International Journal of Multidisciplinary Research and Development
Online ISSN: 2349-4182, Print ISSN: 2349-5979; Impact Factor: RJIF 5.72
Received: 15-11-2018; Accepted: 16-12-2018
www.allsubjectjournal.com
Volume 6; Issue 1; January 2019; Page No. 103-108

Alignment of Islamic banking law into national positive legal system: Indonesia context

Try Widiyono
Faculty of Law, Jakarta Islamic University, Jakarta, Indonesia

Abstract
The enactment of Law No. 21 of 2008 on Islamic Banking Law is a new milestone in Indonesia because it has applied an Islamic legal system to be the Positive Law of Indonesia. Nevertheless, the act uses many concepts without any explanation of its conception, leading an interpretation that the concepts are subject to the same conception set forth in the Indonesian Civil Code (ICC). In fact, sharia and the Civil Code principles have a fundamental difference regarding the covenant principle. Sharia principles are derived from various sources of Islamic law while the ICC principle embraces an open principle; namely, providing the parties involved in the covenant their own as long as it is not against the law, morality and public order. The covenant not only binds the things expressly stipulated in the covenant, but also all things which by their nature are required by propriety, customs and laws. Therefore, it is necessary to harmonize sharia banking principles with the provisions stipulated in the ICC. It is also important to develop a codification of Islamic Civil Code as a substitute of the ICC in the sharia principles to accommodate the development of Islamic banking and sharia economy in Indonesia.

Keywords: sharia principles, harmonization of law, sharia economy in Indonesia

1. Introduction
Sharia (Islamic) banking in Indonesia has grown rapidly since the passage of Law No. 21 of 2008 on the Islamic Banking Law (hereafter the IIBL 2008). The passage of the law is a new milestone on the entry of the Islamic legal system into Indonesia's Positive Law in banking institutions. So far, there has never been any banking regulation in Indonesia that provides a juridical basis in the form of sharia banking law (Mardani, 2011) [14]. Hartono (2011) [10] states that Indonesia's positive law is a law that now exists and applies in Indonesia. Thus the enactment of the IIBL 2008, especially in the field of Islamic banking, is binding.
Referring to Soemitra (2010) [23], the juridical basis of a covenant is based on the normative facts stipulated in the IIBL 2008 Article 1 Paragraph 13. It was stated that "A covenant is a written agreement between an Islamic Bank and other parties which contains rights and obligations of each party in accordance with Sharia principles" (IIBL 2008) [12]. Subsequently, Article 1 Paragraph 12 states that "Sharia principle is the Islamic principle of law in banking activities based on a provision issued by institutions that have authority in the determination of provision in the field of Sharia" (IIBL, 2008) [12]. Nofinawati (2015) claims that this provision is stipulated in the general explanation of the IIBL 2008. It was stated that as a law specifically regulates Sharia banking, the IIBL 2008 regulates Sharia compliance issues in which its authority resides in Indonesian Council of Muslim Scholars (hereafter MUI - Majelis Ulama Indonesia); which is represented through the Sharia Supervisory Board established in every Sharia Bank and Sharia Business Unit.
Following Alamsyah (2012), in order to implement the fatwa (provisions) issued by the MUI into the regulations of the Financial Services Authority and Bank of Indonesia, a Sharia Banking Committee (SBC) is formed. The member of the SBC consists of the representatives of Bank of Indonesia, Ministry of Religious Affairs, and society elements. In similar, Widiyono (2008) asserts that one of the main legal sources in the operations of Sharia banking is the provision issued by the MUI. Further, Widiyono claims that although the operations of Islamic banking are based on the provision issued by the MUI, however, according to the Indonesian positive law, the legal position of the provision issued by the MUI is not mentioned in the hierarchy of Indonesian positive law as regulated by Law no. 12 of 2011 on the Establishment of Legislation. Such a condition inflicts the emergence of bias interpretation concerning the legal position of the provisions issued by the MUI.
Furthermore, Mansyur (2011) states that the Indonesian legal system has recognized the validity of Islamic law as a legal basis, especially in the field of Islamic banking. Mansyur further highlights that the interpretation of Islamic banking principles derived from the Islamic law principles is based only on the provisions issued by the MUI. In other words, the implementation of Islamic law principles within the operation of Islamic banking cannot be based on the individual opinions and/or the principles other than the provisions issued by the MUI. This is based on the notions that if the operation of Islamic banking is based on the provisions other than the provisions issued by the MUI then there can be a legal uncertainty because one provisions may be different from the other. According to Adil (2011), citing the opinion of the Manna al - Qattan, the term sharia means the way to the release of water for drinking. However, in the deliberations of law, the term sharia means "all things that Allah recommends to his servants, as a righteous way to gain happiness in the world and the hereafter.
Sudarsono (2008) provide a similar opinion by stating that given the vastness of Islamic jurisprudence and the existence of the numerous number of Islamic law schools, granting autonomy to legal opinions will lead to the absence of legal certainty. In addition, the MUI provision is built based on a mixture of Islamic religious organizations under the auspices of the MUI organization and it represents the opinions of Indonesia Islamic scholars. Anshori (2008) identifies that the

