

ACT OF THE REPUBLIC OF INDONESIA
NUMBER 21 OF 2008
CONCERNING
SHARIA (ISLAMIC) BANKING

WITH THE BLESSING OF GOD ALMIGHTY

THE PRESIDENT OF THE REPUBLIC OF THE INDONESIA,

- Considering:
- a. that, consistent to the objective of the Indonesian national development to achieve a just and welfare society based on economic democracy, an economics system based on the value of justice, mutuality, equality, and benefit according to the principles of sharia is to be developed;
 - b. that, the need of the Indonesian society for sharia (Islamic) banking services is constantly increasing;
 - c. that, sharia (Islamic) banking has special characteristic compared to conventional banking;
 - d. that, regulations concerning sharia (Islamic) banking in Act No 7 of 1992 concerning Banking as amended by Act Number 10 of 1998 is not yet specific therefore need to be regulated in a specific Act;
 - e. that, based on considerations set forth in letter a, letter b, letter c, and letter d it is deemed necessary to draw up an Act concerning Sharia (Islamic) Banking;

- In view of :
1. Article 20 and Article 33 of the 1945 Constitution of the Republic of Indonesia;
 2. Act No. 7 of 1992 concerning Banking (State Gazette of the Republic of Indonesia No. 31 of 1992, Supplement No. 3472) as amended by Act No. 10 of 1998 (State Gazette of the Republic of Indonesia No. 182 of 1998, Supplement No. 3790);
 3. Act No. 23 of 1999 concerning Bank Indonesia (State Gazette of the Republic of Indonesia No. 66 of 1999, Supplement No 3843) as amended by Act No. 3 of 2004 (Supplement of the State Gazette of the Republic of Indonesia No. 4537 of 2004);
 4. Act No. 24 of 2004 concerning Deposit Security Institution (State Gazette of the Republic of Indonesia No. 96 of 2004, Supplement No. 4420);

5. Act No. 40 of 2007 ...

5. Act No. 40 of 2007 concerning Limited Liability Company (State Gazette of the Republic of Indonesia No. 106 of 2007, Supplement No. 4756);

By the Mutual Consent of

THE HOUSE OF THE REPRESENTATIVES OF THE REPUBLIC OF INDONESIA

and

THE PRESIDENT OF THE REPUBLIC OF INDONESIA

HAS DECREED:

To enact: THE ACT CONCERNING SHARIA (ISLAMIC) BANKING.

CHAPTER I

GENERAL PROVISIONS

Article 1

The terminology used in this Act has the following meaning:

1. **Sharia (Islamic) Banking** is all matters concerning Sharia (Islamic) Bank and the Sharia (Islamic) Business Unit, including institution, business operation, and means and process in the implementation of its business operation.
2. **Bank** is a business entity mobilizing funds from the public in the form of Deposits and disbursing them to the public in the form of credit and/or other form in order to improve the living standard of the people.
3. **Bank Indonesia** is the Central Bank of the Republic of Indonesia as stipulated in the 1945 Constitution of the Republic of Indonesia.
4. **Conventional Bank** is a Bank conducting business activities conventionally consisting of Conventional Commercial Bank and Rural Bank.
5. **Conventional Commercial Bank** is a Conventional Bank providing services in the transaction of payments.
6. **Rural Bank** is a Conventional Bank that does not provide services in the transaction of payment.
7. **Sharia (Islamic) Bank** is a Bank conducting business based on the Sharia Principles consisting of Sharia (Islamic) Commercial Bank and Sharia (Islamic) Rural Bank.

8. **Sharia ...**

8. **Sharia (Islamic) Commercial Bank** is a Sharia (Islamic) Bank providing services in the transaction of payments.
9. **Sharia (Islamic) Rural Bank** is a Sharia (Islamic) Bank which do not provide services in the transaction of payment.
10. **Sharia (Islamic) Business Unit**, henceforward called UUS, is a working unit of the Conventional Commercial Bank head office functioning as head office of offices or units conducting business activities based on the Sharia Principle, or working unit in a branch office of a Bank located overseas conducting conventional business activities functioning as a head office of sub- Sharia (Islamic) branches and/or sharia (Islamic) unit.
11. **Branch Office** is a Sharia (Islamic) Bank branch office which directly responsible to its head office, with a permanent address of business place where the Branch Office doing its business. that report to the Bank central office concerned with a fixed business address according to such branch office business location.
12. **Sharia Principle** is the Islamic law principles in the banking business based on the fatwa issued by an institution having the authority in stipulating fatwa in sharia matters.
13. **Akad** is a written covenant between a Sharia (Islamic) Bank or UUS and other parties containing the respective rights and obligations of the respective parties according to the Sharia Principle.
14. **Bank Secrecy** is anything related to information concerning to Depositing Customer and his Deposits and Investor Customer and his Investment.
15. **Affiliated Parties** are:
 - a. commissioners, directors or their attorneys, officials, and employees of a Sharia (Islamic) Bank or Conventional Commercial Bank having UUS;
 - b. a party providing services to the Sharia (Islamic) Bank or UUS, among others the Sharia Supervisory Board, public accountant, appraisal, and legal consultant; and/or
 - c. a party which according to Bank Indonesia assessment directly or indirectly, participation influence a Sharia (Islamic) Bank or UUS management, among others bank controllers, shareholders and their family, family of the Board of Commissioners, and the family of the board of directors.
16. **Customers** are parties using the Sharia (Islamic) Bank and/or UUS services.
17. **Deposit Customers** are Customers placing funds in a Sharia (Islamic) Bank and/or UUS in the form of Savings based on the Akad between the Sharia (Islamic) Bank or UUS and the concerned Customers.
18. **Investor Customers** are Customers placing funds in the Sharia (Islamic) Bank and/or UUS in the form of Investment based on Akad between Sharia (Islamic) Bank or UUS and the Customers concerned.

19. **Facility Receiving Customer** is a Customer obtaining fund facility or similar matters, based on the Sharia Principle.
20. **Deposits** are funds entrusted by Customer to the Sharia (Islamic) Bank and/or UUS based on Akad *wadi'ah* or other Akads that are not contradictory with the Sharia Principle in the form of Demand Deposit, Saving, or other compatible forms.
21. **Savings Deposits** are Deposit based on the Akad *wadi'ah* or fund Investment based on the Akad *mudharabah* or other Akads which are not contradictory with the Sharia Principle of which the drawing may only be conducted according to certain terms and conditions, but may not be drawn by cheque, "demand deposit notes", and/or other compatible instruments.
22. Time **Deposits** are fund Investment based on the Akad *mudharabah* or other Akads that are not contradictory with the Sharia Principle and can only drawn on certain time based on the Akad between the Depositing Customers and the Sharia (Islamic) Bank and/or UUS.
23. Demand Deposits are deposits based on the Akad *wadi'ah* or other Akads which are not contradictory with the Sharia Principle and can be drawn anytime using cheques, demand deposit notes, other payment order instruments, or by book transfer.
24. **Investments** are funds entrusted by the Customers to the Sharia (Islamic) Bank and/or UUS based on the Akad *mudharabah* or other Akads that are not contradictory with the Sharia Principle in the form of Deposits, Savings, or other compatible forms.
25. **Financing** is the providing of funds or collection compatible to it in the form of:
 - a. production sharing transaction in the form of *mudharabah* and *musyarakah*;
 - b. lease transaction in the form of *ijarah* or lease purchase in the form of *ijarah muntahiya bittamlik*;
 - c. sales and purchase transaction in the form of outstanding *murabahah*, *salam*, and *istishna'*;
 - d. lending transactions in the form of outstanding *qardh*; and
 - e. lease service transaction in the form of *ijarah* for multiple services transactions based on an agreement or convention between the Sharia (Islamic) Bank and/or UUS and other party obligating the parties receiving funds and/or given funding facility to refund such fund after a certain period with *ujrah* compensation, without compensation, or production sharing.
26. **Collateral** is an additional security, both in the form of moveable or immoveable asset submitted by the Collateral owner to the Sharia (Islamic) Bank and/or UUS, to secure the facility settlement of a Facility Receiving Customer.
27. **Custody** is storage of assets based on the Akad between Sharia (Islamic) Commercial Bank or UUS and the depositor, with the provision that the Sharia (Islamic) Commercial Bank or UUS concerned has no right of title on such assets.

28. **Trusteeship** is a Sharia (Islamic) Commercial Bank representing the interest of the securities holder based on Akad *wakalah* between the Sharia (Islamic) Commercial Bank concerned and the holder of such securities.
29. **Merger** is a legal act conducted by one or more Bank to merge them with another existing Bank resulting in the merging Banks assets and liabilities to be transferred according to law to the Bank receiving the merger and henceforward law terminates the legal entity status of the Bank merging.
30. **Fusion (Consolidation)** is a legal act conducted by two Banks or more to merge them by incorporating a new Bank that according to law obtain the assets and liabilities of the Banks merging and the Bank legal status fusion terminates due to law.
31. **Take over** is a legal act conducted by an entity or private person to take over the shares of the Bank resulting in the control exchange of such Bank.
32. **Splitting (spin off)** is an effort of a Bank to split into two business entities or more, according to prevailing laws and regulations.

CHAPTER II

PRINCIPLE, OBJECTIVE, AND FUNCTION

Article 2

Sharia (Islamic) banking in conducting business based on the Sharia Principle, economic democracy, and prudential principles.

Article 3

The objective of Sharia (Islamic) banking is to support the implementation of national development in the framework of improving justice, cooperation, and the people's welfare equitable distribution.

Article 4

- (1) The Sharia (Islamic) bank and UUS have the obligation to execute its functions to mobilize and distribute public funds.
- (2) The Sharia (Islamic) Bank and UUS may conduct social functions in the form of *baitul mal* institution, receiving fund from "zakat", "infaq", "shodaqoh", grant, or other social funds and distribute it to a "zakat" managing organization.
- (3) The Sharia (Islamic) Bank and UUS may raise social fund originating from "waqaf" money and distributed it to "waqaf" management (*nazhir*) according to the will of the "waqaf" (*wakif*) donator.

(4) The social ...

- (4) The social function execution as considered in paragraph (2) and paragraph (3) shall be according to the provision of laws and regulations.

