

**THE ROLES OF ISLAMIC BANKING
IN THE PREVENTION OF MONEY LAUNDERING**



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INTERNATIONAL PROGRAM

FACULTY OF LAW

UNIVERSITAS ISLAM INDONESIA

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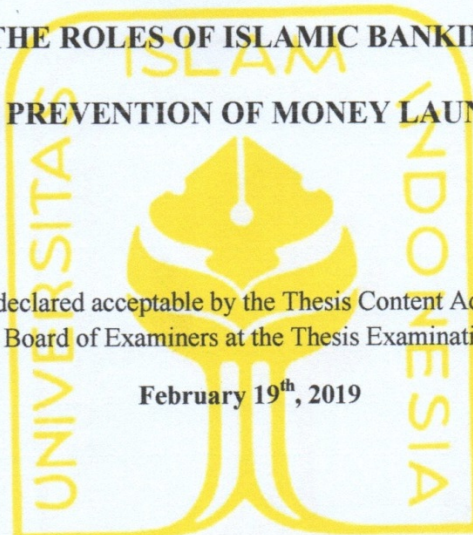
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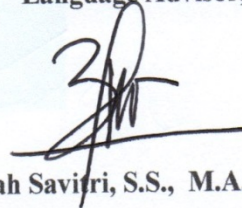
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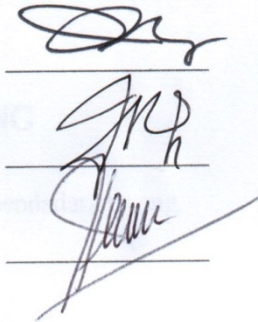
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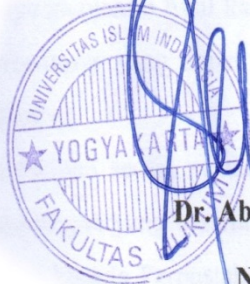
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Yang membuat pernyataan,

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MOTTO

“Blessings may appear under the shape of pains, losses and disappointments; but let him have patience, and he will see them in their proper figures.”

–Joseph Addison in *the Guardian* (1713)

"I am enough of an artist to draw freely upon my imagination. Imagination is more important than knowledge. For knowledge is limited, whereas imagination encircles the world."

–Albert Einstein in *What Life Means to Einstein* (1929)

From the deepest part of my heart, I would like to dedicate this thesis to:

My mother Mrs N. Sodriyatun,

My father, Mr Aminuddin, and my brother, Nawrel Ezzat Tawshy

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Assalamualaikum wr. wb.

The writer would like to express her gratefulness to Allah SWT for the strength He has been giving me up till now, and to Prophet Muhammad SAW who dedicated his life to enlighten the world through Islam.

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Finally, the writer recognizes that this bachelor degree is still imperfect, thus encouraging readers to express their opinions and suggestions regarding this thesis. However so, the writer hopes that this thesis would not be useless for anyone who read this thesis.

Wassalamualaikum wr. wb.

Yogyakarta, 25 Februari 2019

NAWRA HASENA NAOMY

ABSTRACT

By the existence of globalization, the corporate crime which is a kind of white-collar crime develops fast and in alarming pace, because not only it includes certain location, it's also able to transfer to other locations –being trans-territorial kind of crime. The corporate crime that is difficult to conclude is the money laundering crime. Money laundering crime, as it is developing by years, comes real close with the banking system. Through the banking system developed in every state, the spread of money laundering is hardly stoppable. Banking system, including conventional and non-conventional, becomes the tool to commit the crime. Islamic banking started to develop well in the recent decade, especially in Indonesia. It is possible that it becomes one of the tools of the money laundering, too. However, in Islamic banking itself, there is no mentioning about money laundering from Al-Quran, hadith, or Indonesian regulation. Instead, based on the Quran and hadith, there are mentioned about what kind of act to commit is prohibited by Allah. Taking general definition about money laundering, it could be safely stated that everything earned through the prohibited acts is considered *haram* and its essence is and will be *haram*. Considering the essence of the money, money laundering in Islamic banking is possible to be suppressed due to the principles maintained in the Islamic banking system.

Keywords: Islamic Banking, Money Laundering, The Prevention of Money Laundering, The Roles of Islamic Banking

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CHAPTER I

INTRODUCTION

A. Context of Study

Indonesia is referred as the biggest Muslim country in the world. Over around 200 millions of Indonesian are of Muslim. This amount is equal to approximately 87% of Indonesian inhabitants.¹ Although Muslim is the most inhabitants of Indonesia, Indonesia doesn't declare itself as an Islamic state; it's a Muslim state instead. With the majority of Muslims living in Indonesia, it also uses Islamic law on governing the people. Several aspects are regulated in Islamic laws altogether with the non-Islamic laws.

In the recent years, Islamic banking has been under the spotlight. The development of this kind of banking system appears in the form of various investment companies, holding companies, and others. This development happens in various states including Europe, America, Denmark, United Kingdom, Philippines, and other states.² The expansion is including not only Islamic states and Muslim states, but also even the countries whose people were not majorly Muslims.

Islamic banking itself is not new phenomenon. It has existed since the era of Muhammad SAW. Basically, the theory of Islamic banking covered three basic functions of banking system namely accepting money, lending money, and providing services among other

¹ According to stastical data, the total population of Indonesians are 237 million people, 87.18% are Muslims, 6.96% Protestant, 2.91% Catholic, 1.69% Hindus, 0.72% Buddhist, and 0.05% Kong hu cu. The last census was conducted in 2010. Akhsan Naim and Hendry Syaputra, 2011, *Kewarganegaraan, Suku Bangsa, Agama, dan Bahasa Sehari-hari Bangsa Indonesia*, Jakarta: Badan Pusat Statistik, page 10.

² Muhammad Syafi'I Antonio, 2001, *Bank Syariah dari Teori ke Praktik*, Jakarta: Gema Insani, page 74-75.

functions. **These functions** at the time however, were *not* implemented under one single institution. Meaning that, one function was implemented under one institution/body/person; instead of three functions under one institution/body/person.³ This kind of practice continued until the era of *Bani Abbasiyah* when during the era, the three functions were implemented under one institution to simplify it.⁴

However, during the *renaissance* era, there was a degeneration in Islamic states. The Islamic systems were changed to the European system in various elements, including the banking system. The banking system started using the European law, that mostly differ in the use of interest; where it permitted the implementation of interest, whereas during the Islamic law it was not permitted. The implementation of banking system under the European system continued until in the 1940's when Malaysia restarted using Islamic banking system. Initiated by Malaysia, the Islamic banking system soon was used also by other states.⁵

In Indonesia, the development of the Islamic banking started back in 1992, with *Bank Muamalat Indonesia* (BMI). It's being one of the dual-banking system used by Indonesia and immensely grows through the years since its development.⁶ Using the Islamic system, the Islamic banking is not solely for the accommodation of Muslims who are the majority inhabitants in Indonesia, but also the people in general. This takes place following the growth of economic field. The growth of economic field corresponds with the growth of banking system that is closely related to monetary. The more development

³ Adiwarman A Karim, 2010, *Bank Islam: Analisis Fiqih dan Keuangan*, Jakarta: PT Raja Grafindo Persada, page 18-20.

⁴ Ibid.

⁵ Ibid, page 23.

⁶ Amir Mahfud and H. Rukmana, 2010, *Bank Syariah: Teori, Kebijakan, dan Studi Empiris di Indonesia*, Jakarta: Erlangga, page 1.

happens in the economic field, the more development also happens in the monetary system; either conventional or Islamic.⁷

Development doesn't only become visible in the monetary system. The monetary system is only one aspect among other aspects that are developing throughout the years. One aspect that developing fast is the society, where nowadays it's led by the technology and knowledge, triggering further development.⁸ This, however is not always good thing, because the development of the society also affects the development of crime. At first, crime is only meant for conventional crime; the crime using force and the like in order to gain the aim of the crime. However, following the development of society, the kinds of crime are also developing –not limited to the crime using force, which is truly evident. Conventional crime branched out to be more modern, using technology and knowledge. This development of crime spread to various fields in the society, not only certain fields— but also including the economic field and monetary field.

Among many kinds of crime, the economic crime is referred as a dangerous crime. This kind of crime is including in the white-collar crime; as defined by Edwin Sutherland, that is a crime committed by a person of respectability and high social status in the course of his occupation. Sutherland also included crime committed by corporations and other legal entities within his definition—corporate crime.⁹

By the existence of globalization, the corporate crime which is a kind of white-collar crime develops fast and in alarming pace, because not only it includes certain location, it's also able to transfer to other locations, being trans-territorial kind of crime. The corporate

⁷ Ibid. page 31.

⁸ Muh. Yusuf T, 2012. *Peranan Teknologi Pendidikan pada Mutu Pendidikan*, page 65.

⁹ J, Kelly Strader, *Understanding White Collar Crime*, 2002, Soutwestern: LexusNexus, page 1.

crime that is difficult to conclude is the money laundering crime. This kind of crime also happens in Indonesia, in disturbing rate as more cases appeared; which lead to the importance of the existence of regulations regarding the crime.¹⁰ One of them is a law in accordance to the money laundering, the Law No.8 of 2010 concerning Prevention and Suppression of Money Laundering Crime (*Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang*).

Money laundering crime, as it's developing by years, comes real close with the banking system. Through the banking system developed in every states, the spread of money laundering is hardly stoppable. Banking system, including conventional and non-conventional, becomes the tool to commit the crime. As mentioned previously, as Islamic banking started to develop well, especially in Indonesia, it's possible that it becomes one of the tools of the money laundering, too. However, in Islamic banking itself, there is no mentioning about money laundering from either Al-Quran, hadith, or Indonesian regulation. Instead, based on the Quran and hadith, there are mentioned about what kind of act to commit is prohibited by Allah. Taking general definition about money laundering, it could be safely stated that everything earned through the prohibited acts is considered *haram* and its essence is and will be *haram*. Considering the essence of the money, money laundering in Islamic banking is possible to suppress due to the principles maintained in the Islamic banking system.

