

# SOCIOLOGICAL FOUNDATION OF ISLAMIC BANKING LAW LEGISLATION AS THE LEGAL UMBRELLA OF ECONOMIC AND ISLAMIC FINANCE DEVELOPMENT IN INDONESIA

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## **Abstract**

**Objective** - Sociologically, the existence of Law No.21/2008 on Islamic Banking in the splendor of economic development and Islamic finance is an interesting thing to observe. This paper wants to discuss the sociological foundation of Islamic banking law legislation as the legal umbrella of economic and Islamic finance development in Indonesia.

**Methods** – qualitative Research, includes the study of law.

**Conclusions** – At least, there are several spectrums that can be understood from the emergence of this law. *First*, the establishment of Islamic Banking Act is essentially a response to the provisions of Islamic law that has become the popular belief in the majority of Indonesian people who crave the realization of banking institutions which are free from usury, which is the Islamic law since his arrival in the archipelago until now classified as living law in the community. This reality is associated with the construction established by von Savigny. *Second*, the formation of Law No. 21/2008 concerning Islamic Banking is a response to social economic demand both nationally and globally. The presence of Islamic banks have become a necessity in managing the economy and coping with the economic crisis based on the underlying transaction. *Third*, the Establishment of Law No. 21/2008 concerning Islamic Banking in legal political perspective, has a basic principle, an aim and a response to the dynamic development of Indonesian society, particularly in relation to the development of Islamic economy. *Fourth*, formation of Islamic Banking Act affects the Islamic economic development in Indonesia, particularly in relation to the development of Islamic banking in Indonesia.

Keywords: Sociological Foundation, Islamic Banking Law, Economic Development.

## **Abstrak**

**Tujuan** - Secara Sosiologis, kehadiran UU No. 21 Tahun 2008 tentang Perbankan Syariah di antara semaraknya pengembangan ekonomi dan keuangan syariah merupakan suatu hal yang menarik untuk dicermati. Tulisan ini mendiskusikan landasan sosiologis perbankan syariah sebagai payung hukum pengembangan ekonomi dan keuangan Islam di Indonesia.

**Metode** – Riset kualitatif, mencakup kajian hukum.

**Kesimpulan** – Setidaknya ada beberapa spectrum yang dapat dipahami dari munculnya undang-undang ini, terutama dari aspek sosiologis. *Pertama*, pembentukan UU Perbankan Syariah ini pada dasarnya merupakan respon terhadap hukum yang telah menjadi keyakinan masyarakat sebagian besar rakyat Indonesia yang mendambakan terwujudnya lembaga perbankan yang bebas dari (riba). Keyakinan masyarakat muslim, yang nota bene sebagai penduduk mayoritas di Indonesia, tentang keharaman riba tidak terbantahkan. Hukum Islam yang menjadi dasar keharaman riba dan bunga ini sejak kedatangannya di Bumi Nusantara hingga kini tergolong hukum yang hidup (*living law*) di masyarakat. Realitas ini terkait dengan konstruksi yang dibangun oleh von Savigny. *Kedua*, pembentukan UU No. 21 Tahun 2008 tentang Perbankan Syariah ini, secara sosiologis, tidak terlepas dari ‘tuntutan’ sosial ekonomi baik di tingkat nasional maupun global. Kehadiran bank syariah ini menjadi kebutuhan masyarakat dalam menata perekonomian dan mengatasi krisis ekonomi yang telah menggurita dengan berbasis pada *underlying transaction*. *Ketiga*, Pembentukan UU No. 21 Tahun 2008 tentang Perbankan Syariah ini, dalam perspektif politik hukum ekonomi Islam memiliki dasar pijak, tujuan dan juga merupakan jawaban terhadap dinamika perkembangan masyarakat Indonesia terkait dengan pengembangan ekonomi syariah. *Keempat*, pembentukan UU bank syariah mempengaruhi perkembangan ekonomi Islam di Indonesia, terutama dalam kaitannya dengan perkembangan bank syariah di Indonesia.

Kata kunci: Sociological Foundation, Islamic Banking Law, Economic Development.