IIBL 2008 contains some provisions which are also elements of the ICC, such as the provisions concerning covenant, purchase, and sale of financing objects. The interesting issue arises is that the MUI provision has been in effect and used by the Islamic banking institutions before the coming into effect of the IIBL 2008. In fact, the IIBL 2008 asserts that banking practices are based on the MUI provision, suggesting that the MUI provision is still valid in the operation of Sharia banking. Yasin (2014) suggests that as a relatively new positive law, it is necessary to harmonize the existing national laws with the provisions of Sharia banking transactions, especially regarding the differences between existing national laws including the ICC and the IIBL 2008.

2. Research Method

This study is a normative legal research. Marzuki (2007) states that legal research is a process to discover the rule of law, legal principles, and legal doctrines to address the legal issues faced". In this study, the legal issues to be investigated are [1] how the sharia principles in sharia banking are implemented as a source of positive law, [2] how the sharia principle in sharia banking uses the ICC concepts, and [3] how should national law support the implementation of sharia principles.

In particular, this study addresses the legal issues mentioned above through a certain process to find legal norms should be established, including the rule of law, legal principles and legal doctrine in the context of sharia banking. The legal principle is the values underlying legal norms. The legal doctrine is the legal source of the jurists (Purbacaraka and Soekamto, 1982). In this study, the approach applied is statute approach. This approach examines [1] the law in sharia banking, [2] the relevant Civil Code, [3] some provisions on credit guarantee rights (financing), as well as [4] the MUI provisions related to sharia banking. All legal materials obtained from library research, then are analyzed systematically, comprehensively and accurately so that the answers of the problems posed are obtained.

3. Results and Discussion

3.1 Mudharabah-based Financing Principles

Referring to Article 19 Paragraph 1 Letter C of the IIBL 2008, mudharabah covenant has the following characteristics: [1] there is a cooperative covenant of a business between first party (Sharia bank) and second party (customer) [2], the first party provides all the capital needed by the second party [3], the second party uses the fund to do a business and share business profit to the first party according to agreement set in the covenant [4], in case of business experience loss, the loss will be fully borne by the first party, except if the second party conducts a deliberate mistake, negligent, or violates the covenant. Meanwhile, musyarakah covenant has the following characteristics [1]. There is a cooperative covenant between two or more parties for certain businesses [2], each party provides a portion of the fund [3], business profit shall be shared according to the agreement, and [4] loss shall be borne according to the respective fund portion (IIBL 2008).

In relation to financing based on mudharabah principle, the MUI has issued a provision No. 07/DSN-MUI/IV/2000 on Mudharabah Financing. In the provision, it is stated that [1] mudharabah financing is a financing channeled by a Sharia bank to another party for a productive business, [2] the bank financing all of the needs of business, [3] customers acts as business manager [4], the bank is not directly involved in business management [5], the bank has right in coaching and supervising [6], the amount of financing fund must be clearly stated in the form of cash and not the receivables [7], loss will be fully borne by the bank except if the customer conduct a deliberate mistake, negligence, or violates the covenant.

