

UNIVERSAL BANKING SYSTEM AS A RECONSTRUCTION OF THE DUAL BANKING SYSTEM IN THE NATIONAL LEGAL BANKING SYSTEM

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ABSTRACT

The presence of Islamic banking as an alternative to conventional banking have an impact on the national banking system, namely, the enactment of dual banking system (dual banking system) in Indonesia. The system had an impact on the institutional structure of the national banking sector and the level of regulation raises the question of the imposition of Islamic law as a source of national law or Islamic law as the legal system applicable in national law. In fact, the existence of the Islamic principles of banking is flexible and universal, in order to constantly adapt to the development and welfare of society in general as an ethical economy, still stuck as a "prisoner" of legislation in Indonesia. As a result, the existence of the Islamic banking system has not really able to resolve the issue of poverty in order to improve the general welfare. Through research with the methodology of the juridical dogmatic, the authors analyze the legal issues qualitatively and produce study in this article with the discussion, the issue of the implementation of the system of dual banking system in Indonesia related to the management and reconstruction of the dual banking system as an effort to reform the management and development of the law of sharia banking in Indonesia in order to promote the general welfare based on the principles that apply to the Pancasila economic system.

Keywords: The dual banking system, Reconstruction of Islamic banking law

Introduction

Enabling dual banking system marked the enactment of two different systems and implementing the principles of banking differ from one another. Therefore, the implementation of this system indicate a "dualism" in the national banking system, which indicates the existence of "dualism" legal system, namely, the national legal system and the legal system Sharia / Islamic.

The extent to which the application of the legal system of this dualism, according to Sutan Remy Sjahdeni, that practice and the implementation of Islamic banking in Indonesia apart must not conflict with Islamic law normative (*Al-Qur'an, Sunnah / Hadith, and ijtihad*), also must not conflict with positive law in Indonesia. The affirmation of this juridical, economic law relating to the legality of Islam in Indonesia, as well as showing the existence and position within the framework of the legal system applicable national economy today.¹

As a result of the implementation of the "model dual banking system" in the style of Indonesia is, raises the issue of the intermediary function Islamic bank as a financial institution that has a difference in the variation distribution of funds to the public, with the intermediation of conventional banks as a financial institution that can only be channeling funds to communities in credit form, can be blurry due to the application of sharia bank intermediation function that is equal to or subjugated to the rule of law on conventional different bank products and operations.

Instead of experiencing the transfer of Muslim customers of conventional banks to Islamic banks, Islamic banks majority of customers are the same customers who are also in conventional banks. That is, the people of Indonesia who was among Muslim majority still regard the principles of sharia in Islamic banking business activities as the rules are the same as the conventional bank. In fact, what is the purpose and objective of the beginning of the establishment of Islamic banks as an effort to fulfill the banking system is lawful by not using bank interest as a system of pricing for the products of conventional banks, not directly proportional to the level of public awareness of Muslims in Indonesia. So with their two banking system in the form of conventional banks and Islamic banks in force in Indonesia as a dual banking system, whether it can run and grow together, with distinctive characteristics between the two based on the rules in accordance with the banking system being used? Thus, further analysis of the dual banking systems, regardless of the reconstruction of the national banking system to see where the Islamic principles of banking based on Islamic law on the rule of law or the national legal system. Based on the description of the introduction above, there is thing that will be highlighted in this paper is: *Reconstruction of the concept of dual banking system as effort to reform the management and development of Islamic banking law in order to promote the general welfare.*

Dual Banking System In The National Legal Banking System

¹ Sutan Remi Sjahdeini, PERBANKAN SYARIAH, PRODUK-PRODUK DAN ASPEK-ASPEK HUKUMNYA, 105-110 (Kencana Prenada Media, Cetakan Kesatu, Jakarta, Juni 2014).

