



Epistimology of Sharia Economic Law in Indonesia (Figures, History and Orientation)

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Abstract. Islam is a universal and comprehensive religion. Universal means that Islam is intended for all human beings on earth and can be applied at any time until the end of time. An important aspect related to human relations is the economic aspect. So in Islam, economic activity has principles derived from Al-qur'an and Hadith. All scientific disciplines including economics have an epistemological basis. Epistemology is a branch of philosophy that discusses in depth the whole process of acquiring knowledge. In other words, Islamic economics can only be used as a scientific discipline if it meets the requirements scientific requirements. So that the epistemology of Islamic economic law requires ijthad using rational reasons. The ideals of Islamic economic law contained in the maqāṣid ash-shari'ah are in line with the ideals of economic law in Indonesia with the focus on building and creating the benefit of the world and the hereafter for mankind. The development of Islamic Economic Law in Indonesia gave birth to various regulations related to economic and financial problems that occurred in Indonesia. The epistemology of Islamic economic law in Indonesia is an important study to find out the origin and truth of the law itself. This study uses descriptive qualitative methods, namely to describe the results of the findings of the authors from various historical literature. The results of this study found that in general the anatomy of Islamic economic system thinking in Indonesia can be categorized with three periods; growth, development and formation phases.

Keywords: Epistemology, Indonesia, Sharia Economic Law.

1. Introduction

The study of Islamic economics is tied to Islamic values, or in everyday terms it is bound by halal-haram provisions, while halal-haram issues are one of the scopes of legal studies. So this shows the close relationship between law, economics and sharia. Law and economics are two things that cannot be separated because these two things complement one another. Sharia economic law is a study of Islamic law related to economics in an interdisciplinary and multidimensional manner. Economic law is the overall norms made by the government or authorities as a personification of society that regulates economic life in which the interests of individuals and society face each other. In these norms, the government tries to include provisions that put more emphasis on the interests of society, even if it is necessary to limit individual interests and rights. Thus, the location of economic law is partly in civil law and partly in criminal or criminal law.

The term shari'ah economy or shari'ah economy is only known in Indonesia. While in other countries, the term is known as Islamic economics (Islamic economics). Islamic economy, al- iqtishad al islami) and as a science called Islamic economics (Islamic economics,, ilm ai-iqtishad al-islami). Linguistically al-iqtishad means middle and just. The meaning of the middle class is, people who act honestly, straight, and do not deviate from the truth. Iqthishad (economics) is defined by knowledge of the rules relating to wealth

production, distribution, and consumption (Rafiq, 2015). Philosophically, the ideals of Indonesian economic law are to initiate and prepare a legal concept of economic life. The desired economic life is the life of the nation and state whose people have social welfare and justice, as aspired by Pancasila. Starting from these ideals, in the future economic law must show an accommodative nature towards: 1) the realization of a just and prosperous society; 2) proportional justice in society; 3) there is no discrimination against economic actors, 4) unfair competition (Sri, 2007).

The ideals of economic law are in line with the ideals of Islamic law contained in the *themaqasid* as *syari'ah* with the focus on building and creating the benefit of the world and the hereafter for mankind. The ideals of Islamic law in the economic field can be seen in its concept of economic activity seen as a vehicle for society to lead to at least the implementation of the two teachings of the Qur'an, namely the principle of *mutualat- of awwun* (helping and cooperating between community members for good) and the principle of *avoidinggharar* (business transactions in which there is an element of fraud which ultimately harms one of the parties). The inclusion of Islamic elements (sharia economics) in the ideals of Indonesian economic law does not mean directing the national economy towards a certain religious economic ideology, but because the Islamic economy has long lived and developed not only in Indonesia, but also in the world. The Islamic economic system is one of the other economic systems such as capitalism and socialism. According to Jimly Asshiddiqie, from the perspective of economic constitution, we don't need to get caught up in discussions about economic ideology. Sharia Economics its existence has a strong foundation both in formal *syar'i* and formal constitution. Formally *syar'i*, the existence of Shariah economy has a strong foundation. In the context of the country, Sharia economy has a constitutional basis (Fitria, 20019).