## **1. Introduction**

Islamic Bank is a major component in Islamic finance industry. The Islamic Banks grow and develop rapidly at the regional, national, and global levels. In 2007, the Islamic banking assets worldwide reached USD 500 billion, but in 2012 the World Islamic Banking Competitiveness Report of the year 2011-2012 reported that the assets have reached USD 1.13 trillion. The Islamic Banks grow not only in Muslim countries but also in European countries, America, Singapore, Hong Kong and China. There are several Islamic Banks at the global level such as the Wellington Management Company (USA), Oasis International Equity Fund of Flemings Bank (UK), Hong Kong Shanghai Banking Corp (HSBC-London), and ANZ Bank (Melbourne-London).<sup>1</sup>

In Indonesia, the Islamic banks also grow rapidly and most of them have a good financial performance. According to Bank Indonesia (2012), the Islamic Banking industry grew in average of 37.9% over the last five years, even reached 48.35% in 2011. In 2011, the CAR (Capital Adequacy Ratio) average was about 15%, the FDR (Financing to Deposit Ratio) was above 88 %, while the NPF (Non-Performing Finance) was only 2.56%. Although the nominal of Islamic banking assets was relatively small compared to the national banking assets, it could be said that the asset tend to grow rapidly.

According to the statistics of Bank Indonesia (2013), the development and growth of Islamic banking in Indonesia are quite fantastic and encouraging each year.<sup>2</sup> This is reflected in asset growth, financing development, service expansion (the office network reaching 33 provinces in Indonesia). The Islamic banking industry in Indonesia has strong durability and demonstrates good achievement performance when it faces global crisis. Furthermore, the banking

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<sup>1</sup> The Islamic finance industry is not solely about Islamic banking, but it also has capital markets, insurance, mortgage, and investment funds (Journal of Science and Culture Ulumul Quran 02 / XXI / 2012: 5).

<sup>2</sup> According to the data from Bank Indonesia, now there are 11 Islamic Banks (BUS), 24 in the form of Islamic Business Unit (UUS), and 156 in the form of Islamic rural Banks (BPRS), with network offices increased from 1,692 offices in the previous year to 2,574 offices in the year of 2012. Thus the number of Islamic banking office network services increases by 25.31%. The Islamic banking assets are now reaching Rp.179 trillion (4.4% of national banking assets). While the Third Party Funds (TPF) reach Rp.137Trillion. The total financing provided by Islamic banking is Rp.139 trillion, exceeding the amount of deposits, which means the FDR of Islamic banking is more than 100 percent. (Islamic Banking Outlook, 2013: 1-10).

intermediation function continues to perform well with FDR over 100% in 2013.<sup>3</sup> These data indicate that the function of Islamic banking intermediation to drive economies was very big.

The enactment of Law No. 21/ 2008 on Islamic Banking on July 16, 2008 by the President, which is previously passed by the House on June 17 2008, was principally a response of the dynamic of global economic development as well as response to some people's 'desire' to do Islamic law positivisation. As known previously, the economic crisis hitting Indonesia in 1998 had devastated the Indonesian economy. Some countries in Southeast Asia was also hit the economic and monetary crisis. However, the fact shows that Indonesia needs the longest time for economic recovery. The banking sector was also hit by crisis; many banks are exposed to liquidation, or even merged with other banks. Those happened because many banks do not apply prudential banking principle in managing their business and give the high interest rate policy and the depreciation of rupiah (Anshori, 2007: 1).

Thus the enactment of Law No. 21/ 2008 on Islamic Banking has a strategic role in providing the foundation for the continuity of Islamic banking activity that does not have a legal umbrella and specifically regulates the Islamic banking. Therefore, enactment of that Law is expected to strengthen the existence of Islamic Banking.<sup>4</sup> Since the Islamic finance develops rapidly, especially the Islamic banking, its continuity requires supports of all elements of society<sup>5</sup> and legal foundation. Based on those considerations, the writer wants to discuss the sociological foundation of Islamic banking law legislation as the legal umbrella of economic and Islamic finance development in Indonesia.

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<sup>3</sup> <http://www.eramuslim.com/peradaban/ekonomi> accessed on Tuesday, April 23, 2013 at 16.15.

<sup>4</sup> As previously explained, the law on banking was actually enacted in 1992 with the Law No. 7/ 1992. The law did not specifically regulate the Islamic banking, but in practice it introduces 'profit-sharing' activity in banking, particularly in Article 1, Section 12, Article 6 letter m and Article 13 letter c in which the term has not been previously known in the banking world. In 1998, the Law No. 10/ 1998 concerning Amendment to Law No. 7/ 1992 on dual Banking system was issued; this means that conventional banking employs the interest system and Islamic banking employs system with the sharia principles based-agreement (Burhanuddin Susanto, 2008: 39-45).

