

# REGULATION OF CONVERSION OF CONVENTIONAL BANKS TO ISLAMIC BANKS AND LEGAL ISSUES

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## ABSTRACT

*The purpose of this study is to analyze the regulation of conversion of conventional banks to Islamic banks according to positive law. The method used in this research is normative legal research, using primary, secondary and tertiary legal materials that are sourced from statutory regulations, Fatwa DSN MUI, government policies, research results, books and other documents about Islamic banking and banking. The collection of legal materials is done through the study of documents and literature, then a descriptive analysis is carried out through the method of legal interpretation to get a deductive conclusion. The results of this study indicate that First, the regulation of conversion of Conventional Banks to Islamic Banks is regulated in Law No. 10/1998 concerning Amendments to Law No. 7/1992 concerning Banking, Law No. 21/2008 concerning Islamic Banking, POJK No. 64/POJK.03/2016 concerning Changes in Business Activities of Conventional Banks to Islamic Banks. Second, legal issues in the conversion of Conventional Banks to Islamic Banks include; there is no Government Regulation that specifically regulates the conversion of conventional banks to Islamic banks, the conversion of conventional banks (owned) by local governments does not have a clear legal basis, problems in obtaining permission to change from the OJK and changes in the legal status of conventional banks to Islamic banks.*

**Keywords:** Islamic Bank, Conversion, Legal Issues

## INTRODUCTION

The existence of Law Number 21 of 2008 concerning Islamic Banking, and Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking which allows banks to run a dual banking system, so that conventional banks that dominate the market begin to look and open sharia business units to meet market needs and demands, especially Muslim consumers.

The rapid development of the contribution of Islamic banking in the last twenty years proves that Islamic banking is indeed in accordance with the needs of today's society. Efforts to accelerate the development of Islamic banking are not only carried out by the Government and Bank Indonesia as well as the Financial Services Authority as a regulator, but also need support from internal sharia banks, as well as positive appreciation of the Indonesian people, thus making conventional banks interested in converting their bank business into a global business sharia.

Bank conversion that can be justified by law is to make changes to the business activities of conventional banks into sharia bank business activities. Meanwhile, the conversion or change of business from an Islamic bank to a conventional bank cannot be justified by law.

Since 2008, a new trend has emerged for the formation of Islamic banks through the acquisition and conversion mechanism of conventional banks into Islamic banks. Its implementation can be done through three approaches. First, conventional commercial banks that already have UUS acquire relatively small banks then convert them to sharia and release and merge their UUS with the newly converted bank. Second, conventional commercial banks that do not yet have a UUS, acquire relatively small banks and convert them to sharia. Third, conventional commercial banks perform spin-offs and become separate Islamic Commercial Banks.

At this time, the development of Islamic banks, whether they are the result of conversion (change) or not the result of conversion, has experienced significant development compared to before the issuance of the Sharia Banking Law. Based on data, there are 14 Sharia Commercial Banks (BUS) currently operating which consist of: 9 BUS of which are converted from Conventional Commercial Banks (BUK), 2 BUS resulting from the spin-off of UUS (Sharia Business Unit), 2 BUS combined bank conversion conventional and spin-off UUS, while 1 BUS is the result of the establishment from the beginning:

Sharia Commercial Banks (BUS), which were born purely through the spin-off process of sharia business units are Bank Jabar Banten Syariah and BNI Syariah, while many other BUSs have emerged through the acquisition process, such as Bank Syariah Mandiri from the acquisition of Bank Susila Bakti, Bank Mega Syariah from the acquisition of the Tugu Commercial Bank, and BCA Syariah through Bank Jasa Artha. In addition, the spin-off process is through acquisitions, as well as through conversions, such as Bank Syariah Bukopin. BRI Syariah through Bank Jasa Artha, through Bank UIB, Bank Victoria through Bank Swaguna, and Maybank Syariah through Maybank Indocorp.