The Islamic banking grows continuously, encouraged by the growth of the economic. The concept and philosophical of Islamic monetary are based of logical consideration as well as al-Quran and

¹⁰ Universitas Sumatera Utara, *Konsep Pertanggungjawaban Korporasi Dalam Tindak Pidana Persaingan Usaha Tidak Sehat Menurut Undang-Undang No. 5 Tahun 1999*, page 1.

hadith.¹¹ Al-Quran explicitly stated, by narratives or commands, there are some concepts in *akhlaq* that need to follow.; accountability¹², trust¹³, justice¹⁴, strict action¹⁵, and reprimand¹⁶. Al-Quran also stated about the hierarchy of management as a means to reach the purpose of an institution as a manifestation of the love for Allah.¹⁷ This shows that an institution will not work well if *akhlaq* during the process of achieving the purpose is not right. It's concluded that based on al-Quran, an institution is not about the form of the institution, but about the *akhlaq*/ ethics in the institution.¹⁸

In Indonesia, Islamic banking is regulated with Law No.72 of 1992 concerning Islamic Banking, Law No.10 of 1998 concerning the improvement of Law No.72 of 1992, The Fatwa of DSN MUI, Law No.23 of 1999 concerning Bank Indonesia that mentions about monetary system under Sharia principle, and Law No.21 of 2008

¹¹ Muhammad Ayub, 2009, *Understanding Islamic Finance, A-Z Keuangan Syariah*, Jakarta: PT Gramedia Pustaka Utama., page 693.

¹² Q.S Al-Baqarah: 283, “*And if you are on a journey and cannot find a scribe, then let there be a pledge taken (mortgaging); then if one of you entrusts the other, let the one who is entrusted discharge his trust (faithfully) and let him afraid of Allah , his Lord. And conceal not the evidence for he, who hides it, surely his heart is sinful. And Allah is All-Knower of what you do.*”

¹³ Ibid.

¹⁴ One of them, Q.S Al-Anam: 70, “*And leave those who take their religion as play and amusement, and whom the life of this world has deceived. But remind (them) with it (the Quran) lest a person be given up to destruction for that which he has earned, when he will find for himself no protector or intercessor besides Allah, and even if he offers every ransom, it will not be accepted from him. such are they who are given up to destruction because of that which they have earned. For them will be a drink of boiling water and a painful torment because they used to disbelieve.*”

¹⁵ *Amar ma'ruf nahi munkar*, Q.S Al Imran: 110, “*You are the best of peoples ever raised up for mankind; you enjoin Al-Ma'ruf and forbid Al-Munkar, and you believe in Allah. And had the people of the Scripture believed, it would have been better for them; among them are some who have faith, but most of them are Al-Fasiqun (disobedient to Allah and rebellious against Allah's Command).*”

¹⁶ Q.S Al-Asr: 1-3, “*By Al-Asr (The Time). Verily, man is in loss. Except those who believe and do righteous good deeds, and recommend one another to the truth, and recommend one another to patience.*”

¹⁷ Q.S As-Saff: 4, “*Verify, Allah loves those who fight in His Cause in rows (ranks) ad if they were a solid structure.*”

¹⁸ Muhammad M.Ag, 2011, *Manajemen Bank Syariah*, Yogyakarta: Unit Penerbit dan Percetakan Sekolah Tinggi Ilmi YKPN, page 24.

concerning Sharia Banking (Islamic Banking), other than Quran and hadith.¹⁹

B. Problem Statements

1. What are the activities classified as money laundering in Islamic banking?
2. What are the roles of Islamic banking in the prevention of money laundering?

C. Objectives

1. To discover activities classified as money laundering in Islamic banking.
2. To understand what the roles Islamic banking has in the prevention of money laundering.

D. Definition of Terms

1. Islamic Banking

An Islamic bank is a deposit-taking banking institution whose scope of activities includes all currently known banking activities, excluding borrowing and lending on the basis of interest. Islamic bank is a role of an investment manager for owner. It shares its earning to the owners of investment in a way depends on several

¹⁹ Amir Mahfud and H. Rukmana, 2010, *Bank Syariah: Teori, Kebijakan, dan Studi Empiris di Indonesia*, Jakarta: Erlangga, page 21.

aspects which are informed to them before they put their investment in the Islamic bank.²⁰

Bank in general is a regulator in the development of small business and a facilitator to accelerate the development of small business (intermediary function). In the business world, there are four factors: the location of the business, the human resources, technology, and fund. These four factors are the things that influence the result of business, either products or services. However, it is commonly stated that fund is linearly equivalent to the size of business—resulting the importance of fund. Bank, in this case, becomes an important aspect for the development of business, especially small business for small enterprises.²¹

Islamic bank is like other banks, they are profit-maximizing entities. It is as the intermediaries between savers and investors and offer custodial and other services found in traditional banking systems. The difference is that in Islamic bank, it is based on the Sharia law. There are especially four factors that are unique in comparison to the conventional bank: prohibition of *riba*, prohibition of *haram*, prohibition of *masyrir* and *gharar*, and the purpose to benefit the society.²²

2. Money Laundering

Money laundering has no exact definition. Each party usually has their own definition about money laundering in accordance

²⁰ Academics International Modern Studies, *Conventional vs Islamic Banking System*, referred to Mabid Ali Al-Jarhi and Munawar Iqbal, page 1.

²¹ Krisna Wijaya, 2010, *Analisis Kebijakan Perbankan Nasional*, Jakarta: PT Elex Media Komputindo, page: 166-167.

²² Patrick Imam and Kangni Kpodar, 2010, *Islamic Banking: How Has It Diffused?* International Monetary Funds, page 3-4.

with the situation they face.²³ There are also various sources that mention about the meaning of money laundering; the law experts and several conventions made by the international body or national body.

Welling states that money laundering is the process by which one conceals the existence, illegal source, or illegal application of income, and then disguised that income to make it appear legitimate.

Chaikin defines that money laundering is the process by which one conceals or disguises that the true nature, source, disposition, movement, or ownership of money for any reason.

Fraser concludes that money laundering is quite simple the process through with 'dirty' money proceed of crime, is washed through 'clean' or legitimate sources and enterprises so that the 'bad guys' may enjoy their ill gotten gain safely.

Department of Justice of Canada explains that money laundering is the conversion of transfer of property, knowing that such property is derived from criminal activity, for the purpose of concealing the illicit nature and origin of the property from government authorities.

Financial Action Task Force on Money Laundering doesn't give exact definition on money laundering. However, it instead gives explanation as mentioned after:

“The goal of a large number of criminal acts is to generate a profit for the individual or group that carries out the act. Money laundering is the processing of these criminal proceeds to disguise

²³ Prof. Dr. Sultan Remy Sjahdeini, SH, 2007, *Seluk Beluk Tindak Pidana Pencucian Uang dan Pembiayaan Terorisme*, Jakarta: PT Pustaka Utama Grafiti, page 1.

their illegal origin. This process is of critical importance, as it enables the criminal to enjoy these profits without jeopardizing their course.

Illegal arm sales, smuggling, and the activities of organized crime, including for example drug trafficking and prostitution rings, can generate huge sums. Embezzlement, insider trading, bribery, and computer fraud schemes can also produce large profits and create the incentive to “legitimate” the ill-gotten gains through money laundering.

When a criminal activity generates substantial profit, the individual or group involved must find a way to control the funds without attracting attention to the underlying activity or the person involved. Criminals do this by disguising the source, changing the form, or moving the funds to a place where they are less likely to attract attention.”

In the Statement on Prevention of Criminal Use of the Banking System for the Purpose of Money Laundering, it's mentioned that “criminal and their associates use the financial system to make payment and transfers of funds from one account to another; to hide the source and beneficial ownership of money; and to provide storage for bank-notes through a self-deposit facility. These activities are commonly referred to as money laundering.

From the national source, Law No. 15 of 2002 concerning Money Laundering that's been amended and added with Law No. 25 of 2003 defines²⁴:

“Money laundering is the act of placing, transferring, paying, shopping, granting, donating, depositing, bringing to foreign states, or of other

²⁴ “Pencucian uang adalah perbuatan menempatkan, mentransfer, membayarkan, membelanjakan, menghibahkan, menyumbangkan, menitipkan, membawa ke luar negeri, menukarkan, atau perbuatan lainnya atas harta kekeayaan yang diketahuinya ayau patut diduga merupakan hasil tindak pidana dengan menyembunyikan atau menyamarkan asal-usul harta kekayaan sehingga seolah-olah menjadi harta kekayaan yang sah.”

kind of acts upon wealth property that's known or estimated resulted from criminal conduct with the purpose to hide or to pass off the source of the wealth property so that it looks like legal wealth property."

In conclusion, money laundering is simply an act of crime whose purpose is to make some illegal wealth property as the result of illegal doing to be legal wealth property through various means. Specifically for Islamic bank, the source of money laundering being the "dirty" money from illegal doing based on the laws, it's also the money got from the prohibited acts based on the Quran and hadith.

E. Theoretical Review

Money laundering is a crime where 'dirty' money is involved. There are several regulations used in order to prevent this kind of crime²⁵:

1. Law No. 22 of 1977 concerning Narcotics
2. Law No. 5 of 1997 concerning Psychotropic
3. Law No. 23 of 1999 concerning Bank Indonesia
4. Law No. 31 of 1999 concerning The Eradication of Corruption, revised by Law No. 20 Of 2001 concerning The Revision of Law No. 31 of 1999 concerning The Eradication of Corruption

Among previous regulations, there is Law No. 23 of 1999 concerning Bank Indonesia which is closely related to this thesis.

