

## **JURIDICAL NORMATIVE REVIEW OF CONVERSION CONVENTIONAL BANKS INTO ISLAMIC BANK AFTER THE PROMULGATION OF QANUN ACEH CONCERNING SHARIA FINANCIAL INSTITUTIONS**

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### **ABSTRACT**

Qanun Number 11 of 2018 concerning Sharia Financial Institutions in Aceh is enforced on January 4, 2019. Article 65 of the Qanun states that "*When this Qanun comes into force, financial institutions operating in Aceh must adjust to this Qanun no later than 3 (three) years from This Qanun was enacted*". This provision has an impact on conventional banks that currently operate in Aceh. Based on data from the Financial Services Authority, in December 2019 there were 77 conventional bank branch offices in Aceh. Thus, conventional banks that are there have to do the conversion in order to continue doing their business activities. This article will examine the different concepts of Islamic banks and conventional banks, and how the procedures must be carried out if conventional banks want to convert to Islamic banks in accordance with Financial Services Authority Regulation Number 64/POJK.03/2016. The author uses a normative juridical approach in conducting this research by examining a number of legal sources regarding banking and Islamic banking supported by literature study methods on several secondary sources.

## **1. INTRODUCTION**

Nowadays, banking institutions are the core of a country's financial system. The bank is an institution whose business field is to collect funds from parties who have excess funds which will then be redistributed of funds collected to the public who need funds within a predetermined period of time (Wafa, 2017). The growth of a bank is very dependent on its function in finding and raising funds in the form of savings or deposits. The greater the volume of funds that can be collected by banks, the greater the volume of funds that will be developed by banks.

In Indonesia, there are conventional banks and Islamic banks. Conventional banks are banks that were formed before Islamic banks and apply interest to gain profits from the activities of the company. Besides the existence of conventional banks, there are also Islamic banks. Islamic banks are banks that are run according to and are based on the Islamic economic system. Islamic banks emerged as a response from a group of Muslim banking practitioners who wanted to accommodate input from various parties who requested that financial transaction services be provided that was in line with Islamic sharia values and principles (Marimin, Romdhoni, and

Fitria, 2015). It is hoped that Muslims can support the development of Islamic banks in Indonesia.

Establishment of Law Number 7 of 1992 that discuss about Banking is a point of agreement of the state to implement a dual banking system (conventional bank and Islamic bank). Then the Amendment to the Banking Law, namely Law Number 10 of 1998 further established the existence of a dual banking system. A decade later, the existence of Islamic banks became stronger after the promulgation of Law Number 21 of 2008 about Islamic Banking. The Law looks optimistic that Islamic banks will become a fast-growing financial institution in the future. In this Law, it is also formulated that Islamic banking is all thing related to Islamic banks and Islamic business units including business activities, institutions, as well as ways and processes in conducting their business activities (Wirdayaningsih, Perwataatmadja, Dewi, and Barlinti, 2005).

The progress of Islamic banks in Indonesia continues to increase over time. The Financial Services Authority (OJK) has recorded that currently there are 480 Sharia Commercial Bank (BUS) Operational Head Office, 160 Sharia Business Unit (UUS) Operational Head Office, and 167 Sharia Financing Bank (BPRS) Operational Head Office in Indonesia supported by a total of 1,402 Sharia Branch Offices/Sharia Service Units. Nanggroe Aceh Darussalam Province ranks fifth with the highest number of Operational Head Office, with 38 Operational Head Offices supported by 117 Supporting Branch Offices (Financial Services Authority, 2019).

Given the special features of the Province of Nanggroe Aceh Darussalam, surely we assume that there are no conventional banks in the province. But apparently based on OJK Data, as of December 2019 there were 77 Conventional Bank Branch Offices operating in the special province (Financial Services Authority, 2019). In connection with this, actually, on January 4, 2019, was enacted Qanun Aceh Number 11 of 2018 concerning Islamic Financial Institutions (hereinafter referred to as Qanun LKS). This is one of the provisions said that 3 (three) years after the Qanun LKS was legitimated, all financial service institutions in Aceh Province must adhere to the sharia principle. Which of course this will certainly affect the existence of conventional banks in the province. Therefore, this article will examine the different concepts of Islamic banks and conventional banks, and how the procedures must be carried out if

conventional banks want to convert to Islamic banks in accordance with Financial Services Authority Regulation Number 64/POJK.03/2016.

## 2. LITERATURE REVIEW

The term bank originates from Italian, Banco, which means a piece of board for a book of a type (Thomson, 1911). Called the bench because the bankers to carry out operations to customers carried out on the bench. In its development, the term bench became popular as a bank. Early development in Indonesia, Banking was interpreted as a business entity that collected money or funds from the community and channeled it to the community to improve the people's standard of living.