<sup>5</sup> Indonesian Public awareness to participate the Islamic banking development in Indonesia shows a significant increase, especially after the issuance of Indonesia Ulema Council (MUI) fatwa on December 16, 2003. It is indicated by the increase of the total assets of the Islamic banking which reach 1.15% at the end of 2004 with a growth rate of Islamic banking assets reaching 80-90%. With a high asset growth, Bank Indonesia predicts that the share of Islamic banking assets to the total asset of national banks is 5% in 2008.

## 2. Methodology

### 2.1 Types of Research

This study is classified as qualitative research. Qualitative research is a type of research that the findings are not obtained through statistical procedures or other forms of matter (Strauss and Juliet, 2003: 4), but the data presented is in the form of verbal word. This qualitative research procedure produces findings obtained from the data collected by various means include library research and documentation. Qualitative research paradigm inspired by the philosophy of rationalism which include calls for discussion of holistic, systemic, and reveals the meaning behind the empirical facts. In epistemological, methodological research-rationalistic kualitatif demanded that the object under study is not removed from its context. Qualitative research departed from the natural paradigm. This means that this study assumes that the empirical reality occurs within a socio-cultural context, intertwined with each other. Therefore every social phenomenon must be disclosed in a holistic manner (Maman, U et al (Ed), 2006: 74)

This research includes the study of law. Research the law itself consists of normative legal research (doctrinal) and empirical legal research (sociological). This is in accordance with what was raised by Soekanto (1983: 51) that the law was based on the research made up the first goal; normative legal research, which includes the study of the principles of law, systematic research on law, legal research on the synchronization level, research the history of the law, and the law of comparative research. second; sociological or empirical research which includes two types, namely (1) the law of juridical sociological research (sociological jurisprudence), and (2) research on the sociology of law (sociology of law) (Fajar and Ahmad, 2010: 47).

Juridical sociological research (sociological jurisprudence) examines the law in the sense of legislation were observed in the process of formation and its application in society (Fajar and Ahmad, 2010: 17). Or in other words, this study based on the science of normative law (legislation), but instead examine the system of norms in the rules and regulations, but how to observe reactions and interactions that occur when a system of

norms was formed and work in the community. In the socio-juridical research (sociological jurisprudence), the task of the researcher is to study about "what is behind that appears on the application of law (something behind the law)". Meanwhile, research on the sociology of law (sociology of law) based on the social sciences, using social science theories and studied by the like Max Weber, Emile Durkheim, Karl Marx, and so on. Research sociology of law is observed how about law living in the community. Law in this context given meaning and a different conception of the law as well as people who have to know and understand ordinary people. "Law" in this schools (*madzhab*) conceived as public behavior that stable and institutionalized and socially legitimated where people obey and submit to "the law" is (Fajar and Ahmad, 2010: 56).

## *2.2 Data Sources*

In exploring the data, researchers will use legal material consists of:

### a. Primary Data Sources.

Primary data is legal behavior of citizens. The primary data source, basically to obtain additional data associated with the enactment of Law no. 21 of 2008 concerning Islamic Banking, by conducting interviews (interviews) to various parties who allegedly had a role in the formation of the law. These parties, among others; members of the House at that time, the Board MUI and manages BI, and some parties are considered to have a contribution to the enactment of the Act.

### b. Secondary Data Sources

Secondary data is data obtained from official documents, books related to the object of study, research and legislation (Ali, 2010: 106). Secondary data or data library or known as legal materials can be grouped into: 1) primary legal materials consisting of legislation such as Law No. 19 Year 2008 concerning State Sharia and Law 21 of 2008 concerning Islamic Banking. 2) secondary legal materials, ie materials that law may provide an explanation for the primary legal materials in the form of Chronological Discussion Draft Law Treatise on Islamic Banking Bill SBSN dau. In addition, researchers also refer to related books, journals, newspapers, magazines and news on

the internet. 3) Material tertiary law, this law may be material dictionaries, encyclopedias, bibliographies, indexes and others.

c. Data Processing and Analysis

This study data processing techniques include using triangulation method. In many of his works, Norman K. Denkin defines triangulation as a combinations of the various methods used to assess inter-related phenomena from the point of view and different perspectives. Until now, this Denkin concept used by qualitative researchers in various fields. According to him, triangulation includes four things: (1) triangulation of method, (2) inter-investigator triangulation (if the research conducted by the group), (3) triangulation of data sources, and (4) triangulation theory.