²⁵ Adrian Sutedi, SH, MH, 200, *Tindak Pidana Pencucian Uang*, Bandung: PT Citra Aditya Bakti, page 89-92.

Article 31 paragraph (1) of this law states that Bank Indonesia could order banks to stop a part or a whole transaction temporarily if based on the assessment of Bank Indonesia there is a transaction that's estimated resulted from criminal conduct in the banking field.²⁶

Based on the prescription of Law No. 23 of 1999, specifically article 31 paragraph (1), the meaning of 'transaction' is a transaction that includes big amount of money that's estimated resulted from criminal conduct. In this sense, it also includes the money laundering because money laundering is also a criminal conduct.²⁷

The other regulation is Law No. 24 of 1999 concerning The Traffic of Devise and Exchange Value System whose background is the occurrence of Eddy Tansil case.²⁸

Money laundering happens through organization or group of people. Each party in the organization or group has their own role in order to create the perfect money laundering process. Based on various literatures, there are several frameworks of how money laundering proceeds²⁹:

- a. model;
- b. modus operandi;
- c. instrument;
- d. method;

²⁶ *"Bank Indonesia dapat memerintahkan bank untuk menghentikan sementara sebagian atau seluruh kegiatan transaksi tertentu apabila menurut penilaian Bank Indonesia terhadap suatu transaksi patut diduga merupakan tindak pidana di bidang perbankan."*

²⁷ Adrian Sutedi, SH, MH, 200, *Tindak Pidana Pencucian Uang*, Bandung: PT Citra Aditya Bakti, page 90.

²⁸ In 1996, Eddy Tansil was charged for his transfer of Rp 178 billion to a bank in Cayman Islands in order to avoid taxation.

²⁹ Adrian Sutedi, SH, MH, 200, *Tindak Pidana Pencucian Uang*, Bandung: PT Citra Aditya Bakti, page 93.

e. step-by-step and its subjects.

Through the frameworks of how money laundering proceeds, the main part of money laundering which is the illegal money as the result of the criminal conduct could become legal money. However, even if there is huge amount of money, usually it's not used directly. It's because if it's used directly, there is high possibility of legal enforcers to detect the source of it. The actors of criminal conduct tend to commit another criminal conduct in order to cover their criminal conduct by saving their money into financial system; banking system. By saving their money into a bank, the source of the huge amount of money will be hard to be detected. This is called money laundering.³⁰

In the criminal organization, money got from the criminal conduct is like a blood in a body. It's being the most important part for a body to work. When a blood flow stops, a body won't be able to work. The same with the money, if the money for the criminal organization is stopped, the criminal organization will not be able to proceed. This is why, the existence of the money for the criminal organization is greatly important. This reason is why the criminal organization tends to commit money laundering in order to keep functioning.³¹

The crime conducted are usually big enough so that it needs coverage for the income of their wealth. This fact shows that they give disadvantages to the people and the state because it could give the instability of the economical field.³² The procedure of money laundering basically separated into three steps: placement, layering, and integration. Among these three steps, placement and layering are highly potential to happen in banking system. To cut the flow of

³⁰ Ibid, page 132.

³¹ Ibid, page 132.

³² Ibid.

money laundering, it's important to stop the flow during the placement and layering process in the banking system. If the criminals conducting money laundering could get away with money laundering, there are possibilities that:³³

1. they avoid committing the previous act where they got the source of money laundering thus making legal-enforcers unable to seize them;
2. the money could be hidden elsewhere to avoid being take-over by the legal enforcers;
3. the criminals could get benefit from the money under the radar of legal-enforcers;
4. investment in the legal means by the illegal money for the criminals' benefit.

The danger of money laundering, mentioned by Lamberto Dini in 1994 during his era of being the Monetary Minister of Italia: *The social danger of money laundering consists in the consolidation of the economic power of criminal organizations, enabling them to penetrate the legitimate economy.*

Being a dangerous crime, there are several others experts' opinions regarding the case. Indonesia has made certain body to prevent the continuity of the money laundering in this state, namely Indonesia Financial Transaction Reports and Analysis (IFTRA).³⁴ One of the tasks of IFTRA is to observe the money transaction in the monetary service including bank (covering both conventional bank and

³³ Prof. Dr. Sultan Remy Sjahdeini, SH, 2007, *Seluk Beluk Tindak Pidana Pencucian Uang dan Pembiayaan Terorisme*, Jakarta: PT Pustaka Utama Grafiti, page 14.

³⁴ Ibid, page 191.

the Islamic bank). This body is one of the protection shields to money laundering.³⁵

Basically, in Islam, there are several sources to determine the position of certain things and actions: the main sources are al-Quran and as-Sunah, and additional source *al-ijtihad*.

Al-quran is the main source used in Islam as the guideline to live, covering *aqidah* (the belief of Allah), *sharia* (ibadah (relation between men and Allah) and *muamalah* (relation between men and men), *ahklaq*, past history, future history, and other important matters regarding Islam.

As-sunah is a tradition, the source from the tradition in which told, acted, and guided by Rasulullah. As-sunah is also identical to al-hadith. The function itself is to explain the content of al-Quran, especially the ones general and implicitly stated. The ambiguous matters stated in al-Quran also cleared by as-sunah.

Al-ijtihad is the effort conducted by ulama in order to decide certain matters which is not mentioned in both al-Quran and as-Sunah, either implicitly or explicitly. The money laundering, in which not mentioned falls in this category.³⁶

Islamic banks, in comparison to the conventional banks holds certain positive points³⁷:

1. the mechanism of Islamic bank is based on the principles of: efficiency, justice, and togetherness,

³⁵ Adrian Sutedi, SH, MH, 200, *Tindak Pidana Pencucian Uang*, Bandung: PT Citra Aditya Bakti, page 134.

³⁶ Endangg Saifuddin Anshari, 2004, *Pokok-pokok Pikiran tentang Paradigma dan Sistem Islam*. Jakarta: Gema Insani, page 55.

³⁷ Edy Wibowo, 2005, *Mengapa Memilih Bank Syariah*, Bogor : Ghalia Indonesia, page 52-53.

2. Islamic bank is not easily influenced by the monetary situation in the state.
3. Islamic bank is more independent in the policy-making.
4. Islamic bank is relatively easier to respond the government's policies.
5. it's free of money laundering.

From Islamic perspective, Q.S. Al-Baqarah: 85 mentioned:

ثُمَّ أَنْتُمْ هَٰؤُلَاءِ تَقْتُلُونَ أَنْفُسَكُمْ وَتُخْرِجُونَ فَرِيقًا مِّنْكُمْ مِّن دِيَارِهِمْ
تَظَاهِرُونَ عَلَيْهِم بِالْإِثْمِ وَالْعُدْوَانِ وَإِن يَأْتُواكُمْ أُسْرَىٰ فَتَدَّوهُمْ
وَهُوَ مُحْرَمٌ عَلَيْهِمْ إِخْرَاجُهُمْ أَفَتُؤْمِنُونَ بِبَعْضِ الْكِتَابِ وَتَكْفُرُونَ
بِبَعْضٍ فَمَا جَزَاءُ مَن يَفْعَلْ ذَٰلِكَ مِنكُمْ إِلَّا خِزْيٌ فِي الْحَيَاةِ
الدُّنْيَا وَيَوْمَ الْقِيَامَةِ يُرَدُّونَ إِلَىٰ أَشَدِّ الْعَذَابِ ۗ وَمَا اللَّهُ بِغَفِيلٍ
عَمَّا تَعْمَلُونَ ﴿٨٥﴾

After this, it is you who kill one another and drive out a party of you from their homes, assist (their enemies) against them, in sin and transgression. And if they come to you as captives, you ransom them, although their expulsion was forbidden to you. Then do you believe in a part of the Scripture and reject the rest? Then what is the recompense of those who do so among you, except disgrace in the life of this worlds, and of the Day of Resurrection they shall be consigned to the most grievous torment. And Allah is not unaware of what you do.³⁸

Besides from al-Quran, there is also *fiqh* principle of *maa haroma akhdzuhu haruma i'thoouhu* which means that something

³⁸ The meaning of Q.S Al-Baqarah: 85 as translated in <http://www.alquranenglish.com/al-baqarah/quran-english-al-baqarah-85>.

forbidden to take is something forbidden to give.³⁹ It may be concluded that there is no concept of “money laundering” that causes “dirty” money to be “clean”. The money got from forbidden means will stay forbidden money, will stay “dirty” although tried to clean because the base of the money is already dirty.

F. Research Method

1. Legal Material

a. Primary legal material

1) UU No.8 of 2010 concerning Prevention and Suppression of Money Laundering Crime

2) UU No. 21 of 2008 concerning Shari’a Bank.

This law is the basic law used for the Islamic bank in Indonesia, contains the rules specifically how to manage the Islamic bank.

3) UU No. 10 of 1998 concerning the amendment of UU No. 7 of 1992 concerning banking.

4) UU No. 23 of 1999 concerning Central Bank

This law is to give possibility for Bank Indonesia to give monetary policy based of Islamic value.

5) The *Fatwa* of DSN MUI

Consisting of *fatwas* from DSN MUI regarding Islamic banking.

b. Secondary legal material

1) Books related with the material concerning Islamic banking and money laundering in general.

2) Journals related with the material concerning Islamic banking and/or money laundering.

³⁹ Based on a presentation given by Setiawan Budi Utomo October 1, 2015 in Yogyakarta.