Based on the data above, the development of conversion of conventional banks to Islamic banks in Indonesia has been quite significant; this is due to the existence of legal rules on which to base it. This will increase in line with the approaching deadline for the expiration of the transitional provisions of Law Number 21 of 2018 which regulates spin off obligations for companies that open sharia business units from their parent conventional banks to be separated.

Spin-off must be carried out when a conventional bank owns a UUS whose asset value is at least 50 percent of the total asset value of the parent bank. This will also apply to all UUS, 15 years after Law no. 21 of 2008 was ratified. The provisions in Article 68 indicate that a sharia business unit that still has a conventional parent is one that is ready to separate itself from its parent, so that it becomes an independent business entity. This readiness is measured through the company's performance, such as financial performance, management, human resources, networks, and others. The impact will show the development of Islamic banks.

In this study, the problem is focused on the theme of converting conventional banks to Islamic banks, especially those relating to regulation and legal issues regarding the conversion of conventional banks to Islamic banks according to positive law.

## RESEARCH METHODS

This research is a doctrinal or normative legal research namely viewing the law as a set of normative rules or what is the text of the legislation (law in books). In connection with the issues raised are regulatory and legal issues regarding the conversion of conventional banks to Islamic banks according to positive law, it is hoped that an integral understanding of the regulation and legal issues regarding the conversion of conventional banks to Islamic banks according to positive law will be obtained. The approach used is the statutory approach, and the conceptual approach.

This study uses secondary data, namely data from library materials or legal materials both primary legal materials, secondary legal materials and tertiary legal materials, which include: al-Qur'an, al-Hadith, ijthid scholars, written documents, sourced from legislation, court decisions, literature and legal sources in Islam, such as fatwas of the MUI National Syari'ah Council, research results, scientific articles, literature books, official documents, archives and others. as well as dictionaries and encyclopedias related to banking and sharia banking.

After the data is collected through library research and document studies, it is then classified for later analysis. Analysis using qualitative descriptive analysis method through legal interpretation (legal interpretation) in an authentic and grammatical way to build legal arguments to draw conclusions deductively.

## RESULTS AND DISCUSSION

### Regulation of Conversion of Conventional Banks to Islamic Banks

Definition of Conversion (Change), according to the Big Indonesian Dictionary, is defined as "a change from one system of knowledge to another". In addition, conversion can also mean a change in ownership or an object, land, and so on. Conversion in another sense is intended as a change from one form (likeness and so on) to another form (likeness and so on). conversion is "a change from one initial thing to a new thing. In the banking world, the word Conversion has the meaning of changing the legal form of a bank or financial institution into another form of legal entity. Conversion is the process of changing from a certain system or type of instrument to another system or instrument: "...Changes in the legal form of a bank or financial institution to another form of legal entity".

Based on the description above, it means that conversion is a change in the business activities and legal form of the bank, but the OJK regulations only regulate the change in the business activities of conventional banks to become Islamic banks and do not regulate otherwise and do not change the legal status of the bank.

Arrangements for conversion (changes) of Conventional Banks to Islamic Banks, are regulated in Law Number 21 of 2018 concerning Islamic Banking and then technically and in detail are regulated in Bank Indonesia Regulations which were later replaced by Financial Services Authority Regulation Number 64/POJK.03/2016 concerning Changes in Business Activities of Conventional Banks to Islamic Banks as the implementation of the Law governing the Financial Services Authority (OJK) which has transferred part of the authority to regulate and supervise banks from Bank Indonesia (BI) to OJK. Where the Financial Services Authority (OJK) has the authority to regulate and supervise financial service activities in the banking sector.

Article 2 of the Financial Services Authority Regulation Number 64/POJK.03/2016 describes that:

- 1) Conventional Banks can change their business activities to become Islamic Banks.
- 2) Changes in the activities of a Conventional Bank to a Sharia Bank can be made:
  - a) Conventional commercial banks become Islamic commercial banks.
  - b) BPR becomes BPRS.

Some of the legal rules governing the conversion of conventional banks to Islamic banks include; the provisions of Article 5 paragraph (6) of Law Number 21 of 2008 concerning Sharia Banking describe: "Conventional Banks can only change their business activities based on Sharia Principles with permission from Bank Indonesia".