Data analysis techniques used in legal research is descriptive-analytical approach using socio-historical or historical (historical Approach), and sociological. With this method, the data has been analyzed in depth, either by way of the translation, interpretation and explanation also meaning (Moleong, 1988: 197-198).

### **3. Discussion**

#### *3.1 The Existence of Islamic Financial Institutions in the constellation of Global Economic Developments*

The United States' global financial crisis has affected the economy of the countries in the world. The financial crisis in the USA is caused by the breakdown of housing loans "subprime mortgage". The owner bond of "subprime" is not only bankings in the United States but also those in Australia, China, India, Taiwan and other countries. As effect, the bank share prices around the world fall.<sup>6</sup> This kind of crisis is not new to the market economic system which lays on capitalism. This shows the weaknesses in the economic system of capitalism.

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<sup>6</sup> The fall of US stock market makes the value of bank assets and other financial institutions in the United States fall down. Thousands of investors at the US are stressful as their money is disappeared, the invested retirement money in the United States was lost USD 2 trillion, thousands of employees loss their jobs and leads to high level of unemployment in the United States. There are 2.5 million Americans lost their homes because they are seized for nonpayment of installments. Negative response of the markets was compounded by the funds withdrawal done by the Americans on a large scale which resulted in disruption of the banking liquidity. As a result, the credit and the economic are broken down. The crisis has to be paid expensively, in which USD 700 billions or Rp 6.450 trillion is not enough amount to rescue

The economic power under capitalism has globally left a number of problems related to the basic principles of justice, in terms of ownership, production, consumption or production. The economic system of capitalism<sup>7</sup> has resulted social gap between the rich and the poor. The world has born a small group of conglomerates but it leaves billions of people living under poverty. Economic injustice has been a universal problem faced by all contemporary systems. In most parts of the world, the economic systems based on the greed, exploitation, and individual satisfaction has experienced an impasse in realizing social justice. This fact has sparked sharp criticism toward the conventional economic system that has become the core of the global economy.<sup>8</sup>

Indonesia has experienced financial crisis several times. One of them is the financial crisis that occurred around 1998's. The crisis that hit Indonesia in 1998 has devastated the lives of the Indonesian economy. Countries in Southeast Asia were not immune from the economic and monetary crisis. The fact shows that Indonesia needs the longest time for economic recovery process. It is caused by the severe level of corruption, collusion and nepotism in this country, so that economic recovery has a high difficulty level (Anshori, 2007: 1). Banks are also not immune from the crisis; many banks are exposed to liquidation and merged with other banks.

During the crisis, there are at least five major problems faced by the banking sector. Firstly, Negative Spread which occurs because the banks have to pay high interest to depositors (cost of funds), while the interest rates of loans to customers can not be fully adjusted. Secondly, liquidity which happens as result of funds withdrawal on rush or on a large scale, primarily experienced by private banks, while the banks having excess liquidity do not want to help those

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from crisis. See <http://ekonomi.kompasiana.com/moneter/2012/08/07/ekonomi-islam-solusi-krisis-global/> downloaded on Thursday, January 3, 2013.

<sup>7</sup> Historically, Capitalism embryo raised in the 16th century in Europe when the Europe was experiencing the phenomenon of social transformation, culture, technology and knowledge. In this century there is an effort to accumulate the results of a massive nature. In the early of 18th century, Adam Smith (1723-1790) wrote the book "An Inquiry into the nature and Causes of the Wealth of nations" which later regarded as sacred books of capitalism. The book consists of ideas on behavior of community economic. The philosophical basis is then translated into the economic system and eventually became entrenched ideology that reflects certain world view. The basic postulates of capitalism was also inspired by Legendre opinion through the recording dialogue with the Finance Minister of France, Jean Bapiste Colbert during the reign of Louis XIV at the end of the 17 century. Colbert asked Legendre, "How would the government help the business world?" Legendre said: "laissez nous faire (do not disturb us, -leave us alone). This sentence is then popular with the term *laissez faire* which is defined as the absence of government intervention that allows the growth of individualism and economic freedom (Hasan 2011: 5).

