

Islamic Law for Business and its Legal Bases in Indonesia

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Abstract

Islamic law has a crucial position and meaning in the context of implementing human development, just like in business in Indonesia. Thus, this study demonstrates Islamic law's perspective in business. This research uses a library approach which can be in the form of the Qur'an, Hadith, scientific works, research reports, scientific journal articles, laws and regulations, and official website sources. The study results reveal that Islam descends as a comprehensive religion, so its teachings do not have a partition only on the rituals of worship of *mahdah* and *ghairu mahdah* but including activities of human life with respect to economics. Therefore, there is a need for sharia principles in business practice and implementation because it provides hope and development so that sharia-compliant business law offers solutions for everyone. The sources of Islamic law are the Qur'an and the Sunnah of the Prophet, and then if no instructions are found, the method of *ijtihad* can be used as a guide. This has been implemented in the laws and regulations.

Keywords: Islamic Law, Business, Legal Bases

INTRODUCTION

Indonesia has a regulatory system, specifically called law, in the country and state. Law and society are like two sides of a coin that cannot be separated from each other. The enactment of the law is indeed in a social order called society. In this era of globalization, sale and purchase agreements are often the cases for the parties to do based on a mutual agreement.

In the sale and purchase agreement, the parties may bind themselves to one or more other persons, where the parties involved in the sale and purchase agreement will receive legal protection if the parties have written evidence in a sale and purchase agreement bond. One party gives up title to an item, and the other party undertakes to pay at a price consisting of a sum of money in exchange for acquiring such property rights (Soeikromo, 2013). One party, the seller, is obliged to deliver the goods following the agreement's content and is entitled to receive the price (payment). The other party, the buyer, is obliged to pay the fee and is entitled to obtain the goods promised in the sale and purchase agreement.

As one of the legal systems, Islamic law also applies in Indonesia and has a critical position and meaning in the context of implementing full human development. Muslims, as the majority in Indonesia, are the substantial element. At the international Islamic world level, Indonesian Muslims can even be called the most prominent Muslim community gathered within one territorial boundary of a statehood.

Indonesia has the largest Muslim population (Ulfa, 2021). It is appropriate for Indonesia to be a pioneer in the development of Islamic law practices in its application to the sector of Islamic finance in the world (Komite Nasional Keuangan Syariah, 2018). This situation is not an impossible dream because Indonesia's potential to become a global player in Islamic finance is tremendous. In this regard, it becomes exciting to understand the course of the history of Islamic law during the world's largest Islamic community. Questions such as: how far the influence of the Indonesian Muslims' prosperity is on the application of Islamic law in the country, for example, can be answered by explaining the history of Islamic law since the Muslim community was present in Indonesia.

One of the studies provides the view that studies and approaches to the history of Islamic law in Indonesia can also be used as a foothold for Muslims, specifically in determining the right strategy in the future to bring the country closer or familiarize the country and this nation with Islamic law. The historical process of Islamic law, which is marked by clashes with the tradition that prevailed previously as well as with the policies of state politics and the actions taken by previous Indonesian Islamic figures, can at least be an essential study material in the future. Thus, history shows that the process of Islamization of a society is not a process that can be completed instantly (Munir, 2014).

Another study to consider is that Islamic law is regarded to adhere strictly on the principle and values intimated in the Quran and Hadith as stated by Cerimagic (2010). The latest study of Ahyani et al. (2022) revealed that the urgency of sharia business in Indonesia is concerned to do which is that what we require to think about together with the purpose of a chance for making potential of the sharia economy and Indonesia is a country showing the rapid development on the sharia business. Currently, Islamic law has entered a new phase; namely, the role of Islamic principles in Indonesia's positive legal system has colored the laws and regulations in Indonesia. However, unfortunately, it is still limited to private law, and legal principles alone have not led to legal substance. The criminal law of our country is not Islamic law but enforcing the rules of Islamic law will create a complete ideal. There are still many laws, especially in criminal law, but there is still a lack of sense of justice. Thus, enforcing Islamic law is vital so all parties can enjoy a sense of justice. Business activities are no exception, as Muslims must pay attention to the rules and principles in their activities as Islamic law is derived from the Qurán and Al Hadith.

