Jurnal Ilmiah Al-Syir'ah Vol. 21, No. 1 (2023): 72-85
Website: http://journal.iain-manado.ac.id/index.php/JIS
ISSN 2528-0368 (online) ISSN 1693-4202 (print)

The Legal Argumentation Regulatory Framework for Management of Sharia Funding and Risk Loans in Indonesia

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ABSTRACT

This study discusses legal arguments related to Indonesia's regulatory framework for managing Sharia funding and loan risk. This study uses a legal analysis approach concerning the principles of the state constitution, Islamic banking laws, the fatwa of the Indonesian Ulema Council (MUI), and regulations from the Financial Services Authority (OJK). This arrangement aims to protect consumer interests, ensure compliance with Sharia principles, and maintain the sustainability of the Sharia financial industry in Indonesia. This study uses qualitative research with data search methods, namely through library research sources and literature studies through library research in scientific journals, books, papers, and articles directly related to the research problem under study. It has the purpose of doing a description of the problem under study. In conclusion, this regulatory framework is essential to protect consumer interests, ensure compliance with Sharia principles, and maintain sustainability in Indonesia's Islamic finance industry. These regulations are based on solid legal principles, such as the country's constitution, laws, MUI fatwas, and OJK regulations. This research contributes to understanding the legal arguments regarding Indonesia's regulatory framework for managing Sharia funding and loan risk. It can be a reference for further research and development in this field.

Keywords: Legal Argumentation; Regulatory Framework; funding and Lending Risk; Management of Sharia.

How to Cite: Tarantang, J., & Astiti, N. N. A. (2023). The Legal Argumentation Regulatory Framework for Management of Sharia Funding and Risk Loans in Indonesia. *Jurnal Ilmiah Al-Syir'ah, 21*(1), 72–85. https://doi.org/https://doi.org/10.30984/jis.v21i1.2268

INTRODUCTION

Every activity carried out certainly has risks, but risks are minimized and overcome so as not to hinder achieving the goals. Risk means there is an opportunity for something or a situation to occur that might cause harm to the achievement of the goals and direction of an organization (Kurnia et al., 2017). As for the banking context, the risk is any event that harms bank income and capital, whether legible or not. Some risks can be managed and also controlled but cannot avoid. Therefore, every bank must carry out appropriate and successful implementation of risk management (A. Suhaimi, 2021).

A bank is a business entity that collects funds from the public in the form of savings. It distributes them to the public through credit and other forms to improve the standard of living of the wider community (Sihombing & Nuraeni, 2019). The definition of a bank from Article 1 Paragraph 2 of the Republic of Indonesia Law Number 21 of 2008, dated 16 July 2008, concerning Sharia Banking, a bank is a "business entity that collects funds from the public in the form of savings and distributes them to the public in the form of credit and other forms in the framework of improve people's standard of living" (B. Simatupang, 2019).

Bank is a business that operates in the financial aspect, so often, banking activities related to the financial aspect mentioned above, namely in fundraising activities known as funding and activities in channeling funds, which means lending. All activities related to the bank are inseparable from financial problems. The greater the distribution of funds from most people to banks, the higher the number of banks that collect funds from many people is increasing. The increase also allowed for a high level of risk faced by banks (Tengor et al., 2015).

Bank is a business that operates in the financial aspect, so banking activities are often related to the financial aspects mentioned above, namely fundraising operations and lending activities. In banking, the risk is any event that harms the bank's income and capital, whether legible or not. One of the risks that may occur in raising funds (funding) is the bank's obligation to assure customers that the money they keep is guaranteed to be safe to collect funds from the wider community. Therefore, banks need to be liquid to provide a sense of security to customers. It creates a liquidity risk if Islamic banks cannot complete their customer obligations within a predetermined time.

With the increasingly rapid development of banking, both from the external and internal situation, the higher the risk from the business activities carried out by the bank, therefore it is necessary to implement mature risk management. Either internally or externally. The application of risk management is undoubtedly beneficial for banks and banking supervisors. Risk management is required to measure, identify, and manage all risks. Risk management is securing property, property rights, risk control, and individual or business profits against potential depreciation due to risk. Irham Fahmi believes that risk management is an aspect of knowledge, namely "a field of knowledge that examines and traces the application of steps to find solutions to various problems that exist through various management approaches comprehensively and systematically in an organization."