A bank is an institution that aims to satisfy credit needs both with its own means of payment or with money obtained from other people and by circulating new exchange instruments with demand deposits (Stuart in Suyatno, 1993). Banks as financial institutions have an important function of financial intermediaries in a country's economy. At present, banks are institutions that cannot be separated from people's lives because they have become a place for people to save deposits, savings, current accounts, and places to borrow funds. In this modern era, banks also function as providers of electronic shopping payments, bills, and other payments that keep abreast of the times.

According to Law Number 10 of 1998 concerning Amendment Banking Law, Banks are "Business entities that collect funds from income in the form of credit or other forms in order to improve the lives of many people". From that understanding, a common thread can be drawn that a bank is a company whose business type is in the financial sector or is always related to finance. In conducting its business, banks in Indonesia based on a dual banking system are divided into two systems: conventional banks and Islamic banks.

Conventional banks are banks that already existed earlier than Islamic banks and already have facilities that are widespread in Indonesia. Indonesia Dictionary defines conventional as "according to what has become a habit" This understanding indicates that conventional banks are banks that have formed earlier or have become the habits of banks in the past in making a profit. Conventional banks run their operations by applying interest to gain profits from the activities of the company. With the mention of banks that run businesses with interest as

conventional banks, it can be interpreted that the Indonesian people are familiar with the mechanism of banking with interest.

As stated earlier, banks are institutions that have a central position in a country's economy. Article 1 paragraph (2) of Law Number 10 of 1998 defines banking as "a business entity that collects funds from the public in the form of deposits and distributes them to the public in the form of credit or other forms in order to improve the lives of many people."

Islamic banking is defined as all thing that is related to Islamic banks and Islamic business units including their activities, institutions, as well as ways and processes in carrying out their business activities. Islamic banks are banks that run their business activities based on sharia principles. Islamic banks consist of Sharia Commercial Banks (BUS) and Sharia Financing Bank (BPRS).

In Indonesia, the first Islamic bank established in 1992 was Bank Muamalat, which marked the start of the dual banking system. The development of Islamic banks in Indonesia can be said to be a bit late compared to other Muslim countries. In 1999 the number of Islamic banks increased to three units, then in 2000 Islamic banks or conventional banks that opened Islamic business units had increased to six units. While the number of BPRS has reached 86 units. In the coming year, the number of Islamic banks will continue to increase along with the entry of new players, the addition of Islamic bank branch offices, and the opening of Islamic windows in conventional banks (Karim, 2004).

Article 1 Paragraph 13 of Law Number 10 of 1998, what is meant by sharia principles is the rules of agreement based on Islamic law between banks and other parties for depositing funds and financing business activities, or other activities declared in accordance with sharia, including financing based on the principle of profit-sharing (*mudharabah*), financing based on capital participation (*musyarakah*), the principle of buying and selling goods with a profit (*mudharabah*), or financing of capital goods based on the principle of the pure lease without choice (*ijarah*), or by transferring ownership of the goods leased from the bank by another party (*ijarah wa iqtina*).

Whereas Law Number 21 of 2008, the principle of sharia is 'Islamic legal principles in banking activities based on fatwas issued by institutions that have the authority to determine

fatwas in the field of sharia'. Thus, an Islamic bank is a business entity that runs a business based on Islamic law, both in collecting and distributing funds on the basis of sharia principles.

Because conventional banks and Islamic banks use different principles in running their businesses there will certainly be similarities and differences between the two. From the technical side of receiving money, computer technology, transfer mechanisms, general terms of financing both conventional banks and Islamic banks are the same. The fundamental difference lies in the legal aspects, organizational structure, businesses that are financed, and the work environment. Another basic thing that most distinguishes between conventional banks and Islamic banks lies in the return and distribution of profits in the relationship between the bank and its customers. The principle that distinguishes that the operations of Islamic banks use the principle of profit-sharing (mudharabah). The principle of conventional banks that apply interest is seen as usury so it is haram for Islamic banks to use interest as a means of making a profit.

Through the profit-sharing system implemented by Islamic banks, customers can directly monitor the performance of Islamic banks by monitoring the amount of profit-sharing obtained. The greater the number of profits, the greater the results received by customers, and vice versa. The amount of profit-sharing that continues to fall indicates that the bank experienced a decline in profits. This can be a transparent early warning for customers. Unlike conventional banks, customers cannot judge performance based on the interest earned.