- 3) Articles related with Islamic banking and/or money laundering.
- 4) Law experts' opinions on the topic of Islamic banking and/or money laundering.
- 5) Online sources in accordance to Islamic banking and/ or money laundering.

c. Tertiary legal material

- 1) Dictionary related to the terminology used in this paper, especially concerning Islamic banking and money laundering.
- 2) Encyclopedia concerning Islamic banking and money laundering

2. Method of Gathering Data

The method in gathering data was conducted by using library research. Library research means that the writer of certain work shall seek the information of the work based on the books and other written sources.

3. Approach Method

This thesis used normative method. Normative method means the method which is used in legal research by using the existed data; document data sources such as legal theories, and the scholars' opinion.

4. Method of Legal Materials Analysis

The method used for analyzing legal material is the descriptive qualitative method. The obtained data were descriptively presented and try to correlate according to the convention, legal theories, and scholars' opinion related to Islamic banking and/ or money laundering.

G. Proposed Systematic Content

Chapter I : INTRODUCTION

The discussion of this chapter will cover various aspects of study, background, problem statements, literature review, and research methods.

Chapter II : GENERAL OVERVIEW TOWARDS THE ISLAMIC BANKING AND MONEY LAUNDERING IN INDONESIA

This chapter will talk about the general situation in the conventional banking and how money laundering exist in there as well as the specific situation in the Islamic banking.

Chapter III : THE ROLES OF ISLAMIC BANKING IN THE PREVENTION OF MONEY LAUNDERING

This chapter covers the roles of Islamic banking in the prevention of money laundering, both from legal perspective and from al-Quran.

Chapter IV : CONCLUSION

This chapter is the end of the papers, that will conclude the papers.

CHAPTER II

GENERAL OVERVIEW TOWARDS THE ISLAMIC BANKING AND MONEY LAUNDERING IN INDONESIA

A. Islamic Banking in Indonesia

As aforementioned in the chapter I, Indonesia is referred as the biggest Muslim country over the world. Over around 200 million of Indonesian are of Muslim. This amount is equal to about 87% of Indonesian inhabitants.⁴⁰ Although Muslim is the most inhabitants of Indonesia, Indonesia doesn't declare itself as an Islamic state, instead, it's a Muslim state. With the majority of Muslims living in Indonesia, it uses also Islamic law on governing the people. Several aspects are regulated in Islamic law altogether with the non-Islamic law.

In the recent years, Islamic banking has been under the spotlight. The development of this kind of banking appears in the form of various investment companies, holding companies, and others. This development happens in various states including Europe, America, Denmark, United Kingdom, Philippines, and other states.⁴¹ The expansion including not only Islamic states and Muslim states, but also even the countries whose people were not majorly Muslims.

⁴⁰ According to stastical data, the total population of Indonesians are 237 million people, 87.18% are Muslims, 6.96% Protestant, 2.91% Catholic, 1.69% Hindus, 0.72% Buddhist, and 0.05% Kong hu cu. The last census was conducted in 2010. Akhsan Naim and Hendry Syaputra, 2011, *Kewarganegaraan, Suku Bangsa, Agama, dan Bahasa Sehari-hari Bangsa Indonesia*, Jakarta: Badan Pusat Statistik, page 10.

⁴¹ Muhammad Syafi'I Antonio, 2001, *Bank Syariah dari Teori ke Praktik*, Jakarta: Gema Insani, page 74-75.

1. Aim and Purpose of Islamic Banking in General

Humans are the caliph of the Earth.⁴² Islam esteemed that the Earth and all contained inside it is the mandate of Allah to use freely for the social prosperity. In order to fulfill the mandate, Allah give the guidelines covering everything needed by humans; including belief (*aqidah*), morals (*akhlak*), and law (*shar'i*).

Aqidah and *akhlak* is constant, never to change regardless the time and location. As for *shar'i*, it's always changing in accordance to the need of humans, through the *rasuls* of each era as mentioned in Q.S. Al-Maidah: 48 :

وَأَنْزَلْنَا إِلَيْكَ الْكِتَابَ بِالْحَقِّ مُصَدِّقًا لِمَا بَيْنَ يَدَيْهِ مِنَ الْكِتَابِ وَمُهَيْمِنًا
عَلَيْهِ فَاحْكُم بَيْنَهُم بِمَا أَنْزَلَ اللَّهُ وَلَا تَتَّبِعْ أَهْوَاءَهُمْ عَمَّا جَاءَكَ
مِنَ الْحَقِّ لِكُلِّ جَعَلْنَا مِنْكُمْ شُرْعَةً وَمِنْهَا جَاوِلُونَ شَاءَ اللَّهُ لَجَعَلَكُمْ
أُمَّةً وَاحِدَةً وَلَكِنْ لِيَبْلُوَكُمْ فِي مَا آتَاكُمْ فَأَسْتَبِقُوا الْخَيْرَاتِ
إِلَى اللَّهِ مَرْجِعُكُمْ جَمِيعًا فَيُنَبِّئُكُمْ بِمَا كُنْتُمْ فِيهِ تَخْتَلِفُونَ ﴿٤٨﴾

Q.S. Al-Maidah: 48, "and We have revealed to you the Book with the truth, verifying what is before it of the Book and a guardian over it, therefore judge between them by what Allah has revealed, and do not follow their low desires (to turn away) from the truth that has come to you; for everyone of you did We appoint a law and a way, and if Allah had pleased he would have made you (all) a single people, but that He might try you in what He gave you, therefore strive with one another to hasten to virtuous deeds; to Allah is your return of all (of you), so He will let you know that in which you differed.

⁴² Muhammad Syafi'i Antonio, 2001, *Bank Syariah dari Teori ke Praktik*, Jakarta: Gema Insani, page 3

As Muhammad becomes the last *rasul*, *shar'i* has become unique, being not only comprehensive but also universal. It's because no other laws given by Allah to perfect it. Being comprehensive means that it covers all things, including *muamalah* (the relationship between humans) and *ibadah* (the relationship between Allah and humans).⁴³ Universal means that the law is the same, regardless the time and the location.

As previously mentioned, humans are the caliph of the Earth, and mandated to realize the social prosperity, which is closely related to the economic sector, that also means the existence of a monetary institution. A monetary institution is not explicitly stated in Al-quran. However, the structure of the institution, which includes structure, management, function, right and obligation, are explicitly stated. *Kaum*, *ummat* (a group of society), *muluk* (government), *balad* (a state), and others pointed to the function and roles in the development of society.⁴⁴

Other than that, al-Quran, in accordance to *akhlaq*, also mentioned explicitly in the form of narratives and commands: accountability⁴⁵, trust⁴⁶, justice⁴⁷, strict action⁴⁸, and reprimand⁴⁹. Al-

⁴³ Muhammad Syafi'I Antonio, 2001, *Bank Syariah dari Teori ke Praktik*, Jakarta: Gema Insani, page 4.

⁴⁴ Dr. Muhammad. MAg. 2011, *Manajemen Bank Syariah*, Yogyakarta: UPP STIM YKPN, page 23.

⁴⁵ Q.S Al-Baqarah: 283, "And if you are on a journey and cannot find a scribe, then let there be a pledge taken (mortgaging); then if one of you entrusts the other, let the one who is entrusted discharge his trust (faithfully) and let him afraid of Allah , his Lord. And conceal not the evidence for he, who hides it, surely his heart is sinful. And Allah is All-Knower of what you do."

⁴⁶ Ibid.

⁴⁷ One of them, Q.S Al-Anam: 70, "And leave those who take their religion as play and amusement, and whom the life of this world has deceived. But remind (them) with it (the Quran) lest a person be given up to destruction for that which he has earned, when he will find for himself no protector or intercessor besides Allah, and even if he offers every ransom, it will not be accepted from him. such are they who are given up to destruction because of that which they have earned. For them will be a drink of boiling water and a painful torment because they used to disbelieve."

Quran also stated about the hierarchy of management as a means to reach the purpose of an institution as a manifestation of the love for Allah.⁵⁰ This shows that an institution will not work well if *akhlaq* during the process of achieving the purpose is *not* right. It's concluded that based on al-Quran, an institution is *not* about *the form of institution*, but about *the akhlaq/ ethics* in the institution.⁵¹

a. Ethics in institutions

There are several ethics important owned by the people working in institution and especially for the people working in the Islamic banking:

- 1) Accountability and trust is stated through the command in Q.S Al-Baqarah: 283 that explained the existence of mortgage. Mortgage itself is given if there is no trust between the parties involved as a warranty that the parties will do as pledged. However, if between the parties is a trust, the existence of mortgage could be cancelled. Allah is All-Knower.

⁴⁸ *Amar ma'ruf nahi munkar*, Q.S Al Imran: 110, "You are the best of peoples ever raised up for mankind; you enjoin Al-Ma'ruf and forbid Al-Munkar, and you believe in Allah. And had the people of the Scripture believed, it would have been better for them; among them are some who have faith, but most of them are Al-Fasiqun (disobedient to Allah and rebellious against Allah's Command)."

⁴⁹ Q.S Al-Asr: 1-3, "By Al-Asr (The Time). Verily, man is in loss. Except those who believe and do righteous good deeds, and recommend one another to the truth, and recommend one another to patience."

⁵⁰ Q.S As-Saff: 4, "Verify, Allah loves those who fight in His Cause in rows (ranks) as if they were a solid structure."

⁵¹ Muhammad M.Ag, 2011, *Manajemen Bank Syariah*, Yogyakarta: Unit Penerbit dan Percetakan Sekolah Tinggi Ilmi YKPN, page 24.

