Institutionalization of Sharia Financial Norms in Indonesia

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Abstract: A norm can be institutionalized, if it is known, understood, obeyed, and respected. This happens with the institutionalization of Islamic finance in Indonesia. The norms of Islamic financial institutions in Indonesia were originally sourced from Al-Qur'an and al-Hadith are then understood, adhered to, valued and institutionalized into shariah financial institutions. Institutionalization of norms into Islamic financial institutions in Indonesia is not only determined by the awareness of the community in complying the norm, but the extent to which awareness to comply with norms can be consolidated into cultural strength that can affect the structural strength. This is where the institutionalization of Islamic finance is formed.

1 INTRODUCTION

A new era of Islamic finance in Indonesia originated from the establishment of Bank Muamalat Indonesia (BMI) on November 1, 1991, operating in 1992. Externally, the establishment of BMI is inseparable from OIC encouragement through IDB supporting the establishment of Islamic Bank in Muslim majority countries. Internally, BMI was founded on the contribution of civil society gathered in Indonesian Ulama Council (MUI) and *Ikatan Cendikiawan Muslim Indonesia* (ICMI) which encouraged the government to establish sharia bank in Indonesia.

In the other hand, the initiative of sharia banking establishment in Malaysia and some other countries was not initiated from the lower society (bottom-up).

The establishment of sharia banking in Malaysia was the result of a government push (top down) which is then accepted by the people. While in Indonesia, the establishment of sharia banking was the result of the initiatives of the moslem people as layman. This argument is revealed from Atang Abd Hakim's research which says that MUI and ICMI are important elements that determine the establishment of sharia banking in Indonesia. Both are civil society representations, not representations of government (Atang Abd Hakim, 2010).

The presence of BMI initiated by the MUI and driven by ICMI turned out to provide a new pattern in the national financial system, from which previously only conventional finance alone became colored with the existence of Islamic finance. In addition, the presence of BMI has stimulated the development of other Islamic financial institutions, namely: sharia banking, sharia insurance, shariah financing, shariah venture capital, sharia guarantee, sharia pawnshops, sharia pensions, sharia mutual funds, and sharia bonds.

2 THE NORMS OF SHARIA FINANCE

Before becoming an institution, Islamic finance was shaped as norm (Mahmud Muhammad Balily, 1990). Norms are generally contained in the Qur'an and al-Hadith. However, these norms are not described in detail in the Qur'an and al-Hadith. Although it was not explained in detail, the Qur'an and al-Hadith have given guidance on the value and norms about the provisions that may and should not be done in Islamic financial activities.

Riba is an Arabic word, derived from the verb *raba* that literally means 'to grow' or 'expand' or 'increase' or 'inflate' or 'excess'(Al-Raghib Al-Isfahani, 186-187). The same literary meaning has occurred in many places of *al-Qur'an* as well. It is, however, not every growth or increase, which falls in the category of *riba* prohibited in Islam. It is generally translated into English as "usury" or "interest", but in fact it has a much broader sense in the *Shari`ah*. *Riba* in the *Shari`ah*, technically refers to the 'premium' that must be paid by the borrower to the lender along

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with the principal amount as a condition for the loan or for an extension in its maturity. (M. Umar Chapra, 56-57) In *fiqh* terminology, *riba* means an increase in one of two homogeneous equivalents being exchanged without this increase being accompanied by a return. The term *riba* is, however, used in the *Shari`ah* in two senses. The first is *riba al-nasi'ah* and the second is *riba al-fadl.* Some Muslim scholars attempt to define *riba* which seems to be closer to the sense implied in the verses of the *Qur'an* and *ahadith* related to it. They define *riba* as an increase or excess which, in an exchange or sale of a commodity, accrues to the owner (lender) without giving in return any equivalent counter-value or recompense to the other party (Zia-ul Haque, 16).