According to Ali (2007), mudharabah-based financing in principle does not require any collateral from the customer. However, in order to ensure the consumers not to commit digression, the bank may request collateral from the customer or from the third parties. This collateral can only be disbursed if the customer is found guilty of a breach of the mutually agreed terms in the contract. The customer criteria, financing procedures, and profit-sharing mechanisms are regulated by the bank with respect to the MUI provision. Operational costs are charged to the customer. In case of the bank is not liable or commits a breach of the agreement, the customer shall be entitled to compensation or expenses incurred.

Furthermore, Soemitra (2010) [23] found that under mudharabah-based financing system, there is a liability term in case of loss due to the customer conduct a deliberate mistake, negligence, or violates the covenant. However, as mentioned in the previous section, the MUI provision does not provide explanations pertaining to detailed definitions of the covenant content, including the definition of deliberate mistake, negligence, or violates the covenant. Therefore, it can be interpreted that the terms deliberate mistake, negligence, or violates the covenant is subject to the Civil Code. Similarly, the term mechanism and procedures for collateral disbursement and its execution is subject to the existing positive law provisions.

3.2 Musyarakah-based Financing Principle

Based on the explanation of Article 19 Paragraph 1 Letter C of the IIBL 2008, the characteristics of Musyarakah covenant are as follows [1]; there is a cooperative covenant between two or more parties for certain businesses [2], each party provides a portion of the fund [3], business profit shall be shared according to the agreement, and [4] loss shall be borne according to the respective fund portion (IIBL 2008). The MUI has also issued provision No. 08/DSN-MUI/IV/2000 on Musyarakah Financing. The provision states that the processes of musyarakah-based financing must be done by all parties involved to show their will to enter the covenant. In the covenant, the terms bid and acceptance must explicitly indicate the purpose of the covenant. Furthermore, the provision also states that the covenant should be declared in writing, by correspondence, or by using modern communication ways. This means that modern electronic systems can be used as evidence for all parties involved (Widiyono, 2008).

Furthermore, the MUI provisions explains that all parties involved in the covenant must be mature and competent in giving or receiving representative powers. However, the provision does not explain whether the term mature refers to the ICC or based on the IIBL 2008 as the ICC or based on the IIBL 2008 have different concepts in terms of defining capable by law and proving as a capable by law party (Subekti dan Tjitrosudibio, 1983; Mardani, 2011) [14]. As an illustration, Article 330 of the ICC states that the immature are those who have not reached the age of twenty one and are not married before. However, a person who has not reached the age of twenty one has a possibility to become a bank customer, with a certain mitigation to avoid cancellation requests because it does not meet the subjective requirements

set forth in Article 1320 of the ICC.

According to Muhammad (2009), musyarakah covenant is a covenant of cooperation between two or more parties in which each party provides funds to finance a particular business. In this covenan, the profits and losses of the business are shared in accordance with the agreement. In particular, Arifin (2006) spell out that the object of covenant consists of three things, namely the capital, work, and profit and loss. The given capital may be in the form of cash, gold, silver, or other objects of equal value. The capital may consist of trade assets, such as goods and property. If the capital is in the form of an asset, the capital must first be valued with cash and agreed by the partners. Neither party may borrow, lend, donate or give away musyarakah capital to any other party, except on an agreement basis. Participation of partners in work is the basis of Musyarakah implementation; although that equality in work portion is not a requirement. A partner may carry out more work than others, and in this case, he may claim an additional share of his profits.