Movement and Islamic Economic Thought in many sources try to explain the historical journey of Islamic Economic System thought but only focus on the discussion around the conditions that occurred at the time of the Prophet, companions and *tabi'in*. As for the condition of Indonesia itself, there are still not many found. Even if there is, the discussion still contains imitation of the concept at the time of the Prophet and three generations after the Prophet by trying to "equalize" it in the plane of philosophical praxis.

As a result, the thought of the emerging economic system cannot yet be called a theory of the Islamic economic system but merely an Islamic economic philosophy. This paper examines how the epistemology of sharia economic law in Indonesia starts from history to the formation of various regulations that affect economic performance to realize human welfare, especially in Indonesia. So with this study obtained history, influential figures and the orientation of the existence of various Sharia economic law regulations in Indonesia.

2. Methods

This research was conducted using a qualitative method with a descriptive approach, in which the researcher explored and disclosed history and information through in-depth study on various writings on the epistemology of sharia economic law in Indonesia. Source of data in this research is secondary data. starting from, articles, portals, web, blogspot, etc.

3. Results and Discussion

3.1. *Epistemology of Islamic Economic Law in Indonesia*

All kinds of laws in force in Indonesia today (*ius conctitutum*) are positive laws. Positive law requires unification and codification in written form so that it can be effectively and efficiently enforced in certain areas at certain times.), and verifiable. 25 First, observable. Every Indonesian citizen who is declared right or wrong must be able to observe (carry out investigations and investigations) to find out whether his status is free, reported, suspect, accused, convict, or executed. Second, measurable, that is, it can be measured. Someone is called guilty or cannot be measured how big the mistake is. Standards of truth and error are contained in statutory regulations. For example (1) if someone is sentenced to a fine, it must be able to measure how many millions or billions of fines it is, (2) if sentenced to prison, it must be able to measure how many months or years, if sentenced to death, it can be measured when it will be carried out. Third, verifiable. A person is said to be right or wrong can be proven by various pieces of evidence (BB), including expert testimony, evidence, witnesses, confessions, and oaths. According to Amiruddin and Zainal Asikin, positive law is law that adheres to the principle of law as it is written in the book. That is, law is all provisions written in statutory regulations. 26 Thus, values, principles, and all provisions that have not been written in statutory regulations cannot yet be called Indonesian national law, but are material of national law.

The provisions of sharia economic law first appeared in Indonesia when the government launched the October 1988 Package policy which allowed each bank to set interest rates even if it was zero percent. At that time Islamic Banks began to stand. Subsequent sharia banking arrangements are contained in Law no. 7 of 1992 concerning Banking, PP no. 72 of 1992 concerning Profit Sharing Banks, and Law no. 10 of 1998 concerning Amendments to Law no. 7 of 1992 concerning Banking. Sharia banking arrangements in these laws are not equipped with arrangements regarding dispute resolution between Islamic banks and customers. This gave rise to various legal interpretations to resolve sharia economic disputes. According to Muhammad Syafii Antonio, if a dispute arises between a Sharia Bank and a customer, the two parties will not settle it in the District Court nor in the Religious Court, but according to sharia procedures and material law, namely through the National Sharia Arbitration Board (Basyarnas) which has been established by the Indonesian Ulema Council (MUI) in collaboration with the Attorney General of the Republic of Indonesia.

On the other hand, Sutan Remy Syahdeini is of the view that in the Indonesian legal system, Islamic law is not positive law (not law that applies officially and can be enforced for violations by the courts). Therefore, disputes that arise between Islamic banks and customers are not enforced by Islamic law. However, what is enforced is contract law as stipulated in the Civil Code, because the Civil Code is positive law. The unclear resolution of sharia economic disputes finally received a response with the issuance of Law no. 3 of 2006 concerning Religious Courts. In Article 49 of Law no. 3 of 2006 stated "The Religious Courts have the duty and authority to examine, decide and resolve cases at the first level between people who are Muslim in the areas of: (a) marriage; (b) inheritance; (c) will; (d) grants; (e) waqf; (f) zakat; (g) infaq; (h) sadaqah; and (i) shari'ah economics." Article 49 of Law no. 3 of 2006 above firmly stipulates that sharia economic disputes are resolved by the Religious Courts. This provision is getting stronger with the issuance of Law no. 21 of 2008 concerning Islamic Banking. Article 55 paragraph (1) Law no. 21 of 2008 states "Sharia banking dispute settlement is carried out by courts within the Religious Courts." The

authority of the Religious Courts is increasingly complete with the issuance of Law no. 50 of 2009 concerning the Second Amendment to Law Number 7 of 1989 concerning the Religious Courts. Explanation of Article 3A paragraph (1) Law No. 50 of 2009 Regarding the Second Amendment to Law No. 7 of 1989 concerning the Religious Courts it is stated that "What is meant by "holding special courts" is the existence of differentiation/specialization in the religious court environment where special courts can be formed, for example sharia arbitration courts, while what is meant by "ruled by law" is structure, powers, and procedural law.