Of course, there are differences in objectives between conventional banks and Islamic banks. Conventional banks were established to gain as much material benefit as possible, in contrast to Islamic banks that were formed to provide material and spiritual welfare. Business activities carried out in accordance with sharia principles bring material and spiritual well-being together. Islamic banks may not give funds to companies engaged in fields that are prohibited by sharia. Profits in conventional banks are more likely to focus on material profit angles while in Islamic banks in addition to material profits also still pay attention to spiritual benefits (duniawi and ukhrawi). To make it easier the following table is presented for comparison of conventional banks and Islamic banks:

Table 1.

No.	Conventional banks	Islamic banks
1.	Determination of interest rates made when an agreement with the guidelines must always be for the bank.	Determination of the amount of risk for the results made at the time of the contract with the guidelines on profit and loss.
2.	The amount of the profit percentage is based on the amount of money (capital) lent.	The size of the profit sharing ratio is based on the amount of profit obtained.
3.	The amount of interest payments did not increase even though the amount of profit doubled as the economy improved.	The amount of revenue sharing increases according to the increase in the amount of revenue.
4.	The bank accepts the burden of paying interest on customers, even though economic conditions are unstable.	Profit sharing depends on the profit of the project being carried out, if the project does not get a profit then the loss will be shared by both parties.

### 3. METHODOLOGY

In analyzing the problems that arise, the authors use the normative juridical approach. This approach is carried out by analyzing and interpreting problems theoretically related to concepts, principles, doctrines, legal norms regarding Islamic financial institutions, especially again in the banking sector. In this study, the authors used secondary data (statute approach). Secondary data is data obtained through library materials such as books, legal dictionaries, legal journals, comments on laws (Marzuki, 2005).

This research uses descriptive qualitative analysis method, which takes an indirect assessment by drawing conclusions as outlined in the form of statements and writings. This analysis is used to examine the data obtained from library materials which are qualitative data. With qualitative data analysis techniques, the results of this study will be described in the form of sentences arranged systematically, clearly, and in detail so that it can be interpreted to obtain a deductive conclusion to answer the subject matter (Moleong, 2011).

## 4. RESULTS AND DISCUSSION

### 4.1 Overview of Qanun Aceh No. 11 of 2018 concerning Islamic Financial Institutions

One area that has strong sharia political will is the Province of Nanggroe Aceh Darussalam where Aceh has special autonomy to form sharia regional regulations or commonly referred to as Qanun. Qanun Number 11 of 2018 concerning Islamic Financial Institutions (Qanun LKS) and Qanun Number 8 of 2014 concerning Principles of Islamic Sharia requires that financial institutions that will operate in Aceh must run their activities based on sharia principles (Setiadi, Al Kautsar, Indra, & Hanggraeni, 2019). The consequence of this regulation is that every financial institution in Aceh must be converted into an Islamic financial institution. This conversion will change the type of risk faced by the bank and will also affect the bankruptcy risk experienced by the bank.

Qanun is a statutory regulation similar to provincial regulations that govern the administration of government and the lives of the people of Aceh. This Qanun has begun to have a significant effect on the achievement of the Aceh government's target to carry out the Islamic Shari'a perfectly (kaffah). On January 4, 2019, the Qanun LKS was formed. Sharia Financial Institutions according to the Qanun LKS are institutions that carry out activities in the banking sector, non-banking sharia financial sector, and other financial sectors according to sharia principles.

Whereas an Islamic bank is a bank that runs its business based on sharia principles and by type consists of Sharia Commercial Banks (BUS), Sharia Financing Bank (BPRS), and Sharia Business Units (UUS). Islamic financial institutions other than Islamic banks are institutions engaged in capital market activities, insurance, pension funds, venture capital, pawnshops, cooperatives, financial institutions, factoring, microfinance institutions, and other service financial institutions whose implementation does not conflict with Islamic principles.

Islamic financial institutions in Aceh are intended to strengthen the implementation of Islamic economic development. By having goals namely:

- a. Realizing the Islamic economy of Aceh;
- b. Being a mover and booster of economic growth in Aceh;

- c. To collect and/or provide financial support and carry out the functions of financial institutions based on sharia principles;
- d. Performing other social functions including utilizing religious assets for the benefit of the people based on sharia principles;
- e. Encourage increased Aceh Original Revenue;
- f. Increase access to funding and business for the community;
- g. Help increase economic empowerment and community productivity; and
- h. Help increase the income and welfare of the community.

The Qanun applies to (1) every Muslim person residing in Aceh or a legal entity conducting financial transactions in Aceh; (2) anyone who is not a Muslim makes a transaction in Aceh may submit to the law; (3) every non-Muslim person, business entity and/or legal entity conducting financial transactions with the Aceh Government and Regency/City Government; (4) Islamic financial institutions that do business in Aceh; and (5) Islamic financial institutions outside Aceh which are head office in Aceh.