The principles that apply to conventional banks cannot be separated from its existence as the spirit of a country's financial system. Through a financial institution which is a forum for business entities, government agencies, private and individual to leave or keep their funds and / or perform various financial transactions. Then, the bank channeled to the community through legal institutions credit.²

Juridical basis of banking law in Indonesia is regulated in various laws and regulations, both arranged in the form of legislation, government regulations, as well as Bank Indonesia Regulation. Some of the legislation include:

- a. Act No. 7 of 1992, the State Gazette of the Republic of Indonesia Number 21 of 1992 concerning Banking as amended by Act No. 10 of 1998, the State Gazette of the Republic of Indonesia Number 182 of 1998 (UUP);
- b. Law of the Republic of Indonesia Number 23 of 1999 concerning Bank Indonesia, as amended by Act Number 3 of 2004, subsequently amended by stipulation of Government Regulation in Lieu of Law No. 2 of 2008, which later became Act No. 6 of 2009 on Bank Indonesia;
- c. Government Regulation No. 28 of 1999 on Merger, Consolidation and Acquisition Bank;
- d. Bank Indonesia Regulation No. 11/1 / PBI / 2009 dated January 27, 2009 concerning Commercial Bank;
- e. And other applicable regulations.

According O.P. Simorangkir,³ the bank has three tasks in performing its functions, namely: first, actively lending operations. In this task the bank creates or provides credit to the public; second, lending operations passively, meaning that banks accept public deposits; and third, a bank as an intermediary lender. In general, the activities of conventional banks are conduct activities in trade in currencies, securities letters, and instruments that can be traded. Acceptance of deposits, for easy storage or to earn interest, and / or manufacture, granting loans with or without dependents goods, the use of the money that was placed or handed over for safekeeping. Including the purchase, sale, exchange, or possession or detention means of payment, which can be instruments traded have a direct monetary value as a regular activity.⁴

Bank as a financial institution is a business of entity who had obtained a business license from the authority of banking and finance industry. Permission is that banks are trying to collect funds and distribute those funds to the community does not harm society.⁵

System gains conventional banks by setting fixed profits for investors since the beginning of the agreement, due to using the system as the determination of the interest rates offered to customers. Moreover, a conventional bank can only perform the intermediary function for the provision of services that are commercial in the form of receiving deposits and giving loans with interest. Beyond the activities of commercial banks is not be a conventional bank intermediation function, but becomes intermediation nonbank financial institutions, in this case the financial institutions and insurance companies.⁶

The separation between commercial banking and investment banking in Indonesia is a model that is also applied in the US banking system. Separation is done in the US banking system is in response to a wave of bankruptcies of banks due to economic stagnation in the 1930s. Glass - Steagall Act is a separation between commercial banking and investment activities of banks arranged. Legislative history is the belief that the United States Congress that the involvement of commercial banking in investment banking activities undermine the principle of prudence and public confidence, causing the stock market crashes and bankruptcies bank later followed by economic depression in 1929.⁷

The debate over the separation of business activities of conventional banks that have occurred throughout the twentieth century and is getting warmer, at least, since the 1960s, on which banks and securities companies trying to expand the business activities of each so slowly border that separates the two types of institutions is dwindling. Seeing the reality is that the separation like the above is already not so relevant anymore, given the banking operations no longer know the boundary, and derivatives of banking products is growing so fast. This makes the Institute a federal United States is responsible for the regulation and supervision of commercial banks, namely the **Office of the Comptroller of the Currency (OCC)**, the **Federal Deposit Insurance Corporation (FDIC)** and the **Federal Reserve System (Fed)** agreed to soften restrictions between commercial banks and investment banks.⁸

² Sentosa Sembiring, HUKUM PERBANKAN, 13 (Mandar Maju, Edisi Revisi, Bandung, 2012).

³ O.P. Simorangkir, PENGANTAR LEMBAGA KEUANGAN BANK DAN NONBANK, 11 (Ghalia Indonesia, Cetakan Kedua, Jakarta, 2004)

⁴ Abdurrahman, ENSIKLOPEDIA EKONOMI KEUANGAN PERDAGANGAN INGGRI-INDONESIA, 86 (Pradnya Paramitha, Jakarta, 1991).

⁵ Arief R. Permana dan Anton Purba, SEKILAS ULASAN UU PERBANKAN SYARIAH 12 (Buletin Hukum Perbankan dan Kebanksentralan, Volume 6, Nomor 2, Edisi Agustus 2008)

⁶ Muhammad Zuhri, RIBA DALAM AL-QUR'AN DAN MASALAH PERBANKAN: SEBUAH TILIKAN ANTISIPATIF, 59 (RajaGrafindo Persada, Jakarta, 1996).