Furthermore, profits gained from the work must be clearly quantified to avoid differences in perceptions and disputes at the time of profit allocation or cessation of Musyarakah. Profits must be shared to each partner proportionately. There is no predetermined amount of profit for a partner. A partner may propose that if the profit exceeds a certain amount, the excess or percentage is given to him. The profit sharing system should be clearly stated in the contract. Losses shall be borned among the partners proportionately according to the proportion of their respective capital, unless one party does not fulfill his obligations

According to Widiyono (2008), the principles mentioned above in practice are often disregarded. If the customer breaks the covenant or violates the law, the Bank is likely to use the ICC to solve it. This lawsuit is based on two independent or simultaneous reasons: that is commits an illegal act. Article 1365 of the Civil Code states that a party who commits an illegal act which causes damage to another party shall be obliged to compensate therefor (ICC) or breach of contract. According to Subekti (2000), the term breach of contract refers to [1] not doing what he is willing to do, [2] doing what he promises, but not as promised, [3] doing what he promised but too late, and [4] do something that the agreement should not do.

3.3 Murabahah-based Financing Principles

Referring to the explanation of Article 19 paragraph 1 letter d of Islamic Banking Law, murabahah covenant is a goods financing covenant in which the bank affirm its basic price to the customer and the customer buys the goods for a higher price as agreed profit. This murabahah principle is also stipulated in the MUI provision No. 04/DSN-MUI/IV/2000 on Murabahah Financing. In essence, the Bank and the customer must make a usury free murabahah covenant and the goods traded is not prohibited by Islamic law. The Bank shall finance part or the entire goods price agreed upon by its qualifications.

Referring to Muhammad (2009), the Bank initially purchases the goods required by the customers on behalf of the bank itself. The bank then sells the item to the customer at a price equal to its basic price plus the profit. In this case, the Bank shall notify the cost of goods and other cost required to the customer. Furthermore, the customer pays the price has been agreed upon in a certain period has been agreed. If the bank wishes to depute customers to purchase the goods from the third parties, the murabahah covenant should be made after the goods received by the Bank. In this covenant, the Bank is allowed to ask customers to make an advance payment when signing an initial booking agreement: under the condition that if the customer decides to purchase the item, he just pays the remaining price. If the customer fails to purchase the item, the advance payment will belong to the bank at a maximum of the loss incurred by the bank due to such cancellation; and if the down payment is insufficient, the customer is required to pay off the shortfall. Thus, this advance payment will be calculated as the price has been paid by the customer.

Widiyono (2008) asserts that, based on the legal construction, the goods to be purchased by the customer must the owned by the bank first. In this case, the legal aspect to be fulfilled in the Murabahah covenant include the type of the goods, procedures for purchasing goods, and the transfer of ownership rights over the goods. The types of objects are set forth in Articles 209, 506, 507, and 511 of the ICC. The types of objects are also regulated by Law No. 5 of 1960 on the Basic Regulations of Agrarian Principles. The procedure for the acquisition of property rights is regulated in article 534 and article 584 of the ICC. In addition, such sale process is also subject to the conception set forth in Article 1457 to Article 1546 of the ICC.

Furthermore, it was found that in the Murabahah covenant, the bank acts as the owner of the goods which then sell it to the customer. In the sharia banking practice, acquiring goods to be purchased by the customer requires a special statement (ijab kabul). Although this type of covenant is lawful according to Islamic law, in case of the object is immovable objects (land), the covenant needs to qualify for specialties and publicity. The terms of the specialization shall be made in the presence of Land Titles Registrar and the publicity requirements are registered at the land registry office. In this case, prior to the selling process start, both seller and buyer taxes must be paid in advance. Such s procedure is not practiced in sharia banking practices because it requires a long time and uncompetitive costs.

3.4 Salam-based Financing Principles

According to the explanation of Article 19 paragraph 1 letter d of the Islamic Banking Law, Salam covenant is referenced as “a financing covenant of goods by ordering and payment that is paid in advance on certain agreed condition” (IIBL 2008). Related to the Salam-based financing, the MUI has issued a provision No. 05/DSN-MUI/IV/2000 on the Salam covenant. The provision explains that the type and amount of the exchange medium must be known, either in the form of money, goods, or benefits. Payment must be made at the time the covenant is agreed. The characteristics and specifications of the Salam covenant object must be clearly declared. In this covenant, the delivery of the object shall be done at the time and place as specified in the covenant. Buyers may not sell the object before accepting it and may not change the object, except with similar goods as agreed.