Prohibition of *gharar* in sharia financial business institutions, more visible in Takaful insurance. So far, it is alleged that in conventional insurance contains elements of *gharar*. The *gharar* element in conventional insurance lies in the uncertainty about the source of funds used to cover claims. Funds received by participants as payment of claims are unclear. Because of this lack of clarity, conventional insurance is exposed to *gharar* elements.

The word *gharar* is sometimes interpreted as 'uncertainty' rather than deception. With regard to *gharar*, Islamic Law is clear that it should not be present in contractual agreement. One cannot for example sell what one does not own, because this is regarded as a form of deception. Similarly, one cannot sell an item of uncertain quality, an unborn calf for example, since the buyer and the seller do not know exactly what it is that they are trading. As far as *maisir* is concerned, it is regarded in Islam as one form of injustice in the appropriation of others' wealth and therefore has much in common with the concept of *riba*.

The act of gambling, sometimes referred to betting on the occurrence of a future event, is prohibited and no reward accrues for the employment of spending of wealth that an individual may gain through means of gambling. Under this prohibition, any contract created, should be free from uncertainty, risk and speculation. Contracting parties should have perfect knowledge of the counter values intended to be exchanged as a result of their transactions. Also, parties cannot predetermine a guaranteed profit. This is based on the principle of 'uncertain gains', which, on a strict interpretation, does not even allow an undertaking from the customer to repay the borrowed principal plus an amount to take into account inflation. The rationale behind the prohibition is the wish to protect the weak from exploitation. Therefore, options and futures are considered as not Islamic and so are forward foreign exchange transactions because rates are determined by interest differentials (Abu Umar Faruq, 18-20).

The next norm, the prohibition against waste on the use of property. This prohibition is based on the idea that waste of property will have a negative impact on the economic life of the community. The consequences of waste will lead to inefficiency of economic resources. At the same time, Islam also prohibits the accumulation of property (*ikhtikar*). Treasure hoarding occurs due to the monopoly of wealth by a group of people. The consequences of monopoly impact price volatility in the market. Conditions such as this will surely burden the public.

According to Afzalur Rahman Prophet Muhammad before being appointed as Prophet, known as *al-amin* (a beloved man), his reputation as an *al-amin* encourages Siti Khadijah to invest her funds to be managed by Prophet Muhammad. Siti Khadijah's position as an investor (*shahibul maal*) and Prophet Muhammad as the entrepreneur (*mudharib*). This then initiated the creation of *mudaraba* institution, which is a principle of cooperation in business that appreciates the principle of profit sharing (Afzalur Rahman, 1997).

3 SHARIA FINANCIAL INSTITUTIONALIZATION

According to Juhaya S. Pradja, social institutions are shaped by the growing norms of norms that are rooted in society. The norms found in people's lives have different bonding power. There is a weak norm of binding force. There is also norm with a strong binding form. The bound ability of this norm will depend on the level of public understanding of the norm. If people's understanding of the norm is high, then the binding power becomes stronger, in contrast, if the society's understanding of the norm is weak, then its binding strength becomes weak.

From this thought, Juhaya divided the norm into four parts. **First**, norms are defined as a means (usage), i.e. irregularities on the way will not get severe punishment, but only reproach; **second**, norms are defined as folkways, which are repetitive acts that's becoming into habits. Habits have binding strength compared to ways. If not done, it is considered to deviate from the common practice and society; **third**, the norm is defined as a behaviour, a habit that is considered not only as a behaviour only, but accepted as regulatory norms; **Fourth**, norms are defined as customs, which is a behaviour that integrates with the patterns of community behaviour and has more binding power. If violated, one will get hard sanction from the community (Juhaya, 2014)

In line with the above phrase, according to Sukanto (1987) that the prerequisite of institutions become social institutions if they have rules or norms that live and thrive in society. Therefore, according to Philip Gillin that the norm can become an institution, it must be known, understood, obeyed, and respected.