Business people should not ignore several business principles in Islam, both personally and as a business group, namely: not being allowed to use arbitrary and destructive methods, not being allowed to carry out business activities in the form of gambling, or there are similarities with gambling, not treasonous to each other and

harming each other, not cheating in doses, scales or falsification of quality, and do not use usury means or with an exciting system (Khikmah, 2021).

This paper seeks to elaborate on law from the perspective of Islam in Indonesia. The presentation of this paper can provide an overview of Islamic law in Indonesia and introduce this nation to Islamic law better. Thus, the study contributes to the body of knowledge in terms of Islamic law for business. The remainder of the paper is structured as follows. Next section discuss method used to obtain data and then results and discussion are presented with the conclusion section following very behind close.

METHOD

The focus of this research is to examine business from the perspective of Islamic law with a library research approach, namely by collecting information and data with the help of various materials (Sari & Asmendri, 2020). The literature study coming from library approach combines several mutually supportive ideas and theories with existing data. Sources of literature as study materials are secondary in the form of scientific research journals, dissertations, theses, scientific research reports, textbooks whose origins can be accounted for, papers, seminar reports/conclusions, notes/recordings of scientific discussions, official writings published by the government and other institutions (Nurhadi, 2020). Some literature data are discussed in depth and carefully to support or oppose the initial idea or theory to produce conclusions. The data analysis used reduction, display, and conclusion drawing/verification in terms of the relevant topic of the study.

RESULTS AND DISCUSSION

Descriptions of Result regarding Islamic Law for Business

The word law linguistically means to establish or decide something, while the definition of law terminologically means to establish a law on everything related to human deeds (Akbar, 2019). This subject means the determination of a business based on the study of Islamic law. While in terminology, the definition of law is an appeal (the law of Allah) relating to the deeds of His servants, whether in the form of demands (iqtidha), choice (takyir), or wadhi'i (Rizal, 2019).

There are essentially only two legal systems in this life: the law of God (*Shari'a*) and the law of *jahiliyyah*. The Word of Allah Almighty in QS. Al Maidah [5]: 50):

أَفَحُكْمَ الْجَاهِلِيَّةِ يَبْغُونَ ۗ وَمَنْ أَحْسَنُ مِنَ اللَّهِ حُكْمًا لِقَوْمٍ يُوقِنُونَ

It means: "What is the law of the Jahiliyah that they will, and (whose rule) is better than the (law of) God for those who are sure?"

Including the law of Allah are all laws that always rely on the Quran and Sunnah as the source of the law, either directly or indirectly. Vice versa, the *jahiliyyah* law is a law that always ignores the existence of the two sources of law (Ariyadi, 2019).

For business actors who ignore legal aspects in carrying out their business activities, what will happen is the emergence of legal problems. As a result, business actors suffer losses because they have to pay high legal fees. Still, on the other hand, business actors will achieve extraordinary success if they pay attention to the relevant legal aspects in carrying out their business activities. Therefore, for business actors who benefit, then the profits are guaranteed by law, and it is believed that there will be no legal problems.

A comprehensive understanding of business law will undoubtedly make it easier to run the wheels of business and minimize the occurrence of various legal problems caused by these businesses. Thus, the understanding of business law today is felt to be increasingly important, both by business people and legal learners, legal practitioners, and the government as policy regulators related to the business. This is inseparable from the

increasingly intense and dynamic business activities in various sectors and the globalization of the economic system (Indra Muchlis Adnan, Sufian Hamim, 2017).

People who run a business tend to experience challenges and need solutions. Religion became a straight path to this solution through its sharia, according to a study of the theory that Islamic Sharia (Arabic): شريعة إسلامية *Shari'a*) is Islamic law or regulation that governs all aspects of Muslim life. In addition to containing laws, rules, and guidelines for life elves, Islamic law also includes the key to solving all problems of human life in the world and hereafter (Eva Aryani, 2017).