Furthermore, Article 4 paragraph (1) of the Regulation of the Financial Services Authority Number 64/POJK.03/2016 describes that: "The change of business activities of a Conventional Bank to a Sharia Bank can only be done with the permission of the Financial Services Authority".

Article 7 of Law Number 21 of 2011 concerning the Financial Services Authority, describes that: "To carry out regulatory and supervisory duties in the banking sector as referred to in Article 6 letter a, OJK has the authority.

Regulation and supervision of bank institutions which include:

- 1) licensing for the establishment of banks, opening of bank offices, articles of association, work plans, ownership, management and human resources, mergers, consolidations and acquisitions of banks, as well as revocation of bank business licenses; and
- 2) Bank business activities, including sources of funds, provision of funds, hybridization products, and activities in the service sector".

With the difference in the license to change the business activities of a Conventional Bank into a Sharia Bank as stated in Article 5 paragraph (6) of Law Number 21 of 2008 concerning Islamic Banking with Article 7 of Law Number 21 of 2011 concerning the Financial Services Authority and in Article 4 paragraph

1. Financial Services Authority Regulation Number 64/POJK.03/2016 concerning Changes in Business Activities of Conventional Banks to Sharia Banks, it appears that there is a conflict of legal norms governing the conversion of conventional banks to Islamic banks. Furthermore, in Article 55 paragraph
2. Of Law Number 21 of 2011 concerning the Financial Services Authority, it describes that: "Since December 31, 2013, the functions, duties, and authorities of regulating and supervising financial service activities in the banking sector have shifted from Bank Indonesia to OJK".

Therefore, to resolve this conflicting norm, it is necessary to conduct an analysis using legal instruments such as the *lex specialis derogate lex generalis* principle, or the old rules become invalid with the new rules. Where special rules can override general rules, in this case the BI Law becomes invalid with the OJK Law.

Then in Article 55 paragraph (2) of Law Number 21 of 2011 concerning the Financial Services Authority, it is emphasized that there is a conflict of norms between Law Number 21 of 2008 concerning Islamic Banking and Law Number 21 of 2011 concerning the Financial Services Authority regarding the permit change business activities of a Conventional Bank to become a Sharia Bank.

### **Requirements for Changes in Business Activities of Conventional Banks to Islamic Banks**

A Conventional Bank that will change its business activities to become a Sharia Bank must first plan a change in its business activities in the Conventional Bank business plan, as regulated in Article 5 of the Financial Services Authority Regulation Number 64/POJK.03/2016 which states:

"The plan to change the business activities of a Conventional Bank to a Sharia Bank must be included in the business plan of a Conventional Bank"

Furthermore, Article 6 states that: "Conventional Banks that will change their business activities to become Islamic Banks must:

- a) Adjusting the basic budget.
- b) Meet the capital requirements.
- c) Adjusting the requirements of the Board of Directors and the Board of Commissioners.
- d) Forming DPS.
- e) Presenting initial financial statements as an Islamic Bank."

The five requirements above must be prepared by a conventional bank which will turn it into a sharia bank which will be submitted to the OJK to obtain a business license to become a sharia business.

The adjustment to the articles of association as referred to in Article 6 letter (a) above refers to the Law that regulates Islamic Banking and the provisions of other applicable laws and regulations. Other applicable statutory provisions include, among others, the Law governing Limited Liability Companies, the Legislative Regulations governing Sharia Commercial Banks institutions, and Legislations governing BPRS institutions.

Conventional Commercial Banks that will change their business activities to become Islamic Commercial Banks must comply with the provisions regarding the capital of Islamic Commercial Banks. The provisions regarding the capital of Islamic Commercial Banks are provisions concerning Minimum Capital Adequacy Requirements for Islamic Commercial Banks and provisions concerning the minimum amount of core capital for Islamic Commercial Banks.