<sup>8</sup> There are some experts who criticize the conventional economic conditions such as Amarya Sen, Amita Etzioni, Wilfred Backerman, James Robertson and others. They argue that the conventional economic is characterized by a severe moral crisis. The absence of this moral factor is supposed to be the main cause of income inequality and public welfare inequality in general (Hasan, 2011: 1)



banks. Thirdly, NOP (Net Open Position) that refers to sharp exchange rate fluctuations which cause foreign banks have difficulties in managing assets and liabilities dominated by the foreign currency. It implies to foreign exchange loss experienced by banks when the Rupiah value is in movement. Fourthly, NPL (Non Performing Loan) happens due to the contraction of output while the company's debt burden develops due to the increasing interest rates (Anshori, 2007: 2). To overcome the crisis in the banking sector, the monetary authorities in November 1997, was forced to liquidate 16 National Private Commercial Banks (BUSN).

The banking crisis has led to negative economic growth, declining investment conditions, and increasing unemployment number. Therefore, the issue of banking reforms agenda is carried out in various ways; in the hardware form such as improving the banking system by way of merging or liquidating the commercial banks; and in the brainware form by replacing some persons in the banking world (Ahmad, 2002: 187).

In addition, the current data indicates that Islamic financial institutions have been operating in over 70 countries. The assets of these banks have increased more than 40 times since 1982 with a performance exceeding more than US \$ 200 billion. In 1996 and 1997 the assets had grown with an average annual rate of respectively 24% and 21% (Warde, 2000: 1). The most important development today is the more integrated the Islamic finance into the global economy. To support it, the Dow Jones Islamic Market Index [DJIMI] is currently able to record 600 companies whose products and services do not violate the norms of Islamic law. The foreign institutions such as Citibank has also established a branch of Islamic banking, and such action is followed by many banks in Europe and the United States that offer Islamic products intended for non-Muslims (Warde, 2000: 2).

The development of Islamic banking within the previous year, particularly Islamic Banks (BUS) and Islamic Business Unit (UUS) which dominate the Islamic banking assets, is relatively rapid so that their assets increased to Rp 174.09 trillion in October 2012 (yoy). BUS and UUS assets when combined with Sharia Rural Banks (BPRS) asset, which was Rp. 4.46 trillion, then the total Islamic banking assets to the period of October 2012 reached approximately Rp. 179 trillion ( $\pm 37\%$ , yoy). The asset growth of Islamic banking is still in the corridor of previous

year's growth projection reaching Rp. 177.8 to 205.8 trillion by the end of 2012. At the end of the year, the Islamic banking assets will experience a significant increase in general.<sup>9</sup>

Those data show that the Islamic finance is eligible to be run in the global economy. This fact denies the paradoxical statement which states that Islam is not competitive with the new world order. On the other hand, it is also obvious that the globalization of the financial system has provided the opportunity to Islamic finance to develop rapidly, particularly the Islamic banking. In Indonesia, the number of Islamic banks develops rapidly. Based on the statistical data on the official website of Bank Indonesia, the number of Islamic banks, Islamic business units, as well as sharia financing banks continues to increase from year to year. In less than 6 years from 2006 to January 2012, the total of Islamic banks and offices in Indonesia is 2,202. It is expected to increase more with the increasing of Indonesian society knowledge.<sup>10</sup>

It can be understood that the Islamic banking system shows a rapid growth and immune to the economic crisis that may appear in economic at both national and international level. It is because the system used in Islamic banking is oriented to the real sector condition. The profits gained by the Islamic banking depend highly on the real sector condition, not on the interest provision. To establish the existence of the Islamic banking institution, a clear and strong legal umbrella is needed. In Indonesian context, there are several laws that serve as the legal basis for banking operations in general and for Islamic banking in particular.

### *3.2 The enactment of Law No. 21/2008 on Islamic Banking*

In fact, Law No. 10/ 1998 and its regulations implementation issued in the second period of Islamic banking policy developments in Indonesia give a positive impact on the development of Islamic banking. It can be seen from the total assets of commercial banks and Islamic sharia business unit at the end of June 2001 which reach Rp 2.27 trillion, increasing to Rp3.31 trillion in the end of June 2002 (Kara, 2005: 224). This means that the growth of Islamic banking assets within a period of one year is about 46%. Since the enactment of the Banking Law in 1998, the period of 1998 to the end of 2004 indicates the growth of Islamic banking has increased such as the number of Islamic Banks (BUS) is from 1 bank increases to 3 banks; the Sharia Rural Banks (BPRS) become 88; and 15 Islamic business Unit are formed by the conventional commercial

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<sup>9</sup> [http://www.bi.go.id/web/id/Ruang+Media/Siaran+Pers/SP\\_17122012.htm](http://www.bi.go.id/web/id/Ruang+Media/Siaran+Pers/SP_17122012.htm) downloaded on Sunday on January 13, 2013 at 04.00 am.