According to Widiyono (2008), the provision provides the following Salam covenant principles. The seller must deliver the goods on time with an agreed quality and quantity. If the seller delivers higher quality goods, the seller may not ask for additional prices. If the seller delivers lower quality goods, and the buyer willingly accepts them, then he should not demand a reduction of price. The seller may deliver the goods sooner than the agreed time and shall not demand additional price. If all or part of the goods are not available at the time

of delivery or the goods has lower quality, and the buyer is not willing to accept, then the buyer has two options: i.e., cancel the covenant and ask for the money back or wait until the goods are available.

Meanwhile, Arifin (2006) claims that cancelation of Salam covenant in principle is permissible as long as it does not harm both parties. According to the MUI provision, if a dispute arises and after no agreement is reached through a palaver, the dispute is resolved through the Syariah Arbitration Board. Such a settlement is not in accordance with the rules set forth in Article 55 of the Islamic Banking Law. This article essentially explains that the problems arising from Salam covenant can be conducted by selecting court jurisdiction in accordance with the agreement contained in the covenant.

3.5 Istishna-based Financing Principles

Referring to the elucidation of Article 19 Paragraph 1 Letter E of the IIBL 2008, Istishna covenant is a financial covenant of goods in the form of order to make a certain good with certain criteria and requirements approved between the purchaser and the seller or maker (IIBL 2008). In similar, Muhammad (2009) argues that Istishna is a covenant in the form of ordering of certain goods with certain criteria and requirements agreed upon the buyer and the seller. The author defines Istishna financing as a provision of funds by the Bank to customers to purchase goods in accordance with customer orders confirming the purchase price and the customer paying it at a higher price as an agreed bank profit. Istishna-based financing are also regulated in the MUI provision No. 06/DSN-MUI/IV/2000 on the Istishna.

In particular, Widiyono (2008) asserts that the means of payment must be declared in term of its amount and shape, either in the form of money, goods, or benefits. The time and amount of the payment are made in accordance with the agreement. Payment must not be in the form of debt relief. Further, Widiyono (2008) asserts that the object of the covenant [1] must be clearly characterized and can be recognized as debt, [2] must be explained by its specification, [3] the time and place of delivery shall be determined by agreement, [4] the buyer may not sell the object before receiving the item, [5] the seller may not exchange goods, except with similar goods as agreed, [6] in case of the object is defect or not in accordance with the agreement, the subscriber has the right to continue or cancel the covenant. In addition, it is explained that if the order has been completed in accordance with the agreement, the law is binding. All the provisions applicable in the Salam covenant mentioned above also apply to the Istishna covenant.

3.6 Qardh-based Financing Principles

Referring to the explanation of Article 19 paragraph 1 letter E of the Sharia Banking Law, the Qardh covenant (bailout financing) is defined as a covenant of fund lending to the customer provided that the customer shall refund the funds received at the agreed time (IIBL 2008). The principles of Qardh financing are also stipulated in the provision of DSN No. 19/DSN-MUI/IV/2001 on the Qardh covenant. The provision asserts that the Qardh covenant is a covenant of fund loan to customers in need with the provisions that the customer is required to return the principal amount of the fund received at the agreed time. Administrative costs are charged to the customers.

Furthermore, Danupranata (2013) asserts that the Sharia financial institution may request collateral to the customer whenever deemed necessary. The customer may make a voluntary endowment for the institution as long as it is not agreed upon in the covenant. If the customer is unable to return a part or all of his liabilities at the agreed time and the institution have determined the customer inability, the institution may extend the repayment period, or write off some or all of his liabilities. Meanwhile, Antonio (2005) argues that in case of that the customer does not indicate the intention to return a part or all of his liabilities and not because of his inability, the institution may execute the collateral. If the collateral is insufficient, the customer must still fulfill his obligations in full. In this Qardh covenant, the Bank will obtain the services of the amount determined based on mutual agreement. These services can be various types of forms in accordance with products sold by banks.