In addition, Article 9 of the Financial Services Authority Regulation Number 64/POJK.03/2016 states that: "The Board of Directors and Board of Commissioners of Islamic Commercial Banks must comply with the provisions governing Sharia Commercial Banks". Provisions regarding the requirements, number, duties, authorities, responsibilities, and other matters concerning the Board of Commissioners and Board of Directors of a Sharia Bank are regulated in the Articles of Association of Sharia Banks in accordance with the provisions of the Prevailing Laws.

The next requirement is in the provisions of Article 10 of the Financial Services Authority Regulation Number 64/POJK.03/2016 that:

- a) Conventional Commercial Banks that will change their business activities to become Sharia Commercial Banks must establish a DPS.
- b) Prospective DPS members as referred to in paragraph (1) must meet the DPS requirements as stipulated in the provisions concerning Sharia Commercial Banks

Sharia Supervisory Board (DPS) the board in charge of providing advice and guidance to the Board of Directors as well as supervising the activities of Sharia Banks to comply with sharia principles. The task of this DPS is to carry out internal supervision of Islamic banking products in collecting funds from the public and distributing funds to the public so that they are in accordance with sharia principles. In other words, the DPS has the duty and authority to determine whether or not a product or service of Islamic Banking is marketed or an activity is carried out by a bank based on the principle of profit sharing, in terms of sharia. Therefore, DPS members must have broad and in-depth knowledge of sharia. In carrying out its duties, DPS may consult with the Indonesian Ulema Council (MUI).

Thus, it can be said that the function of the DPS in a bank based on the principle of profit sharing is different from the function of the board of commissioners, supervisory board, or bank supervisor, which are also owned by Islamic banks. The function of the DPS is solely limited to researching and determining a product, service, or business activity carried out by the relevant profit-sharing bank (Islamic Bank), whether or not it is in accordance with sharia principles. On the other hand, the function of the board of commissioners, supervisory board or bank supervisor is to supervise all operational activities and bank management based on the principle of profit sharing (sharia).

### **Authorities and Licensing Procedures for Changes in Business Activities of Conventional Banks to Islamic Banks**

Conventional commercial banks that will change into commercial banks that carry out business activities based on sharia principles must follow the requirements and procedures for the changes as stipulated in the Financial Services Authority Regulation Number 64/POJK.03/2016.

The provisions in Article 5 paragraph (6) of Law Number 21 of 2008 concerning Sharia Banking, stipulates that: "Conventional banks can only change their business activities based on Sharia principles with permission from Bank Indonesia". However, on the contrary as stipulated in the provisions of Article 5 paragraph (7) of Law Number 21 of 2008 concerning Islamic Banking, that: "Islamic commercial banks cannot be converted into conventional commercial banks". However, in the provisions of Article 4 paragraph (1) of the Financial Services Authority Regulation Number 64/POJK.03/2016 it explains: "Changes in the business activities of a Conventional Bank to a Sharia Bank can only be done with the permission of the Financial Services Authority".

Therefore, the authority related to regulation and supervision in the banking sector falls under the authority of OJK. Article 2 of the Financial Services Authority Regulation Number 64/POJK.03/2016 outlines that:

- 1) Conventional Banks may change their business activities to become Sharia Banks.
- 2) Changes in the activities of Conventional Banks to Islamic Banks can be made: Conventional commercial banks become Islamic commercial banks; or BPR to become BPRS.

This is in line with the provisions of the OJK Law which gives authority to the OJK in regulating and supervising banking, and the authority which was originally under BI has now been transferred to the OJK.

The initial step before starting business activities requires a permit and the permit is granted by the competent authority after the permit applicant fulfills the requirements, for example; the existence of the articles of association, ownership, and the chosen form of business entity (legal entity/not). This also applies to the Islamic banking sector as stipulated in the Sharia Banking Law.

The requirements for an application for a license for a change in business activities submitted by a Conventional Bank are stated in Article 14 paragraph (1) of the Financial Services Authority Regulation Number 64/POJK.03/2016: An application for a permit for a change in business activities is submitted by a Conventional Bank accompanied by the following requirements:

- a) Mission and vision of changing business activities to become a Sharia Bank;
- b) Draft amendments to the articles of association;
- c) Name and identity data of prospective PSP (controlling shareholder), candidate for member of the Board of Directors, candidate for member of the Board of Commissioners, and candidate for member of DPS;
- d) Sharia Bank business plan;
- e) Feasibility studies on market opportunities and economic potential; and
- f) Plan for the settlement of customer rights and obligations.