CHAPTER III

LICENSES, FORM OF ENTITY, ARTICLES OF ASSOCIATION AND OWNERSHIP

Part One

Licenses

Article 5

- (1) Any party intending to conduct Sharia (Islamic) Bank business or UUS must prior to it obtain a business license as a Sharia (Islamic) Bank or UUS from Bank Indonesia.
- (2) To obtain such license a Sharia (Islamic) Bank must at least meet the following requirements:
 - a. the organization formation and its management;
 - b. capital;
 - c. ownership;
 - d. expertise in the field of Sharia (Islamic) Banking; and
 - e. business feasibility.
- (3) Requirements to obtain a UUS business license shall be regulated by a Bank Indonesia Regulation.
- (4) A Sharia (Islamic) Bank having obtained a business license as considered in paragraph (1) must clearly state the word "Sharia" in writing the bank may.
- (5) A Conventional Commercial Bank having obtained a UUS business license as considered in paragraph (1) must clearly state the phrase "Sharia (Islamic) Business Unit" after the Bank name at the UUS office concerned.
- (6) A Conventional Bank can only exchange its business activity based on the Sharia Principle with a license of Bank Indonesia.
- (7) A Sharia (Islamic) Commercial Bank cannot be converted into a Conventional Commercial Bank.
- (8) A Sharia (Islamic) Rural Bank cannot be converted into Rural Bank.
- (9) A Conventional Commercial Bank conducting business based on the Sharia Principle must open a UUS at its central office with a license of Bank Indonesia.

Article 6

- (1) The opening of a Sharia (Islamic) Bank Branch Office and UUS requires prior license from Bank Indonesia.
- (2) The opening of a branch office, representative office and other kinds of offices overseas by a Sharia (Islamic) Commercial Bank and Conventional Commercial Bank owning a UUS requires prior license from Bank Indonesia.
- (3) The opening of a sub- Branch Office must be reported and can only be affected after receiving a confirmation letter from Bank Indonesia.
- (4) A Sharia (Islamic) Rural Bank is not allowed to open a Branch Offices, representative office, and other types of offices overseas.

Part Two

Form of a Legal Entity

Article 7

The legal entity form of a Sharia (Islamic) Bank is a limited liability company

Part Three

Articles of Association

Article 8

A Sharia (Islamic) Bank articles of association besides fulfill the requirements as regulated in the provision of prevailing laws and regulations must also stipulate the following provisions:

- a. the appointment of the board of directors and board of commissioners' member must obtain the approval from Bank Indonesia;
- b. A Sharia (Islamic) Bank General Meeting of Shareholder must assign the management task, the board of commissioners and board of directors remuneration, annual financial statement, appointment and cost of public accountant services, profit application and other matters stipulated in the Bank Indonesia Regulations.

Part Four
Incorporation and Ownership of a Sharia (Islamic) Bank

Article 9

- (1) A Sharia (Islamic) Commercial Bank can only be incorporated and/or owned by:
 - a. Indonesian citizen and/or an Indonesian entity;
 - b. Indonesian citizen and/or Indonesia entity in partnership with a foreign citizen and/or foreign entity; or
 - c. Regional administration.
- (2) A Sharia (Islamic) Rural Bank can only be incorporated and/or owned by:
 - a. Indonesian citizen and/or Indonesian legal entity of which all its owners are Indonesian citizens;
 - b. Regional administration; or
 - c. Two parties or more as considered in letter a and letter b.
- (3) The maximum ownership of a Sharia (Islamic) Commercial Bank by a foreign citizen and/or foreign legal entity is regulated in a Bank Indonesia Regulation.

Article 10

Further provisions regarding licenses, form of legal entity, articles of association, and incorporation and ownership of a Sharia (Islamic) Bank as considered in Article 5 through Article 9 is regulated in a Bank Indonesia Regulation.

Article 11

The minimum capital paid-up to incorporate a Sharia (Islamic) Bank is stipulated in Bank Indonesia Regulation.

Article 12

Sharia (Islamic) Bank shares can only be issued in the form of common shares.

Article 13

A Sharia (Islamic) Commercial Bank may conduct a securities public offering through the capital market as long as it does not contradict the Sharia Principle and the provisions of the laws and regulations in the field of capital market.

Article 14 ...

Article 14

- (1) an Indonesian citizen, a foreign citizen, Indonesian legal entity, or foreign legal entity may own or buy Sharia (Islamic) Commercial Bank shares directly or through the stock market.
- (2) The provisions as considered in paragraph (1) is implemented according to the provisions of laws and regulations.

Article 15

Changes in the ownership of a Sharia (Islamic) Bank must meet the provisions as considered in Article 9 through Article 14.

Article 16

- (1) AUUS may become an independent Sharia (Islamic) Commercial Bank after obtaining the license of Bank Indonesia.
- (2) A UUS license change to become a Sharia (Islamic) Commercial Bank as considered in paragraph (1) is regulated in a Bank Indonesia Regulation.

Article 17

- (1) A Merger, Fusion (Consolidation), and Take over of a Sharia (Islamic) Bank must obtain prior license from Bank Indonesia.
- (2) In the case of a Sharia (Islamic) Bank Merger or Fusion (Consolidation) to another Bank, the resulting merger or Fusion (Consolidation) Bank must become a Sharia (Islamic) Bank.
- (3) Provisions regarding the Merger, Fusion (Consolidation) , and Take Over of a Sharia (Islamic) Bank must be conducted according to prevailing laws and regulations.

CHAPTER IV

TYPES OF BUSINESS, FEASIBILITY OF FUND DISTRIBUTION, AND PROHIBITIONS FOR SHARIA (ISLAMIC) BANK AND UUS

Part One

Business Types and Activities

Article 18

Sharia (Islamic) Bank consists of Sharia (Islamic) Commercial Bank and Sharia (Islamic) Rural Bank.

Article 19

(1) A Sharia (Islamic) Commercial Bank business include:

- a. mobilize funds in the form of Deposits such as Demand Deposit, Savings, or other compatible forms based on Akad *wadi'ah* or other Akads which are not contradictory to the Sharia Principle;
- b. mobilize funds in the form of Investment such as Deposits, Savings, or other compatible forms based on Akad *mudharabah* or other Akads which are not contradictory to the Sharia Principle;
- c. distribute the production sharing financing based on Akad *mudharabah*, Akad *musyarakah*, or other Akads which are not contradictory to the Sharia Principle;
- d. distribute financing based on the Akad *murabahah*, Akad *salam*, Akad *istishna'*, or other Akads which are not contradictory to the Sharia Principle;
- e. distribute financing based on Akad *qardh* or other Akads which are not contradictory to the Sharia Principle;
- f. distribute Financing of leasing moveable or immoveable goods to customers based on the Akad *ijarah* and/or lease purchase in the form of *ijarah muntahiya bittamlik* or other Akads which are not contradictory to the Sharia Principle;
- g. conduct loan/debt take over based on Akad *hawalah* or other Akads which are not contradictory to the Sharia Principle;
- h. debit card business and/or financing card based on the Sharia Principle;
- i. purchase, sell, or secure on own risk securities of third parties issued based on obvious transactions based on Sharia Principle, among others, such as Akad *ijarah*, *musyarakah*, *mudharabah*, *murabahah*, *kafalah*, or *hawalah*;
- j. purchase securities based on Sharia Principles issued by the government and/or Bank Indonesia;
- k. accept payment from calls on securities and conduct negotiation which third parties or inter parties based on the Sharia Principle;
- l. conduct Custody for the interest of other parties based on a Sharia Principle based Akad;
- m. provide safety boxes to store goods and securities based on Sharia Principle;
- n. transfer money, both for own interest and interest of Customers based on Sharia Principle

o. function ...

- o. function as Trustee based on Akad *wakalah*;
 - p. provide letter of credit facilities and bank guarantee based on Sharia Principle; and
 - q. conduct other activities usually executed in banking and social life as long as it is not contradictive to the Sharia Principle and according to prevailing laws and regulations.
- (2) UUS business includes:
- a. mobilize funds in the form of Deposits such as Demand Deposit, Savings, or other compatible forms based on Akad *wadi'ah* or other Akads which are not contradictory to the Sharia Principle;
 - b. mobilize funds in the form of Investment such as Deposits, Savings, or other compatible forms based on Akad *mudharabah* or other Akads which are not contradictory to the Sharia Principle;
 - c. distribute the production sharing financing based on Akad *mudharabah*, Akad *musyarakah*, or other Akads which are not contradictory to the Sharia Principle;
 - d. distribute financing based on the Akad *murabahah*, Akad *salam*, Akad *istishna'*, or other Akads which are not contradictory to the Sharia Principle;
 - e. distribute financing based on Akad *qardh* or other Akads that are not contradictory to the Sharia Principle;
 - f. distribute Financing of leasing moveable or immoveable goods to customers based on the Akad *ijarah* and/or lease purchase in the form of *ijarah muntahiya bittamlik* or other Akads which are not contradictory to the Sharia Principle;
 - g. conduct loan/debt take over based on Akad *hawalah* or other Akads which are not contradictory to the Sharia Principle;
 - h. debit card business and/or financing card based on the Sharia Principle;
 - i. purchase, sell, or secure on own risk securities of third parties issued based on obvious transactions based on Sharia Principle, among others, such as Akad *ijarah*, *musyarakah*, *mudharabah*, *murabahah*, *kafalah*, or *hawalah*;
 - j. purchase securities based on Sharia Principles issued by the government and/or Bank Indonesia;
 - k. accept payment from calls on securities and conduct negotiation which third parties or inter parties based on the Sharia Principle;
 - l. conduct Custody for the interest of other parties based on a Sharia Principle based Akad;
 - m. provide safety boxes to store goods and securities based on Sharia Principle;
 - n. transfer money, both for own interest and interest of Customers based on Sharia Principle
 - o. function ...

- o. function as Trustee based on Akad *wakalah*;
- p. provide letter of credit facilities and bank guarantee based on Sharia Principle; and
- q. conduct other activities usually executed in banking and social life as long as it is not contradictive to the Sharia Principle and according to prevailing laws and regulations.