Business people are not independent of the law because it plays an essential role in regulating business activities so that they can run smoothly, orderly, and safely so that no parties are harmed due to these business activities. Since, in essence, all business is allowed (mubah), please do so unless a verse forbids it.

The study of verses on business can be some of the terms in the Quran. However, in the *financial Fiqh approach*, the definition of business, in general, is commonly referred to as *tijarah*, which is the management of property for profit (Yuniar et al., 2021). A business is an organization that sells goods or services to consumers or other businesses to make a profit. In Sharia business, profit certainly does not stop at the material level. But it comes to trying to get Allah's pleasure when practicing business. According to experts that business activities, in general, can be distinguished into three business fields (Hariyanto, 2013), namely:

- a. Business in the sense of trade activities (*Commerce*) is the buying and selling activities carried out by people and agencies, domestically and abroad or between countries, to make a profit. Examples are manufacturers (factories), dealers, agents, wholesalers, shops, etc.
- b. In the industrial sense, the business produces goods whose value is more valuable than their origin. Examples are the forestry industry, plantations, mining, and handicrafts.
- c. In service, business is activities that provide services by people and entities. Examples are Hospitality Services, Consultants, Insurance, Tourism, Lawyers, *Appraisers*, and Accountants.

Legal Bases of Islamic Law for Business

There are some sources of revealing business. They are Alquran, Hadith, and Ijtihad discussed in further paragraphs as follows.

1. Al-Qur'an

The Qur'an as the holy book of Muslims is the word of Allah handed down to the Prophet Muhammad SAW to be delivered to all mankind until the end of time. The Word of Allah Almighty in QS. Saba' [34]: 28:

وَمَا أَرْسَلْنَاكَ إِلَّا كَافَّةً لِّلنَّاسِ بَشِيرًا وَنَذِيرًا وَلَٰكِنَّ أَكْثَرَ النَّاسِ لَا يَعْلَمُونَ

"And we did not send you, but to mankind all as bearers of glad tidings and as givers of warnings, but most men did not know."

Al-Quran is a Muslim guideline that is the first and foremost source of Islamic teachings we must believe in and apply daily to gain good in the world and the hereafter. As Muslims, we must follow it wholeheartedly, and it is only natural that we know everything about the miracles of the Qur'an because there is so much wisdom we can take to add to our faith. I'jazul Qur'an is a part of the science of interpretation that studies everything that concerns the miracles of the Qur'an (Nuralisah, 2014).

Apart from being the source of Islamic teachings, the Qur'an is also referred to as the first source or first principle of *syara'*. The Qur'an is the last holy book to descend from other scriptures once handed down to the world. To understand the content of the Qur'an over time, there has been a growing interpretation of the contents of the Qur'an, but none of them contradict each other. So from this explanation, the primary source of each regulation and solution to business problems is the Qurán.

2. Al-Hadith

The Hadith is divided into several degrees of authenticity, including the Hadith, which is used as a legal reference only hadith with the degree of *shahih* and *hasan*. The dhaif hadith, according to the agreement of salaf scholars (previous generations), as long as it is used to spur the passion for charity (fadhilah charity), is still allowed by Muslims. As for the hadith with the degree of *maudhu* and the degree of hadith under which must be abandoned, it still needs to be studied in science (Maha, 2021).

The difference between the Qur'an and the Hadith is that the Qur'an is a holy book containing the truth, the law of the law, and the word of Allah, which is then recorded into a bundle for all humankind. Meanwhile, al-hadith is a collection that explicitly contains the source of Islamic law after the Qur'an contains the rules of implementation, procedures of worship, morals, and sayings attributed to the Prophet Muhammad SAW (Jaya, 2019).

There are some differences between scholars of jurists and hadith experts in understanding the meaning of the two sources of law, and they are all efforts to see the truth for the benefit of the people. Only the scholars of the school (jurists) with a high degree of scholarship and trusted by the Ummah can understand it; all of this is the will of Allah. Thus, the issue of muamalah or compulsory business is based on the views of hadith as the second source of law after the Qur'an.