The explanation regarding Article 14 paragraph (1) is that the granting of a business activity change permit is granted taking into account, among other things:

- a) Analysis of the plan to settle the rights and obligations of customers who are not willing to be converted into Sharia Bank customers.
- b) Analysis of business plans for Islamic banks.
- c) The results of the fit and proper test for the prospective Controlling Shareholder (PSP), prospective members of the Board of Directors, and prospective members of the Board of Commissioners.
- d) Results of interviews with DPS members.

A Conventional Bank applying for a license to change its business activities must provide an explanation regarding the overall plan for changing its business activities to become a Sharia Bank. Explanation means things that must be explained through a presentation at the Financial Services Authority, including:

- a) Mission and vision of changing business activities,
- b) The results of a feasibility study regarding market opportunities for raising and distributing funds,
- c) Short and medium term business plans for Islamic banks,
- d) Information technology systems,
- e) Number and location of Islamic Bank offices,
- f) Organizational structure and personnel.

The application for amendment to the articles of association as referred to in Article 14 paragraph (1) letter b must be approved by the authorized agency. This application to the competent authority can be made at the same time as the application for a business activity change permit.

If a Conventional Bank that has obtained a license to change its business activities into a Sharia Bank is required to clearly state several things, as stated in Article 16, which states:

- a. The word "Sharia" in writing the name
- b. iB logo on forms, documents, products, offices, and office networks of Islamic Banks.

Approval or rejection of the application for a license to change the business activities of a Conventional Commercial Bank into a Commercial Bank that conducts business activities based on Sharia principles is given no later than sixty (60) days after the complete documents are received, as stated in the provisions of Article 17 of the Financial Services Authority Regulation Number 64 /POJK.03/2016 outlines that:

- 1) Conventional Banks that have obtained a license to change their business activities to become Sharia Banks are required to carry out business activities based on sharia principles no later than 60 (sixty) days as of the date on which the license to change business activities is granted.
- 2) If after the period as referred to in paragraph (1) the Sharia Bank resulting from the change in business activities has not carried out business activities based on sharia principles, the permit for change in business activities that has been granted will be reviewed.
- 3) The plan for implementing business activities based on sharia principles as referred to in paragraph (1) must be announced to the public no later than 10 (ten) days prior to the implementation date.
- 4) The implementation of business activities based on sharia principles as referred to in paragraph (1) must be reported no later than 10 (ten) days after the date of implementation.
- 5) Conventional Banks that have obtained a license to change their business activities to become Sharia Banks are prohibited from conducting conventional business activities, except for the settlement of rights and obligations of conventional business activities.

The permit for change in business activities is valid from the date of approval of the amendment to the articles of association or deed of establishment including the articles of association by the authorized agency or the date of registration of the deed of amendment to the articles of association in the company register if the amendment to the articles of association does not require approval from the competent authority.

In addition, conventional commercial banks that have obtained permits for changes in business activities based on sharia principles are also required to settle all rights and obligations of debtors and creditors from conventional business activities no later than 360 days from the date of issuance of licenses for changes in business activities, provided that they can be extended for the purpose of the settlement of the productive assets of the bank concerned, which is submitted no later than 30 days prior to the expiration of the settlement period, accompanied by reasons for the extension of the period and supporting evidence. As regulated in Article 18 of the Financial Services Authority Regulation Number 64/POJK.03/2016 which states that:

- 1) A Conventional Bank that has obtained a license to change its business activities to become a Sharia Bank is required to settle the rights and obligations of conventional business activities no later than 1 (one) year as of the date the license to change business activities is granted
- 2) The deadline for completion as referred to in paragraph (1) may be extended in the event that the settlement of rights and obligations from conventional business activities cannot be completed due to unavoidable matters (force majeure) or other acceptable considerations.