What's interesting about the provisions of this Qanun LKS and is the main subject of discussion in this article is Article 65, "When this Qanun comes into force, financial institutions operating in Aceh must adjust to this Qanun no later than 3 (three) years after this Qanun was enacted". We know that this Qanun LKS was implemented on January 4, 2019, thus the deadline for financial institutions in Aceh including conventional banks to adjust to this Qanun LKS no later than January 4, 2022. It is interesting to study what conventional banks have done to adjust to this Qanun LKS.

#### **4.2 Existence of Conventional Banks in Aceh**

As explained in the previous section, that due to the enactment of the Qanun LKS, conventional banks in Aceh, whose numbers are based on data obtained from the OJK, are 77 conventional bank branch offices that must apply sharia principles or start following the provisions in the Qanun LKS.

It has also been stated that one of the regions that has strong sharia political will is the Province of Nanggroe Aceh Darussalam where Aceh has special autonomy to form sharia regional regulations called Qanun. The Qanun LKS requires financial institutions that will



operate in Aceh to carry out their activities based on sharia principles. The consequence of this regulation is that every financial institution in Aceh must be converted into a sharia financial institution. This conversion will change the type of risk faced by the bank and will also affect the bankruptcy risk experienced by the bank.

When reviewed, Article 65 of the Qanun LKS states "When this Qanun comes into force, financial institutions operating in Aceh are required to adjust to this Qanun no later than 3 (three) years after the promulgation of this Qanun". In other words, the Aceh Provincial Government has planned to close access to non-Islamic banking institutions (conventional banks). What is the effect of this qanun, conventional banks leave the Serambi Makkah (Aceh)?

In principle, business operations must always comply with the rules that apply in each region. Including the banking business. No exception in the operational restrictions on non-Islamic financial institutions in Aceh. OJK, as the regulator in the financial services industry, has stated its attitude regarding this Qanun LKS. According to the OJK reported from [financial.bisnis.com](http://financial.bisnis.com), financial service business actors, including banks, must follow the rules that apply legally in an area. Thus, if the Aceh Provincial Government does not allow non-Islamic financial institutions to operate in the area, then inevitably these institutions must stop operating or follow the provisions to change or adjust to these rules (Kinanti, 2017).

The Sharia Economic Community (MES) of the Province of Aceh said that all financial service institutions must implement the sharia system from 2020 (Medianti, 2019). At present, socialization continues to be intensively carried out in all cities and districts in Aceh. However, if we look back at Article 65 Qanun LKS, the time limit for conventional banks to adjust to sharia principles is three years after the Qanun is enacted. So if the Qanun LKS is promulgated on January 4, 2019, the last period to adjust the principles and provisions is January 4, 2022. So that in early 2022, there should be no more conventional banks in Aceh, only Sharia Commercial Banks (BUS), Sharia Financing Bank (BPRS), and Sharia Business Units (UUS).

OJK data shows that in Nanggroe Aceh Darussalam Province in 2015 there were 78 conventional bank branch offices, then increased to 81 branch offices in 2016, then declined again to 76 branch offices in 2017, then in 2018, the number of branch offices was still the same which is 76 units. Then in December 2019 conventional bank branch offices in Nanggroe Aceh Darussalam totaled 77 units (Financial Services Authority, 2019).

Based on Indonesian Banking Statistics, the sharia banking market share as of February 2019 was 5.94% with asset growth of 13.07%. The growth of national banking assets was 10.34% where Sharia Commercial Banks (BUS) contributed 66.54% and Sharia Business Unit (UUS) 33.46%. Sharia Business Unit (UUS) can operate in Indonesia because the Indonesian banking system still adheres to a two-window system. According to Law Number 21 of 2008, the principle of the dual banking system in Indonesia will end at a maximum of 2023 where banks that have been running Sharia businesses using Sharia Business Unit (UUS) will be forced to spin off or convert (Setiadi, Al Kautsar, Indra, & Hanggraeni, 2019).

Both of these options have advantages and disadvantages of each, which if a bank chooses to do a spin-off then the bank needs funds in excess of Rp 500,000,000,000 (five hundred billion rupiahs) to form book bank 1 which tends to be difficult to fulfill, while to do the conversion it takes a strong political will in converting banks even more so on banks owned by local governments.

Below will be explained the steps that can be taken by conventional banks in Aceh to be able to adjust to the provisions of the Qanun LKS with the conversion mechanism. Conventional banks can adjust to the Qanun LKS by converting it to Islamic banks. The following will explain the mechanism of converting conventional banks to Islamic banks.