As a follow-up to the mandate of the sharia economic legislation above, it is necessary to reform the formal law and material law of the sharia economy. So far, there are two material legal references to sharia economics, namely the Fatwa of the National Sharia Council (FDSN) and Supreme Court Regulation (Perma) Number 02 of 2008 concerning Compilation of Sharia Economic Law (KHES). Lawrence M. Friedman formulates that a law reform will not get an effective law if it is not supported by three things, namely good legal substance, authoritative legal institutions, and cooperative legal culture. In this context, the DSN MUI and KHES fatwas fill the void in the substance of legal norms in the field of sharia economic material law. During 2007 and 2008 there were 4 sharia economic dispute cases that went to the Religious Courts, and 14 dispute cases were handled by the National Sharia Arbitration Board (Basyarnas). As of June 2007, the MUI's National Sharia Council (DSN) has issued 61 sharia economic fatwas. If before May 2007 the DSN MUI fatwa always included a clause, if a dispute occurred it should be resolved at the National Sharia Arbitration Board (Basyarnas). So since June 2007 the DSN MUI has made a new clause that if a dispute occurs, it must be resolved at the National Sharia Arbitration Board (Basyarnas) or the Religious Courts (PA). This change cannot be separated from the passing of Law no. 3 of 2006 concerning the Religious Courts in lieu of Law no. 7 of 1989. Article 49 of the law gives competence to PA to resolve sharia economic disputes.

3.1.1. History of Islamic Economic Thought in Indonesia (History, Figures and Orientation)

In general, the anatomy of the Islamic Economic System of thought in Indonesia can be categorized into three periods. growth period. This period was initiated by the spirit of the Islamic da'wah mission brought by Muslim traders and Walisongo to the archipelago. Estimated 7th century to late 15th century. The main feature of this growth period is that the behavior of traders and Islamic economic awareness is still not clearly revealed. The economy is only a tool for da'wah missions. Likewise in the 15th century, the time when Walisongo spread Islam concentrated more on problemstajdidin terms of renewal of religious understanding. Period of development: marked by the enthusiasm to translate the Islamic Economic System into a modern financial institution. This period of development from the beginning of the 16th century to the end of the 18th century with its main characteristic, the desire for an Islamic economy has started to grow. One of the peaks of the establishment of Islamic kingdoms in the archipelago was to support this assumption. Finally, the formation period. This period began after the independence of the Republic of Indonesia and reached its culmination in the decade of the 90s or 21st century until now. This period was marked by the proliferation of financial institutions with Islamic characteristics. Laws that have made it possible for the formation of Muslim financial institutions are also increasingly wide open.

a. Growth Phase

In general, the period of growth can be called the da'wah period. A symbiotic relationship can be seen between the Rajaraja rulers at that time and Muslim traders. If the merchants needed spices, then the kings needed money for the royal treasury. During this period, the spirit of economics under Islamic guidance had not yet become an organized consciousness. The cultural diversity of the traders themselves met with the spirit of the Hindu religion of the kings who were still strong, making the contract system very varied. If not, it is difficult for Muslim traders to enter into economic cooperation contracts with the kings who have these rich natural resources. In short, economic behavior that is consciously organized and in accordance with Islamic law, emerges after the da'wah mission meets the point of social solidarity.