<sup>10</sup> <http://ekonomisyariah.blog.gunadarma.ac.id/2012/04/13/perkembangan-dan-peran-bank-syariah-di-era-modern/> downloaded on Friday Januari 11, 2013.

banks. In addition, the growth of office network in the same period continues to rise, from 120 offices to 407 bank offices throughout Indonesia (Machmud and Rukmana, 2010: 65). The rapid growth of Islamic banking is not only because of potential market but also because of the government support, ulema and Bank Indonesia regulation. The regulation continues to accommodate the needs of industry regulations and open broad opportunities for banks and investors to run the Islamic banking activities.

The development phenomena refer to the increasing need and interest of public toward the Islamic banking services. So, a change in legislation is needed in governing Islamic banking in Indonesia in order to better serve the society and banking needs. Recognizing that the rapid growth of national Islamic banking, especially after the issuance of Law No. 10 / 1998 on the amendment of Law No. 7 / 1992 on Banking; and the issuance of Law No. 23 /1999 on Bank Indonesia, we need a blueprint development giving direction what should be achieved as well as the stages to achieve long-term development goals. All of those are intended to provide guidance for stakeholders of Islamic banking and put the position and Bank Indonesia perspective in developing Islamic banking in Indonesia.

In this regard, the Bureau of Islamic Banking of Bank Indonesia, since 2001, has conducted a study and prepared Blueprint of National Islamic Banking Development for the period 2002-2011. It contains planned initiatives with a clear stages to achieve the development goals set. The Blueprint consists of the Islamic banking national development vision and mission. It was compiled by collaborating the imbued basic values of Islamic economy in developing Islamic banking in the level of either micro or macro perspective.

Many aspects have been comprehensively considered while drafting the law, such as the actual condition of the national Islamic banking industry and its related tools; and the development trend of Islamic banking industry in the international level and national development of the Islamic financial system. The development of Islamic banking is directed to provide the highest benefits for society and contribute meaningfully to the national economy. Therefore, the direction of of Islamic banking development is always referred to other strategic plans, such as the Indonesian Banking Architecture (API), Indonesian Financial System Architecture (ASKI), the National Mid Term Development Plan (RPJMN) and National Long-Term Development

Plan (RPJPN). Thus the effort to develop Islamic banking is part of activities that supports the achievement of the strategic plan in a larger scale at the national level.<sup>11</sup>

To further establish the existence of Islamic banking, finally on June 17, 2008 the Islamic Banking Bill had been enacted into law by the House of Representatives chairman Agung Laksono. A month later on July 16, 2008, the president of Indonesia, Susilo Bambang Yudhoyono, endorsed the Islamic Banking Law with No. 21/ 2008 published in the gazette of Indonesia in the Year of 2008 with the number of 94 and consist of 13 chapters and 70 articles.

The enactment of Law No. 21/ 2008 on Islamic Banking is essentially motivated by the intention to increase the compliance of Islamic banks with sharia principles as stated in Koran and Hadith. The intention is in line with the vision of National Islamic Banking Development that is to realize a healthy, strong, and committed system against Islamic principles within the framework of justice, benefit and balance, in order to achieve a prosperous society both materially and spiritually. In order to purify the goal, the presence of Law No. 21/ 2008 on Islamic Banking gives regulations related to institution and Islamic banking products.

### *3.3 Sociological Foundation of Islamic Banking Law Legislation*

The legislation of Banking Law is a response to the society dynamics particularly in relation to economic development. The relationship between law and society is inseparable or interdependent. A law aims to regulate people lives fairly, while the society expects the law to maintain the order of society's member when interact with one another, in order to meet the interested needs. (Sudiana, AA Kt., 2012: 360). In term of legislation, it can be said that law has a sociological foundation if its provisions are in accordance with the general belief or public law awareness, so the law or regulations can be adhered by the community (Huda in Anwar, 2008: 252).

In fact, in term of norm system the law is created by society through state mechanisms and applied in the society. The social condition, where the law exist, colors the work of law in society (Dawn ND and Ahmad, 2010: 15). So, the author views the enactment of Law No. 21/ 2008 on Islamic Banking can sociologically be seen from 2 (two) dimensions.

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<sup>11</sup> <http://kebolangsing.wordpress.com/2011/02/20/pengantar-perbankan/> downloaded on Saturday January 12, 2013.