Similarly, a bank that originally had a business license as a commercial bank conducting conventional business activities and had obtained a license to change business activities into a bank carrying out business activities based on sharia principles, was prohibited from changing business activities based on sharia principles into conventional business activities.

Before the conversion (conversion) is made, a meeting is held by the shareholders at the Extraordinary General Meeting of Shareholders. Where conventional Banks change their business activities from the conventional system to the sharia system entirely starting after the date of the decision. The conversion process begins with the Conventional Bank conversion team supervised by the Financial Services Authority. After going through various stages and licensing processes required by the OJK, the converted bank obtained a conversion operational permit from the Central OJK Board of Commissioners to change its business activities from the conventional system to the sharia system as a whole.

## **Legal Relationship of the Customer with the Bank after the Change to Become a Sharia Bank**

Banks carry out the function of collecting and distributing public funds, so that the consequences lead to 2 (two) legal relationships, namely: first, the legal relationship between the bank (debtor) and the depositor of funds (creditor), in the form of a deposit agreement (deposit agreement) of funds; and second, the legal relationship between the bank (creditor) and the borrowing customer (debtor), in the form of a credit agreement (financing based on sharia principles). In addition to carrying out business activities to collect funds from the public and then distribute funds to the public, banks carry out other bank service activities which are part of their usual business activities.

Customers according to Law Number 10 of 1998 are parties who use bank services. In the Act, customers are divided into 2, namely:

- a. Depositing customers are customers who place their funds in a bank in the form of deposits based on the bank's agreement with the customer concerned
- b. Debtor customers are customers who obtain credit or financing facilities based on sharia principles or equivalent based on bank agreements with the customers concerned.

Meanwhile, Article 1 of Law Number 21 of 2008 concerning Islamic Banking also mentions the definition of customer, depositing customer, investor customer, and customer receiving the facility. Based on the description above, it can be explained that a customer is a person who is a customer of a bank who has a savings and loan account or not. So that customers in a broad sense can also be understood as consumers.

In their position as legal subjects, customers can manifest in two forms as legal subjects, people and legal entities, both public legal entities and private legal entities. The relationship between the customer and the bank is based on two most closely related elements, namely law and trust. A bank can only carry out activities and develop its bank, if the public believes in saving their money in banking products available at the bank. Based on public trust, banks can mobilize funds from the public to be placed in their banks and banks will provide banking services.

### **Legal Relations Between Banks and Depositors**

In a simple sense, everyone who saves money in a bank is called a depositor. In a juridical sense, a depositing customer is a customer who places his/her funds in a bank in the form of a deposit based on the bank's agreement with the customer concerned. Such a relationship provides an understanding that the bank places itself as a borrower of public funds. The form of legal relationship between a bank and a depositor of funds can be seen from the legal relationship that arises from banking products, such as time deposits, savings, current accounts, and so on.

This form of legal relationship can be stated in the form of the relevant bank regulations and general requirements that must be met by each depositor of funds. These requirements must be adjusted to the available banking products, because the requirements of a banking product will not be the same as those of other banking products. In banking products such as savings and time deposits, the general terms and conditions that apply are the general terms and conditions for deposit accounts and savings accounts.

The bank's agreement with the depositor is called a deposit agreement. Another provision that can be used as the basis for a legal relationship between a bank and a depositing customer is a power of attorney agreement. This provision is regulated in Article 1792 of the Civil Code. Thus, can it be said that the depositor gives his/her authorization to the bank when signing the deposit account or savings account or checking account?



## Legal Relations Between Banks and Borrowing Customers

Giving credit is one of the bank's efforts, which gave birth to an agreement between the bank and the borrower (debtor customer). Usually, the agreement between the bank and the borrowing customer is called a credit agreement or loan-borrowing agreement (agreement).

Credit according to Law no. 10 of 1998 is "as the provision of money or an equivalent claim, based on a loan agreement or agreement between a bank and another party that requires the borrower to repay his debt after a certain period of time with interest".