3.7 Ijarah-based Financing Principles

Elucidation to the Article 19 paragraph 1 letter f of the Islamic Banking Law states that Ijarah covenant is "a covenant for providing funding in relation to transferring the right or usage of the benefit of the good or services based on lease transactions, without being followed by ownership transfer of good itself (IIBL 2008). The Ijarah-based financing is also stipulated in the MUI provision No: 09/DSN-MUI/IV/2000 on the Ijarah Financing. According to the provision, Ijarah is a covenant for the transfer of use rights (benefit) of a certain goods (or service) within a certain time through the payment of rent/wages, without being followed by the transfer of ownership of the goods itself (Nurhayati and Wasilah, 2013).

Following Arifin (2006), the object of Ijarah covenant is the benefit of the use of goods (or services) that could be assessable and be implemented in the covenant. The benefits of the goods should be able to be identified specifically in such a way as to eliminate the nescience and misinterpretation. In this perspective, the specification of benefit should be clearly stated including its validity period. The physical specifications of the covenant object must also be recognizable. Furthermore, Hadi (2010) explains that a lease is something promised and paid by the customer to the bank as a benefit payment. An item having a price value in buying and selling process is also could be used as a lease in Ijarah covenant. From this perspective, lease payments may be conducted in the form of services (other benefits) of the same type as the covenant object. The flexibility in determining the lease can be realized in the form of time, place and distance.

Meanwhile, Widiyono (2008), asserts that the bank is obliged to provide goods or services to be leased, bear the maintaining cost of the goods, and bear the costs incurred by defective goods. Meanwhile, the consumer is required to pay the rental fee and is responsible for maintaining the condition of goods and use goods in accordance to covenant. In addition, the customer is also required to bear the cost incurred by minor damage. In case of the leased goods is damaged not for a violation of the permissible use, nor due to negligence of the consumer in using it, the consumer is not obliged to bear the costs incurred. In the Ijarah covenant, the concept used is a lease on the object of financing. Accordingly, the covenant is legally interpretable subject to

the concept of lease stipulated in Chapter 7 Article 1548 to Article 1600 of the ICC on the Lease.

3.8 Ijarah Muntahiya Bittamlik based Financing

Referring to Elucidation of Article 19 Paragraph 1 Letter f of the IIBL 2008, Ijarah Muntahiya Bittamlik (IMB) is defined as a covenant for providing funds in the relation of transferring the right of usage or benefit of goods or services based on a lease transaction with the option of transferring the ownership of the goods (IIBL 2008). In this case, the MUI provision No. 27/DSN-MUI/III/2002 on the IMB asserts that the principles applicable in the Ijarah covenant (i.e., MUI provision of No. 09/DSN-MUI/IV/2000) also apply in the IMB-based financing. Therefore, the parties involved in the IMB covenant must perform the Ijarah covenant first. A covenant of ownership transfer, whether in the form of buying, selling, or giving, may only be conducted after the Ijarah period is completed. By law, the pledge of ownership transfer agreed at the beginning of the Ijarah covenant is not binding. If the pledge is to be implemented, then there must be a covenant of ownership transfer conducted when the Ijarah period is complete (Arifin, 2006).

According Sudarsono (2008), the IMB covenant is one of relatively new products provided by sharia financial institutions in Indonesia. This type of covenant basically is a combination of a lease covenant with a selling and buying covenant or grant at the end of the lease period. In similar, Muhammad (2009) argues that the IMB covenant is a combination of two types of covenant between a lease covenant and a selling and buying covenant, or between a lease covenant and a grant covenant. Such a combination may be interpreted as an agreement form of two parties to carry out a transaction consisting of two covenants or more. In addition, such a transaction will give implication to all parties involved in terms of their rights, obligations, and legal consequences as a unity that cannot be separated from each other.