Article 20

- (1) Besides conducting business as considered in Article 19 paragraph (1), a Sharia (Islamic) Commercial Bank may also:
 - a. conduct foreign currencies transactions based on Sharia Principle;
 - b. conduct capital equity participation in a Sharia (Islamic) Commercial Bank or financial institution conducting business based on Sharia Principle;
 - c. conduct temporary capital equity participation abilities to overcome failed result of financing based on Sharia Principle, on the condition of withdrawing its participation;
 - d. acting as founder and manager of retirement fund based on Sharia Principle;
 - e. conduct activities in the capital market as long as it is not contradictory to Sharia Principle and prevailing laws and regulations in the field of capital market;
 - f. operate activities or bank product based on Sharia Principle by using electronic means;
 - g. directly and indirectly issue, offer, and trade short-term securities based on Sharia Principle, through the money market;
 - h. directly and indirectly issue, offer, and trade long-term securities based on Sharia Principle, through the capital market; and
 - i. provide product or conduct other business activities of a Sharia (Islamic) Commercial Bank based on Sharia Principle.
- (2) Besides conducting businesses as considered in Article 19 paragraph (2), a UUS may also:
 - a. conduct foreign currencies transactions based on Sharia Principle;
 - b. conduct activities in the capital market as long as it is not contradictory to Sharia Principle and prevailing laws and regulations in the field of capital market;
 - c. conduct temporary capital equity participation abilities to overcome failed result of financing based on Sharia Principle, on the condition of withdrawing its participation;
 - d. operate activities or bank product based on Sharia Principle by using electronic means;

e. directly ...

- e. directly and indirectly issue, offer, and trade short-term securities based on Sharia Principle, through the money market;
 - f. provide product or conduct other business activities of a Sharia (Islamic) Commercial Bank based on Sharia Principle.
- (3) Activities as considered in paragraph (1) and paragraph (2) must comply with provisions stipulated by Bank Indonesia and prevailing laws and regulations.

Article 21

The business scopes of a Sharia (Islamic) Rural Bank are:

- a. mobilize funds from the community in the form of:
 - 1. Deposits in the form of Savings or compatible means based on the Akad *wadi'ah* or other Akads which are not contradictory to Sharia Principle; and
 - 2. Investment in the form of Deposit or Saving or other compatible forms based on Akad *mudharabah* or other Akads which are not contradictory to Sharia Principle;
- b. distribute funds to the community in the form of:
 - 1. Product sharing financing based on Akad *mudharabah* or *musyarakah*;
 - 2. Financing based on Akad *murabahah*, *salam*, or *istishna'*;
 - 3. Financing based on Akad *qardh*;
 - 4. Financing the lease of moveable and immovable to Customers based on Akad *ijarah* or lease purchase in the form of *ijarah muntahiya bittamlik*; and
 - 5. loans/debts take over based on Akad *hawalah*;
- c. placing fund in another Sharia (Islamic) Bank in the form of deposit based on Akad *wadi'ah* or Investment based on Akad *mudharabah* and/ or other Akads that are not contradictory to Sharia Principle;
- d. transfer money, both for self interest or for the interest of Customers through the Sharia (Islamic) Rural Bank existing in the Sharia (Islamic) Commercial Bank, Conventional Commercial Bank and UUS; and
- e. provide product or conduct other Sharia (Islamic) Bank business activities that are in accordance to the Sharia Principle based on Bank Indonesia approval.

Article 22

Without a prior license of Bank Indonesia, whosoever is prohibited to mobilize funds in the form of Deposits or Investment based on Sharia Principle, except it is already regulated in another law.

Second Part
Feasibility of Fund Disbursement

Article 23

- (1) Prior to distributing funds to Facility Receiving Customers a Sharia (Islamic) Bank and/or UUS must ensure the commitment and capability of the candidate Facility Receiving Customer to settle all his/her liability on time.
- (2) To ensure matters as considered in paragraph (1), a Sharia (Islamic) Bank and/or UUS must conduct intensive assessment on the attitude, capability, capital, Collateral, and business prospect of the proposed Facility Receiving Customer.

Part Three

Prohibitions for a Sharia (Islamic) Bank and UUS

Article 24

- (1) A Sharia (Islamic) Commercial Bank is prohibited:
 - a. conduct business activities contradictory to the Sharia Principle;
 - b. conduct direct share trading activities in the capital market;
 - c. conduct capital equity sharing, except as considered in Article 20 paragraph (1) letter b and letter c; and
 - d. conduct business in insurance, except as sharia insurance product agent.
- (2) A UUS is prohibited from:
 - a. conduct business activities contradictory to the Sharia Principle;
 - b. conduct direct share trading activities in the capital market;
 - c. conduct capital equity sharing, except as considered in Article 20 paragraph (2) letter c; and
 - d. conduct business in insurance, except as sharia insurance product agent.

Article 25

A Sharia (Islamic) Rural Bank is prohibited to:

- a. conduct business activities contradictory to the Sharia Principle;
- b. accept deposit in the form of demand deposit and participate in payment transactions;
- c. conduct business in foreign exchange, except exchange foreign currencies with consent of Bank Indonesia;
- d. conduct ...

- d. conduct insurance business, except as sharia insurance product marketing agent;
- e. conduct capital equity participation, except in an institution assigned to overcome liquidity difficulties in a People Sharia Liquidity Financing; and
- f. conduct other business outside the business activities as considered in Article 21.

Article 26

- (1) Businesses as considered in Article 19, Article 20, and Article 21 and/or sharia product and services, must comply with Sharia Principle.
- (2) Sharia Principle as considered in paragraph (1) is given as fatwa by the Indonesian Ulama Council.
- (3) Such fatwa as considered in paragraph (2) is stated in a Bank Indonesia Regulation.
- (4) Bank Indonesia appoints a sharia (Islamic) banking committee to draw up the Bank Indonesia Regulation as considered in paragraph (3).
- (5) Further provision regarding the process of assigning, membership, and task of the sharia (Islamic) banking committee as considered in paragraph (4) shall be regulated in a Bank Indonesia Regulation.

CHAPTER V

CONTROLLING SHAREHOLDERS, BOARD OF COMMISSIONERS, BOARD OF SHARIA SUPERVISORY BOARD, AND FOREIGN MANPOWER

Part One

Controlling Shareholders

Article 27

- (1) The proposed Sharia (Islamic) Bank Controlling shareholders must pass fit and proper test conducted by Bank Indonesia.
- (2) The Controlling shareholder who does not qualify the fit and proper test must reduce its share ownership at the most 10% (ten percent).
- (3) In the case that the controlling shareholders do not reduce its share ownership as contemplated in paragraph (2):
 - a. the voting right of the controlling shareholders will not be calculated in the General Meeting of Shareholders;
 - b. the voting ...

- b. the voting right of the controlling shareholders shall not be calculated in calculating the quorum calculation or of the Shareholders General Meeting;
 - c. at the most 10% (ten percent) dividend shall be paid to controlling shareholders and the balance is paid after such controlling shareholders transfer its ownership as considered in paragraph (1); and
 - d. the name of the related controlling shareholders is announced to the public through 2 (two) media that has wide circulation.
- (4) Further provision regarding fit and prover test shall be regulated in a Bank Indonesia Regulation

Indonesia Regulation.

Part Two

Board of Commissioners and Board of Directors

Article 28

According to prevailing laws and regulations the provision regarding the term, number, task, authority, responsibility, and other matters related to the board of commissioners and the board of directors in a Sharia (Islamic) Bank is regulated in its Articles of Association.

Article 29

- (1) The formation of a Sharia (Islamic) Bank board of directors as contemplated in Article 28 must at least consist of 1 (one) director with the task to ensure the compliance of the Sharia (Islamic) Bank to the implementation of Bank Indonesia provisions and other prevailing laws and regulations.
- (2) Further requirements concerning the Sharia (Islamic) Bank compliance to the implementation of the provision of Bank Indonesia and other laws and regulations as contemplated in paragraph (1) shall be regulated by a Bank Indonesia Regulation.

Article 30

- (1) The proposed commissioners and directors must pass a fit and proper test conducted by Bank Indonesia.
- (2) Bank Indonesia shall conduct a fit and proper test to commissioners and directors violating integrity and do not qualify.
- (3) Commissioners and directors not qualifying the fit and proper test must renounce their positions.
- (4) Further provision regarding the fit and proper test as considered in paragraph (1) and paragraph (2) shall be regulated in a Bank Indonesia Regulation.

Article 31

Article 31

- (1) In executing a Sharia (Islamic) Bank activity, the board of directors may appoint an executive officer.
- (2) Further provisions regarding the appointment of an executive officer as considered in paragraph (1) shall be regulated in a Bank Indonesia Regulation.

Part Three

Sharia Supervisory Board

Article 32

- (1) A Sharia Supervisory Board must be established in a Sharia (Islamic) Bank and Conventional Commercial Bank having UUS.
- (2) A Sharia Supervisory Board as considered in paragraph (1) shall be appointed by the General Meeting of shareholders on the recommendation of the Indonesian Ulama Council.
- (3) The Sharia Supervisory Board as considered in paragraph (1) has the task to give advice and recommendation to the Board of Directors and supervise the Bank activities to be in accordance with Sharia Principle.
- (4) Further provisions regarding the establishment of a Sharia Supervisory Board as considered in paragraph (1) shall be regulated in a Bank Indonesia Regulation.

Part Four

Employee Foreign Manpower

Article 33

- (1) In executing its operation, a Sharia (Islamic) Bank may utilize foreign manpower.
- (2) The procedure of utilizing foreign manpower as considered in paragraph (1) shall be executed in accordance to prevailing laws and regulations.

CHAPTER VI

CORPORATE GOVERNANCE, PRUDENTIAL PRINCIPLES AND RISK MANAGEMENT OF A SHARIA (ISLAMIC) BANKING

Part One

Corporate governance of a Sharia (Islamic) Banking

Article 34

- (1) A Sharia (Islamic) Bank and UUS must apply good corporate governance including the principles of transparency, accountability, responsibility, professionalism, and fairness in executing its business.
- (2) A Sharia (Islamic) Bank and UUS must compile an internal procedure concerning the implementation of principles as considered in paragraph (1)
- (3) Further provisions concerning good corporate governance as considered in paragraph (1) shall be regulated in a Bank Indonesia Regulation.