3. Ijtihad

Ijtihad is an attempt by scholars to establish a verdict of Islamic law based on the Qur'an and al-Hadith (Heri Fadli Wahyudi, 2018). *Ijtihad* was done after the Prophet Muhammad died, so he could not directly ask him about any law or worship. However, there are also things of worship that cannot be *ijtihad*. Some kinds of *ijtihad* (Faishal Agil Al Munawar & Mirwan, 2020), among others :

- a. *Ijma'*, the agreement of the scholars
- b. *Qiyas* likened to something similar and clear in law
- c. *Maslahah Mursalah*, for the benefit of the people
- d. 'Urf, habit

Regarding the orderly arrangement of Shari'a, the Qur'an in Sura Al Ahzab verse 36 teaches that if Allah and His Messenger have decided on a matter, then Muslims are not allowed to take other provisions. Therefore, it is implicitly understood that if there is a matter for which Allah and His messenger have not established its requirements, then Muslims can determine for themselves the conditions. This understanding of meaning is supported by a verse from the Qur'an in Sura Al Maidah, which states that Allah has forgiven things not explained in QS. Al Maidah [5]: 101.

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَسْأَلُوا عَنَ أَسْئَاءَ مَا قَدَّمْنَا لَكُمْ لَعَلَّكُمْ تُسَوِّدُونَ وَإِن سَأَلْتُمُوهُنَّ لَيَسْأَلَنَّهُنَّ مَلَائِكَةُ اللَّهِ يَوْمَئِذٍ لَّعَلَّكُمْ تَحْزَنُونَ

"O people of faith, do not ask (your Prophet) things which, if explained to you, will trouble you, and if you ask when the Quran is handed down, it will undoubtedly be presented to you. Allah forgives (you) for those things. Allah is All-Forgiving again All-Guiding.

Thus, the things faced by Muslims in living their life of worship to Allah can be simplified into two categories, namely what is called a matter that is included in the category of Syara Principle' or Mahdhoh worship and cases that fall into the category of Furu' Syara' or called Ghairu Mahdhoh worship (Aksa, 2015).

- 1) The Principle of Syara' (Mahdhoh). The principle of Shari'a or Mahdhoh worship Is a matter that already exists and is stipulated in the Qur'an or al-Hadith. Its position as the Principal of Islamic Shari'a where the Qur'an is the first principle of *Syara'* and al-Hadith is the second principle of Shari'a' (Rozak & Ja'far, 2019). In nature, it binds Muslims worldwide wherever they are, from the apostolate of the Prophet Muhammad to the end of time, except in emergencies. A state of emergency in Islamic religious terms is defined as a state that allows Muslims not to obey Islamic Law, which is a situation that is forced or in a state that endangers oneself physically and mentally. The case is not foreseen or undesirable in advance and taking

advantage of the situation is not excessive. If the state of emergency ends, it immediately returns to the applicable sharia provisions.

- 2) Furu' Syara' (Ghairu Mahdhoh). Ghairu Mahdhoh Worship That is a matter that does not exist or is not clear about its provisions in the Quran and al-Hadith. Its implementation is based on the intention to seek blessing and reward from Allah Almighty (Kahar, 2019). The scramble for worship encompasses all that Allah SWT loves and knows, whether in speech or deed, which is zhahir or what is beloved. The principle is "Benefits", long as it is functional, then as long as it can be done (Suparmin, 2014). Its position as a branch of Islamic Sharia. Its nature is essentially not binding on all Muslims in the world unless accepted by the local Ulil Amri takes as a rule/legislation applicable within his domain. The matter or problem included in the furu' syara' is also referred to as the *ijtihadiah case*.

The Relationship between Legal Sources and Sharia Business Law

The rule of law becomes a rule that the superior party must maintain as much as possible and is usually sanctioned if it is not carried out (Nasution, 2014). The sanction means that if the rule is not enforced, the ruler will naturally intervene (as is the case in Criminal Law), or also, the ruler will provide assistance to a person to obtain his rights (as in the Code of Civil).