In this aspect, the juridical momentum that underlies the legal relationship between the bank and the debtor customer is the principle of consensualism, which is stated in Article 1320 number (1) of the Civil Code, that the word agreement is one of the subjective conditions for giving birth to an agreement, while money or its equivalent is the object of the agreement that must not conflict with the law, decency or public order as confirmed in Article 1320 number 4 in conjunction with Article 1337 of the Civil Code.

Along with the approval of changes in the business activities of conventional commercial banks into business activities based on sharia principles, Islamic banks need to announce or inform customers (creditors and debtors) directly and or through the mass media.

For debtor customers and creditors who do not agree with changes in business activities based on sharia principles, the bank is obliged to settle all rights and obligations of debtors and creditors from conventional business activities no later than 360 days from the date of issuance of the license for the change in business activities. The time limit in question is that it can be extended in the event that the settlement of rights and obligations from conventional business activities cannot be completed due to unavoidable things (force majeure) or other acceptable considerations, which are stated in Article 18 Financial Services Authority Regulation Number 64/POJK.03/2016.

The customer's legal status after the change from a conventional bank to a sharia bank, namely the customer switches status to a sharia bank on the condition that the customer agrees to become a bank customer with business activities based on sharia principles, where customers are classified into two types, namely, fundraising customers, and financing.

Based on the description above, that there are several regulations that form the basis for regulating the conversion of conventional banks to Islamic banks, including; Law No. 10/1998 concerning Amendments to Law No. 7/1992 concerning Banking, Law No. 21/2008 concerning Sharia Banking, POJK No. 64/POJK.03/2016 concerning Changes in Business Activities of Conventional Banks to Islamic Banks. Then it is also regulated in various related laws including; Law on Financial Services Authority, Law on Bank Indonesia, Law no. 40 of 2007 concerning Limited Liability Companies.

## Legal Issues in Conversion of Conventional Banks to Islamic Banks

Based on the description of the laws and regulations above regarding the conversion of conventional banks to Islamic banks, there are several legal problems in the conversion of conventional banks to Islamic banks, including:

- a. There is no Government Regulation that specifically regulates the conversion of conventional banks to Islamic banks,
- b. The legal basis for conversion is not only related to banking and sharia banking, but must comply with the Limited Liability Company Law, Bank Indonesia Law, OJK Law, Regional Government Law and its Implementing Regulations, Dispute Resolution Law
- c. Conversion of conventional banks (owned by local governments) does not yet have a clear and strong legal basis, so there is the potential for legal problems in the future.
- d. Conversion of regionally owned banks (BUMD) requires the approval of shareholders (Governor and Regent/Mayor) through the GMS or Extraordinary GMS and DPRD through amendments to Regional Regulations.

- e. Before applying for a permit to the OJK, the bank must make changes to the Articles of Association and Bylaws.
- f. Changes in the Organizational Structure of Islamic Banks with the obligation to complete the organizational structure with the Sharia Supervisory Board (DPS). DPS must obtain a recommendation from the National Sharia Council (DSN) of the Indonesian Ulama Council (MUI) and carry out a fit and proper test by the OJK.
- g. In addition, in its operations, it is required to change the name of the bank to become a sharia bank by including the word "Shari'ah" behind the name of the bank, both at the head office and in all bank branch offices, as regulated in Article 16 of POJK 64/2014 which reads: "Banks Conventional which has obtained a license to change its business activities to become a Sharia Bank must clearly state: the word "Sharia" in the writing of the name; and the iB logo on forms, documents, products, offices, and office networks of Islamic Banks.
- h. Licensing and changing the legal entity status of conventional banks to Islamic banks have not been regulated in the legislation.
- i. The legal status of conventional bank customers after conversion has not been clearly regulated, whether it is the same as conventional banks or not in the laws and regulations, including provisions regarding the choice of law for customers or parties.
- j. The change in the model of a credit agreement to a contract has not been clearly regulated, because a credit agreement with a contract has different characteristics and legal consequences.
- k. Bank income still relies on the interest system or similar to the interest system in credit agreements (murabaha financing) and Corporate Culture of Islamic banks, while profit sharing in mudharabah and musyarakah financing is different from interest in conventional banks.
- l. Settlement of bank disputes with non-Muslim customers after conversion is also still a problem that needs to be clearly regulated.
- m. There is a conflicting norm in licensing and conversion of conventional banks to Islamic banks between Law Number 21 of 2008 concerning Islamic Banking where the bank's license is from BI, while the POJK permits Islamic banks from the OJK.
- n. Special arrangements regarding the conversion of foreign or non-Muslim-owned conventional banks, so that they do not violate sharia principles and Islamic law.
- o. Attribution of authority of Law Number 21 of 2008 concerning Islamic Banking does not contain any government regulations and OJK Regulations, all implementing regulations are regulated in Bank Indonesia Regulations. This is contrary to the OJK Law.

