

The Role of Sharia Economic Law in Sustainable Development in Indonesia

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Abstract

It is a fact that sustainable development is a challenge to realize the achievement of human civilization in across generations both physical and inner aspects. This article is aimed to analysis the role of sharia economic law either in the form *fiqh/fatwâ* of DSN-MUI or regulations in sustainable development in Indonesia. The methods used to write this article is normative legal research with conceptual approach to elaborate legal concept in *fiqh/fatwâ* and statute approach to elaborate some regulations of sharia economic which prevail formal juridical. From this discussion can be concluded that the implementation of sharia economic law has provided a strategic role to sustainable development, especially in the financial sector both at institutional level and even at the level policy either fiscal or monetary. The existence of these financial institutions has given new hope for the present and future society to enjoy the development result.

Keywords: Sharia, Economic, Law, Development

1. Introduction

United Nations General Assembly had described that sustainable development is development that meet the needs of present generations without compromising the ability of future generations to meet their own needs (Emas 2015). The purpose of sustainable development goal (SDGs) in a nation is to realize the achievement of human civilization in across generations both physical and inner aspects. Human was created by God in a state of nature through a combination of physical elements (*jasmaniyah*) (QS.Ali-Imran [3]: 59) and spiritual elements (*ruhaniyah*) (QS.Al-Hijr [15]: 29). The both element of the human creation then transformed into a living needs to be met simultaneously. Therefore to meet their needs properly, every human need to interact with others in environment that patterns of relationships must always be based on the norms of law.

The nature purpose of human creation is basically to worship God. But in order to has the value of worship, every act of Muslim not only basing intentions for God, but also sholud refer to sharia law had been revealed. Thereby running the norms contained in sharia law is an obligation for Muslim. The scope of sharia law is very broad, which includes the laws governing human relationships with God (*hablum mina Allâh*) and the laws governing relationships among human beings (*hablum mina nas*) (QS. Ali-Imran[3]:112). There are a variety of forms of relationships between human beings, one of which is in the field of economic activity covering production of goods and services, distributon, and consumption.

Economic terms in Arabic called *al-iqtishâd*, namely science that studies how to get the treasures, to manage, and to spend them (Ahmad 1981). Economic activity in Indonesia there is run through a conventional approach and the other sharia approach. The both approachs then have caused the economic adopts a dual system each of which has its own concept. Sharia economic activity in general there is a run in the real sector and in the financial sector. It said the real sector because its business activities are directly related to the business of production and distribution of goods and / or services. While the business is said to be the financial sector, because the scope of activities directly related to the financial services either through product of fund raising or distribution of funds to the communitis who need. Both the business sector beside profit oriented (*tijarah*), they can incorporated with social function (*tabbaru'*) through its Corporate Social Responsibility/ CSR) to provide social security to the poors including environmental conservation.

The fact that practice of sharia economic in Indonesia has been gradually progressing along with establishment the number of sharia financial institutions. Islamic economic practices can be executed by human individually or partnership through companies, both of which they have legal entity or have not legal entity. To be able to run the practice of Islamic economics optimally, the society need to have adequate knowledge to avoid practices that are prohibited by law. Therefore, research for the development of sharia economics law is a necessity to provide a guidelines how to practices economic legally from perspective both *syar'i* and regulations. The legitimacy of an economic concept is intended to protect the present and future generations from prohibited action.

Law term derived from the Arabic *al-hukm*, and plural form is *al-ahkâm*. Term *hukm* is a derivation of the verb *hakama-yahkumu-hukm* which means *al-qadha` bi al-'adl*, namely determine the case fairly. The parties who determine the case referred to *al-qadi*. The terminology, the law can be interpreted as the statutes of God pertaining to *mukallaf* either in the form demands (*iqtidhâ*) or optional (*takhyir*) and / or in the form of provisions set (*wadh'i*) (Dahlan 2010). In essence, all human actions will be held accountable (QS.Al-

Muddatsir[74]:38), so that its existence will never escape from the law. It is said that, because the law does not only contain restrictions that should not be violated (*makruh/ haram*), also contains a provision which can give direct instructions for people to do as good as possible. Those guidance there are realized in the form of commands (*wajib/ sunnat*) or permissibility (*mubah*) to do something (Syarifuddin 2011). The boon of permissibility aspects inherent in the law is intended to facilitate people to be creative according to the nature of its creation. The laws applied in Indonesia is very diverse, including law regulating the practice of sharia economics which is currently being developed in the society.