Seeing the importance of risk management to overcome various risk problems in the banking world that may occur, one of which is in Islamic banking, a legal regulation made regarding Islamic banking risk management as regulated by banking law in Indonesia, namely Bank Indonesia Regulation Number 13/23/PBI/ 2011 concerning Implementation of Risk Management for Sharia Commercial Banks and Sharia Business Units.

METHODS

This paper applies normative research using the library research method, which examines the literature (Pelu & Tarantang, 2020) and qualitatively analyzes it is using conceptual and statutory approaches (Tarantang, 2018). This study examines laws and regulations elaborated using a retrospective method, examining the regulatory framework for risk management in Islamic banking funding and lending in Indonesia.

RESULTS AND DISCUSSION

Sharia Banking Risk Management Arrangements

Islamic banking risk management arrangements are essential in ensuring Islamic banks' stability, soundness, and compliance. By implementing effective risk identification, assessment, and mitigation measures, Islamic banks can navigate the risks inherent in their operations while adhering to Sharia principles. Establishing a robust risk governance framework, comprehensive policies, and a continuous monitoring process enables Islamic banks to proactively manage credit, market, liquidity, operational, and Sharia compliance risks. The importance of risk management in Islamic banking cannot overstate. Practical risk management arrangements protect stakeholders' interests and stabilize the financial system. By aligning with international standards and best practices, Islamic banks can increase competitiveness and build trust with customers and investors.

It is imperative for Islamic banks to continuously refine and upgrade their risk management arrangements to keep pace with evolving market dynamics and regulatory requirements. Routine evaluation, stress testing, and continuous monitoring of risk profiles are essential to identify emerging risks and implement timely mitigation strategies. Practical risk management arrangements are the cornerstone of a resilient and sustainable Islamic banking industry. By managing risks prudently, Islamic banks can contribute to economic growth and financial stability and promote ethical and responsible financial practices following Sharia principles. The term risk is interpreted as uncertainty. In a general understanding, risk can bring challenges but also profitable opportunities. Risk also refers to the possibility of a loss resulting in a problem. Risk is essential because it is impossible to know how much the losses are incurred (Astuti et al., 2021).

Risk management is a technique of securing property rights, property, and individual or business profits, as well as controlling risks against potential deficiencies caused by risks. Irham Fahmi argues that risk management is an aspect of knowledge, namely "a field of science that examines and traces the application of steps to find solutions to various problems that exist through various management approaches comprehensively and systematically in an organization" (Irham, 2011).

According to procedures, risk management is a reasonable and orderly way to identify, measure, and ensure attitudes, solve problems and monitor and report risks in implementing activities. The Big Language Dictionary defines risk as "an unsatisfactory outcome (harmful, detrimental) as a result of a treatment." It means the loss resulting from a particular event is known as risk. Measuring or evaluating risk and developing a management strategy is known as risk management (Muzariah, 2022). In banking, a risk is a potential event, whether anticipated or not, negatively impacting bank capital and income. In addition, risks are a barrier to achieving goals (Bank Indonesia, n.d.). Islamic banking in Indonesia also experiences potential risks, considering the ability of the Islamic banking industry to adapt to changes in the financial world will determine its future (Fasa, 2016).

As a financial institution, the scope of Islamic banking has expanded beyond a country's legal boundaries due to the information technology revolution and globalization. The impact is that the financial industry is becoming increasingly competitive and complicated (Yulianti, 2009). Risk management implemented in a bank is a set of methods and processes used as materials for identifying, calculating, evaluating, and handling risks in bank business operations. It helps minimize risks resulting in losses (Arifin, 2009). As an intermediary institution, risk management in the activities of all banks is paramount, optimizing trade-offs in income and risk and supporting financing plans in developing business accurately, smoothly, and practically (Arviyan et al., 2010).