وَإِنْ كُنْتُمْ عَلَىٰ سَفَرٍ وَلَمْ تَجِدُوا كَاتِبًا فَرِهَانٌ مَّقْبُوضَةٌ فَإِنْ أَمِنَ
 بَعْضُكُم بَعْضًا فَلْيُؤَدِّ الَّذِي أُؤْتِمِنَ أَمَانَتَهُ وَلْيَتَّقِ اللَّهَ رَبَّهُ وَلَا تَكْتُمُوا
 الشَّهَادَةَ وَمَنْ يَكْتُمْهَا فإِنَّهُ إِعْثَابٌ قَلْبُهُ وَاللَّهُ بِمَا تَعْمَلُونَ عَلِيمٌ



Q.S Al-Baqarah: 283, “And if you are on a journey and cannot find a scribe, then let there be a pledge taken (mortgaging); then if one of you entrusts the other, let the one who is entrusted discharge his trust (faithfully) and let him afraid of Allah , his Lord. And conceal not the evidence for he, who hides it, surely his heart is sinful. And Allah is All-Knower of what you do.”

- 2) Justice⁵² is stated in Q.S. Al-Anam: 70, “And leave those who take their religion as play and amusement, and whom the life of this world has deceived. But remind (them) with it (the Quran) lest a person be given up to destruction for that which he has earned, when he will find for himself no protector or intercessor besides Allah, and even if he offers every ransom, it will not be accepted from him. such are they who are given up to destruction because of that which they have earned. For them will be a drink of boiling water and a painful torment because they used to disbelieve,”

It means that there is the existence of mutual result of what ones conduct. Any conduct would result in equal to his conduct. Good conducts brought good result and ill will would result bad result.

- 3) Strict action⁵³ means *amar ma'ruf nahi munkar*, which is the two important Islamic requisites from Al-Quran. It is the central part of Islamic doctrine for all Muslims. The enjoinder of what is right and the forbiddance of what is reprehensible. These two are considered as positive roles in helping others to take the

⁵² One of them, Q.S Al-Anam: 70, “And leave those who take their religion as play and amusement, and whom the life of this world has deceived. But remind (them) with it (the Quran) lest a person be given up to destruction for that which he has earned, when he will find for himself no protector or intercessor besides Allah, and even if he offers every ransom, it will not be accepted from him. such are they who are given up to destruction because of that which they have earned. For them will be a drink of boiling water and a painful torment because they used to disbelieve.”

⁵³ *Amar ma'ruf nahi munkar*. You enjoin what is right and forbid what is reprehensible.

straight path and abstain from reprehensible acts. The straight path is considered the obligation/duty while the other is the sinful/forbidden acts.

كُنْتُمْ خَيْرَ أُمَّةٍ أُخْرِجَتْ لِلنَّاسِ تَأْمُرُونَ بِالْمَعْرُوفِ وَتَنْهَوْنَ
عَنِ الْمُنْكَرِ وَتُؤْمِنُونَ بِاللَّهِ وَلَوْ آمَنَ أَهْلُ الْكِتَابِ لَكَانَ
خَيْرًا لَهُمْ مِّنْهُمْ الْمُؤْمِنُونَ وَأَكْثَرُهُمُ الْفَاسِقُونَ ﴿١١٠﴾

Q.S Al Imran: 110, "You are the best of peoples ever raised up for mankind; you enjoin Al-Ma'ruf and forbid Al-Munkar, and you believe in Allah. And had the people of the Scripture believed, it would have been better for them; among them are some who have faith, but most of them are Al-Fasiqun (disobedient to Allah and rebellious against Allah's Command)."

- 4) Reprimand⁵⁴ is the situation where Al-quran already mentioned that people are in loss unless they fill their time with good deeds.

وَالْعَصْرِ ﴿١﴾ إِنَّ الْإِنْسَانَ لَفِي خُسْرٍ ﴿٢﴾

إِلَّا الَّذِينَ ءَامَنُوا وَعَمِلُوا الصَّالِحَاتِ وَتَوَّصُوا بِالحَقِّ وَتَوَّصُوا بِالصَّبْرِ

﴿٣﴾

Q.S Al-Asr: 1-3, "By Al-Asr (The Time). Verily, man is in loss. Except those who believe and do righteous good deeds, and recommend one another to the truth, and recommend one another to patience."

⁵⁴ Q.S Al-Asr: 1-3, "By Al-Asr (The Time). Verily, man is in loss. Except those who believe and do righteous good deeds, and recommend one another to the truth, and recommend one another to patience."

- 5) Al-Quran also stated about the hierarchy of management as a means to reach the purpose of an institution as a manifestation of the love for Allah.⁵⁵

إِنَّ اللَّهَ يُحِبُّ الَّذِينَ يُقَاتِلُونَ فِي سَبِيلِهِ صَفًّا كَانَتْهُمْ بُنْيَانٌ مَرْصُوعٌ



Q.S As-Saff: 4, “*Verify, Allah loves those who fight in His Cause in rows (ranks) ad if they were a solid structure.*”

This shows that an institution will not work well if *akhlaq* during the process of achieving the purpose is *not* right. It’s concluded that based on al-Quran, an institution is *not* about *the form of institution*, but about *the akhlaq/ ethics* in the institution.⁵⁶

Therefore, it’s important to emphasize the *akhlaq* in the conduct in institution, not limited to certain form of institution, but the institution in general, more so in the monetary institution.

b. History of Islamic banking

Historically, the beginning of monetary institution based on the Islamic law takes place in Mesir in 1960’s in the form of *Mit ghamr Bank*, that operated in the Nile River. This becomes the starter of the existence of the modern Islamic banking. In the 1970, Egypt brought forth the proposal to build Federation of Islamic Banks. In the proposal, it’s mentioned that the bank rate should be changed into profit and loss sharing system. The proposal passed through and then Islamic Development Bank was built. The function of this organization is to assist the founding of Islamic banking in various countries.⁵⁷

⁵⁵ Q.S As-Saff: 4, “*Verify, Allah loves those who fight in His Cause in rows (ranks) ad if they were a solid structure.*”

⁵⁶ Muhammad M.Ag, 2011, *Manajemen Bank Syariah*, Yogyakarta: Unit Penerbit dan Percetakan Sekolah Tinggi Ilmi YKPN, page 24.

⁵⁷ Ibid, page 19.

The earliest application of the monetary institution that covers profit and loss sharing system is Pakistan. In 1979, Pakistan had removed rate system from three of their institutions: National Investment (unit Trust), House Building Finance Corporation, and Mutual funds of the Investment Corporation of Pakistan. In 1979-1980, there was the socialization of the funding system without rate system to farmers and fishermen. And by 1981, seven thousand conventional banks has converted into Islamic banks. In the 1985, all banking system in Pakistan had turned into Islamic banks.⁵⁸

As for the area of South East Asia, Malaysia started *Bank Islam Malaysia Berhad* (BIMB) in 1983. In 1999, BIMB has spread seventy branches in their regions. In the same year, new Islamic bank was built, *Bank Bumi Putera Muamalah* (BBPM). In Malaysia, other than the full pledge Islamic banking, there is also Islamic window that covers the Islamic based services to consumers of conventional banks.⁵⁹

In Indonesia, the development of Islamic Banking in the Islamic countries deeply influenced its existence. In the beginning of 1980's, the discussions of Islamic banking as the pillar of Islamic economy were held; with figures like Karnaen A Perwataatmadja, M. Dawam Rahardjo, AM Saefuddin, M Amin Aziz to join inside the discussion. However, it was not until 1990 that more specific discussion on Islamic banking was held. On 18-20 August 1990, the *Majelis Ulama Indonesia* (MUI) held a seminar on Bank Rate and Banking in Cisarua which resulted Team Banking MUI.⁶⁰

⁵⁸ Ibid, page 22.

⁵⁹ Ibid, page 24

⁶⁰ Muhammad Syafi'I Antonio, 2001, *Bank Syariah dari Teori ke Praktik*, Jakarta: Gema Insani, page 25

The first result from Team Banking MUI is *Indonesian Muamalat Banking* (IMB) on 1 November 1991. In the beginning of IMB, the Islamic banking was not optimally put into spotlight, as it's not an Islamic bank, but "a bank with a sharing system" instead. The Law No, 7 of 1992 doesn't put details on Islamic banking, making the idea of Islamic banking only as one referenced from its article. It's not until Law No. 10 of 1998 that the Islamic banking get detailed reference. The mentioned law regulated detailed references for the Islamic banking.

By the beginning of the development of Islamic banking in Indonesia, started by the existence of the Law No. 10 of 1998, the growth of Islamic banking industry in Indonesia is rapidly growing.

As basically it is the bank that abdicate the *riba* (rate), the Islamic banking is a challenge for muslims, especially muslims in Indonesia to get the banking system that is more suited to the muslims. This is in order to build the theory in order to free the banking industry from *riba*, testing its compatibility to the growth of economy, allocation, and the income distribution.

The ground base of the building of Islamic banking is that the prohibition of *riba*,⁶¹ whereas the the conventional banking contains the weaknesses as mentioned below:⁶²

- a. The transaction based on rate contravenes the justice and fair business. In a business, the income of the business will be uncertain. There will be days when the income is good and there will be days when the income is bad. However so the businessman will still have to pay for the borrowed

⁶¹ Muhammad, 2011, *Manajemen Bank Syariah*, Yogyakarta: UPP STIM YKPN, page 7.

⁶² Machmud. Amir and Rukmana. 2010. *Bank Syariah : Teori, Kebijakan, dan Studi Empiris di Indonesia*. Jakarta : Erlangga, page 5.

principal added with the rate. It's possible for the business man that some time the the income would not pass the amount of the rate money. This is certainly a condition that show the injustice in Islam.