Firstly, the enactment of Islamic Banking Law is essentially a response to the law that has become belief of most Indonesian people who want to have banking institutions that are free from interests. This can be seen from the historical fact that the early consciousness of Islamic Banking establishment arises from the communities who want to liberate themselves from the practice of bank interest. Meanwhile, all of banking operating systems at the time are based on interest. Although there are differences in law of interest, but the definition of interest is not much different from the usury (*riba*). Yet, as mentioned earlier that the ban on usury is clear that is prohibited or forbidden.

Muslim society, as the major population in Indonesia, believes that the prohibition of interest is indisputable. The arguments stated in Koran and Hadith explain clearly the prohibition of interest. This belief has been long ingrained in most of Muslims in Indonesia. However, with some progress experienced by many Islamic Banks, they do not have legal umbrella to protect them. Meanwhile, the Islamic Law which become the basis of interest prohibition is classified as living law in the community since its arrival in this country. Culturally, the Islamic law refers to a deeply rooted law in the culture of the community. This is in accordance with what is stated by Savigny that the law is always evolving with the development of society (Mahfud, 1999: 71).

Such reality is related to the construction built by von Savigny. Savigny argues that there is an organic relationship between the law and character of a nation. Law is only determinant of *volkgeist*. Therefore, 'customary law' which grows and develops in the womb of *volkgeist*, should be viewed as a true law of life, not made, but it should be found. Legislation is important as long as it has a declarative nature of the true law. The important task in the field of law is not the law making itself, but it is to dig the pearl of legal value in the womb of people life. The main problem of law management is to find principles and doctrines of living law values. To understand those values, it is highly needed to observe the heart of people soul. Thus, the law made is not solely artificial. (Tanya, Bernard L, et al, 2010: 103-104). In line with this, Philippe Nonet and Philip Selznick say that a regulation should be adapted to the right historical conditions so it will be relevant and have the power of life. When the environment changes, it is necessary then to organize the rules (Selznick and Nonet, 2003: 65).

Articulation of Islamic principles set forth in Law No. 21 / 2008 on the Islamic Banking is basically a reflection of Muslim who gets the support of Law No. 10/ 2004 on legislation establishment. The Article 53 of Chapter X of the Law emphasizes on community participation: "the public is entitled to give spoken or written input in preparation to the draft of Bill and

regional regulation". From this article, it is understood that all elements of society have an equal opportunity to provide input to the draft of Bill, including the Muslim community with the provisions of Islamic law.

Secondly, the enactment of Law No. 21/2008 on Islamic Banking is sociologically inseparable from the 'demand' of socioeconomic at both national and global level. The presence of Islamic banks is a necessity in managing the economy and overcoming the economic crisis based on the underlying transaction. In reality, the Islamic Banking is relatively resistant to crisis. It is due to the existence of the contract and agreement stated in the Islamic Banking which emphasize on the real sector or underlying transaction. The legislation Law No. 21/ 2008 on Islamic Banking is a consequence of conformity between law changes and society developments and law that has function to change society. In this context, this legislation is related to Roscoe pounds theory stating that law can serve as a means of society manipulation or in other word "law is as a tool of social engineering".<sup>12</sup>

Thirdly, the enactment of Law No. 21/ 2008 on Islamic Banking, in the political perspective of Islamic economic law, has a basis, goal and answer to the development of Indonesian society and Islamic economics. Therefore, it is believed that all activities in the context of national and state will be more stable and solid when they are given a clear legal umbrella. Although the Islamic banks have been developed everywhere, if they do not have legal foundation their existence will be questioned. It is because the legal foundation used is the one under the conventional banks. Consequently, with the legal foundation of Law No. 8/ 2008, the community manager, community users, investors and other stakeholders will have no doubt to do transaction in Islamic Banking environment.

Fourthly, Formation of Islamic Banking Act affects the economic development of Islam in Indonesia, particularly in relation to the development of Islamic banking in Indonesia. It is, among others, can be seen that the development of Islamic banking in Indonesia until 2012 showed rapid progress. Total Islamic Banks to date a total of 11 Islamic Banks. As for Sharia Business Unit amounted to 24, and Bank Financing Sharia as much as 156. The amount is for the coming years is very likely to continue to grow. This is because it is the guarantee of Act No. 21 of 2008 concerning Islamic banking in Indonesia.