b. Development Phase

During this period, which began around the end of the 13th and 18th centuries, in which the Islamic kingdoms met their center point, the spirit of an organized economy according to Islamic law also started to appear. One of them is the mushrooming of colonies with a special population of Muslim traders. The clearest historical records around the 17th century show that the nobles and kings in Indonesia, like the aristocrats in the Netherlands, played a very important role in the trade economy in the archipelago, especially in capital investment, ownership of merchant ships, control of trade, management of ports and markets, port security and monopoly on basic trading materials. Similar to the trade institutional system that applies in the sultanates in West Asia and South Asia, in the archipelago region the trade partnership institutional system also applies (partnership or shari'ah, mufawadah) and system commendation or capital ownership (qirad, mudarabah).

c. Formation Phase

After the fall of the Muslim economic system at the end of the 18th century, on January 1, 1800 the fate of the VOC ended in Indonesia. Then it was taken over by the Dutch, whose economic agenda was to introduce the Western capitalist system, which was full of bureaucracy, banks and bank interest. So that the struggle for the economic system is more about the rejection of the bank interest system which is considered the equivalent of rent and the monopolistic colonialist system. If during the growth and development period the economic system was still based on strong mutual trust, then during this formation period everything became a strict bureaucratic system. To respond to the problem of banks with the interest system, Muhammadiyah, for example, as a social organization, can at least be used as material for consideration to see the seeds of the Islamic Economic System in Indonesia.

Furthermore, in this period around the 1990s, the thoughts and movements of the Islamic Economic System developed at two levels, namely the theoretical and practical levels. At the theoretical level it is developed through higher education, scientific studies and the development of research on the Islamization of the economy. At a practical level, it is developed starting from the monetary sector, commercial banks, BPRS, BMT, development of productive zakat management, insurance and

Islamic stock exchanges and Islamic pawnshops. The idea of establishing institutions that are labeled or contain Islamic values such as Islamic banks in Indonesia, BPRS, BMT and even the Islamic arbitration institution above marks that the era to present the Islamic Economic System in a more conscious and open manner. Especially for the arbitral institution (hakam) has actually been known since the Pre-Islamic era. At that time, although there was not yet an organized judicial system any agreement on property, inheritance and other rights was often settled with the help of a peacemaker or arbiter appointed by each of the disputing parties. Also during this formation period, the Indonesian Ulema Council (MUI) played a quite important and prominent role which was considered as a representation of Muslims and the government. MUI in this case becomes more pro-active in efforts to improve the people's economy. Not only solving khilafiyah problems but also being a catalyst for the wider interests of Muslims.

Materials of national law in the economic field can come from Western law, customary law, and Islamic law. The national law in the economic field originating from Islamic law, the momentum of its unification and codification was marked by the establishment of Bank Muamalat Indonesia in 1992. In early 1992, in preparation for the formation of Bank Muamalat Indonesia (BMI), KH. Hasan Basri was invited to lunch by President Soeharto while talking about BMI. According to Iwan Triyuwono, at that time President Soeharto agreed to the term "profit sharing", because it was in accordance with Indonesian national culture. Regarding BMI, initially, the name to be used was Bank Syariah Islam Indonesia. However, this was not agreed upon because it was feared that it would remind people of the Jakarta charter. Then came the name of Bank Islam Indonesia, abbreviated as BASINDO, is also not accepted.

According to Bahtiar Effendi, the struggle of Muslims in the New Order era was patterned into three characters, namely (1) the pre-independence period, characterized by calls for the unity of Islam and the state, (2) the post-revolutionary period, characterized by the struggle for Islam as the ideological basis of the state, and (3) the New Order period, characterized by the taming of Islamic idealism and political activity. The stages of this struggle at its peak gave rise to a new intellectualism, precisely in the second half of the 20th century and patterned into three schools of thought. First, religious theological renewal with the central issue of calling for desacralization, reactualization and indigenization. The main characters, such as Nurcholish Madjid, Abdurrahman Wahid, Harun Nasution, John Effendi, and Munawir Sadzali. Second, political and bureaucratic reform, with the central issue of bridging the ideological gap between political Islam and the state. The characters, such as Dahlan Ranuwiharjo, Mintaredja, Sulastomo, and Mar'i Muhammad. Third, social transformation, with the central issue of enriching the political meaning of Islam. Its figures, including Sudjoko Prasodjo, Adi Sasono, and M. Dawam Rahardjo Kaukus from all schools of thought, ultimately lead to two main themes, namely the development of egalitarian political orders and the development of processes towards economic equality. In an accommodative political situation, Muslims reiterated that the State based on Pancasila is the final form of the unitary state of the Republic of Indonesia.