Sharia economic law in Indonesia there is applied in non-formal form as part of the law which live in the society and there is applied in a formal judicial form. Islamic economic law applying non-formally can be realized in the form of *fiqh mu'amalah iqtishadiyah* and *fatwa* of National Sharia Board - Indonesian Ulama Council (DSN-MUI). According Barlinti (2010), the position of DSN-MUI's *fatwâ* in the national legal order is indirectly binding due to there are regulations which have legitimated it. While that law which apply formally can be realized in the form various regulations are performed by authorized government agencies which is hierarchically stated in Article 7 and Article 8 Law Number 12 Year 2011 on Performing of Regulations.

Fiqh mu'âmalâh iqtishadiyah and *fatwâ* are products of excavations Islamic law (*istinbath al-ahkam*) from sharia sources (*mashâdir al-ahkam al-syar'iyah*) according understanding of Islamic jurists through a legal excavation methods contained in *ushûl fiqh* with its legal maxims, both rules of legal basic (*qawaid al-ushûliyah*) and its rules of legal product (*qawaid al-fiqhiyyah*). Through legal excavation methods, then the jurists construct the *fiqh* and *fatwâ* which contain quote verses derived from the al-quran and al-hadith, include contain their interpretation of both sources for guidance of human action. *Fiqh mu'amalah iqtishadiyah* is knowledge of the sharia laws practically (*amaliyah*) in economics field excavated from the specific arguments (*tafsili*) (Dahlan 2011). DSN-MUI's *fatwâ* (Al-Hamshî 1417H) is a legal opinion of DSN-MUI related contemporary problems that occurred in the economic field. DSN-MUI is part of the MUI established under Decree of the Chairman Board of MUI No. Kep-754/MUI/II/ 1999 on the Establishment of the National Sharia Board (DSN). DSN-MUI is a council which is formed by the MUI to address issues relating to the activities of Islamic financial institutions.

2. Method Research

The existence of sharia economic laws must provide real benefits to the development in Indonesia. How the role of sharia economic law on sustainable development in Indonesia? To answer this question, writers used normative legal research with two approaches, namely conceptual approach to elaborate legal concept in *fiqh mu'âmalâh iqtishadiyah* and DSN-MUI's *fatwâ* and statute approach to elaborate some regulations of sharia economic which prevail formal juridical. This research uses primary legal materials in the form of regulations related to financial institutions, secondary legal material in the form of relevant books, and tertiary legal materials such as dictionaries. The role criteria of sharia economic law in sustainable development is from the existence of Islamic financial institutions and their effects on the welfare of the community.

3. Result and Discussion

The fact that the sharia economy law had been used as guidelines for developing of financial institutions in Indonesia. Many financial institutions that have been developed to follow the progress of financial products that are constructed based on Islamic principles. Some indications of the development of financial institutions can be seen from the establishment of a new institution, the conversion from a conventional financial institution to sharia financial institution, or opening of sharia branches by conventional financial institutions. The existence of those institutions are intended to accomodate variety of new sharia products based on sharia that as character need to be separated from conventional products. Following table is describes the relationship between sharia economic law with the development of financial institutions in Indonesia:

Table 1
Sharia Economic Law and Its Role in Development

<i>Fiqh Mu'âmalâh Iqtishadiyah</i>				<i>Fatwâ</i> of DSN-MUI		
Regulations of Financial Institutions						
Cooperative & UMKM	Banking Institution	Insurance Institution	Capital Market Institution	Institution of pawnshops	Financing Company Institution	Money Market Institution
Sustainable Development						

Institution of cooperative and Micro, Small, and Medium Enterprise (UMKM) have an important role in building the national economy (Hariyono 2012). In cooperative law has stated that the purpose of cooperatives is to improve the welfare of members in particular and society in general, also to build the national economic order (Article 3 Law Number 25 Year 1992 concerning Cooperative). Even to optimize the function of cooperatives,

ministry cooperative and UMKM have issued some regulations as operational guidance of sharia financial services in cooperative and its unit. Some regulations related to sharia cooperative namely: (a) Ministerial Decree Number 91/Kep/M.KUKM/IX/2004 regarding Guidance on Implementation of Sharia Financial Services in Cooperative Business Activities, Ministerial Regulation Number 35.2/PER/M.KUKM/X/2007 regarding Standard Operational Manual for Management of Sharia Financial Services Cooperative, and etc. Through those regulations, they are expected to facilitate the establishment of sharia-based cooperatives so can provide the real benefits for members or community who make use of their services. In practice, many sharia cooperatives have been established under such regulations, even include instituton of *Baitul Maal wat Tamwil* (BMT).