In banking practice, the object of covenant in formal jurisdiction is already owned by the bank from the beginning of the lease period. Although the bank has authorized the customer, in the covenant document, the ownership of the object is already on behalf of the tenant. Such a condition is inconsistent with the legal logic because in the formal juridical the customer as the tenant is hiring his own goods. Furthermore, the leased object is tied up with the mortgage rights granted by the customer to the Bank. In fact, the Bank is the owner of the goods. Therefore, there is a need to be a synchronization of the IMB-based financing principles to the existing positive law relating to the transfer of rights and collateral including the binding principle of lease arranged in Chapter 6 of the ICC (Widiyono, 2008).

4. Conclusion

Based on the analysis of the data obtained, this study draws some conclusions as follows. First, the social function of Sharia banking has not been optimized to raise funds in the form of zakat, infaq, alms, grants, or other social funds. In addition, Sharia banking covenant applies some concepts without any explanation of their definition: so that it can be interpreted that the concepts are subject to the same concept as set forth in the ICC.

Second, the principles that apply to Sharia-based financing is Islamic law derived from various sources of Islamic law. Meanwhile, the legal principles set out in the ICC embrace an open principle that frees the parties involved in the covenant to establish their own covenant provision; as long as the provisions are not contradictory with the law, morality, and public order. In addition, the covenant not only binds the matters expressly stipulated in the agreement, it also binds the matters that by its nature is required to comply with propriety, customs and laws. The different principles between Sharia-based and conventional financing and the enforcement of these principles simultaneously in a Sharia covenant can be contradictory with the maqoshid of Sharia and even contradict with the Sharia principles itself.

The wide variety of principles between Sharia-based and conventional financing has the potential to create new problems; including the absence of legal certainty in settling the disputes between the parties involved in the covenant. Finally, it is found that the ownership of a Sharia Bank in respect of immovable property, its purchasing procedure for a third party, and its sales to the customer is not conducted in accordance with the legal provisions concerning the transfer of rights on the immovable property as regulated in the ICC.

To optimize the social function of Sharia banking in collecting funds in the form of zakat, infaq, alms, grants, and other social funds, it is necessary to socialize the society concerning Sharia banking services and to harmonize Sharia law principles with conventional legal principles. In addition, DSN needs to issue a provision on harmonization Sharia law principles as well as the obligations of Corporate Social Responsibility. The concepts used in shariah-based financing should be clearly defined. Furthermore, there is a need to be an affirmation of the concepts: whether it has its own conception, principle, and doctrine or it is subject to the ICC with certain restrictions. This assertion is necessary to provide a legal certainty for the parties using the Sharia banking services. Therefore, there is a need to sort and choose the ICC principles which is in line with the Sharia banking principles.

An important issue that needs to be resolved soon is the development of a provision that protects the Sharia transaction, so that it does not give rise to different interpretations. The development should be conducted by considering the Sharia banking characteristics, particularly concerning the ownership of Sharia banks over financing objects. The current provisions apply are contradictory with the provisions on the transfer of objects regulated in the ICC and the Agrarian law, including the collateral binding principle. In addition, it is important to develop a codification of the Islamic Civil Code, by taking norms of the existing civil law which do not contradict Sharia principles in order to achieve the Maqoshid Sharia: i.e. the goals to be achieved from the Sharia law enforcement. Finally, there is a need for a legal certainty in dispute settlement related to the Sharia covenant because there is a different interpretation of Article 55 of Law No. 21 of 2008 on the Sharia Banking.

5. References

1. Adil U. *Mengenal Notaris Syariah*, Bandung, Penerbit Citra Aditya Bakti, 2011.
2. Alamsyah H. Perkembangan dan Prospek Perbankan Syariah Indonesia: Tantangan Dalam Menyongsong MEA, 2012-2015, available at https:// media. neliti. com/ media/publications/93143-ID-perkembangan-perbankan-syariah-di-indone.pdf
3. Ali Z. Hukum Perbankan Syariah, Jakarta, Penerbit Sinar Grafika, 2007.