To formulate a law that is *amaliah*, it is necessary to know *ushul fiqh*. *Ushul Fiqh* is the science of rules that can be used to explore the laws of *syara'* and detailed postulates (Umam, 2018). In *fiqh*, it is also interpreted as the science of *syar'i* law, including the category of *fiqh* is the application of Sharia business law, which is a separate science. The virtue of sharia business law is that it is always based on sharia principles with the source of law, namely the Quran and the Sunnah of the Prophet, which has a level of certainty of truth.

However, please note that the principles of Sharia law are not all textual or the meaning of the term *mafhum* (Saihu, 2021). Besides referring directly to the sources of sharia, another way that can be used to find out the degree of validity of the law is by following the provisions of *ijma'* and *qiyas* contained in the *fiqh* books written by the fuqaha. It can be concluded that to explore and establish laws of *amaliyah nature*, it is necessary to know *ushul fiqh*.

Related to Ethics and Business

Nowadays, in a very competitive business world, with business increasingly globalized, business ethics is a price that is no longer negotiable. Treating employees, consumers, suppliers, financiers, and the general public ethically, fairly, and honestly is the only way we can survive in the business world we are in today. Today, the company's state is slowly beginning to apply ethics to employees who once tended to be regarded as screws in the company's big machine, now empowered. Women who have been frequent victims of efficiency demands are now getting the attention they deserve.

Ethics is a dynamic, continuous process and seeks to align with the changes that occur in human life so that humans realize not to be increasingly excluded from their human values due to changes in progress in the business field (Ahmad, 2013). Business is an individual activity organized to produce and sell goods and services to profit from meeting needs.

Business ethics can also be interpreted as a set of regulations or norms that regulate individual business activities (business) so that the company runs smoothly, which aims to arouse the moral awareness of business people to carry out good business (Durin, 2020). The growing ethical problems faced now are not only at a very abstract level, but overall the climate of moral thought is now more focused on concrete issues. Seeing the development of business that is developing and increasingly globalizing causes business people to be more profit-oriented, as a result of which human beings as business people are left out of the values of humanity, then they should be aware of the importance of business ethics as one of the solutions to overcome the problem.

As much as possible, business ethics is realized to be applied to people who carry out ideal business activities so that this becomes easy to recognize as a reality. There is no reason to reject ethics in the business world. Even compliance with business ethics is conducive to efforts to increase the profits of entrepreneurs or capital owners.

Ethics is a part of philosophy that discusses rationally and critically values, norms, or morality. Thus, morals and ethics have differences. Norms are a value regarding good and bad, while ethics is a critical reflection and rational explanation of why something is good and bad. Deceiving others is terrible. This is on a moral level, whereas the vital and sensible study of why deception is bad and what the reason for the mind is an ethical field (Muhlis & Anas, 2021).

Business ethics will help people to breakers and morals in business systematically and will not directly make people moral in business but will change as gradually. Business ethics cannot change business practices if it is not the business people who change them. The virtues of Business Ethics (Ahmad Syafiq, 2019) in a view can be described, among others:

- a. In modern business, business people are required to become professionals in their fields. A superior company has good business, managerial and financial performance, ethical performance, and business ethos.
- b. In the fierce business competition, then consumers are king. Consumer trust is maintained by showing a good and ethical business image.
- c. In an open market system with the role of a government that guarantees the interests and rights of all parties, the company must conduct its business properly and ethically.
- d. Modern companies understand employees are not workers who must be exploited for profit

Islam places ethical values in the highest place. Islam is derived as a code of moral and ethical behavior for human life (Hamzah, 2020). As mentioned in the hadith: "I was sent to perfect the noble morals." The terminology closest to the notion of ethics in Islam is morals. In Islam, morality is a reflection of Islamic beliefs (faith). Islamic ethics gives substantial punishment and implementing authority in carrying out ethical standards.