Thus, any activity with the initials Islam is no longer considered to be harmful to the state, but is considered an important part of nation building and development.

3.1.2. Development of Sharia Economic Law in Indonesia

The development of the Islamic economy or what is commonly known as the sharia economy in Indonesia is taking place so rapidly. This is also supported by the legal sector, which is based on the issuance of laws and regulations in the field of sharia economics, including the issuance of Law Number 3 of 2006 which authorizes the Religious Courts to handle cases of sharia economic disputes. In addition, the issuance of Law Number 19 of 2008 concerning State Sharia Securities and Law Number 21 of 2008 concerning Islamic Banking has further strengthened the legal basis of Islamic economics in Indonesia. (fitria, 2019).

At a practical level, the existence of Islamic financial institutions today shows an increasingly rapid development. This is in line with the increasing awareness of the majority of Muslims to carry out Islam in a kaffah manner. This development certainly provides new hope for business actors to run a business that is not only oriented to material gain, but also in accordance with the spirit of sharia law which promises to fulfill spiritual needs (Burhanuddiin, 2010).

Islamic law is a summary of Islamic intellectualism, the most characteristic embodiment of Muslim human life activities, and the main element of the essence of Islam. It is too difficult or even impossible to truly recognize Islam without understanding Islamic law. 1 Among the products of Islamic intellectualism, Islamic law occupies the top position and is most widely spread throughout the Islamic world. Thus, it has implications for individual behavior and shapes the mindset and action patterns of Muslim society. 2 The implication of legal development in the economic field is the emergence of various regulations that affect economic performance to realize human welfare. The law seeks to provide a reflection for the creation of economic justice. 3 Among the significant dimensions of Islamic law that contribute to upholding economic justice in the midst of people's lives is Islamic economics which in Indonesian terminology is more popular with the term sharia economics. The ups and downs of the development of the civilization of the Indonesian Muslim community have gained an important contribution from the dynamics of the sharia economy. In this context, it cannot be denied that there is a relationship between the development of Islamic law and the dynamics of sharia economic law in Indonesia.

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4. Conclusions

The existence of the sharia economy in Indonesia has actually taken root even though its enforcement is still sociologically normative. The economic crisis that occurred in Indonesia in 1997, made the government begin to look at a system that

departed from the Shari'ah economic system. There are relatively many legal instruments to cover the implementation of the Indonesian sharia economy, even though they are not maximized. In the future, more optimal and comprehensive efforts are needed in order to complete the rules or regulations related to Islamic economics, so that the existence of Islamic economics becomes strong not only sociologically normatively but also formally juridically. What needs to be done is to carry out legal reform which is one dimension of the development of national law, in addition to the dimensions of maintenance and creation. What is meant by the renewal dimension is an effort to further improve and perfect the development of national law, namely by addition formation of new laws and regulations, as well as improvement of laws and regulations.

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References

- Agus Arwani, RELIGIA Vol. 15 No. 1, April 2012. pp. 125-146
- Ahmad, Khursid. 1981. Studies in Islamic Economics: United Kingdom of Arab: Islamic Foundation.
- An-Nabhani, Taqiy al-Din. 1990. An-Nizham Al-Iqtishadi fi Al-Islam. Beirut: Dar Al Ummah.
- Chapra, Umer M. 2001. The Future of Economics: An Islamic Review. Jakarta: Echo of Insani Press.
- Burhanuddin S. 2010. Legal Aspects of Islamic Financial Institutions. Yogyakarta: Graha Ilmu, pp. 2.
- Muhammad, Microeconomics (In Islamic Perspective).2005. Yogyakarta: BPFE.
- Mannan, Muhammad A. 1980 .Islamic Economic Theory and Practice. Yogyakarta: Waqf Bhakti Fund.
- Naqvi, Syed Nawab Haider. Ethics and Economics an Islamic Synthesis, The Islamic Foundation, London
- Rafiq Yunus Al-mishri,. 2015. ushul al-iqtishad al-islami", in Islamic economics, ed Rozalinda, Jakarta: Pt Rajagrafindo Pesada. pp.2.
- Sri Redjeki Hartono. 2007. Indonesian Economic Law, Malang: Bayumedia Publishing. pp. 31