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<sup>12</sup> This theory is based on idea that the initial conditions of society structure is always in a condition that is less balanced. To create a civilized world, the structural imbalances need to be reorganized in a proportional balance pattern. In the context of purposes, progressive steps are necessary to function the law in organizing the change (Ask, 2006: 154)

A large number of existing Islamic banking has a positive effect for the Indonesian people, because the reach of the public to become more widespread. In addition, the increase in Islamic banking industry is also increasing the number of principled sharia financing which could be distributed to the public. Based on data from Bank Indonesia today, at least, the total Islamic banking assets of the total banking assets Indonesia has reached 174.09 billion dollars, or increase of 37% as of October 2012 compared with the prior-year period in the same month about 127.15 billion dollars . In fact, according to a study by the Islamic Financial Services Board (IFSB) in the year 2023, Islamic banking assets in Indonesia could reach Rp 15.000 trillion and became number one in the world as well as the shift of Malaysia who are in a position to 11. The total assets of Islamic banking which amounts to hundreds of trillions of dollars is very positive and it provide its own power for the Islamic banking and push to encourage policies of some policy makers to continue for supporting the development of islamic banking in the context of islamic economic development in Indonesia. Therefore, banks including Islamic banking is a pillar in the economic development in Indonesia.

The author views the legislation of Law No. 21/ 2008 on Islamic Banking as a response to new needs occurred in the society and has relevance to the Pound's theory. This is proved by the existence of Islamic Banking before and after the enactment of Islamic Banking Law. Before the enactment of Law no. 21/ 2008 on Islamic Banking, the Islamic Banking position in Indonesia is uncertain. It is shown in the Constitution stating several articles that support the enactment of Islamic banks, but in real terms it has not been set in legislation underneath. Finally, the Islamic Banking run only based on fighters' creativity with all sorts of trial and error.

After the enactment of Law No. 21/ 2008 on Islamic Banking, the Islamic banking institutions are relatively more established and developed. The development indicators of Islamic banking industry can be seen from the development and performance of Islamic banking institutions. This can be seen from the table below:

Table 1 Institutional development and performance of Indonesian Islamic Banking

<b>INDICATOR</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
BUS	3	5	6	11	11	11
UUS	26	27	25	23	24	24
BPRS	114	131	138	150	155	155
Office network	802	1,069	1,258	1,763	2,101	2,380
Asset (billion Rp)	37,754	51,249	68,212	100,258	148,987	149,321
DPK (billion Rp)	28,730	37,828	53,522	77,640	117,510	116,871
PYD (billion Rp)	28,837	39,455	48,473	70,190	105,331	106,532

**Source:** processed from Islamic Banking Outlook position in February 2012

The data above shows that the presence of Islamic Banking Law sociologically has two dimensions of strategic values; the first is the material contained in the law as an excavation of the applicable law in society (living law), especially regarding the prohibition of interest. The second, the presence of Islamic Banking Law is a response to the social demands of the global economy. In addition, the presence of this Islamic Banking Law can be a “special” legal umbrella for the Islamic banking institutions which have their own specificity compared to conventional banking institutions. Besides, it is also important to appreciate the struggle of Islamic Banking activists in Indonesia who fight for the enactment of Law no. 21/ 2008 on Islamic Banking.

Thus it can be understood that the existence of the Law No. 21/ 2008 on Islamic Banking cannot be separated from politics influence. However, based on the description above, the Legislation of Islamic Banking Law is not only because of political factors but also because of well-established system including base of departure, the goal substance of the Law and dialectic with the existing society development. That is, the legislation of Law No. 21 / 2008 on Islamic Banking law politically has a strong basis, the substance also has a purpose that is in line with the goals of Indonesia. In addition, the enactment can sociologically be described in two directions; the first direction is the excavation of the applicable law in society (living law) and the second direction is the legislation done to meet the Islamic banking challenges.

#### **4. Conclusion**

There are some findings that can be drawn from this study: *firstly*, the enactment of Islamic Banking Law is essentially a response to the law that has become belief of most Indonesian people who want to have banking institutions that are free from interests. *Secondly*, the enactment of Law No. 21/2008 on Islamic Banking is sociologically inseparable from the 'demand' of socioeconomic at both national and global level. *Thirdly*, the enactment of Law No. 21/ 2008 on Islamic Banking, in the political perspective of Islamic economic law, has a basis, goal and answer to the development of Indonesian society and Islamic economic which is inseparable with the struggle of Islamic Banking activists in Indonesia. *Fourthly*, Formation of Islamic Banking Act affects the economic development of Islam in Indonesia, particularly in relation to the development of Islamic banking in Indonesia.



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