Risk management rules aim to direct, integrate and identify on an ongoing basis, control, measure and monitor bank business practices (Jasni, 2020). Thus, risk management bank operations by acting as an early warning system filter. However, measuring, identifying, monitoring, and working on multiple exposures are vital components of risk management. However, these things cannot implement without well-defined procedures and systems to build a risk management culture. The entire risk management process must cover all departments or work divisions of the institution (Khan & Ahmed, 2001).

To achieve sustainable business development, all banks must develop risk management procedures according to their functions and complexities and plan an organizational risk management system for banks according to their needs (Ikatan Bankir Indonesia, 2014). By implementing risk management according to Sharia principles, banks must be able to adapt to the Sharia environment. The Islamic Financial Services Board (IFSB) is a fixed rule that guides applying risk management principles in Islamic banking in Indonesia. In Islamic banking, risk management aligns with the bank's capabilities and the size and complexity of the business (Bank Indonesia, 2011).

Sharia Banking Funding Risk Management Through Banking Law

By implementing the Islamic Banking Law, the regulatory framework facilitates the effective management of funding risks in Islamic banks. It ensures that funding activities carried out in a Sharia-compliant manner promote transparency, protect stakeholder interests, and contribute to the overall stability and sustainability of the Islamic banking industry in Indonesia. Kashmir says that the function of banking is to collect funds (funding), distribute funds (lending), and perform bank services (services) (Jonathan & Lau, 2016). The central banking practice is funding, namely collecting funds from many people. The meaning of "raising funds" is the process of obtaining funds from many people. Banks use various tactics to get people to keep their money to obtain public funds. The public can choose the type of savings (H. B. Simatupang, 2019). Meanwhile, the collection of funds (funding) in Islamic banking differs from conventional banking, namely obtaining funds according to Sharia through deposits, deposits, current accounts, and savings (Rahmany, 2020).

Savings are deposits based on a *wadi'ah* contract, investments based on a *mudharabah* contract, or contracts that do not conflict with sharia law in which withdrawals are by the agreed amount rules. They cannot take by giro, check, or other similar methods. They are stated in Article 1 no 21 of the Law of the Republic of Indonesia Number 21 of 2008 concerning Sharia Banking (Baweni & Hasan, 2018, p. 38).

Article 1 no 22 of the Sharia Banking Act explains that deposits are investment funds commensurate with Sharia law based on *mudharabah* contracts and other contracts. Certain time. In addition, the Sharia Banking Law explains current accounts in Article 1, paragraph 23, namely deposits based on *wadi'ah* contracts and other contracts that do not violate the rules of Islamic law. Current accounts can withdraw at any time.

Based on these banking activities, of course, some risks can occur. To minimize the risk of raising funds or funding is necessary to have excellent and appropriate risk management based on applicable legal regulations. One of the risks that may occur in raising funds (funding) is the bank's obligation to assure customers that the money they keep is guaranteed to be safe to collect funds from the wider community. Therefore, banks need to be liquid to provide a sense of security to customers.

For banks, financial practitioners, and third parties wishing to deposit funds in a bank, managing liquidity is a must in the banking industry. A method used to determine whether a bank is in a healthy, moderate, unhealthy, or unhealthy condition is to evaluate the bank's liquidity (Winanti, 2019). If Islamic banks cannot complete their obligations to customers within a predetermined time, it creates liquidity risk (Alexandro et al., 2021).

Wadi'ah and mudharabah are two types of fundraising contracts based on Sharia principles. Liquidity risk can occur higher for products with *wadi'ah* contracts. It is because the owner of the assets does not bear any losses or income from assets. Customer funds must be treated with care by the bank. Liquidity risk tends to be low in *mudharabah* contracts because the owner of the funds and the bank share the risk of using the funds (Mutafarida, 2018).