Part Two

Prudential Principles

Article 35

- (1) In executing its business a Sharia (Islamic) Bank and UUS must apply prudential principles.
- (2) A Sharia (Islamic) Bank and UUS must submit to Bank Indonesia financial reports in the form of an annual balance sheet and annual profit and loss statement and its notes compiled based on generally valid sharia accounting principles, and other periodical reports at times and forms regulated by a Bank Indonesia Regulation.
- (3) The balance sheet and annual loss and profit statement as considered in paragraph (2) must prior to it be audited by public accountant office.
- (4) Bank Indonesia may exempt such obligation as contemplated in paragraph (3) for a Sharia (Islamic) Rural Bank.
- (5) A Sharia (Islamic) Bank must announce its balance sheet and profit and loss statement to the public at times and form stipulated by Bank Indonesia.

Article 36

In Disbursing Financing and conducting other business operations, a Sharia (Islamic) Bank and UUS must utilize means which are not detrimental to the Sharia (Islamic) Bank and/or UUS and the Customer interest in entrusting their funds.

Article 37 ...

Article 37

- (1) Bank Indonesia stipulate the provisions regarding the maximum limit of fund disbursement based on Sharia Principle, providing of collateral, placement of securities investment based on sharia, or other similar matters which may be executed by a Sharia (Islamic) Bank and UUS to Facility Receiving Customer or a group of such Customers, including companies in the same group with the Sharia (Islamic) Bank and UUS concerned.
- (2) According to Bank Indonesia provisions, the maximum limit considered in paragraph (1) may not exceed 30% (thirty percent) of the Sharia (Islamic) Bank capital.
- (3) Bank Indonesia stipulate provisions regarding the maximum fund disbursement limit based on Sharia Principle, collateral providing, placement of securities investment, or other similar matters which may be conducted by a Sharia (Islamic) Bank to:
 - a. shareholders owning 10% (ten percent) or more of a Sharia (Islamic) Bank capital;
 - b. members of the board of commissioners;
 - c. members of the board of directors;
 - d. family related parties as considered in letter a, letter b, and letter c;
 - e. other bank officers; and
 - f. a company where parties as considered in letter a to letter e have an interest.
- (4) The maximum limit as stipulated in paragraph (3) may not exceed 20% (twenty percent) of the Sharia (Islamic) Bank capital according to the provisions stipulated by Bank Indonesia.
- (5) Implementation of the provisions as considered in paragraph (1) and paragraph (3) must be reported according to the provision stipulated by Bank Indonesia.

Part Three

Risk Management Responsibility

Article 38

- (1) A Sharia (Islamic) Bank and UUS must apply risk management, principles of knowing the customer, and customer protection.
- (2) The provision considered in paragraph (1) shall be regulated by a Bank Indonesia Regulation.

Article 39

Sharia (Islamic) Bank and UUS must explain to their Customers regarding the possibility of loss risk related to the Customers transactions executed to the Sharia (Islamic) Bank and/or UUS.

Article 40

- (1) In the event that the Facility Receiving Customers, do not meet its obligation, a Sharia (Islamic) Bank and UUS may purchase part or all of the collateral, whether through or without an auction, voluntary submission by the collateral owner or pursuant to a power of attorney to sell, provided that such purchased collateral must be disbursed at the latest within 1 (one) year.
- (2) A Sharia (Islamic) Bank and UUS must calculate the price of purchasing the Collateral as considered in paragraph (1) with the liabilities of the Customer to the Sharia (Islamic) Bank and UUS concerned.
- (3) If the Collateral purchase price as considered in paragraph (1) exceed the Customers liabilities to the Sharia (Islamic) Bank and UUS, such balance must be repaid to the Customer after being deducted by the auction cost and other expenses directly related to the process of purchasing the Collateral.
- (4) Further provisions as to the purchase of Collateral as considered in paragraph (1), paragraph (2), and paragraph (3) shall be regulated in a Bank Indonesia Regulation.

CHAPTER VII BANK SECRECY

Part One Bank Secrecy Scope

Article 41

A Bank and Affiliated parties must maintain secrecy of all information regarding deposits and Savings of Customers and Investor and their Investment.

Part Two Exemption of Bank Secrecy

Article 42

- (1) For the sake of tax crime investigation, the management of Bank Indonesia at the request of the Minister of Finance has the right to issue a written order to a Bank to provide information and show written proof and letter concerning the financial condition of certain savings or investor Customer to tax officials.
- (2) Such written order as considered in paragraph (1) must mention the name of the tax official, name of tax holder customer, and the case needing information.

Article 43

- (1) For the interest of a proceeding in criminal case, Bank Indonesia management may give consent to the police, prosecutor, judge or other investigator authorized by law to obtain information from the Bank regarding a suspect or accused Deposit or Investment in the Bank.
- (2) The approval as considered in paragraph (1) is given in writing on a written request of the Chief of Police of the Republic of Indonesia, Attorney General, Head of the Supreme Court, or head of an institution having the authority to conduct such investigation.
- (3) The request as considered in paragraph (2) must mention the name and position of the investigator, prosecutor, or judge, name of suspect or accused, the reason for the information needed, and the relation of the criminal case concerned with the information needed.

Article 44

The Bank must provide information as considered in Article 42 and Article 43.

Article 45

In a civil case between a Bank and its Customer, the Bank Board of Directors concerned may inform the court regarding the financial condition of the Customer concerned, and provide other relevant information to such a case.

Article 46

- (1) With regard to interbank information exchange, a bank board of directors may reveal the financial situation of its Customers to another Bank.
- (2) Provisions regarding the exchange of information as considered in paragraph (1) is regulated in a Bank Indonesia Regulation.

Article 47

On a written request, consent, or attorney of the Depositing Customer or Investor Customer, the Bank must provide information regarding the Depositing Customer or Investor Customer of the concerned Bank to parties assigned by the Depositing Customer or Investor Customer concerned.

Article 48

A valid heir of the Depositing Customer or Investment Customer has the right to obtain information concerning the Deposit of Depositing Customer or investing Investor Customer passing away.

Article 49

Parties considering themselves harmed by the information given by the Bank as considered in Article 42, Article 43, Article 45, and Article 46, have the right to know the contents of such information and request corrections if there are errors in the information provided.

CHAPTER VIII

DEVELOPMENT AND SUPERVISION

Article 50

Development and supervision of a Sharia (Islamic) Bank and UUS is conducted by Bank Indonesia.

Article 51

- (1) A Sharia (Islamic) Bank and UUS must maintain soundness level which include at least capital adequacy, asset liquidity, rentability, solvability, managerial integrity showing the capability in financial aspects, compliance to Sharia Principle and Islamic managerial aspect of the Sharia Principle or other aspects related to a Sharia (Islamic) Bank and UUS business.
- (2) The criteria of the soundness level and provisions to be met by Sharia (Islamic) Bank and UUS as considered in paragraph (1) shall be regulated in a Bank Indonesia Regulation.

Article 52

- (1) According to procedures stipulated by a Bank Indonesia Regulation, a Sharia (Islamic) Bank and UUS must provide all information and explanations regarding its business to Bank Indonesia
- (2) On request of Bank Indonesia a Sharia (Islamic) Bank and UUS, must give the opportunity for the auditing of book and files maintained by them, and must provide assistance needed related to obtain the truth of all statements, documents, and elucidations reported by the Sharia (Islamic) Bank and UUS concerned.
- (3) In the framework of executing the supervising task as considered in paragraph (1) and paragraph (2), Bank Indonesia has the right to:
 - a. examine and take data/document from any place related to the Bank;
 - b. examine and take data/document and information from any party who based on Bank Indonesia assessment has an influence on the Bank; and
 - c. order the Bank to block certain accounts, either Deposit account or financing account.
- (4) Information and report of the examination regarding a Sharia (Islamic) Bank and UUS based on the provisions as considered in paragraph (1), paragraph (2), and paragraph (3) shall not be announced and is confidential.

Article 53

- (1) Bank Indonesia may order a public accountant office or other parties to and on behalf of Bank Indonesia, conduct examination as considered in Article 52 paragraph (2).
- (2) Requirement and procedure of examination as considered in paragraph (1) shall be regulated by a Bank Indonesia Regulation.

Article 54

- (1) In case a Sharia (Islamic) Bank experienced difficulties which may endanger its business continuation, Bank Indonesia may related to its supervision, conduct follow ups among other:
 - a. limit the authority of the General Meeting of Shareholders general meeting, commissioners, directors, and shareholders;
 - b. request the shareholders to add capital;
 - c. request the shareholders to change the board of commissioners and/or board of directors of the Sharia (Islamic) Bank;
 - d. request the Sharia (Islamic) Bank to funds and calculate the loss of the Sharia Bank to its capital, writes-off bad Financing, and set-off the losses against its capital;
 - e. request ...

- e. request the Sharia (Islamic) Bank to conduct merger or fusion (consolidation) with another Sharia (Islamic) Bank;
 - f. request the Sharia (Islamic) Bank to be sold to interested party willing to take over all its liabilities;
 - g. request the Sharia (Islamic) Bank to submit part or the whole of its managements to another party; and/or
 - h. request the Sharia (Islamic) Bank to sell part or all its assets and/or the Sharia (Islamic) Bank liabilities to other parties.
- (2) In case such action as considered in paragraph (1) is insufficient to overcome the difficulties experienced by the Sharia (Islamic) Bank, Bank Indonesia shall announce the Sharia (Islamic) Bank can not be made sound again and transfer its management to the Deposit Protection Institution to be saved or not to be saved.
 - (3) In the case that the Deposit Protection Institution state the Sharia (Islamic) Bank as considered in paragraph (2) is not to be saved, Bank Indonesia on the request of the Deposit Protection Institution shall revoke the business license of the Sharia (Islamic) Bank and the Deposit Protection Institution according to prevailing laws and regulations shall conduct further management.
 - (4) On the request of the Sharia (Islamic) Bank, Bank Indonesia may revoke the business license of the Sharia (Islamic) Bank after the concerned bank has settled all liabilities.
 - (5) Further provisions regarding the requirements and procedure to revoke the business license of a Sharia (Islamic) Bank as considered in paragraph (4) shall be regulated in a Bank Indonesia Regulation.

CHAPTER IX SETTLEMENT OF DISPUTES

Article 55

- (1) Settlement of disputes of Sharia (Islamic) Banking is conducted by a court in the Religious Court.
- (2) In the case that the parties have already agreed the settlement of disputes besides as considered as in paragraph (1), the dispute settlement shall be according to the Akad content.
- (3) Settlement of disputes as considered in paragraph (2) may not be contrary to the Sharia Principle.