⁷ Zulkarnain Sitompul, KEMUNGKINAN PENERAPAN UNIVERSAL BANKING SYSTEM DI INDONESIA: KAJIAN DARI PERSPEKTIF BANK SYARIAH, 4-5 (Jurnal Hukum Bisnis, Volume 20, Agustus-September 2002). Lihat dalam George Graham, BANK INSURANCEBATTLE FLARES AGAIN SWEEPING REFORM OF BANKING LEGISLATION IS PUT UNDER TREAT,5 (*Financial Times*, 5 May 1995).

⁸ Zulkarnain Sitompul, KEMUNGKINAN PENERAPAN UNIVERSAL BANKING SYSTEM DI INDONESIA: KAJIAN DARI PERSPEKTIF BANK SYARIAH, 9 (Jurnal Hukum Bisnis, Volume 20, Agustus-September 2002). Dikutip dari Joao A.C.Santos, SECURITIES UNITS OF BANKING CONGLOMERATES: SHOULD THEIR LOCATION BE REGULATED?, 93 (*Cato Journal*, Vol. 18, No.1, Spring/Summer 1998).

The softening reasons based on the grounds that the delegation of certain functions of a financial intermediary will reduce costs because it can eliminate duplication. For example, function as gatherers of information before deciding to finance and monitor a particular debtor. For this reason, it is believed that the bank also offers services such as guaranteeing securities issuance of shares of a company in the stock market can develop a comprehensive and long relationship with the company. Another reason is the increase in the number of points of contact between banks and companies, enables banks ingather information about the company and use that information to transact. For example, it would be simple for a bank to assess conditions a company that once guaranteed by the bank when it *go public (Initial Public Offering)*.

Meanwhile, the trend of globalization has also eliminated the boundaries the traditional sovereignty of the state in the financial system. Capital has never had a national flag, funds flow from one country to another quickly, moving past the boundaries of the state. In general, banks and other financial institutions and financial systems around the world are involved in the restructuring process at large. In this process the entire financial institutions are forced to be proactive in implementing change and are required to make the anticipation of new developments by way of a plan in accordance with the new development.⁹

Banking is faced with a very tough competition in every kind of business that they do. In retail banking this competition comes from *building societies, savings banks, postal giro, credit co-operative, insurance companies and non-bank financial institution*. While wholesale banking is also facing the same competition. The increased activity has distracted intermediary securitization of credit from banks to money and capital markets, transaction growth commercial paper showed significant changes on this point.¹⁰

Those changes make government increasingly feel the increasing difficulty to identify the relevant provisions for each of the financial services industry. With the traditional barriers that used to separate segments of the financial services business conducted in currencies and different countries have lost the characteristics used to separate between financial institutions and non-financial institutions also missing. The blurring of the difference between the financial institutions is often referred to as the universalization of banking activities as found in some countries.

The conventional bank existence already several decades older then and apply as a national banking law system. The presence and existence regulation of Islamic bank, historically devoted an attempt access to justice for the Muslim community in Indonesia to meet its needs to practice and conviction to use the legal system of banking in accordance with Islamic principles.

Characteristics of sharia banking activities that prohibits the bank interest for the *riba* and prohibit financial transactions that are speculative and unclear. Islamic banks through a formula system for results (profit and loss sharing), is based on the activities of cooperation and mutual help through financing products, buying and selling, and services do not put the distribution of funds needed by society as debts or better known as credit, placing Islamic banks have distinctive characteristics in operation.¹¹

Islamic principles of banking fields above indirectly formulate the functions and activities / operations of Islamic banks through contract-agreement or agreement sharia that we can see the following:¹²

- a. Receiver mandate for investing in funds entrusted by the holder of the investment / saving on the basis of the results in line with the bank's investment policy;
- b. The business investments of funds owned by the owner of the *shahibul mal* funds in accordance with the investment direction desired by the owner of the funds;
- c. Providers of payment traffic and other services is not contrary to Islamic principles; and
- d. The business social functions such as, the management of *zakat* funds and receipts and disbursements virtues (the function selection).