Sharia Banking risk management controls in Bank Indonesia Guidelines Number 13/23/PBI/2011 concerning Risk Management for Sharia Commercial Banks and Sharia Business Units. The following is how Islamic banks use risk management as a way to deal with liquidity risk, alone or when joining subsidiaries:

1. Implementing Risk Management for Islamic Commercial Banks and Sharia Business Units, an active inspection of the Board of Directors, Board of Commissioners, and Sharia Supervisory Board carried out as written in Chapter III of Bank Indonesia Regulation Number 13/23/PBI/2011. Islamic banks are also required to monitor and are required to carry out various types of implementation for each field of active supervision of the board of commissioners and directors, namely:

    a. Duties and authorities of the Board of Commissioners; (a) For each liquidity risk, the Board of Commissioners must have an obligation to ensure the implementation of risk management with strategic objectives, scale, and characteristics of the Islamic bank's liquidity business. In addition, it is obliged to manage liquidity risk and other risks that affect the location of liquidity in Islamic bank; (b) The Board of Commissioners has the authority and duty to implement risk management for liquidity risk. Moreover, periodically approve and evaluate risk management strategies and rules for liquidity risk, such as urgent funding budgets. Evaluate so that it can occur once a year or more often if there is a change in components that can change the implementation of relevant Islamic bank business activities (Rianto, 2013).

    b. Responsibilities and authorities of the board of directors at least are: (a) Pay attention to risk and liquidity position in normal or unfavorable market conditions; (b) Evaluate Islamic banks' location and liquidity risk at least once a month.

    c. The responsibility and authority of DPS; (a) Risk management regulations related to liquidity risk regarding the application of Sharia law evaluate by the Sharia Supervisory Board; (b) Risk management regulations related to liquidity risk regarding the application of Sharia law evaluate by the Sharia Supervisory Board.

d. Human Resources. Each unit or function managing liquidity risk must have proper and competent human resources, and the board of directors must ensure this. The ALCO Committee, which assists the directors in managing assets and liabilities in an integrated manner, must have competent human resources (Rianto, 2013).

2. Chapter IV Bank Indonesia Regulation Number 13/23/PBI/2011 Concerning the Application of Risk Management for Islamic Commercial Banks and Sharia Business Units stipulates rules and procedures for risk management and setting risk limits to carry out procedures, rules, and set limits, every Islamic bank is required to include the following implementations:

   a. For risk management, Islamic banks must develop procedures for liquidity risk to reduce the possibility that they will not be able to obtain cash flow funding sources.

   b. Evaluate the stage of risk that must carry out.

   c. Any treatment to limit liquidity risk must comply with and be related to Sharia bank operations (Rianto, 2013).

3. Chapter V Bank Indonesia Regulation Number 13/23/PBI/2011. Islamic banks carry out risk management activities regulating the identification process, determining size, monitoring and controlling risks, and implementing a SIM (Management Information System) for liquidity risk. Islamic banks have to carry out every procedure, i.e.:

   a. Carry out liquidity risk identification; (a) Islamic banks must examine all sources of liquidity risk to identify liquidity risk; (b) Islamic banks must investigate additional risks related to liquidity risk because deficiencies or problems caused by other risks often contribute to liquidity risk. Risk identification considers liquidity and other risks (Rianto, 2013).

   b. Measuring liquidity risk; (a) Islamic banks must own measuring tools to calculate liquidity risk directly and thoroughly; (b) At least there are several elements in the measuring instrument, namely; (1) Financial ratios that serve as a tool to measure the ability of Islamic banks to complete short-term obligations and describe liquidity indicators are called liquidity ratios; (2) The tool for setting the position of assets, administrative accounts, and liabilities is mapped at a certain period proportion based on the remaining time until maturity, called the maturity profile.

   c. Monitor liquidity risk. Liquidity risk must be monitored periodically by Islamic banks from the start so that they get a warning before the risk occurs (Rianto, 2013).

d. Efforts to control liquidity risk; (a) The first effort to control liquidity risk is by managing the liquidity position, paying attention to daily liquidity risks, and managing liquid assets of good quality; (b) To manage and control funding diversification strategy is necessary.

e. Implement a liquidity risk of management information system (MIS). Efforts to support implementation in managing the course of risk identification, determining measurements, monitoring and controlling liquidity risk, and reporting it in an appropriate, complete, updated, intact and sustainable manner both in average and crises, Islamic banks need a risk management information system (MIS) sufficient and reliable (Rianto, 2013).