CHAPTER X
ADMINISTRATIVE SANCTIONS

Article 56

Administrative sanctions are stipulated by Bank Indonesia to a Sharia (Islamic) Bank or UUS, members of the board of commissioners, members of the Sharia Supervisory Board, board of directors, and/or the employees of a Sharia (Islamic) Bank or Conventional Commercial

Bank having an UUS, who obstruct and/or do not conduct Sharia Principles in conducting its business operation or its tasks or do not meet its liability as provided in this Act.

Article 57

- 1) Administrative sanctions are imposed by Bank Indonesia to a Sharia (Islamic) Bank or UUS, members of the board of commissioners, members of the Sharia Supervisory Board, board of directors, and/or Sharia (Islamic) Bank employee or Conventional Commercial Bank having an UUS violating Article 41 and Article 44.
- (2) The application of administrative sanctions as considered in paragraph (1) does not prejudice the criminal provisions as a result of the violation on bank secrecy.

Article 58

- (1) Administrative sanctions as stipulated in this Act are:
 - a. Imposition of a fine;
 - b. Dispatch of written warnings;
 - c. Degradation of Sharia (Islamic) Bank and UUS soundness rating;
 - d. Prohibition from taking part in clearing activities;
 - e. Freezing of certain business activities, both for certain Branch Offices and for a Sharia (Islamic) Bank and UUS as a whole;
 - f. Dismissing the Sharia (Islamic) Bank and Conventional Commercial Bank Having an UUS management and then appointing a temporary substitute of the management until the General Meeting of Shareholders appoints the permanent substitute with the approval of Bank Indonesia;
 - g. Inclusion of Sharia (Islamic) Bank and UUS members of management, employees, and shareholders in a list of disreputable (disgraceful) persons in Banking sector; and/or
 - h. revoke the business license.
- (2) Further provision regarding the implementation of the administrative sanction as considered in paragraph (1) is regulated in a Bank Indonesia Regulation.

CHAPTER XI

PENAL PROVISIONS

Article 59

- (1) Any person conducting Sharia (Islamic) Bank, UUS business, or activities of mobilizing funds in the form of Deposit or Investment based on Sharia Principles without a business license from Bank Indonesia as considered in Article 5 paragraph (1) and Article 22 is threatened with imprisonment of at least 5 (five) years and the longest 15 (fifteen) years and a penalty of at least Rp10.000.000.000, 00 (ten billion rupiah) and the utmost Rp200.000.000.000, 00 (two hundred billion rupiah).
- (2) In case such activities as considered in paragraph (1) is conducted by a legal entity, the persecution shall be conducted on those giving orders to implement such actions and/or functioning as leaders in such activities.

Article 60

- (1) Any person who deliberately without any written order or approval from Bank Indonesia as considered in Article 42 and Article 43 compels a Sharia (Islamic) Bank, UUS, or affiliated parties to give information, is threatened with an imprisonment at least 2 (two) years and the most 4 (four) years and the penalty punishment of at least Rp10.000.000.000, 00 (ten billion rupiah) and the utmost Rp200.000.000.000, 00 (two hundred billion rupiah).
- (2) Members of the board of directors, board of commissioners, employee of a Sharia (Islamic) Bank or Commercial Bank having a UUS, or affiliated parties which deliberately provide confidential information as considered in Article 41 shall be punishable by imprisonment of a minimum 2 (two) years and maximum 4 (four) years and a penal fined of at least Rp 4.000.000.000,00 (four billion rupiah) and the utmost Rp 8.000.000.000,00 (eight billion rupiah).

Article 61

Members of the board of commissioners, board of directors, employee of a Sharia (Islamic) Bank or Commercial Bank having an UUS who deliberately do not give compulsory information as considered in Article 44, Article 47, and Article 48 shall be punishable by imprisonment a minimum 2 (two years) and maximum 7 (seven) years and the penal fined of at least Rp4.000.000.000, 00 (four billion rupiah) and the utmost Rp15.000.000.000, 00 (fifteen billion rupiah).

Article 62

(1) Members of the board of commissioners, board of directors, employee of a Sharia (Islamic) Bank or Conventional Commercial Bank having a UUS who intentionally:

- a. do not submit a financial statement as considered in Article 35 paragraph (2); and/or
- b. do not provide information or do not follow an order which should be implemented as considered in Article 52

shall be punishable by imprisonment of minimum 2 (two) years and a maximum of 10 (ten) years and a penal fined of at least Rp5.000.000.000, 00 (five billion rupiah) and the utmost Rp100.000.000.000, 00 (one hundred billion rupiah).

(2) Members of the board of commissioners, board of directors, employee of a Sharia (Islamic) Bank or Conventional Commercial Bank having a UUS neglecting:

- a. to submit a financial report as considered in Article 35 paragraph (2); and/or
- b. do not provide information or do not conduct compulsory orders as considered in Article 52

is punishable by imprisonment of a minimum 1 (one) year and maximum 2 (two) years and a penal fined of at least Rp1.000.000.000, 00 (one billion rupiah) and the utmost Rp2.000.000.000, 00 (two billion rupiah).

Article 63

(1) Members of the board of commissioners, board of directors, employee of a Sharia (Islamic) Bank or Conventional Commercial Bank having a UUS who intentionally:

- a. make or cause the existence of false records in the book keeping or in the report, document or business operation report, and/or transactional reports or account in Sharia (Islamic) Bank or UUS;
- b. leave out or do not enter or cause the omission of records in the book keeping or report, documents or business operational reports, and/or transactional reports or account in a Sharia (Islamic) Bank or UUS; and/or
- c. change, obscure, hide, erase, or cause the loss of records in the book keeping or in the report, document or business operational reports, and/or transactional reports or account in a Sharia (Islamic) Bank or UUS, or deliberately change, obscure, let loss, hide, or destroy such book keeping records

is punishable by imprisonment of minimum 5 (five) years and maximum 15 (fifteen) years and a penal fined of at least Rp10.000.000.000, 00 (ten billion rupiah) and the most Rp200.000.000.000, 00 (two hundred billion rupiah).

(2) Members ...

- (2) Members of the board of commissioners, board of directors, employee of a Sharia (Islamic) Bank or Conventional Commercial Bank having a UUS who deliberately:
- a. request or accept, allow or approve to accept compensation, commission, additional charges, services, money, or valuable goods for personal interest or family interest, related to:
 1. obtain or try to obtain for others advancement, bank guarantee, or facility of fund disbursement from a Sharia (Islamic) Bank or UUS;
 2. the purchase by a Sharia (Islamic) Bank or UUS of acceptance promissory notes, cheque and tradable securities, or other proof of liabilities;
 3. consent other persons to draw funds exceeding limit of disbursement of its funds in a Sharia (Islamic) Bank or UUS; and/or
 - b. do not conduct necessary steps to ensure compliance of a Sharia (Islamic) Bank or UUS to the provision of this Act.

shall be punishable by imprisonment of minimum 3 (three) years and maximum of 8 (eight) years and the penal fined of at least Rp5.000.000.000, 00 (five billion rupiah) and the utmost Rp100.000.000.000, 00 (one hundred billion rupiah).

Article 64

An affiliated party who deliberately do not conduct necessary steps to ensure compliance of a Sharia (Islamic) Bank or Conventional Commercial Bank having a UUS to the provision of this Act shall be punishable by imprisonment of a minimum 3 (three) years and a maximum of 8 (eight) years and penal fined at least Rp5.000.000.000, 00 (five billion rupiah) and the utmost Rp100.000.000.000,00 (one hundred billion rupiah).

Article 65

Shareholders who deliberately order members of the board of commissioners, board of directors, employee of a Sharia (Islamic) Bank or Conventional Commercial Bank having a UUS to conduct or do not conduct actions which affect a Sharia (Islamic) Bank or UUS not to do necessary steps to ensure compliance of the Sharia (Islamic) Bank or UUS to the provision in this Act shall be punishable by imprisonment for a minimum of 7 (seven) years and a maximum of 15 (fifteen) years and penal fined of at least Rp10.000.000.000, 00 (ten billion rupiah) and the utmost Rp200.000.000.000,00 (two hundred billion rupiah).

Article 66

- (1) Members of the board of commissioners, board of directors, employee of a Sharia (Islamic) Bank or Conventional Commercial Bank having a UUS who deliberately:

a. conduct ...

- a. conduct contradictory actions to this Act causing a loss to a Sharia (Islamic) Bank or UUS or cause the financial condition of the Sharia (Islamic) Bank or UUS to become unsound;
- b. obstruct the audit or not assist the audit examination by the board of commissioners or public accountant office assigned by the board of commissioners;
- c. provide disbursement of funds or loans facility by violating existing provisions imposed by a Sharia (Islamic) Bank or UUS, causing a loss and putting into danger the continuation of the Sharia (Islamic) Bank or UUS; and/or
- c. ignored steps needed to ensure a Sharia (Islamic) Bank or UUS compliance to the provisions of Fund Disbursement Maximum Limit as stipulated in this Act and/or other applicable provisions

shall be punishable by imprisonment of a minimum 1 (one) year and a maximum of 5 (five) years and penal fined of at least Rp1.000.000.000,00 (one billion rupiah) and the utmost Rp2.000.000.000,00 (two billion rupiah).

- (2) Members of the board of director, employee of the Sharia (Islamic) Bank or Conventional Commercial Bank having a UUS who deliberately misuse funds of Customers, shall be punishable by imprisonment of minimum 2 (two) years and a maximum of 8 (eight) years and penal fined of at least Rp2.000.000.000,00 (two billion rupiah) and the utmost Rp4.000.000.000,00 (four billion rupiah).

CHAPTER XII

TRANSITIONAL PROVISIONS

Article 67

- (1) A Sharia (Islamic) Bank or UUS in possession of a business license at the time of this Act coming in affect is pronounced to have a business license based on this Act.
- (2) A Sharia (Islamic) Bank or UUS as considered in paragraph (1) must adjust to the provision of this Act at the latest 1 (one) year as of the coming into effect of this Act.