In this context, the establishment of Islamic financial institutions does not grow in a vacuum. It grows through an evolutionary process stages. Sociologically, sharia finance institutions, initially the sharia-economic norms of the new business understood only on the surface alone, so that the attachment of norms in the community is relatively weak.

Norms about prohibition in economic practice containing elements of *maysir* (gambling), *gharar* (uncertainty), *dharar* (harm), *ikhtikar* (monopoly), *iktinaz* (hoarding), and riba (usury). The prohibited norms are abbreviated as "maghadir." These norms are, in fact, already known in the community, but because the level of public understanding of the norm is still weak, the violation of the norm is not accompanied by severe sanctions. Thus, the economic activities of Muslims that are contrary to the economic norms of sharia-business are seen as commonplace. As in the practice money lender that occur in society. The practice is contrary to Islamic norms, but this is considered normal, due to the public's lack of understanding of the norms of sharia-business economics.

However, after the islamic proselytizing (*da'wah*) and education (*tarbiyah*) of Islam increasingly developed by Muslims, the level of public understanding of the economic norms-sharia business is getting better. Growing public awareness of economic norms-sharia business, it will increase the knowledge Of the consequences from disobeying the norm. In these conditions, the norms of sharia-economic business become the norms that bind the behaviour of Muslims. The economic activity of loan sharks can be minimized as much as possible. Even in Islamic societies, economic activity is seen as something that is blameworthy. In this case, the norm of prohibiting usury has been embedded among Muslims, so that the perpetrators get a stronger social sanction compared with the first stage in the process of establishing norms into an institution.

The above incidents became a driving force among Muslims to realize the Islamic teachings about economic norms-business in accordance with the principles of sharia. In 1968 the Majelis Tarjih Muhammadiyah conducted an in-depth study of usury and bank interest. The study concluded that bank interest given by state banks to its customers include *syubhat* (Pusat Pimpinan Muhammadiyah, 2011).

In 1985 Assembly Assessment (study forum) under the Majelis Ulama Tk. I Sumatera Utara and Baitul Makmur Foundation Medan held a study of banks and non-bank financial institutions. The study concludes that: 1) banking and non-banking institutions are one sub-system and economic system that is difficult to avoid, 2) usury which is *adh'afan mudha'afan* (multiply) the law is haram (prohibition), 3) bank interest is the problem That sparks different opinion from scholars (Ibrahim Lubis, 1995).

In 1990 the discourse of sharia economy grew stronger with the focus of the establishment of Islamic banks organized by the Indonesian Ulama Council (MUI) on 19-22 August 1990. The workshop still has not resulted in a unified agreement on bank interest. However, the passion for building an alternative banking system became a unanimously agreed decision. At the 5th National Assembly (MUNAS) of the 5th Indonesian Ulama Council (MUI), the results of the workshop were discussed in depth. At the end of the MUNAS, MUI recommended to establish a Sharia Bank in Indonesia. The recommendations then received a positive response from the Association of Indonesian Muslim Intellectuals (ICMI). MUI and ICMI formed a joint team to establish a sharia bank. On first of November 1991, Bank Muamalat Indonesia (BMI), the first bank based on sharia, has established.

The establishment of BMI is seen as a new round of institutionalization process of sharia-economic business in Indonesia From this, the sharia economic institutions started to emerge, both in the financial sector of sharia and non-sharia financial sector. In the sharia financial sector, emerging sharia banking, sharia insurance, sharia pawnshops, syariah venture capital, sharia guarantee, and sharia pension. While in the non-syariah financial sector appears, syariah tourism, sharia hotels, sharia restaurants, sharia fashion, and sharia-based business companies.