Based on the description above, there are still many legal problems related to the conversion of conventional banks to Islamic banks that need to be accommodated in changes to regulations governing the conversion of conventional banks to Islamic banks in the future, so as not to cause legal problems in the future. This is in line with the opinion of jurists that good law is a law that reflects philosophical aspects, juridical aspects and sociological aspects. Likewise with the opinion of legal sociologists that a good law in the era of democracy is a law that is responsive in accordance with the demands and needs of the community.

In addition, according to Lawrence Friedman's theory that the law must pay attention to three important aspects, namely the legal structure, legal substance and legal culture (society) where the law is applied, so that the law can run effectively or have power in society. So that with clear legal rules, it will be able to minimize the occurrence of legal problems that will arise in the future in the conversion of conventional banks to Islamic banks, so that with clear legal rules can provide justice and legal certainty for the parties including the public as banking consumers.

## CONCLUSION

Conversion of Conventional Banks to Sharia Banks is regulated in Law No. 10/1998 concerning Amendments to Law No. 7/1992 concerning Banking, Law No. 21/2008 concerning Islamic Banking, POJK No. 64/POJK.03/2016 concerning Changes in Business Activities of Conventional Banks to Sharia Banks, in addition, are also regulated in various related laws including; Law on Financial Services Authority, Law on Bank Indonesia, Law no. 40 of 2007 concerning Limited Liability Companies.

Legal issues in the conversion of Conventional Banks to Islamic banks include; there is no Government Regulation that specifically regulates the conversion of conventional banks to Islamic banks, the conversion of conventional banks (owned) by local governments does not yet have a clear

legal basis, licensing problems for changing the legal entity status of conventional banks to Islamic banks.

## RECOMMENDATIONS

The government needs to make a Government Regulation that specifically regulates the conversion of Conventional Banks to Islamic Banks as the implementation of Law No. 21 of 2008 concerning Islamic Banking.

The OJK Regulation concerning Conversion of Conventional Banks to Islamic Banks needs to clearly regulate the legal status of the customer after the Conventional Bank is converted to a Sharia Bank.

## REGULATION

Law No. 21 of 2008 concerning Sharia Banking, LN of the Republic of Indonesia of 2008 No. 94, TLN of the Republic of Indonesia No. 4867.

Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, Foreign Minister of the Republic of Indonesia of 1998 Number 182, State Government of the Republic of Indonesia Number 3790.

Law Number 21 of 2011 concerning the Financial Services Authority, Foreign Affairs of the Republic of Indonesia of 2011 Number 111, TLN of the Republic of Indonesia Number 5253.

Law No. 6 of 2009 concerning Stipulation of Perpu No. 2 of 2008 concerning the Second Amendment to Law Number 23 of 1999 concerning Bank Indonesia to become a law, the State of the Republic of Indonesia of 2008 Number 142, the State of the Republic of Indonesia Number 4901.

Law Number 40 of 2007 concerning Limited Liability Companies, Foreign Minister of the Republic of Indonesia of 2007 Number 106, State Administration of the Republic of Indonesia Number 4756.

Financial Services Authority Regulation Number 64 /POJK.03/2016 concerning Changes in Business Activities of Conventional Banks to Sharia Banks.

## ENDNOTES

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