Article 68

- (1) In the event that a Conventional Commercial Bank having a UUS of which its assets value has reached at least 50% (fifty percent) of the total asset value of its Parent Bank or after 15 (fifteen) years of coming into force of this Act, the Conventional Commercial Bank must conduct a UUS Splitting (spin off) to turn it into a Sharia (Islamic) Commercial Bank.

(2) Further ...

- (2) Further provisions regarding such separation and sanction for a Conventional Commercial Bank neglecting such Splitting (spin off) as considered in paragraph (1) shall be regulated in a Bank Indonesia Regulation.

CHAPTER XIII
CLOSING PROVISIONS

Article 69

With the enactment of this Act, all provisions concerning Sharia (Islamic) Banking regulated in Act Number 7 of 1992 concerning Banking (State Gazette of the Republic of Indonesia Number 31 of 1992, Supplement to the State Gazette of the Republic of Indonesia Number 3472) as amended by Act Number 10 of 1998

(State Gazette of the Republic of Indonesia Number 182 of 1998, Supplement to the State Gazette of the Republic of Indonesia No. 3790) including all implementation regulation is pronounced to be still valid as long as it does not contradict this Act.

Article 70

This Act shall come into force on the date of its enactment.

For the public to be informed, it is instructed to promulgate this Act in the State Gazette of the Republic of Indonesia.

Enact in Jakarta

Dated: 16 July 2008

PRESIDENT OF THE REPUBLIC OF
INDONESIA

signed

DR. H. SUSILO BAMBANG YUDHOYONO

Promulgated in Jakarta

on 16 July 2008

MINISTER OF JUSTICE AND HUMAN RIGHT

REPUBLIC OF INDONESIA,

signed

ANDI MATTALATTA

STATE GAZETTE OF THE REPUBLIC OF INDONESIA OF 2008 NO. 94

Setio Sapto Nugroho

ELUCIDATION
TO
THE ACT OF THE REPUBLIC OF INDONESIA
NUMBER 21 OF 2008
CONCERNING
SHARIA (ISLAMIC) BANKING

I. GENERAL

As mandated by the Pancasila and the 1945 Constitution of the Republic of Indonesia, the objective of national development is the creation of a justice and welfare society, based on economic democracy, by developing an economic system based on market mechanism. To realize this objective, the national economic development is directed towards a people centered economy, equitable, independent, trustworthy, fair, and able to compete in the international economic world.

To attain such national development objective and able to take an active part in a sound global competition, the participation and contribution of all elements in the society is needed to uncover various existing potential in the society to support the economic acceleration process in the effort to realize the objective of national development. One such form of potential community contribution in the national economic system is the development of an economic system based on Islamic values (Sharia) by placing such principles in the National Law System. Sharia principle is based on the value of justice, benefit, balance, and universalism (*rahmatan lil 'alamin*). Such value is applied in the banking regulation based on the Sharia Principle called Sharia (Islamic) Banking.

The Principle of Sharia (Islamic) Banking is part of Islamic teaching related to economic. The fundamental of those principles in Islamic Economy is the prohibition of interest in all its form, using another system among others production sharing. With the principle of production sharing, a Sharia (Islamic) Bank may create a sound and just investment climate because all parties may share both profit and also potential risk creating a balance position between a bank and its customers. In the long run, this will boost national economic equality as the result of the profit is not only enjoyed by the capital owner, but also by the capital manager.

Sharia (Islamic) Banking as one of the national banking systems needs several supporting means to enable it to provide maximum contribution to national economic development. One of those vital means of support is an adequate and commensurate regulation according to its characteristics. Such regulation is among others regulated in Sharia (Islamic) Banking Act. The formulation of a Sharia (Islamic) banking Act becomes a need and certainty for the development of such institution. Regulations regarding Sharia (Islamic) Banking in Act Number 7 of 1992 concerning Banking as amended in Act Number 10 of 1998 are not specific enough and adequate to accommodate the operational characteristics of Sharia (Islamic) Banking, where, on the other side the growth and volume of Sharia (Islamic) Bank business has grown quite fast.

To ensure legal certainty for stakeholders and at the same time also giving certainty to the community in using the products and services of a Sharia (Islamic) Bank, this Sharia (Islamic) Banking Act regulates the type of business, provisions of Sharia implementation, business feasibility, fund distribution, and prohibitions for a Sharia (Islamic) Bank and UUS constituting a part of a Conventional Commercial Bank. Meanwhile, to give certainty to the community still doubtful concerning the sharia operational of Sharia (Islamic) Banking so far, there are also regulated business activities which are not contrary with the Sharia Principle covering business activities which does not contain interest elements, *maisir*, *gharar*, *haram*, and *zalim*.

As a special Act regulating sharia (Islamic) banking, this Act regulates matters of sharia compliance of which the Authority is with the Indonesian Ulema Council (MUI) represented through the Sharia Supervisory Board (DPS) that must be assigned in each Sharia (Islamic) Bank and UUS. To follow up the fatwa implementation issued by MUI into the Bank Indonesia Regulation, a sharia banking committee was internally set up in Bank Indonesia, whose members consists of representative from Bank Indonesia, Religious Department, and community elements with a balanced composition.

A court in the Religious Court circle shall conduct settlement of disputes that may arise in sharia (Islamic) banking. Besides it, other possibilities for disputes settlement is also provided such as through mutual consent, banking mediation, arbitration institution, or through a court in the Commercial Court circle as long as it is agreed upon in the Akad by the parties.

To apply the substance of this sharia (Islamic) banking act, regulation of the UUS which as a corporation is still in one entity with the Conventional Commercial Bank, in the future, if already in condition and at a certain time period it is obligatory to separate the UUS to become a Sharia (Islamic) Commercial Bank by fulfilling the procedures and requirements stipulated by a Bank Indonesia Regulation.

Considering all of the above matters, a separate regulation for Sharia (Islamic) Banking is an urgent matter to be implemented, to guarantee the fulfillment of Sharia principles, Bank soundness of a Sharia (Islamic) Bank, and also not less important in the hope of being able to mobilize funds from other countries requiring separate regulations for Sharia (Islamic) Bank in a separate act.

II. ARTICLE BY ARTICLE

Article 1

Self-explanatory.

Article 2

Business based on Sharia Principles, include but are not limited to, businesses which does not contain the element of:

- a. usury, illegally obtain additional income (*batal*) among others the exchange transaction of similar types of goods but of different quality, quantity, and delivery time (*fadhl*), or in lending transaction requiring the Facility Receiving Customer to repay the fund received exceeding the principal due to the passing of time (*nasi'ah*);
- b. *maisir*, a transaction depending on unstable condition and on luck;
- c. *gharar*, a transaction of which is the object is not clear, not own, not known its whereabouts, or cannot be delivered at the time of transaction unless otherwise regulated in sharia;
- d. *haram*, a transaction of which the object is prohibited in sharia; or
- e. *zalim*, an unfair transaction for the other party.

“Economic democracy” is defined as a sharia economic activity that contain fairness, mutual ness, equality, and benefit.

“Prudential principle” is defined as bank management guidance that must be complied to create a sound banking, strong, and efficient according to the provisions of prevailing laws and regulations.

Article 3

To attain its objective in supporting the implementation of the national development, Sharia (Islamic) Banking steadfastly and consistently (*istiqamah*) uphold the whole Sharia Principle (*kaffah*)

Article 4 ...

Article 4

Paragraph (1)

Self-explanatory.

Paragraph (2)

“Other social funds”, is defined as including but not limited to a Bank receivable derived from imposing sanction to the Customer (*ta'zir*).

Paragraph (3)

Self-explanatory.

Paragraph (4)

Self-explanatory.

Article 5

Paragraph (1)

Self-explanatory.

Paragraph (2)

Self-explanatory.

Paragraph (3)

The requirements regulated in the Bank Indonesia Regulation must at least contain:

- a. organizational formation and its management;
- b. working capital;
- c. expertise in Sharia (Islamic) Banking; and
- d. business feasibility.

Paragraph (4)

The phrase “sharia” is only obligatory for a Sharia (Islamic) Bank having obtained a license after the coming in force of this Law.

The word “sharia” is affixed after the word “bank” or after the bank name.

Paragraph (5)

Self-explanatory.

Paragraph (6) ...

Paragraph (6)

Self-explanatory.

Paragraph (7)

Self-explanatory.

Paragraph (8)

Self-explanatory.

Paragraph (9)

Self-explanatory.

Article 6

Paragraph (1)

Self-explanatory.

Paragraph (2)

Self-explanatory.

Paragraph (3)

“Sub-office under the Branch Office” is defined as a sub branch office or cash office of whose business is helping the parent office.

Paragraph (4)

Self-explanatory.

Article 7

Self-explanatory.

Article 8

Letter a

Self-explanatory.

Letter b

Matters, which may be regulated in a Bank Indonesia Regulation, are among others:

a. dismissal ...

- a. dismissal of the members of board of directors and board of commissioners not qualifying the fit and proper test;
- b. transfer of bank controlling shares ownership must have the approval of Bank Indonesia;
- c. transfer of business license from an old name to a new name, amendment of authorized capital, and the status change to become a public Bank must have the approval of Bank Indonesia;
- d. amendment of the bank paid in capital which covers addition, subtraction, and composition must have the approval of Bank Indonesia;
- e. prohibition for controlling shareholders to put up the shares they own as security.

Article 9

Paragraph (1)

Letter a

Self-explanatory.

Letter b

In the event that one of the parties incorporating a Sharia (Islamic) Commercial Bank is a foreign legal entity the concerned party must have a prior recommendation from the banking authority of the country of origin. Such recommendation must at least state that such foreign legal entity has a good reputation and has never conducted unreputable actions in the field of banking.

Letter c

Self-explanatory.

Paragraph (2)

Self-explanatory.

Paragraph (3)

Self-explanatory.

Article 10

Self-explanatory.

Article 11

Self-explanatory.

Article 12

Self-explanatory.

Article 13

Self-explanatory.

Article 14

Self-explanatory.

Article 15

Changes in the ownership of a Sharia (Islamic) Bank that does not affect changes in the controlling shareholders can be just reported in writing to Bank Indonesia.

Article 16

Paragraph (1)

Self-explanatory.

Paragraph (2)

The regulatory principles in Bank Indonesia Regulation include but are not limited to among others:

- a. minimum capital adequacy;
- b. preparation of human resources;
- c. organization formation and management; and
- d. business feasibility.