From the above explanation, it can be seen that the process of institutionalization of Islamic business-economy in Indonesia begins with the public awareness of economic norms-sharia business. Sociologically, these norms are then absorbed and internalized in the economic activities of society. So that the weak norms become stronger and have a stronger binding power. The process of establishing norms into economic institutions-sharia business can be seen in the Figure below

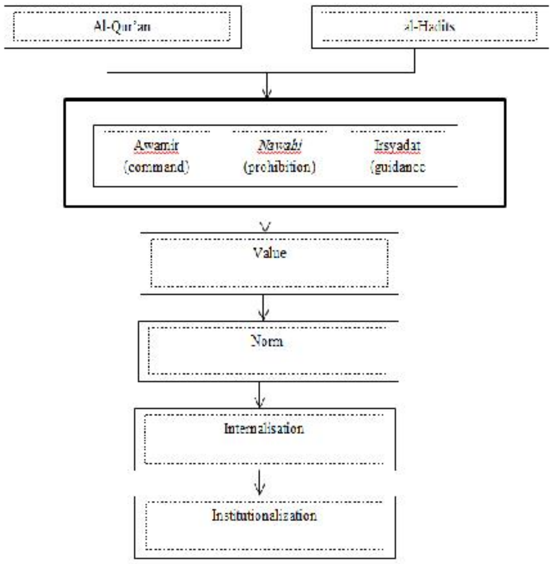

Figure 1: The Process of Establishing Norms into Sharia Financial Institutions.

According to some scholars, such as Anas bin Malik (d.795), al-Shafi'i (d.820), al-Tabari (d.926), ibn Qutaibah (d.892), Ibn Abd al-Bar (d. 1076), Ibn Arabi (d.1159), the religious rule composed of *Awamir* (commands) is the commandment of Allah whose perpetrators will reward the Hereafter. *Nawahi* (prohibitions) is a prohibition of God who will be sinners in the afterlife. Meanwhile, *irsyadat* (guidelines) are good instructions of God in the form of orders or restrictions that imply on the benefit in the world. (Kholah Mohammad Omar Bazmool, 1435/2014).The human understanding of those values is manifested in the norms internalized by a number of experts in consciousness to implement the whole teaching comprehensively. The form of awareness of the implementation of Islamic teachings leads to the institutionalization of norms. The framework above could describe how sharia financial institution in Indonesia born.

4 FACTORS AFFECTING THE ESTABLISHMENT OF SHARIA FINANCIAL INSTITUTIONS IN INDONESIA

The process of establishing an economic institution-sharia business is influenced by various factors, the most dominant factors are: 1) theological factors, 2) sociological factors, 3) cultural factors, 4) economic factors, and 5) political factors of economic law.

4.1 Theological Factor

The theological factor here is a factor influencing the formation of the religious consciousness of Muslims in doing business who wishes to implement economic practices in accordance with the principles of sharia.

This factor appears to be motivated by the notion that conventional financial business institutions are seen to be in conflict with the provisions of sharia. In practice the institution contains elements of *maysir* (gambling), *gharar* (uncertainty), *dharar* (harm), *ikhtikar* (monopoly), *iktinaz* (hoarding), and *riba* (usury) or abbreviated as maghadir. On that basis, Muslims are eager to have an economic institution-sharia business that can shelter their activities in doing business .

4.2 Sociological Factors

Sociologically, the emergence of sharia-economic economic institutions is based on the idea that the majority of Indonesians are Muslim. Therefore, it is considered reasonable if there is a desire of Muslims who in economic activities run in accordance with the principles of sharia.

However, it is not denied that there is an ambivalent attitude in the society. On the one hand, he believes that the interest is haram, but on the other hand he still interacts with the conventional bank, dealing with this condition also affects the MUI fatwa which states that bank interest is forbidden because usury (MUI Fatwa No. 1, 2014), but on the other hand MUI also allows doing business with conventional banks for people to whom the sharia bank do not available at their area.