- b. The inflexibility of the transaction based on rate could cause the bankruptcy. This cause the disappearance of the potential productivity by the society as a whole, causing more people to be unemployed. And evenmore, it could cause the growth of debt that caused the difficulty to rebuild business that is already going bankrupt.
- c. The commitment of the bank to protect the money of the consumers cause the apprehensiveness of the bank in order to return the principal money and the rate. For security purpose, bank would only give the principal money and rate to the people who is already competent; the people who could warrant the returning principal money added with the rate. This fact made the people who has potential to build a business that have no warranty given to the bank to be unable to get the principal money from the bank. This caused the imbalance between the competent people and the potential people that is opposite from the Islamic idea.
- d. The transaction based on rate would dissuade the innovation from micro to small business. Innovative business would need to take risks covering the technic and new product errors. For big business, this is not a problem since they have spare money in case their innovation failed. However, for small business, this is clearly problem because they have no spare money in order to realize the innovative idea they have. If their innovation failed, there is no other choice they

have other that returning the principal money and rate they got from the bank and goes bankrupt, preventing them to make another innovation.

- e. In the transaction based on rate, the bank would not be interested into partnership unless there is a warranty of the returned financial capital provided by the bank as well as the additional charge from the rate. Every business plan that is forwarded to the bank will be counted by this system (the warranty of the returning of the principal money as well as the rate), This is possible to result the miscallocation of resource.

These weaknesses of the conventional banking caused the idea of Islamic banking to be able freely developing their products. There will be advantages to the application of freedom of Islamic banking:⁶³

- a. The nurture of justice from the parties regarding to transactions.
- b. There will be more profit for the business man.
- c. Could hold the stability of the money value.
- d. There will be transparency as one of the main characteristics of Islamic banking.
- e. Broaden the application of Islamic law in the living of the muslim society.

⁶³ Machmud. Amir and Rukmana. 2010. *Bank Syariah : Teori, Kebijakan, dan Studi Empiris di Indonesia*. Jakarta : Erlangga, page 5

2. Product and Services

In Islamic bank, there are several product and services are prepared in order to fulfill the need of the costumers. Basically, there products and services are similar to that of conventional banking, but also different at once.

a. The basics of product and services in Islamic banking

In Islamic banking, the product and services are tied to Islamic law, meaning that it will not have possibility to hold a product or service that is prohibited by any of the Islamic laws (al-Quran, al-hadith). Therefore, there are several questions to answer before the start of product and services to give:⁶⁴

1) Is the object of product and service *halal* or *haram*?

As mentioned previously, Islam has put certain line concerning *haram* and *halal*. The line differing both are the right of Allah and through Al-Quran and as-Sunah. As stated in Q.S Al-An-am: 119 that mentioned how Allah has explained what is *haram*.⁶⁵ And one of the principle in Islam is that if Islam has stated one thing to be *haram*, no means of receiving them could make them turn into *halal*. And any *haram* acts will also cause things to be *haram*.

2) Does the object give bad influence to the society?

The aim of Islam is for the interest of the society.⁶⁶ This, in its own explains that for an object to give bad influence to the

⁶⁴ Muhammad Syafi'I Antonio, 2001, *Bank Syariah dari Teori ke Praktik*, Jakarta: Gema Insani, page 33

⁶⁵ Syekh Muhammad page 22

⁶⁶ Amir Machmud page 10

society will be contradictive to the aim of Islam which is focusing on the prosperity of the society.

3) Is the object related to immorality actions?

Immorality is *haram*. And as mentioned previously, once *haram* will always be *haram* and no other way could make it into *halal*, thus causing the objects that is related to immorality to be prohibited to process.

4) Is the object related to gambling?

Gambling is a mean of enjoying free time. However, for gambling is closely related to profit-loss for the players, it becomes *haram*. Gambling is also prohibited to use for money-maker. Since the position of *gambling* in Islam is already clear, it's also clear that in Islamic banking, the objects related to gambling would not be acceptable.

5) Could the object give loss to the Islamic community, either directly or indirectly?

Related to point c, the contradiction of objects giving negative impact to the society is not to be the aim of Islam. This covers both impact got from the direct contact or indirect contact to the Islamic community.

Those aforementioned questions are needed in order to decide whether certain objects are possible be implemented in Islamic banking products and services or impossible because if the objects are contradicting to any of the mentioned questions, it will become impossible to be processed in Islamic bank as it contradicts to the Islamic laws.

b. Principles of product and services in Islamic banking

After the basics of product and services in Islamic banking, there are several principles: shariaa principles, economic principles and carefulness principle.⁶⁷

1) Shaaria principles

In the sharia principles, there are some fulfillment needed:

- a) the justice principle (*'adl*) that means positioning something in the right place and giving something to the people who has the rights,
- b) equality principle (*tawazun*) that means there is equality between material and spiritual, private and public, monetary sector and riil sector, business and social, and the aspect of utilization and continual,
- c) *maslahah* principle, meaning that the every action is for the recent and Hereafter, individual and collective, and has to fulfill three elements: *halal* , bringin good things (*thoyib*), and doesn't cause bad things,
- d) universalism principle (*alamiyah*), that means could be carried out by, with, and for the parties interested without considering the race and class.

2) Economic democratic

Economic democratic means that the conduct of Islamic banking holds justice, togetherness, equality, and usefulness.

3) Carefulness principle

It means that in Islamic banking, there is the principle that has to be followed to reach the aim of healthy bank where it's strong and efficient as mentioned in the laws.

⁶⁷ Dr. Mardani pg 25

c. Product and Services in Islamic Banking

In the Islamic banking, there are several products and services provided:

1) Depository principle (Al-Wadiah)

Al-Wadi'ah is the contract to save their belongings or money between the party who owns the belongings or money and the party who's given the trust to watch over the safety, security, and completeness of the belongings or money.⁶⁸

Based on Q.S Al-Baqarah: 283 and Q.S An-Nisaa:58, it's mentioned that if one is going on a journey and needs to trust someone else on their belongings, ones should be truthful, because Allah is Seeing and Hearing.

In the application in the banking, bank becomes the the acceptor of the possession (saving) can use the savings for current account (*giro*) and saving account (*tabungan berjangka*). As the consequence, the profit received from the saving will be taken by bank (and bank will also be responsible in case instead of profit, it become loss). It means that the owner of the possession will get fully warranty of their saving in the bank, fully getting the amount of their possession. However, it is not prohibited for bank to give incentive to the owner. This insentive is in the form of bonus that is not fixed previously. This bonus is reasonably based on the bank itself.

⁶⁸ Explanation in the article 19 verse (1) paragraph a Law No. 21 year 2008 of Islamic Banking.

2) Profit-sharing principle

Based on Q.S. Shaad: 24: *“He said: Surely he has been unjust to you in demanding your ewe (to add) to his own ewes; and most surely most of the partners act wrongfully towards one another, save those who believe and do good, and very few are they; and Dawood was sure that We had tried him, so he sought the protection of his Lord and he fell down bowing and turned time after time (to Him).”*

In the application in the banking, this is the partnership (*al-Musayarakah, project financing participation*), that is applied to the financing of a project in which the consumers and the bank provided the principal money to pay for the project. Only after the project has ended that the consumer returns the principal money provided by the bank added with the profit-sharing fixed before the start of the project.

Al-muyarakah is the contract between two parties or more for a certain business in which each parties gives their shares with the stipulation that the profit will be shared in accordance to the contract and the loss will be liable for the portion of each shares.⁶⁹

Besides the partnership, also under the same category of profit sharing principle is trust financing/trust investment. Based on Q.S. Al-Muzzamil:20: *“Surely your Lord knows that you pass in prayer nearly two-thirds of the night, and (sometimes) a third of it, and (also) a party pf those with you; and Allah measures the night and the day, he knows that you are not able to do it, so He has turned to you mercifully, therefore read what it is easy of the Quran. He knows that there must be among you sick and others who travel in the land seeking of the bounty of Allah, and others who fight in Allah’s way, therefore tread as much of it as is easy (to you), and keep up prayer and pay the poor-rate and offer to Allah a goodly gift, and whatever of good you send*

⁶⁹ Explanation in the article 19 verse (1) paragraph c Law No. 21 year 2008 of Islamic Banking

beforehand for yourselves, you will find it with Allah; that is best and greatest in reward; and ask for forgiveness of Allah; surely Allah is Forgiving, Merciful.”

Al-mudharabah is usually applicable in the product of financing and investment where one party paid for the project, whereas the other one would be the one responsible for the processing of the project. The profit got from this kind of application is that the profit is shared based on the previous agreement. And for the loss will be responded by the one responsible for the principal money, unless the one responsible for the processing of the project is caused by the later.

Al-Mudharabah is the contract for a business between first party as the owner of principals and the second party as the manager of the principals and divide the profit based on the contract.⁷⁰

3) Sale and Purchase

Based on Q.S. Al-Baqarah: 275: *“Those who swallow down usury can not arise except as one whom Shaitan has prostrated by (his) touch does rise. That is because they say, trading is only like usury; and Allah has allowed trading and forbidden usury. To whomsoever then the admonition has come from his Lord, then he desists, he shall have what has already passed, and his affair is in the hands of Allah; and whoever returns (to it)—these are the inmates of the fire; they shall abide in it.”*

In the application in the banking, bank becomes the the acceptor of the possession (saving) can use the savings for current account (*giro*) and saving account (*tabungan berjangka*). As the consequence, the profit received from the saving will be taken by bank (and bank will also be

⁷⁰ Explanation in the article 19 verse (1) paragraph b Law No. 21 year 2008 of Islamic Banking

responsible in case instead of profit, it become loss). It means that the owner of the possession will get fully warranty of their saving in the bank, fully getting the amount of their possession. However, it is not prohibited for bank to give insentive to the owner. This insentive is in the form of bonus that is not fixed previously. This bonus is reasonably based on the bank itself.