Article 17

Self-explanatory.

Article 18

Self-explanatory.

Article 19 ...

Article 19

Paragraph (1)

Letter a

“Akad *wadi'ah*” is defined as an Akad concerning goods or money custody between parties owning the good or money and the party entrusted with the objective to protect the safety, security, and wholeness of the goods or money.

Letter b

“Akad *mudharabah*” is defined as collecting funds is a cooperation Akad between first party (*malik, shahibul mal*, or Customer) as fund owner and second party (*'amil, mudharib*, or Sharia/Islamic Bank) acting as manager of the funds by sharing the business profit according to agreement stated in the Akad.

Letter c

“Akad *mudharabah*” is defined as Financing in a cooperative Akad of a business between first party (*malik, shahibul mal*, or Sharia/Islamic Bank) providing all capital and second party (*'amil, mudharib*, or Customer) acting as fund manager by sharing business profit according to agreement set in Akad, while loss will be fully borne by Sharia (Islamic) Bank except If the second party conduct deliberate error, neglect or in default of an agreement.

“Akad *musyarakah*” is defined as a cooperation Akad between two or more parties for certain business where the respective parties provide a portion of the fund with the stipulation that profit shall be shared according to the agreement, while loss shall be borne according to the respective fund portion.

Letter d

“Akad *murabahah*” is defined as a Financing Akad of goods by fixing the purchase price to the buyer and the buyer pay the excess price as an agreed profit.

“Akad *salam*” is defined as a Financing Akad of goods by ordering and payment that is paid in advance on certain agreed condition.

“Akad *istishna'*” is defined as a Financing Akad of goods in the form of order to make a certain good with certain criteria and requirements approved between the orderer or purchaser (*mustashni'*) and the seller or maker (*shani'*).

Letter e ...

Letter e

“Akad *qardh*” is a fund loan Akad to a Customer with the provisions that the Customer is obligated to return the fund accepted in an agreed period.

Letter f

“Akad *ijarah*” is defined as Akad for providing fund in relation to transferring the right or usage of the benefit of the good or services based on lease transactions, without being followed by ownership transfer of good itself.

“Akad *ijarah muntahiya bittamlik*” is defined as Akad for providing funds in the relation of transferring the right of usage or benefit of goods or services based on a lease transaction with the option of transferring the ownership of the goods.

Letter g

“Akad *hawalah*” is defined as an Akad of loan/debt take over from the debtor to another party obligated to bear or pay.

Letter h

Self-explanatory.

Letter i

“Clear transactions” is defined as transaction based on tangible assets.

“Akad *kafalah*” is defined as an Akad providing securities given by one party to another, where the security provider (*kafil*) is responsible on the repayment of the loan that is the right of the security beneficiary (*makful*).

Letter j

Self-explanatory.

Letter k

Self-explanatory.

Letter l

Self-explanatory.

Letter m

Self-explanatory.

Letter n

Self-explanatory.

Letter o ...

Letter o

“Akad wakalah” is defined as Akad providing an attorney to a proxy to carry out a task on behalf of the principal.

Letter p

Self-explanatory.

Letter q

“Other activities” is defined as, among others, implementing social function in the form of accepting and distributing “zakat”, “infaq”, “shodaqoh”, and other virtuous fund.

Paragraph (2)

Self-explanatory.

Article 20

Paragraph (1)

Letter a

Self-explanatory.

Letter b

“Capital participation” is defined as putting funds into a Sharia (Islamic) Commercial Bank in the form of shares in a company operating in the field of sharia financing, including fund investment in the form of securities which can be converted into convertible bonds or certain transactions types based on Sharia Principle resulting in the Sharia (Islamic) Commercial Bank owning or going to own shares in the company doing business in the field of sharia financing.

Letter c

“Temporary capital participation” is defined as capital participation of the Sharia (Islamic) Commercial Bank, among others, in the form of share purchase and/or financing conversion into shares in the Customer company to overcome failure in the disbursement of fund and/or account receivable in a certain period as considered in the Bank Indonesia stipulations.

Letter d

Self-explanatory.

Letter e ...

Letter e

Self-explanatory.

Letter f

Self-explanatory.

Letter g

Self-explanatory.

Letter h

Self-explanatory.

Letter i

Self-explanatory.

Paragraph (2)

Self-explanatory.

Paragraph (3)

Self-explanatory.

Article 21

Self-explanatory.

Article 22

Self-explanatory.

Article 23

Paragraph (1)

A commitment related to the good intention of the Facility Receiving Customer to repay the fund disbursed by a Sharia (Islamic) Bank and/or UUS.

Capability related to the condition and/or asset of the Facility Receiving Customer enabling him/her to repay the funds disbursed by a Sharia (Islamic) Bank and/or UUS.

Paragraph (2) ...

Paragraph (2)

Assessment of the proposed Facility Receiving Customer is especially based on the good relation between a Sharia (Islamic) Bank and/or UUS and the Customer or the proposed Customer concerned or information obtained from other trustworthy parties , so that the Sharia (Islamic) Bank and/or UUS may conclude that the proposed Facility Receiving Customer concerned is honest, trust worthy and will not cause difficulties to the Sharia (Islamic) bank and/or UUS in the future.

A bank must also assess the capability of the proposed Facility Receiving Customer in running his/her business and/or management capability so that a Sharia (Islamic) bank and/or UUS is sure that the business to be financed is managed by a right person.

Assessment of the Capital owned by a proposed Facility Receiving Customer, a Sharia (Islamic) bank and/or UUS must conduct an analysis of the financial position in overall, both on the past period and also prediction for the coming period to obtain an idea of the capital capability of the proposed Facility Receiving Customer in supporting the project financing or business of the concerned Customer.

In conducting assessment on a Collateral, a Sharia (Islamic) bank and/or UUS must assess goods, project or outstanding rights financed with the financial facilities concerned and other goods, securities or risk guarantee added as additional Collateral, whether its sufficient so that in case the Facility Receiving Customer in the future is unable to settle its obligation, such Collateral may be used to bear the repayment of the financing from the Sharia (Islamic) bank and/or UUS concerned.

In the assessment of the business project of the proposed Facility Receiving Customer, a Sharia (Islamic) bank must mainly conduct analysis of the market situation, both domestically and overseas, both past or future time to have a good picture of the marketing prospect of the project result or business of the proposed Customer to be financed by Financing facilities.

Article 24

Paragraph (1)

Letter a

Self-explanatory.

Letter b

Self-explanatory.

Letter c ...

Letter c

Self-explanatory.

Letter d

A Sharia (Islamic) Commercial Bank may market insurance products through cooperation with an insurance company conducting business based on the Sharia Principle. All of the Sharia (Islamic) Commercial Bank activities related to the insurance transaction marketed through such cooperation shall become the responsibility of the sharia insurance company.

Paragraph (2)

Letter a

Self-explanatory.

Letter b

Self-explanatory.

Letter c

Self-explanatory.

Letter d

A UUS may market insurance products through cooperation with an insurance company conducting business based on the Sharia Principle. All of the UUS activities related to the insurance transaction marketed through such cooperation shall become the responsibility of the sharia insurance company.

Article 25

Letter a

Business which are contradictory to Sharia Principles are among others business which are considered as *riba*, *maisir*, *gharar*, haram, and zalim.

Letter b

Self-explanatory.

Letter c

Self-explanatory.

Letter d ...

Letter d

A Sharia (Islamic) Rural Bank may market insurance products through cooperation with an insurance company conducting business based on the Sharia Principle. All of the Sharia (Islamic) Rural Bank activities related to the insurance transaction marketed through such cooperation shall become the responsibility of the sharia insurance company.

Letter e

Self-explanatory.

Letter f

Self-explanatory.

Article 26

Paragraph (1)

Self-explanatory.

Paragraph (2)

Self-explanatory.

Paragraph (3)

Self-explanatory.

Paragraph (4)

A sharia (Islamic) banking committee members shall consist of elements from Bank Indonesia, Religious Department, and community elements with a balanced composition, having the expertise in the field of sharia and numbering at the most 11 (eleven) people.

Paragraph (5)

Self-explanatory.

Article 27

Paragraph (1)

“Controlling shareholders” is defined as a legal entity, private person, and/or business group which:

- a. own 25% (twenty five percent) shares of a Sharia (Islamic) bank or more from the total shares issued and with voting rights; or

b. own ...

- b. own less than 25% (twenty five percent) of the company shares or Bank from the total shares issued with voting rights, but those concerned may be proofed to have controlled directly or indirectly a company or bank.

Control is an action with the objective to directly or indirectly influences the management and/or policies of a company, including a bank, by whatsoever means.

Control of a Sharia (Islamic) bank may be executed by the following means, among others, as follows:

- a. own individually or together 25% (twenty five percent) or more of a Bank shares;
- b. directly conduct the management and/or influence a Sharia (Islamic) bank policy;
- c. has the right of option or other rights to own shares which if being used shall caused such parties to own and/or control privately or together 25% (twenty five percent) or more of a Bank shares;
- d. conduct cooperation or similar activities to achieve mutual objective by acting in concert to control the bank with or without a written agreement with other parties to collectively both directly and indirectly with or without a written agreements own and/or control 25% (twenty five percent or more of a Sharia (Islamic) bank shares,;
- e. conduct cooperation or similar activities to achieve mutual objective by acting in concert to control the bank with or without a written agreement with other parties to collectively have the right of option or other right to own shares and if implemented cause them to control 25% (twenty five percent) or more of a Sharia (Islamic) bank shares;
- f. control one or more other companies with in overall own and/or control collectively 25% (twenty five percent) or more of the Bank shares;
- g. have the right to approve and/or dismiss the management of a Sharia (Islamic) bank;
- h. indirectly influence or conduct the management and/or the policy of a Sharia (Islamic) bank;
- i. conduct control over the parent company or a parent company in the field of finance of a Sharia (Islamic) bank; and/or
- j. conduct control over parties having control as considered in Letter a up to Letter i.

The fit and proper test is fully the right of Bank Indonesia to assess the competence, integrity, and financial capability of controlling shareholders and/or the bank management. Keeping in mind that the fit and proper test is to obtain controlling shareholders and bank management able to protect the trust of the community to banking, the assessment related to the fit and proper test by Bank Indonesia is not necessary accountable.