Legal Argumentation Regulatory Framework for Sharia Banking Lending Risk Management in Indonesia

Overall, the regulatory framework for risk management of Islamic banking loans in Indonesia aims to promote stability, integrity, and Sharia compliance in the Islamic banking industry. It provides a comprehensive framework for managing loan risk, protecting consumers, and ensuring the health of the Islamic banking sector. After obtaining deposits, the bank then uses and rotates the funds back to people who need funds to make them additional capital, namely in the form of loans, often called credit (lending). Lending is interpreted as channeling funds or financing, the central banking activity as an intermediary institution. In Sharia banking, lending activities must comply with Sharia principles. Since lending and borrowing are considered social contracts in Islam rather than commercial contracts, the term "financing" is closely associated with Islamic financial institutions. Conversely, the term "loan" (credit) is not appropriate (Sofyan, 2017).

Article 36 of the Sharia Banking Law provides rules: "When transferring fees and carrying out other activities, UUS, and Islamic banks must go through various methods that do not bring losses to UUS and Islamic banks and maintain customer confidence in the funds deposited. Islamic banks must have certainty of the will and potential of customers who receive opportunities to provide financing (S. Suhaimi & Asnaini, 2018). In general, Islamic banks will not finance businesses just starting to develop. Instead, they will only provide it to people with a growing business. Another caveat is that Sharia bank financing must disclose in a written agreement. Financing is everything from conducting a financing feasibility study to implementing it. However, the financing process does not end with the implementation of financing. Islamic banks must supervise financing because, during the financing period, there will be the possibility of financing problems caused by several factors. For Islamic banks to strive to restore the quality of financing, they must be able to perform a factor analysis of the financing problem (Usanti, 2012). One approach to financing analysis can reduce the risk of non-performing financing.

The most significant source of income for Islamic banks is obtained from financing. On the other hand, it is also the most significant source of risk, which will cause financing problems. The existence of financing problems that occur will reduce income and impact the bank's health, and cause losses to people who save their funds. Default risk is often associated with financing risk in general. This risk refers to the slump that the bank encounters when funding is handed over to the debtor when a problem occurs (Hasan, 2022).

If the debtor defaults, financing risks often arise. Several factors can give rise to this financing risk: business risk, counterparty risk, and shine risk. Business risk is a decrease in the financial performance of a financed business. Counterparty risk is the failure to fulfill obligations from third parties. Shine risk is the possibility that the financing value will decrease (Vitadiar & Muttaqin, 2022).

Financing risks occur in lease and financing receivables accounts, namely *musyarakah*, diminishing, *murabahah, and ijarah*. In addition, on working capital financing such as *istisna, salam, mudharabah,* or equity instruments that are not traded (Afandi, 2022, p. 27). Islamic banking faces risks that tend to be higher than conventional banking because of the variety of transaction contracts used in channeling funds and product innovation (Sholahuddin, 2004).

Article 38 of the Sharia Banking Law requires UUS and Islamic banks to implement risk management, recognize customers, and protect customers. According to his presentation, risk management understands a set of methods and methods banks use to understand, perform calculations, evaluate, and control risks that arise from bank business operations.

According to Wahyudi, there are several steps to carry out risk management, namely, confirm situation, identify risks, give value to risk, perform risk control, constantly communicating and also discussing, monitoring and reviewing (Wahyudi et al., 2013).

Islamic banks can use the abovementioned stages as benchmarks to identify, evaluate, and manage financing risks. Therefore, Islamic banks must analyze financing using several approaches, including 5C + 1S, before disbursing funds (Afandi, 2022).

1. Character. Assessment of customer character is essential to analyzing financing customers because the customer's inner nature forms for a long time.
2. Capacity. To see the capacity of individual customers through their learning, but if the customer is a company, then it is proven through financial reports.
3. Capital. The bank assesses the overall financial condition of the prospective financing customer. The capital owned must be greater than the funds borrowed.
4. Condition of the economy. Whether there is a connection or not, this assessment determines the future direction and prospects of the company

fund. The external environment of the company also influences its survival of the company. Other than that, a country's macroeconomic situation also affects big business.