Banking is a financial institution that has an important role in maintaining monetary stability (Ascarya 2002). The banking system in Indonesia adheres to two systems, namely conventional and sharia. In the beginning, the legal basis of Islamic banking is incorporated with Law Number 7 year 1992 and law Number 10 year 1998. Then after the enactment of Law Number 21 year 2008, sharia banking has its own law to serve as the legal basis for the development of banking institutions in Indonesia. To follow up the law, many regulations issued by Bank of Indonesia (Bank Indonesia) to serve as guidelines banking institutons in running their business. Until April 2016, the number of sharia banks in Indonesia is 199 Islamic banks consisting of 12 Sharia Commercial Banks (BUS), 22 Sharia Business Units (UUS), and 165 Sharia Rural Banks (BPRS) (www.ojk.go.id).

Sharia economic law has also influenced the development of insurance institutions in Indonesia. Insurance Law Number 40 Year 2014 has stated that sharia Insurance (*ta'mîn*) is a collection contract which consists of an agreement between the Islamic insurance company and the policyholder and the agreement between the policyholder in order to manage the contribution based on Islamic principles in order to help and protect each other by means of: (a) Reimburse the participant or policyholder for loss, damage, costs incurred, lost profits, or legal liability to third parties that may be suffered by participants or policyholders because of the occurrence of an uncertain event; or (b) Provide payment based on the participant's death or payment based on the life of participants with a predetermined amount of benefits and/ or based on the results of fund management (Articel 1 Point 2).

Today, insurance does not formed as an individual relationship but through a institution of partnership shares (*syirkâh musâhamah*) for mutual trade among participants to collect large sums of insurance premiums. Collected premiums are a collective right to compensate the unfortunate events occurred among the participants, while the left overs are for investment. If it profits then the results are collected as part of the premium or used for risk compensation (Zarqa 1984). Insurance institution is run by commercial companies that offer insurance services for a participant who not only want to get a warranty by sharing of risk from other participants, but also get profit sharing from investment fund of payment. In *Fatwa* No. 21/DSN-MUI/X/2001 regarding General Guidelines for Sharia Insurance/ *Ta'mîn* stated that the underlying contract done by the participants and the company consists of *tijârah* and/ or *tabarru'* contract. *Tijârah* contract is all forms of agreement for commercial purposes, while *tabarru'* contract is all forms of agreement for virtue purposes. *Tijârah* contract in *ta'mîn* use *mudhârabah* for equity sharing and *tabarru'* contract use *hibah* for charity, both of which are implemented simultaneously when the participants pay their premium. Every participant who pays the premium means automatically has invested through *mudhârabah* and done the charity through *hibah*. The participant who pay the premium has a right to claim sharing risk from other participants which must be given by the insurance company as stated in the agreement. Through incorporated investment concept in insurance service, the companies can contribute in economic empowerment for all participants.

The development of sharia financial system in Indonesia is not only cover the scope of banking and insurance but also the other financial institutions, include the capital market. Capital markets activating undertaken on sharia principles can be referred to as the Islamic capital market. The meaning of sharia principles in the capital market is the principles of Islamic law in the area of capital markets activity based on *fatwâ* of DSN-MUI. For legal certainty, those *fatwâ* regarding capital market have been accomodated in some regulation namely Decision of Bapepam-LK No. Kep-130/BL/2006 (Regulations IX.A.13) concerning the issuance of Islamic securities, Decision of Bapepam-LK No. Kep-131/BL/2006 (Regulation No. IX.A.14) concerning contracts used in the issuance of sharia securities, Decision of Bapepam-LK No. Kep-314/BL/2007 (Regulation No. II.K.1) concerning criteria and issuance of sharia securities (Burhanuddin S 2009).