Paragraph (2)

The obligation to reduce ownership option for a Bank Owner not qualifying the fit and proper test is within 6 (six) months as of the date of failing the fit and proper test.

Paragraph (3)

Self-explanatory.

Paragraph (4)

Self-explanatory.

Article 28

Included in the understanding of laws and regulations is Bank Indonesia Regulations.

The main tasks of the board of directors in the articles of association of a Sharia (Islamic) bank are among others:

- a. task and responsibility;
- b. reporting; and
- c. protection in implementing its task.

Article 29

Paragraph (1)

Self-explanatory.

Paragraph (2)

The main tasks of a director are:

- a. task and responsibility;
- b. reporting; and
- c. protection in implementing its task.

Article 30

Paragraph (1)

The fit and proper test has the objective to ensure the competence, credibility, integrity, and implementation of the good corporate governance of the owner, bank management, and sharia supervisor.

Paragraph (2)

Self-explanatory.

Paragraph (3)

Self-explanatory.

Paragraph (4)

Self-explanatory.

Article 31

Paragraph (1)

“Executive official” is defined as an official directly responsible to the board of directors and/or having influence on the policies and operation of a Sharia (Islamic) bank such as head of division, Head of Branch Offices, or head of the internal audit work unit.

Paragraph (2)

Self-explanatory.

Article 32

Paragraph (1)

Self-explanatory.

Paragraph (2)

Self-explanatory.

Paragraph (3)

Self-explanatory.

Paragraph (4)

A Bank Indonesia regulation regulate at least:

- a. scope, task, and function of a sharia supervisory board;
- b. the number of members of a sharia supervisory board;
- c. term in office;
- d. expertise composition;
- e. maximum concurrent position; and
- f. report of the sharia supervisory board.

Article 33

Self-explanatory.

Article 34

Self-explanatory.

Article 35

Paragraph (1)

In ensuring the implementations of resolutions in the bank management are in accordance to prudential principles, the banks have and apply among others, an internal supervisory system.

Paragraph (2)

“Generally valid Sharia accounting principles” is sharia accounting standard stipulated by an authorized institution.

Paragraph (3)

A public accountant office is public accountant office having an accountant with expertise in the field of sharia accounting.

Paragraph (4)

In giving exceptions, Bank Indonesia observes of the capacity of a Sharia (Islamic) Rural Bank concerned.

Paragraph (5)

Self-explanatory.

Article 36

Self-explanatory.

Article 37

Paragraph (1)

Fund disbursement based on Sharia Principle by a Sharia (Islamic) bank and UUS have contain risk of failure or problems in its settlement and thereby affect the soundness of a Sharia (Islamic) bank and UUS. Keeping in mind that such fund disbursements have its sources from public funds deposited with a Sharia (Islamic) bank and UUS, the risk by Sharia (Islamic) bank and UUS may also affect the safety of such public fund.

Therefore, to maintain soundness and improve its resilience, a bank must diversify risk by arranging credit disbursement or providing financing based on Sharia Principle, providing securities or such other facilities so that it will not be centered in the debtor Customer or group of certain debtor Customer.

Paragraph (2)

“A Sharia (Islamic) bank capital must be according to the provisions stipulated by Bank Indonesia” is defined as according to the meaning applied in the assessment of the bank soundness.

Such maximum limit is intended for a Facility Receiving Customer respectively or Group of Facility Receiving Customer including companies in the same group.

Paragraph (3)

Letter a

Self-explanatory.

Letter b

Self-explanatory.

Letter c

Self-explanatory.

Letter d

“Family” is defined as the ties to the second degree, by vertical and horizontal line including parents in law, son/daughter in law and brother/sister in law.

Letter e ...

Letter e

Self-explanatory.

Letter f

Self-explanatory.

Paragraph (4)

“The Sharia (Islamic) bank capital is according to the regulation is stipulated by the Bank Indonesia” is accordance to the meaning used in the assessment of the bank soundness.

Paragraph (5)

Self-explanatory.

Article 38

Paragraph (1)

“Management risk” is defined as a serial of procedures and methodology applied by banking to identify, measure, monitor, and control risk which emerge as a consequence of a bank business.

The principal of knowing your Customer is a principle that has to be applied by banking which at least include activities of receiving and identifying Customer and monitoring the Customer’s transaction activities, including reporting suspicious transaction.

Customer protection is executed among others by the existence of a Customer claim mechanism, improving product transparency, and education of the Customer.

Paragraph (2)

Self-explanatory.

Article 39

Explanation provided to the Customer regarding the possibility of a risk of loss for a Customer is intended as a transparency of a bank products and services.

If such information has been prepared, the bank is considered to have complied with this provision.

Article 40

Paragraph (1)

The ...

The purchase of collateral by a Bank through auction is intended to assist the Bank to speed up the settlement of the liability of the Facility Receiving Customer. In the case a bank is a purchaser of the Facility Receiving Customer Collateral, the Bank status is the same with any non-bank purchaser.

A Bank has the opportunity to buy the Collateral not through an auction to speed up the settlement of the Facility Receiving Customer obligation.

The time limit is 1 (one) year by calculating the recovery of the Bank liquidity condition and this time limit is a fair period to sell a Bank asset.

A collateral that can be bought by a Bank is a Collateral of which it's financing is categorized as problem loan during a certain time period.

Paragraph (2)

Self-explanatory.

Paragraph (3)

Self-explanatory.

Paragraph (4)

Further principal requirements regulated by a Bank Indonesia Regulation include but not limited to among others:

- a. Collateral which can be bought by a Sharia (Islamic) bank and UUS is a Collateral of which its financing is categorized a problem loan for a certain period;
- b. The time schedule for the disbursement of the Collateral that has been bought.

Article 41

Self-explanatory.

Article 42

Paragraph (1)

“Showing written proof”, is defined as including the submitting of certificates or its photocopy.

Paragraph (2)

Self-explanatory.

Article 43

Paragraph (1)

Self-explanatory.

Paragraph (2)

“An institution manager who is given the authority to conduct investigation” is defined as the department manager or non-department institution at the level of a minister.

Paragraph (3)

Self-explanatory.

Article 44

Self-explanatory.

Article 45

Self-explanatory.

Article 46

Self-explanatory.

Article 47

Self-explanatory.

Article 48

Self-explanatory.

Article 49

Self-explanatory.

Article 50

Guidance conducted by Bank Indonesia, are among others, matters regarding institutional aspects, ownership and management (including fit and proper test), business activities, reporting, and other aspects related to a Sharia (Islamic) bank and UUS operational activities.

Bank supervision includes an off-site supervision based on the Bank report on-site supervision in the form of examination in the office of the concerned bank.

Article 51

Paragraph (1)

A Sharia (Islamic) bank and UUS must maintain their level of soundness in the framework of maintaining the trust of the society.

Paragraph (2)

Self-explanatory.

Article 52

Paragraph (1)

Self-explanatory.

Paragraph (2)

Self-explanatory.

Paragraph (3)

Letter a

“Data/document” is defined as all kinds of data or documents, written and electronic, related to the object of supervision by Bank Indonesia.

“Any place connected to the Bank” is defined as any part of the room of the bank office and other places outside the bank related to Bank Indonesia supervision.

Letter b

“Data/document” is defined as all kinds of data or documents, both written or electronic related to the object of Bank Indonesia supervision.

“Any party” is defined as a person or legal entity which has influence on a Bank decision making and operational, either directly or indirectly, among others, ultimate shareholder or a certain party whose name is not registered as an employee, management or shareholder of the bank share but is able to influence the operational activities of a bank or the decision of the management.

Letter c

“Deposit account or Financing account” is defined as accounts, both existing in a supervised Bank or in another Bank, related to the supervisory object / examination by Bank Indonesia.

Paragraph (4)

Self-explanatory.

Article 53

Paragraph (1)

“Other parties” is defined as a party who according to Bank Indonesia assessment has the competence to conduct examination.

Paragraph (2)

Self-explanatory.

Article 54

Paragraph (1)

A Bank condition is stated to experience difficulties which are detrimental to its business continuation if based on Bank Indonesia assessment, the business condition of the Bank is becoming worst, among others marked by the decline of its capital, asset quality, liquidity, and rentability, and the Bank management which is not longer based on prudential principles and sound banking fundamentals.

Letter a

“Limiting authority” is defined as including but not limited to among others limiting the decision of distributing bonus (tantiem), to giving dividend to Bank owner, or remuneration raise for employees and management.

Letter b

Self-explanatory.

Letter c

Self-explanatory.

Letter d

Self-explanatory.

Letter e

Self-explanatory.

Letter f

Self-explanatory.

Letter g

Self-explanatory.

Letter h

“Other party” is defined as parties outside the concerned Bank, be it another Bank, another corporate, or individual meeting the requirements.

Paragraph (2)

Self-explanatory.

Paragraph (3)

Self-explanatory.

Paragraph (4)

Self-explanatory.

Paragraph (5)

Self-explanatory.

Article 55

Paragraph (1)

Self-explanatory.

Paragraph (2)

“Settlement of dispute is done according to an Akad content” is defined as the following efforts:

- a. mutual understanding;
- b. banking mediation;
- c. through the National Sharia Arbitration Board (Basyarnas) or other arbitration institution; and/or
- d. through a commercial court.

Paragraph (3) ...

Paragraph (3)

Self-explanatory.

Article 56

Basically an administrative sanction is enforced individually on a member of the board of commissioners or board of directors conducting a mistake, but do not close the possibility of the administrative sanctions being applied collectively if such mistake was done collectively.

Article 57

Self-explanatory.

Article 58

Self-explanatory.

Article 59

Self-explanatory.

Article 60

Self-explanatory.

Article 61

Self-explanatory.

Article 62

Self-explanatory.

Article 63

Self-explanatory.

Article 64

Self-explanatory.

Article 65

Self-explanatory.

Article 66

Self-explanatory.

Article 67

Paragraph (1)

“A UUS that has a business license” in this provision is a UUS already existing based on the license for opening a Sharia Branch Office in a Conventional Commercial Bank.

Paragraph (2)

Self-explanatory.

Article 68

Self-explanatory.

Article 69

Self-explanatory.

Article 70

Self-explanatory.

SUPPLEMENT TO THE STATE GAZETTE OF THE REPUBLIC OF INDONESIA

NO. 4867