5. Collateral. The form of expenditure risk management does by providing guarantees. Islamic banks accept customer guarantees as a form of customer responsibility for loan funds.
6. Sharia. Products produced by debtors must comply with Sharia because Islamic banks have responsibilities for profit, the world, and the hereafter. They are prohibited from financing businesses that are not lawful in their operations or which are more detrimental, such as bars and discotheques (Zulkifli, 2003).

In addition, to minimize financing risk, banks also use the BI checking application. The bank also performs other analyses to determine whether the customer is low, medium, or high. In carrying out payment agreement methods with customers as work partners, they often consider the basis of risk management and Sharia perspectives (Pratama, 2018).

Each component evaluates using various criteria to determine the financing category. Article 4 Decree of the Director of Bank Indonesia Number 30/267/KEP/DIR dated 27 February 1998 is the basis for classifying financing quality in the scope of current, special mention, substandard, doubtful, and loss.

Regulates regulations on managing Sharia financing and loan risk in Indonesia based on the legal principles governing the Sharia financial system. The State Constitution: The Indonesian Constitution, which mainly comprises the 1945 Constitution, recognizes the existence and protection of economic activities based on Sharia principles. Therefore, the regulatory framework for managing Sharia credit and credit risk is a step consistent with constitutional principles. Law on Islamic Banking Law Number 21 of 2008 concerning Islamic Banking is the primary legal basis governing Islamic banking operations in Indonesia. This law provides a clear legal framework for managing Sharia loan financing and risk, including provisions regarding Sharia principles, capital adequacy obligations, risk monitoring and control, and consumer protection.

MUI Fatwa: As the religious authority, the Indonesian Ulema Council (MUI) issues fatwas that regulate Sharia banking practices. The MUI fatwa is essential in managing the halalness of Sharia banking products and transactions. Within the regulatory framework, the MUI fatwa forms the legal basis that ensures the alignment of Islamic banking operations with Sharia principles. Financial Services Authority (OJK): OJK is the institution responsible for supervising and regulating the financial industry in Indonesia, including Sharia banking. OJK has the authority to issue risk regulations related to Sharia financing and loan management. Realizing this regulation aims to ensure Sharia banking compliance with Sharia principles and sound business continuity. Consumer Protection: protecting this regulation also aims to protect consumer interests. In Islamic banking, clear and transparent financing and loan risk management regulations are essential to ensure that consumers are not disadvantaged. This regulation also includes consumer protection provisions, such as the obligation to demand clear information and fairness in dispute resolution. Sustainability of the Islamic Finance Industry: Strong regulations based on Sharia principles are crucial to maintaining the sustainability of the Islamic finance industry in Indonesia.

CONCLUSION

The legal argumentation for the regulatory framework for managing Sharia funding and risk loans in Indonesia can be summarized as follows the regulatory framework is supported by the principles of the constitution, which recognize the protection of economic activities based on Sharia principles. The framework is based on the Sharia Banking Law, the primary legal basis for regulating Sharia banking operations in Indonesia, including managing Sharia funding and risk loans. The fatwas issued by the Indonesian Ulema Council (MUI) provide religious guidance and serve as an essential reference for determining the permissibility of Sharia products and transactions. The Financial Services Authority (OJK) enforces the regulatory framework, which is crucial in issuing regulations and overseeing the Sharia financial industry, including managing funding and risk loans. The regulatory framework aims to protect the interests of consumers and ensure compliance with Sharia principles. It includes provisions for consumer protection, such as precise information disclosure requirements and fair dispute resolution mechanisms. The framework is essential for the sustainability of the Sharia financial industry in Indonesia, as it promotes adherence to Sharia principles and supports the soundness of business operations. In summary, the legal argumentation supports the regulatory framework for managing Sharia funding and risk loans in Indonesia, as it aligns with constitutional principles, relevant laws, fatwas, and the financial regulator's oversight. This framework protects consumers, ensures compliance with Sharia principles, and sustains Indonesia's Sharia financial industry.

ACKNOWLEDGMENTS

The author acknowledges and appreciates the help of many people during the creation of this article. The articles presented here are a joint effort from start to finish, with everyone involved. The results of this study expect to provide an overview of the best way to implement the regulatory framework in Indonesia for risk management of Islamic banking funding and loans.

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