4) Operational lease and financial lease

In the application in the banking, the application is called as *Al-Ijarah*. It's a mixture of sale and purchase agreement and the lease agreement. It means that the beginning of the application, the lease agreement is applicable, but by the end, it turns to be sale and purchase agreement.

Al-Ijarah is the contract of fund in order to replace the right to use or function of certain goods or services based on lease agreement without replacing the ownership of he goods.⁷¹

In banking industry. There are two kinds of al-Ijarah: the operating lease and the financial lease.

B. Comparison between Islamic Banking and Conventional Banking

In Indonesia, there are Islamic banking and conventional banking, with Islamic banking become the newer choice in comparison to conventional banking that exists longer than the Islamic one.

⁷¹ Explanation in the article 19 verse (1) paragraph c Law No. 21 year 2008 of Islamic Banking

1. The situation in conventional banking

The form of various aspects in daily life is influenced by the condition of the environment, especially regarding the development of the society. In Indonesia, the banking industry is also influenced by the society, thus bringing different characteristics of banking industry from the other foreign countries; nevertheless, it is basically similar with the banking industry in the other countries. This different characteristics are influenced by the existence of Pancasila and UUD 1945 as the foundation of the laws where the other countries use their own laws.

The characteristics of banking industry in Indonesia are:

1. It's based on the economic democratic with precautionary principles. Its main function is to be the collector and distributor of the public fund to aim for the supporter of national development.
2. It's utilized to maintain the continuity of national development, for the just and prosperous society based on Pancasila and UUD 1945.
3. It carried out its function and responsibility towards the public by keep quickly addressing economic challenge, both from the national side and the international side.

Economic democratic means that the society takes active role in the banking industry, with banking and other monetary service provider as the guide so that there will be better climate for the development of the banking industry.

2. The comparison between Islamic banking and conventional banking

Islamic banking and Conventional banking basically have similarities, especially on the technicality of accepting money, transferring, and the requirements on getting financial assistance such as identity card, proposal, monetary report, and etc. However so, there are also differences that differ Islamic banking and conventional banking.

COMPARISON BETWEEN ISLAMIC BANKING AND
CONVENTIONAL BANKING⁷²

Islamic Banking	Conventional Banking
1. Only approving <i>halal</i> (permitted) investment	1. Approving both <i>halal</i> (permitted) and <i>haram</i> (forbidden) investment
2. Using sharing, sell-purchase, and renting principles	2. Using bank rate principle
3. Profit and <i>falah</i> ⁷³ oriented	3. Profit oriented
4. The relationship between bank and consumers is as “friends”, not only as debtors	4. The relationship between bank and consumers is only as debtors
5. There is Islamic Board of Intendants (<i>Dewan Pengurus Syariah-DPS</i>)	5. No DPS

⁷² Syafii Antonio page 34

⁷³ *Falah* means looking for prosperity for both human words and the hereafter.

Islamic banking, as it is based on the Islamic principles, have both the consequences in the current world and the Afterworld. In its contracts, basically, what the current contracts is will be brought until the Hereafter, the consequences, be it the good ones and the bad ones. As for the conventional banking, the consequences is only bound with the conventional laws. Since its main bases are different, the contracts made in Islamic banking will also differ, based on the Islamic law, which regulates about the object of the contracts, the subjects, and etc that must fulfill the stipulation of contract in Islam, essentially the principles (*rukun*) and the conditions (*syarat*) regarding the contract. The principles are that the absolute important elements in a contract, while conditions are the elements that must exist in the contract.⁷⁴

The main principles for contract in Islam is that of *ijab* and *qabul*. While the conditions are regarding the subjects and objects.

Ijab and *qabul* will have legal consequence when there are: a) the declaration of binding, explicitly stating the term and conditions in which a contract is made, b) there is object in the contract, can be in the form of products or service, c) there are subjects/parties, must be adults who have the liability, and d) there is purpose of the contract that **must not** contradict to the Islamic law.⁷⁵

The conditions of contracts are regarding the subjects and objects of the contracts. The conditions that must be fulfilled by the subjects are: a) the contracts is **not** contradicting the Islamic laws; there is freedom in making the contracts, nut it's limited by the Islamic laws, b) the contracts are made based on the sincerity of the parties, without forceful intentions, and c) the contents of the contract must be clear. While the conditions that must be fulfilled for the objects are : a)

⁷⁴ Hk perjanjian islam abdul ghofur

⁷⁵ ibid

the objects must exist, except *salam*, b) the object of the contracts must *halal*; *haram* products, *mubah* products, and the state-owned products are not to be the objects of contracts, c) the objects are clear, and d) the objects could be given readily.

As Islamic banking is based on the Islamic laws, the aforementioned conditions apply to the contracts made in the Islamic banking area. The main difference is that of the point where both subjects and objects are both not to contradict with the Islamic laws, especially the *haram* and *halal* principle. Substantially, both the contracts in the Islamic banking and the conventional banking is the same.⁷⁶ Therefore, it could be stated that even though the substantial of the contracts are basically the same, the principles of *haram* and *halal* cause the contracts in the Islamic banking become more specific compared to the conventional banking.⁷⁷ For example, the business of pig farm for consumption will be possible in the conventional banking, but not in the Islamic banking because the object itself (which is pig) is included in the *haram* category.

Besides the *halal* and *haram* principles in the making of contract, there is also the profit-sharing, meanwhile the conventional banking use the rate principle. There are basically some differences regarding the profit-sharing principle and the rate principle:⁷⁸

⁷⁶ Abdul ghoful 25

⁷⁷ *ibid*

⁷⁸ Amir machmud page 10

COMPARISON BETWEEN PROFIT-SHARING AND RATE
PRINCIPLES

Profit-sharing principle	Rate principle
1. Determining the amount of profit-sharing is decided in the contract based on the profit/loss	1. Determining the rate is decided in the contract without basing on the profit/loss
2. The returned money is based on the profit got by the parties	3. The percentage of the rate is based on the principal money
4. The risk of the contract is burdened to both parties, both the profit and the loss	5. The rate is paid based on the amount mentioned in the contract without regarding the profit/loss of the parties
6. The amount of profit-sharing increases when the profit also increase	7. The amount of the rate is paid conttantly
8. The profit-sharing is <i>halal</i>	9. The rate is <i>haram</i>

The aim of the business is to get profit. In islam, the money saved without being used will decrease yearly because of the existence of *zakat maal* for 2.5%. Islam accepts the concept of rate in conventional banking and considers it as *riba*, unless the profit got from the money owned by individuals is given also to the owner. However for the case of debt, it's not acceptable, because every profits

got by the money lender from the money borrower is considered *riba*, which is *haram*.⁷⁹

Riba itself is *haram* because it contradicts with the principle in Islam; instead of being the public interest, it's being the personal interest, although in Islam, the public interest is more important than the personal interest.

Islamic banking have the same structure as the conventional banking, such as the commissary and the directors, however, there is a certain structure that is specially in the Islamic banking, *Dewan Pengawas Syariah* (DPS). The obligation of the Islamic banking is to posses DPS, that is not available in the conventional banking. The function of DPS is to to supervise the operational of the Islamic banking and the products provided in the Islamic banking so that both are based on the Islamic laws. The position of DPS is usually put in the same level as the commissary in each bank. This is to ensure the effectiveness of the opinion of the DPS in each bank. The decree of the DPS members is usually in the hand of the Board Meetings after the members of DPS are recommended by *Dewan Syariah Nasional* (DSN).

Therefore, in conclusion, the Islamic banking and the conventional banking are the same. However, several points are explicitly different, causing some special points that differ the Islamic banking to the conventional banking, namely:

- a. the objects of the contract in Islamic banking must be *halal* that means the smaller scope in comparison to objects in the conventional banking

⁷⁹ Amir machmud page 10

- b. the existence profit-sharing principles in the Islamic banking is not available in the conventional banking which uses the rate-principle
- c. the Islamic banking use sharing, sell-purchase, and renting principle
- d. the existence of DPS is solely in the Islamic banking and not available in the conventional banking

3. Money Laundering

Money laundering has no exact definition. Each party usually has their own definition about money laundering in accordance with the situation they face.⁸⁰ There are also various sources that mention about the meaning of money laundering; the law experts and several conventions made by the international body or national body.

Welling states that money laundering is the process by which one conceals the existence, illegal source, or illegal application of income, and then disguised that income to make it appear legitimate.

Chaikin defines that money laundering is the process by which one conceals or disguises that the true nature, source, disposition, movement, or ownership of money for any reason.

Fraser concludes that money laundering is quite simple the process through with 'dirty' money proceed of crime, is washed through 'clean' or legitimate sources and enterprises so that the 'bad guys' may more safe enjoy their ill gotten gains.

⁸⁰ Prof. Dr. Sultan Remy Sjahdeini, SH, 2007, *Seluk Beluk Tindak Pidana Pencucian Uang dan Pembiayaan Terorisme*, Jakarta: PT Pustaka Utama Grafiti, page 1.

Department of Justice of Canada explains that money laundering is the conversion of transfer of property, knowing that such property is derived from criminal activity, for the purpose of concealing the illicit nature and origin of the property from government authorities.

In the Statement on Prevention of Criminal Use of the Banking System for the Purpose of Money Laundering, it's mentioned that "criminal and their associates use the financial system to make payment and transfers of funds from one account to another; to hide the source and beneficial ownership of money; and to provide storage for bank-notes through a self-deposit facility. These activities are commonly referred to as money laundering.