4.3 Cultural Factors

Culturally, it is found that in the economic transition that occurs in the society who apply *maro* system (revenue/profit share), *mertelu* (revenue share of one third two-thirds), and nengahkeun (a half-profit share). The system highlights the principles of profit sharing as practiced in sharia banks. The long-term revenue-sharing pattern in the community, actually leads to the creation of justice and the balance of economic players with their environment. Not only that, the profit-sharing pattern also keeps the spirit of partnership between business actors, rather than just the relationship between employer and subordinate. The spirit of partnership is what will lead business actors, not just business relationships that are profit oriented, but in essence is a humanitarian cooperation; each other will care for each other and help each other.

The existences of cultural relation of economic activity of society with sharia economy encourage the emergence of Islamic economic-business institution. This is in line with Max Weber's saying that to understand the real community how we understand social action between social relationships, where "meaningful action" is interpreted to arrive at a causal explanation (George Ritzer, 1975). Thus, in fact that culture can be created, culture does not form naturally. Cultures are built on the basis of a consensus of values that develop in common and are driven by universal consciousness. (Hans-Dieter Evers, 2003).

However, the thing that is often forgotten in the development of business institutions is a lack of understanding of the culture of the community in which the business institutions are located, not least the Islamic bank which is part of the business entity itself. Understanding of community culture and local wisdom is one of the significant factors as a prerequisite for designing, aligning and developing the business we are running. Thus, a business institution is not only corporate oriented, but it has socio-cultural harmony and corporate social responsibility.

4.4 Economic Factors

Economically, every human being doing economic activity can hardly be released from financial institution either bank or non-bank. Financial institutions serve as intermediary financing, which brings between surplus units (excess funds) with deficit units (lack of funds). In this context, Muslims are in a deficit unit position. Therefore, in this position Muslims need financial institutions. In this framework, Muslims need the presence of Islamic financial institutions.

4.5 Legal Political Factors

Political law plays an important role in the institutionalization of Islamic financial norms in Indonesia. This role is carried out by civil society, such as ICMI, MUI, and campus community through its cultural movement. This movement then encourages the political forces of Islam in parliament to support the ratification of Law no. 21 of 2008 concerning sharia banking. At first, the political power in parliament was limited to Islamic political parties only. However, in its proliferation, this movement is influential on political parties that have no historical traditions and roots with Islam.

There are 9 factions supporting the ratification of Law no. 21 of 2008 concerning Sharia Banking. Of the nine, 6 factions of which represent the political power of Islam, namely: 1) Fraction of United Development Party (FPPP), 2) National Mandate Party Faction (FPAN), 3) Reform Star Party Fraction (PBR), 4) National Awakening Party (PKB), 5) Prosperous Justice Party Faction (FPKS), 6) Fraction of Pioneer Stars of Democracy (FBPD). And three factions of the nationalist element, namely: 1) Faction of Democratic Party of Struggle, 2) Golkar Party Faction, and 3) Democratic Party Faction. And there is only one faction that refused, the Prosperous Peace Party Faction (FPDS). (Djawahir Hejazziey-121)

The existence of political party support in the parliament of both Islamic political parties and nationalist political parties, indicates the legal political efforts carried by civil society into a model in institutionalizing Islamic legal norms into Islamic financial institutions. Thus, the institutionalization of norms into sharia financial institutions must combine cultural movements with structural movements. (Younes Soualhi, 2012) With the enactment of Law no. 21 Year 2008 is the result of legal politics initiated by civil society.

5 CONCLUSIONS

Philip Gillin said that for a norm to become an institution, it must be known, understood, obeyed, and respected. The phrase seems to correlate with the phenomenon of Islamic financial institutionalization in Indonesia. Islamic financial institutions in Indonesia were originally the norms sourced from al-Qur'an and al-Hadith which are then understood, adhered to, valued and institutionalized into shariah financial institutions. Institutionalization of norms into Islamic financial institutions in Indonesia is not only determined by the awareness of the community in complying with the norm, but the extent to which awareness to comply with norms can be consolidated into cultural strength that can affect the structural strength. This is where the institutionalization of Islamic finance is formed.

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