4. Anshori AG. Sejarah Perkembangan Hukum Perbankan Syariah di Indonesia dan Implikasinya bagi Praktik Perbankan Nasional, La_Riba: Jurnal Ekonomi Islam. 2008; 2(2):159-172.
5. Antonio MS. Bank Syari'ah Dari Teori ke Praktek, Jakarta, Penerbit Gema Insani Pers, 2005.
6. Arifin Z. Dasar-dasar Manajemen Bank Syariah, Jakarta, Penerbit Pustaka Alvabet, 2006.
7. Danupranata G. *Manjaemen Perbankan Syariah*, Jakarta, Penerbit Salemba Empat, 2013.
8. Fatwa Dewan Syariah Nasional tentang Giro, Tabungan, Pembiayaan Musyarakah, Pembiayaan Murabahah, Jual Beli Salam, Pembiayaan Istishna, Pembiayaan Ijarah, Pembiayaan Ijarah Muntahiyah bi al Tamlik (IMBT), dan Al-Qardh.
9. Hadi A. Dasar-Dasar Hukum Ekonomi Islam, Surabaya, Penerbit Putra Media Nusantara, 2010.
10. Hartono S. *Beberapa Pemikiran Tentang Pembangunan Sistem Hukum Nasional Indonesia*, Bandung, Penerbit Citra Aditya Bakti, 2011.
11. ICC – Kitab Undang-undang Hukum Perdata, available at www.t ribunais. tl /files/ Codigo_ Civil_Indonesio_(Ingles).pdf
12. IIBL. Undang-undang No. 21 tahun 2008 tentang Perbankan Syariah, available at, 2008, www.bi.go.id/ en/ perbankan/ syariah/Documents/UUN0212008.pdf
13. Mansyur HMA. Aspek Hukum Perbankan Syariah Dan Implementasinya Di Indonesia, Jurnal Dinamika Hukum. 2011; 11(1):67-75.
14. Mardani. Ayat-Ayat Dan Hadis Ekonomi Syariah, Jakarta, Penerbit Rajawali Pers, 2011.
15. Marzuki PM. *Penelitian hukum*, Jakarta, Penerbit Kencana, 2007.
16. Miru A, Dan Pati S. *Hukum Perikatan Penjelasan Makna Pasal 1233 sampai 1456 BW*, Jakarta, Penerbit Rajawali Pers, 2008.
17. Muhammad. Model-model Akad Pembiayaan di Bank Syariah, Yogyakarta, Penerbit UII Press, 2009.
18. Nofinawati. Perkembangan Perbankan Syariah Di Indonesia, JURIS. 2015; 14(2):168-183.
19. Nurhayati S, Dan Wasilah. Akuntansi Syariah Di Indonesia, Jakarta, Penerbit Salemba Empat, 2013.
20. Purbacaraka P, Dan Soekamto S. *Perihal Kaidah Hukum*, Bandung, Penerbit Alumni, 1982.
21. Ramulyo I. Asas-Asas Hukum Islam, Jakarta, Penerbit Sinar Grafika, 1995.
22. Rinaldy E. Membaca Neraca Bank, Jakarta, Penerbit Karya Gemilang, 2008.
23. Soemitra A. Bank & Lembaga Keuangan Syariah, Jakarta. Penerbit Kencana, 2010.
24. Subekti Dan. Tjitrosudibio. *Kitab Undang-Undang Hukum Perdata*, Jakarta, Penerbit Pradnya Paramita, 1983.
25. Sudarsono H. Bank Dan Lembaga Keuangan Syariah, Diskripsi Dan Ilustrasi, Yogyakarta, Penerbit Ekonesia, 2008.
26. Suharnoko. Hukum Perjanjian, Teori dan Analisa Kasus, Jakarta, Penerbit Prenada Media, 2004.
27. Widiyono T. Direksi Perseroan Terbatas Keberadaan, Tugas Wewenang, dan Tanggung Jawab, Jakarta, Penerbit Ghalia Indonesia.
28. Yasin MN. Progresifitas Formulasi Hukum Ekonomi Syariah Di Indonesia, de Jure, Jurnal Syariah dan Hukum. 2014; 6(2):107-116.