Based on some of the operational functions of the Islamic bank as a financial institution that is tied to a number of contract / agreement above, can be seen there are differences in Islamic bank intermediation function more freely perform its functions through some intermediary function of the product compared to conventional banks. Islamic bank intermediation function varied and more widely known as the *universal banking system*.

The concept of universal banking system in the intermediation function of Islamic banks is a unity that cannot be separated as operational activities are commercial banking system function and functions banking. Some investment contract or agreement that binds some bank products sharia above shows that the products of Islamic banks more varied and scope of activities also includes various business activities, the business activities in commercial banking (such as *murabahah*), which benefited from the profit margins / difference between the sales price and the purchase of products that have been agreed in the initial contract / agreement and business activities of investment banking (such as *mudharaba* contract, contract *musharaka* and *ijarah* contract), the gain through the financing of cooperation based on a revenue sharing system.¹³

⁹ Jane E.Hughes dan Scott B. MacDonald, INTERNATIONAL BANKING TEXT AND CASES,68 (Boston : Addison Wesley, 2002).

¹⁰ Id

¹¹ Muhammad Syafi'i Antonio, BANK SYARIAH DARI TEORI KE PRAKTIK, 10-25 (Gema Insani Press, Jakarta, 2001).

¹² Muhammad Asro dan Muhammad Khalid, FIQH PERBANKAN 65, (Pustaka Setia, Bandung, 2011).

¹³ Muhammad Syafi'i Antonio, BANK SYARIAH BAGI BANKIR&PRAKTIKI KEUANGAN, 143 (Bank Indonesia dan Tazkia Institute, Jakarta, 1999).

Channeling funds through credit is not an investment business activities and the commercial banking system in the operations of Islamic banks, but the activities of Islamic banks as managers of social funds, whose function is optional / choice. Credit Islamic bank is based on the principle *tabarru* or the principle of mutual help, as *Qardh*. To *qardh* / credit agreement, Islamic banks are not allowed to take advantage of the transaction. Thus, funds channeled to activities *qardh*, Islamic banks may not draw on the funds deposited in the form of: savings, deposits, and current accounts of customers, but must come from internal capital funds or their own Islamic banks and social funds from customers.

So how Islamic bank intermediation function universal banking in Indonesia, considering the concept of universal banking is basically not be done by the same bank unless done by a subsidiary of the bank (subsidiary). In fact, Islamic banks in Indonesia, almost all of which are subsidiaries (subsidiary) of the parent company which is a conventional bank. Until now, only Bank Muamalat Indonesia (BMI) are not a subsidiary of a bank holding company konvensional. Ini shows that Islamic banks in Indonesia is only running one intermediary function, not intermediary function as a universal banking. In Indonesia this is what inhibits the development of Islamic bank, because of its openness in conducting business activities are very limited. Whereas in the Act No. 21 of 2008 concerning Sharia Banking (Islamic Banking Act) regulates the activities of Islamic banks well as commercial bank or investment bank.¹⁴

Some models of the implementation of the Islamic banking system in some countries based on the results achieved at Conference Islamic Organization (**Organization of Islamic Conference**) in 1983 by Abdul - Mu'min, classified into four (4) categories, as follows:¹⁵

- a. Category First, the system of a single (mono banking system) ;
- b. Category Second, the dual system (dual banking system);
- c. Category Third, modification of the conventional system (conventional plus system), and
- d. the fourth category, the conventional system (conventional system).

The issue of dual banking system prevailing in Indonesia is a dual banking system with a large portion of the market is the conventional banking market, so although the growth is quite high but compared to conventional banking only reached 2.5% in comparison. This is due to lack of clarity about the application of the dual banking system conducted in the national banking system. Because, in fact operational activities of Islamic banks through a second intermediary function is limited even separation between the activities of commercial bank and investment bank. Investment banking activity is only done through subsidiary banks (commercial banks) and non-bank financial institutions.¹⁶

The existence of dual banking system in Indonesia has a purpose, namely, creating a risk diversification to reduce the problem of systemic risk in the event of a financial crisis because in parallel have limited financial relationship with one another. Enforcement of such systems is the bank restructuring effort, because a strong banking indicates the strength or weakness of a country's economy.¹⁷