Sharia capital market institutions are built basis on prevailing regulations either guidelines or restriction. Through guidance functions, sharia capital markets have offered various instruments that emiten can issue, such as stocks, bonds include State Sharia Bonds (SBSN), mutual funds, collective investment contracts and some other derivative instruments all of which based on sharia. Then the function of restriction is there are some prohibitions that should not be violated, like as short selling, margin trading, insider trading, data manipulation, and etc. According to official data issued by the Financial Services Authority (OJK), the number of issuers entering the list of Islamic securities are 345 emitens (Decision of the Commissioners Board of OJK Number KEP-56 / D.04/ 2016 regarding List of Sharia Securities). The number of securities which can be offered and

emiten who issue these securities shows that the law has contributed positively to the economic development in Indonesia.

The role of sharia economic law can also be seen from the products formation of sharia pawn. According DSN-MUI's fatwâ, sharia pawn products are composed of several contracts by modification, namely debt (qardh), pledge (rahn), and lease (ijarah) (Fatwa Number 25/DSN-MUI/III/2002 regarding Rahn). The pledge concept offered through the fatwâ then is accommodated as one of the products in pawnshop company established by the government or private companies. The vision of sharia pawnshops is to become the leading Islamic financial institution in Indonesia. While its mission is to provide convenience to the people who want to make a halal transaction, provide superior return to investors and provide employment peace for employees (Anshori 2006). According Article 13 (1) OJK Regulation Number 31/ POJK.05/2006, business activities of pawnshops company covers: (a) Distribution of money loans with guarantees under the law of gadai; (b) Distribution of money loans with guarantees under the law of fidusia; (c) Service for deposit of valuables things; (d) *Services for estimation*. Those business activities of pawnshops company can be run either conventionally or sharia to provide services financing to the public according to personally choice.

By enactment of Bapepam-LK regulations Number PER-03/BL/2007, allows entrepreneurs to run the business through a finance company based on sharia principles. The financing company is a business entity specifically established to perform leasing, factoring, consumer financing, and/ or credit card business. Muhaimin (2012) said that the issuance of the regulation package is to provide an adequate legal basis in relation to the activities of finance companies conducting activities based on sharia principles as well as to meet the needs of the community in the financing industry that requires a diversity of financing and funding sources based on the Islamic sharia. There are some sharia contracts which are used as underlying transaction in the development some product of finance company namely:

Table 2
Use of Contracts in Products of Financial Company

Sharia Contracts	Product of Finance Company
<i>Ijarah/ Ijarah Muntahiyah bi Tamlik</i>	Leasing
<i>Wakalah bil Ujrah</i>	Factoring
<i>Murabahah, Salam, Istishna'</i>	Consumer financing
<i>Qardh, Kafalah</i>	Credit card

Another financial institution that has a role in sustainable development is the money market. Pandji A. and Piji Pakarti (2001) explained that money market is an abstract meeting place where owners of short-term fund can offer to users who need it either directly or through intermediaries. According DSN-MUI's fatwâ, the interbank money market based on sharia principles is a short-term financial transaction activity among market participants based on sharia principles (Fatwa Number 37/DSN-MUI/X/2002 regarding Interbank Money Market based on Sharia Principles). The period of securities traded on the money market is usually less than a year. Instruments which are traded in the sharia money market are Interbank *Mudharabah* Investments (*Investasi Mudharabah Antarbank/ IMA*) issued by banks which have liquidity problem so require financing from other banks and Certificate of Sharia Indonesia Bank (*Sertifikat Bank Indonesia Syariah/ SBIS*) issued by Indonesia Bank (BI) as an instrumen of monetary policy. Through the issuing SBIS, BI expects the money circulating in the community to be reduced so as to prevent inflation. Further provisions regarding guidelines of the sharia interbank money market are regulated in Regulation Indonesia Bank Number 17/4/PBI/ 2015.

4. Conclusion

Sharia economic law either in the form *fiqh/ fatwâ* of DSN-MUI or regulations have a strategic role in sustainable development in Indonesia. Many financial institutions have been formed after the enactment of these law, so giving a positive impact for people who use those institutions to obtain business capital. The validity of the concepts contained in sharia economic law has provided new hope for communities at present of future to develop their business sustainably with due regard to aspects of social and environmental responsibility. The development based on this law will emphasize the principle of partnership and keep away from the practice of usury (*riba*) which is forbidden by sharia. The role of sharia economic law is not only at the institutional level, but also at the policy level both fiscal such as the issuance of State Sharia Bonds (SBSN) as a financing instrument of the state budget and monetary through SBIS instrument. Because the law has an important role in sustainable development, the government should always pay attention to the aspirations of the community in formulation of national law.

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