The concept of ethics in Islam is not practical and relative but absolute and eternal. So, Islam has become a source of values and ethics in all aspects of human life, including business. The Qur'an gives pointers that in business, a harmonious relationship is created mutually friendly, and there is no element of exploitation. The Word of Allah Almighty in QS. An Nisa' [4]: 29):

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُم بَيْنَكُم بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ ۚ وَلَا تَقْتُلُوا
أَنْفُسَكُمْ ۚ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا

"O people of faith, do not vainly eat each other's property, except by commerce which prevails consensually among you. And ye shall not kill thyself. Verily Allah is all-merciful to you."

In principle, the business ethics inherited by the Prophet Muhammad saw increasingly received academic justification at the end of the 20th century or the beginning of the 21st century. Modern business principles, such as customer goals and satisfaction, service excellence, efficiency, transparency, and healthy and competitive competition, have become a personal picture and business ethics of the Prophet Muhammad saw. Therefore, to become a successful businessman in the world and hereafter, follow what is exemplified by the Prophet of Muhammad Saw.

Related to Moral Message and Morals in Business

Business activities can be a standard and guideline for all employees, including management, and make it an approach to carry out daily work based on morals that are noble, honest, transparent, and professional (Tehupuring & Rossa, 2016). The company believes that a good business principle is based on sharia principles, namely a business with superior and sustainable performance that is carried out by obeying the rules sourced from the Quran and Al Hadith with applicable laws and regulations.

The concept of business in carrying out the economy has also been stated in every moral, ethical, and muamalat teaching in Islam. For example, any act of economy cannot be separated from tawhid, jurisprudence, morals, and worship. So, by discussing tawhid, worship, and morals, we have discussed part of the foundation of Islamic law in doing business.

Business Law in Indonesia

Business is an activity that is related to and interested in the environment. The environment is a system. In the method, some variables or factors are available in the environment related to the business. In other words, a business is essentially an attempt to manage the economic resources provided by its environment. In Indonesia, article 27, paragraph 1 of the 1945 Constitution, is affirmed:

"all citizens have the same positions in law and government and are obliged to uphold that law and government with no exceptions." In this case, we must not violate and make rules and regulations contrary to Islamic law for its adherents. And positively, it means that Muslims are required to practice Islamic law (Prasetianingsih, 2017).

There are several laws and regulations related to business law in Indonesia (Rasyidi, 2014). They are as follows:

- 1) Limited Liability Company Law No. 40 of 2007
- 2) Law Prohibiting Monopoly Practices and Unfair Business Competition
- 3) Capital Markets Act
- 4) Banking Act
- 5) Employment Act
- 6) Copyright Act
- 7) Trademark Law
- 8) Patent Law
- 9) Trade Secrets Act
- 10) Industrial Design Act
- 11) Integrated Circuit Layout Act
- 12) Consumer Protection Act
- 13) Agency, Distribution, and other Acts

Islamic business is a business that will only live ideally in an Islamic system and environment. In non-Islamic environment, people will be easily dragged down, and it will be challenging to struggle in activities prohibited by religion. It starts from bribing money during business licensing, keeping money in a current interest-bearing account, improper advertising, and such on. Thus, whether or not this type of business activity grows will largely depend on the type of system and the existing environment.

CONCLUSION

Islam comes down as a comprehensive religion, so its teachings not only partition the ritual worship of *mahdah* and *ghairu mahdah* but including human livelihood activities, including in the economy field. Islamic economics is universal and can be used by all levels of society, not limited to Muslims only, in any area. It is not limited by time, so it can be applied in any condition. The framework or reference of Islamic norms, namely the Qur'an and the Hadith, is a legal basis for regulating all aspects of people's lives, especially in the economic field.

The public realizes the need for sharia principles in business implementation because it provides hope and development so that business law that is by sharia offers the best way. In doing business, many parties are involved. It is not justified in Islam if it harms other people, or prioritizes personal interests or particular parties, because humans are essentially the same, brothers, and are not allowed to hurt each other.

Islamic business law in Indonesia is sourced from the Qur'an and the Sunnah of the Prophet, so if there is no guidance, the legal solution to the problem can use the method of *ijtihad*. Although this study highlights the core of Islamic business laws, it is actually

limited to the theory alone. Nevertheless, future study could look at case studies and see if what works in the concept indeed does work in the field.

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