Enabling dual banking system for Islamic banks in Indonesia through the Banking Law, the Sharia as the main legal basis for the establishment and activities of Islamic banks, is defined as the conversion of conventional banks into Islamic banks or Islamic commercial bank becomes a subsidiary of a conventional bank, or can be a conventional bank Window opens Islamic or Sharia.¹⁸

Impact of the implementation of the dual banking system locates an alternative role of Islamic banks in various forms, namely: Islamic bank is a subsidiary of the parent company which is a commercial bank in conventional, or it may be from the beginning in the form of Islamic banks that are not affiliated with a conventional bank / single, or in the form of Unit Sharia (UUS) in a conventional bank. Enabling dual banking system with various models which raises the question of whether the varied forms has been in accordance with the terms of the dual banking system, because some form mainly of the subsidiary and Islamic business unit more suitable as a model Conventional Plus System (Conventional System Plus in the form of bank sharia either as a subsidiary or business unit).

The concept of dual banking system prevailing in Indonesia in addition to causing the problems are complex, doubt in case of separation or corporate finance Islamic banks and conventional banks, the question of legislation which regulated or enforced differently in one company bank to be run in parallel , Of course the difference law enforcement raises its own problems in the harmonization of surveillance systems that do Sharia supervisory institution, bank supervisors and regulators of financial markets. Another problem is related to the form of business entity used Islamic bank in Indonesia should form Limited Liability

¹⁴ id

¹⁵ Syukri Iska., SISTEM PERBANKAN SYARIAH DI INDONESIA DALAM PERSPEKTIF FIKIH EKONOMI, 57-58, (Fajar Media Press, Yogyakarta 2012).

¹⁶ Zainul Arifin, BANK SYARIAH VERSUS BANK KONVENSIONAL, Republika, 17 Juni 2012.

¹⁷ Chatu Mongol Sonakul, MESSAGE FROM THE GOVERNOR, tanpa halaman (Bank of Thailand Supervision Report, Bangkok, 2000)

¹⁸ Undang-Undang Nomor 21 Tahun 2008, PERBANKAN SYARIAH L.N.R.I Tahun 2008, Pasal 5 mengatur sebagai berikut:

1. Bank Konvensional hanya dapat mengubah kegiatannya berdasarkan Prinsip Syariah dengan izin Bank Indonesia;
2. Bank Umum Syariah tidak dapat dikonversi menjadi Bank Umum Konvensional;
3. Bank Pembiayaan Rakyat Syariah tidak dapat dikonversi menjadi Bank Perkreditan Rakyat; dan
4. Bank Umum Konvensional yang akan melakukan kegiatan usaha berdasarkan Prinsip Syariah wajib membuka Unit Usaha Syariah di kantor pusat bank dengan izin Bank Konvensional.

Company (PT) as well as conventional banks. This affects the objectives of Islamic banks set on sharia principles, ie, determining the selection of the products issued by Islamic banks is more focused on products which are more quickly deliver benefits for the company, because the bank puts customers who entrust the funds and its shareholders as a higher authority precedence over than the recipient customer financing / distribution of funds that actually the relationship between the three is equal partnership because it should be based on the principles of brotherhood / kinship and cooperation.

On the other side of the dual banking system models problems in Indonesia, which could affect the development of Islamic banks, is that the model obscurity impact on Islamic banks own customers who cannot put both the banking system as an alternative or choice. This is due to the fact that during this time, customers' existing Islamic banks are customers of conventional banks anyway. This means that in terms of customer funds collected do not indicate a significant development. The approach is based on the state of Indonesia as a Muslim majority population at the beginning of the establishment of Islamic banks, is not a determining factor in the rapid development of Islamic banks in Indonesia or not. As an illustration, the State Malaysia with a total Muslim population is smaller than in the Muslim population of Indonesia, until mid-2015, has issued more than 150 products of Islamic banks through various types of contract offered to the target market share of Islamic banks in Malaysia is set at above 30 %.¹⁹

According to the author of several legal instruments of Islamic banking is still not optimal, namely:

- a. The existence and position of Islamic principles of banking in the legal and political policies rulemaking in the Indonesian legal system;
- b. Regarding the specific legal device used in the business development of Islamic banking products, both products of real sector financing business and agricultural / plantation, product selling, product leasing, hire purchase of products, the product of social services and products of Islamic banks;
- c. The intermediary function, namely as a collector of excess public funds then delivered to the other people who need funds to meet their needs. However, the settings cannot be compared for the two are clearly different, namely the Islamic bank intermediation function puts the customer holding the savings / funds and recipient customers disbursement of funds and the bank as a partnership that has a parallel relationship and mutual cooperation based on a revenue sharing system. In terms of products offered by Islamic banks as intermediary institutions more varied and active. While conventional bank intermediation function is channeling institutions fund third parties (customers) as loans must be repaid by the maturity that has been determined at the beginning of the agreement; and
- d. Knowledge of the public understand the system of Islamic banks are still considered foreigners due to the community using the conventional bank products because the benefits are uncertain and given the lack of knowledge about the Islamic bank employee some Islamic contract related to bank products.

Based on these four causes of optimal development of Islamic banks by imposing dual banking system in Indonesia above, the fourth of the above should be optimized in a regulation or a rule of law that can optimize the role of Islamic banks in the community.

Reconstruction Of National Legal Banking System

Purpose Islamic bank in Indonesia as the banking system in parallel with the conventional banking system in the national banking system as a dual banking system, with the intent and purpose of promoting the general welfare through equal partnership between depositors and customers users of funds based on the principles of brotherhood / family and cooperation.

Through the restructuring efforts of Islamic banking, which is back at the primary value of Islamic banks through the intermediation function as universal banking, in accordance with the characteristics of Islamic banking system is based on the sources of Islamic law, in accordance with the purpose of Islamic principles in banking is a form of achievement of the objectives of Islamic law in general , as *Rahmatan lil'alam* (affection of all the people) and *khalifatulillahi fil 'ard* (humanity), which implies that the principles of sharia in Islamic law is not only for the Muslim community alone but is meant for all mankind.

Although the Islamic banking system is recognized because it has been able to show resilience to face the crisis and help the economy of the country, and recognized also has a position that is parallel to the conventional banking system, the reality of Islamic banking system cannot develop optimally as a financial institution that is acknowledged explicitly. The existence explicitly referred to are, put in accordance with the basic principles established sharia banking on. Where the principles of *shari'a* as ethical economy on the banking sector, both in general and specifically will always centered on the principle of monotheism which will generate faith and ethics, to achieve the objectives of Islamic law, namely welfare and social welfare (*the maqasid al shari'ah*) under the provisions of has been established by God.

However, the presence of Islamic banks in the system and the various basic principle underlying its activities are still limited recognition mention in the statute, so if cites the opinion of Satjipto Rahardjo, about the existence of laws in Indonesia are still trapped into a "captive" law, is associated with the presence of principles of Islamic banking awakened about this time is appropriate. That is the fact of "positivisasi" Islamic law in Indonesia as a result.

¹⁹ Sutan Rami Sjahdeni, supranote no.1, in 289

What has been put forward by Atho 'Mudzhar²⁰ in his research concluded that Islamic law in Indonesia is the legitimacy of the policy that is the will of the authorities through the legalization of Islamic law to the institutions established to support government policy. Satjipto Rahardjo, pressed it as a paradigm of positivistic law-legalistic, which is a paradigm that is read and understand the laws in a linear, deterministic and mechanistic. So it has a tendency to be a prisoner of the law. Therefore, there should be efforts liberation from the domination of law, but that does not mean "chaos", but needed legal awareness culture so confines of "colonial" legislation is not really a snare that prevents the law to achieve its objectives. The law was a means to an end for humans achieve their needs in the life of society and the state, to achieve happiness and prosperity.²¹ In the opinion expressed by Romli Atmasasmita, Indonesian law had long forgotten or ignored the noble values of Pancasila, and stuck on "normative box" has done Kelsenian flow.²²

So, we need a reconstruction effort of Islamic banking law in Indonesia. Reconstruction according to James P. Chaplin,²³ is to build or reimbursement something based on the original incident, which was contained in the reconstruction of the primary values that must remain in activity to rebuild things according to its original state.