### **4.3 Converting Conventional Banks into Islamic Banks**

Provisions regarding the conversion of conventional banks into Islamic banks can be done through the procedures that have been regulated in the Financial Services Authority Regulation Number 64/POJK.03/2016 about Changes in Conventional Bank Business Activities to Islamic Banks (POJK 64/POJK.03/2016). In the Article 2 and Article 3 this regulation declared that conventional banks can transform their business activities become Islamic banks, and conversely Islamic banks are prohibited from changing their business activities to conventional banks. Changing conventional banks to Islamic banks can only be done with a permit from OJK, namely a license to change business activities.

Conventional banks that want to change business activities must make plans to change the business activities of conventional banks into Islamic banks which must be included in the business plan of conventional banks. In addition, conventional banks that will make changes to

Islamic banks has to adapt the Articles of Association (AoA), meet capital requirements, adapt the requirements of the Board of Directors (BoD) and the Board of Commissioners (BoC), form the Board of Sharia Supervisory, and present the initial financial statements as an Islamic bank.

The procedure for obtaining a license to change the business activities of a conventional bank into an Islamic bank in POJK 64/POJK.03/2016 must be submitted by the conventional bank concerned accompanied by 1) the mission and vision of changing business activities into an Islamic bank; 2) draft amendments to the articles of association (AoA/AD); 3) names and personal identification data of prospective the Controlling Shareholders, the Board of Directors (BoD), the Board of Commissioners (BoC), and the Board of Sharia Supervisory; 4) Islamic bank business plan; 5) feasibility study of economic potential and market opportunities; 6) plan to settle customer rights and obligations. Conventional banks that submit applications for license to change business activities should also prepare an explanation of the overall plan to change into Islamic banks.

Conventional banks that have obtained a license to change their business activities into Islamic banks must clearly state the word "Sharia" on the writing name and logo "iB" on forms, slips, products, offices, and office networks of sharia banks.

Then a conventional bank has obtained a license to change business activities to become an Islamic bank, which must run business activities based on sharia principles no later than 60 (sixty) days from the date the license to change business activities is granted. If after the period of time the Islamic banks resulting from changes in business activities have not yet start business activities based on sharia principles, the license for changes in business activities that have been granted will be reviewed. Plans for conducting business activities based on sharia principles must be published to the public no later than 10 (ten) days before the date of implementation. Business activities based on sharia principles must be reported no later than 10 (ten) days after the date of implementation.

Conventional banks that have obtained a license to change their business activities into Islamic banks are prohibited from carrying out their business activities conventionally, except in the context of resolving the rights and obligations of conventional business activities. Where the settlement of rights and obligations from conventional business activities must be done no later than 1 (one) year from the date the license to change business activities is granted. The

settlement can be extended in the event that it cannot be completed due to unavoidable matters (force majeure) or other acceptable considerations.

## 5. CONCLUSION

OJK data records that as of December 2019 there were 77 Conventional Bank Branch Offices operating in the Province of Nanggroe Aceh Darussalam. Previously, on January 4, 2019, the Qanun LKS was enacted which obliged that 3 (three) years after this LKS Qanun be legalized, all financial service institutions in Aceh Province must adhere to Islamic principles, including banking. Thus, on January 4, 2022, financial institutions in Aceh, including conventional banks, must turn to banks that apply sharia principles.

Of course, conventional banks and Islamic banks have similarities and differences so that the existence of this Qanun greatly affects the existence of conventional banks in Aceh. The fundamental difference lies in the profit-sharing system, where the operations of Islamic banks use the profit-sharing principle while conventional banks apply the interest system. Because of this very basic difference, conventional banks must follow legally applicable rules in a region, in this case, the Qanun LKS. One option that can be done by conventional banks to be able to stay afloat on the Serambi Mecca (Aceh) is to convert their business activities into Islamic banks.

Conversion can be done by paying attention to the requirements stipulated in POJK 64/POJK.03/2016, where conventional banks must make plans to change the business activities of conventional banks into Islamic banks. Other adjustments that must be made are amendments to the Articles of Association (AoA), capital requirements, Board of Directors (BoD) and Board of Commissioners (BoC), the establishment of Board of Sharia Supervisory, and initial financial statements as Islamic banks. Conventional banks that have obtained a license to change business activities into Islamic banks must run their activities based on sharia principles no later than 60 (sixty) days from the date the license to change business activities is granted. This adjustment through conversion can be an alternative for conventional banks in Aceh, if they want to continue their business activities there.

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