In the reconstruction of this dual banking system needs to look back to the primary values, that is, the original purpose of Islamic law, as was done by the theory *maqasid al shari'ah law* and the establishment of the system of national economic development, namely, the noble values of Pancasila as an ideology of the nation Indonesia. *Maqashid al shari'ah* approximation theory, a theory that is turned on by experts on modern legal experts, by looking for relevant correlations between the needs of the Islamic legislation and issues in the current era of globalization, with the basic principles within five (5) basic purpose of law Islam and some basic principles to achieve human welfare.²⁴

Moh. Hatta opinion substantial economic law Pancasila appropriate and in line with the economic law of sharia, because both contain partial compatibility is not substitution. Moh. Hatta firmly believe the values and norms of Islamic law that is universally acceptable without needing anyone embodied in formalism and of Islamic symbols. But the opinion Hatta on top for the moment in which ideology and economic system of neo-liberal or neo-capitalism that exist and the mainstream global economy, hence the presence of the symbol and the institutionalization of Islam such as, Islamic banking, or Takaful, and others, can help to build and develop an alternative system to provide a new order for the community in accordance with the basic concepts of Islamic law that is *rahmatan lil 'alamin* and *khalifatulillahi fil 'ard*. But do not just stop with the symbols and institutionalization alone without being followed by the development efforts through the general introduction of Islamic economic system, for symbolization and institutionalization alone without being followed by an effort of public awareness will generate execution impossible to realize the goal. As stated by Lawrence M. Friedman,²⁵ that in a legal system that would be effective if the law among the three subsystems (the substance, structure, and culture of the law) can go hand in hand.

Thus, with regard to the renewal and development of sharia banks in Indonesia in the dual banking system, is the adoption of universal banking as reconstruction efforts. The concept of universal banking system which basically should not be done by the Indonesian banking sector, based on the dual banking system needs to be developed possibility of Islamic banks perform broader activities namely conducting insurance business, as is typically done by a true universal banking. The reason is the Islamic banking system is a subsystem of an economic system of Islam, whose scope is wider. For most purposes the establishment of Islamic banks is to promote and develop the application of the principles of Islam and its tradition of banking and financial transactions as well as other related businesses that can increase endurance and prospects of the national banking system.

Closing

Through the restructuring efforts of Islamic banking, which is back at the primary value of Islamic banks through the intermediation function as universal banking system, in accordance with the characteristics of Islamic banking system is based on the sources of Islamic law, in accordance with the purpose of Islamic principles in banking is a form of achievement of the objectives of Islamic law in general, as *Rahmatan lil'alamin* (affection of all the people) and *khalifatulillahi fil 'ard* (humanity), which implies that the principles of sharia in Islamic law is not only for the Muslim community alone but is meant for all mankind.

The rule of law in Islamic banking in Indonesia requires rules in accordance with the Islamic principles in the public welfare universally. Harmonization of Islamic law in positive law, both materially and procedurally done precisely based on principles derived from the sources of law, and not merely a symbol or institutionalization through legalization law will only make the existence and function of the legal system of Islamic banking in Indonesia is not productive in accordance with the basic purpose.

²⁰ Pendapat Atho 'Mudzhar dikutip dalam Mahsun Fuad, HUKUM ISLAM INDONESIA: DARI NALAR PARTISIPATORIS HINGGA EMANSIPATORIS, 58 (LKIS, Yogyakarta, 2008).

²¹ Satjipto Rahardjo, HUKUM PROGRESIF: HUKUM YANG MEMBEBAKAN, 1-24 (Jurnal Hukum Progresif, April 2005)

²² Romli Atmasasmita, TEORI HUKUM INTEGRATIF, REKONSTRUKSI TERHADAP TEORI HUKUM PEMBANGUNAN DAN TEORI HUKUM PROGRESIF, 30-32 (Genta Publishing, Yogyakarta, 2012).

²³ James P. Chaplin, Kamus Lengkap Psikologi, 421 (RajaGrafindo Persada, Jakarta, 1997).

²⁴ Anwar Abbas, BUNG HATTA DAN EKONOMI ISLAM, MENANGKAP MAKNA MAQASHID AL SYARI'AH, 346-347, (Kompas Media Nusantara, Jakarta, Juni 2010).

²⁵ Lawrence M. Friedman, THE LEGAL SYSTEM, A SOCIAL SCIENCE PERSPECTIVE, 12-20 (Russel Sage Foundation, New York 1975).

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