From the national source, Law No. 15 of 2002 concerning Money Laundering that's been amended and added with Law No. 25 of 2003 defines⁸¹: "Money laundering is the act of placing, transferring, paying, shopping, granting, donating, depositing, bringing to foreign states, or of other kind of acts upon wealth property that's known or estimated resulted from criminal conduct with the purpose to hide or to pass off the source of the wealth property so that it looks like legal wealth property."

In conclusion, money laundering is simply an act of crime whose purpose is to make some illegal wealth property as the result of illegal doing to be legal wealth property through various means. Specifically for Islamic bank, the source of money laundering being the "dirty" money from illegal doing based on the laws, it's also the money got from the prohibited acts based on the Quran and hadith.

⁸¹ *"Pencucian uang adalah perbuatan menempatkan, mentransfer, membayarkan, membelanjakan, menghibahkan, menyumbangkan, menitipkan, membawa ke luar negeri, menukarkan, atau perbuatan lainnya atas harta kekeayaan yang diketahuinya ayau patut diduga merupakan hasil tindak pidana dengan menyembunyikan atau menyamarkan asal-usul harta kekayaan sehingga seolah-olah menjadi harta kekayaan yang sah."*

1. Classification of Money Laundering

The development of technology brings the development of various aspects in the daily life, including the politics, economic, socials, and even the criminality. The development of criminality occurs faster in comparison with the development of the legal aspects; both the law and the legal enforcers. This fact causes the criminality to occur easier and more damaging. Criminality is progressing faster, even more developing that it become transnational crimes, where the result of the crimes could be hidden somewhere and taken elsewhere. This is known as money laundering.⁸²

The term “money laundering” itself appeared in 1930 in the US, as it had close relationship with laundry company. At that time, the mafia organization hid their money by buying the laundry companies in order to cover the source of their money.⁸³

However, money laundering actually has no exact definition. Each party usually has their own definition about money laundering in accordance with the situation they face.⁸⁴ There are also various sources that mention about the meaning of money laundering; the law experts and several conventions made by the international body or national body.

Welling states that money laundering is the process by which one conceals the existence, illegal source, or illegal application of income, and then disguised that income to make it appear legitimate.

⁸² TB Irman, page 1

⁸³ TB Irman, page 39

⁸⁴ Prof. Dr. Sultan Remy Sjahdeini, SH, 2007, *Seluk Beluk Tindak Pidana Pencucian Uang dan Pembiayaan Terorisme*, Jakarta: PT Pustaka Utama Grafiti, page 1.

Chaikin defines that money laundering is the process by which one conceals or disguises that the true nature, source, disposition, movement, or ownership of money for whatever reason.

Fraser concludes that money laundering is quite simple the process through with 'dirty' money proceed of crime, is washed through 'clean' or legitimate sources and enterprises so that the 'bad guys' may more safe enjoy their ill gotten gains.

Department of Justice of Canada explains that money laundering is the conversion of transfer of property, knowing that such property is derived from criminal activity, for the purpose of concealing the illicit nature and origin of the property from government authorities.

2. Involvement of Bank in Money Laundering

Basically, based on the previous opinions by the legal experts, money laundering is the act of criminal offenders to cover the source of money in which they received through illegal means, by entering the money into banking industry, both national banking nor foreign banking, so that they could avoid the legal procedure and the seizure of the money.⁸⁵

The procedure of money laundering basically is separated into three steps: placement, layering, and integration.⁸⁶

⁸⁵ TB Irman, page 2

⁸⁶ TB Irman, page 41

The first step is placement. In this step, the form of money is changed through the procession in the banking industry. The money from illegal means is usually in the form of cash money. In this step, criminal offenders usually save their money little by little and continuously in the banking industry so that the cash money become electric money among the others in the bank. Placement covers:

- a. Placing money in the bank; often followed with credit.
- b. Transferring money to the bank or other monetary services as credit in order to blur the audit trail.

The second step is layering. Layering means that the criminal offenders transfer their money to other banking accounts, especially foreign banking, where bank secrecy is upheld in order to complicate the finding of the source of money.

The last step is integration. Integration occurs after placement and layering are completed. In this step, the criminal offenders gather their money to use in legal means that make the money look legal.

Among these three steps, all three of them are placement potentially to happen in banking system, however it's easier to stop the process during placement or layering because in the integration step, the process is more difficult to

conclude. If the criminals conducting money laundering could get away with money laundering, there are possibilities that:⁸⁷

- a) they avoid committing the previous act where they got the source of money laundering thus making legal-enforcers unable to seize them;
- b) the money could be hidden elsewhere to avoid being take-over by the legal enforcers;
- c) the criminals could get benefit from the money under the radar of legal-enforcers;
- d) investment in the legal means by the illegal money for the criminals' benefit.

Several infamous cases of money laundering happened in Indonesia: The Century case, Citibank case, Mega Bank case. The three cases are several among many cases of money laundering that related to banking industry, showing how much closely related to the industry the crime is.

3. Regulations:

In Indonesia, there are several laws that regulate money laundering:

- 1) Article No. 1 verse 1 of Law No. 25 of 2003: "Money laundering is the act of putting, transferring, paying, granting, contributing, bringing to the foreign state, and any other acts over the properties, that is gotten from

⁸⁷ Prof. Dr. Sultan Remy Sjahdeini, SH, 2007, *Seluk Beluk Tindak Pidana Pencucian Uang dan Pembiayaan Terorisme*, Jakarta: PT Pustaka Utama Grafiti, page 14.

illegal action which aims to hide or obscure the source of the properties mentioned so that it become legal”

2) Juridically, the money laundering also regulated in the Law No. 8 of 2010 regarding the eradication of money laundering that divides the money laundering into three kinds of money laundering:

a. Active money laundering:

Everyone who put, transfer, pay, grant, contribute, bring to foreign states, change the form of the property that is indicated to be from illegal acts mentioned in the article 2 verse 1 that aims to hide the source of the properties (Article 3 of Law no. 8 of 2010).

b. Passive money laundering:

Everyone who get the placement of the transfer, payment, grant, contribution, exchange, of the property that is indicated to be from illegal acts mentioned in the article 2 verse 1 that aims to hide the source of the properties (Article 5 of Law no. 8 of 2010). These action are taken as the same situation as committing money laundering. There are exception for the informer who act off their obligation.

c. Article 4 of Law no. 8 of 2010:

Everyone who is benefited from the placement of the transfer, payment, grant, contribution, exchange, of the property that is indicated to be from illegal acts mentioned in the article 2 verse 1 that aims to

hide the source of the properties (Article 5 of Law no. 8 of 2010). These action are taken as the same situation as committing money laundering, the same as being passive money laundering.

Closely related to the money laundering crime is various regulations that related to the money laundering regulations, namely regulations to specific crimes, such as Law No. 22 of 1977 concerning Narcotics and Law No. 5 of 1997 concerning Psychotropic that prohibit the narcotics and psychotropics in Indonesia. The conduct related to both specific objects are to be included in crime and punishable based on the law. And any money or properties achieved from the conducts which are prohibited based on the law is considered as illegal money and by hiding or obscuring the source of the properties mentioned so that it become legal is considered as money laundering.

4. Money Laundering in the Islamic Banking

A monetary institution is not explicitly stated in Al-quran. However, the structure of the institution, which includes structure, management, function, right and obligation, are explicitly stated. *Kaum, ummat* (a group of society), *muluk* (government), *balad* (a state), and others pointed to the function and roles in the development of society.⁸⁸

Other than that, al-Quran, in accordance to akhlaq, also mentioned explicitly in the form of narratives and commands:

⁸⁸ Dr. Muhammad. MAg. 2011, Manajemen Bank Syariah, Yogyakarta: UPP STIM YKPN, page 23.

accountability⁸⁹, trust⁹⁰, justice⁹¹, strict action⁹², and reprimand⁹³. Al-Quran also stated about the hierarchy of management as a means to reach the purpose of an institution as a manifestation of the love for Allah.⁹⁴ This shows that an institution will not work well if *akhlaq* during the process of achieving the purpose is *not* right. It's concluded that based on al-Quran, an institution is *not* about *the form of institution*, but about *the akhlaq/ ethics* in the institution.⁹⁵

Accountability and trust is stated through the command in Q.S Al-Baqarah: 283 that explained the existence of mortgage. Mortgage itself is given if there is no trust between the parties involved as a warranty that the parties will do as pledged. However, if between the parties is a trust, the existence of mortgage could be cancelled. Allah is All-Knower.

⁸⁹ Q.S Al-Baqarah: 283, "And if you are on a journey and cannot find a scribe, then let there be a pledge taken (mortgaging); then if one of you entrusts the other, let the one who is entrusted discharge his trust (faithfully) and let him afraid of Allah, his Lord. And conceal not the evidence for he, who hides it, surely his heart is sinful. And Allah is All-Knower of what you do."

⁹⁰ Ibid.

⁹¹ One of them, Q.S Al-Anam: 70, "And leave those who take their religion as play and amusement, and whom the life of this world has deceived. But remind (them) with it (the Quran) lest a person be given up to destruction for that which he has earned, when he will find for himself no protector or intercessor besides Allah, and even if he offers every ransom, it will not be accepted from him. such are they who are given up to destruction because of that which they have earned. For them will be a drink of boiling water and a painful torment because they used to disbelieve."

⁹² *Amar ma'ruf nahi munkar*, Q.S Al Imran: 110, "You are the best of peoples ever raised up for mankind; you enjoin Al-Ma'ruf and forbid Al-Munkar, and you believe in Allah. And had the people of the Scripture believed, it would have been better for them; among them are some who have faith, but most of them are Al-Fasiqun (disobedient to Allah and rebellious against Allah's Command)."

⁹³ Q.S Al-Asr: 1-3, "By Al-Asr (The Time). Verily, man is in loss. Except those who believe and do righteous good deeds, and recommend one another to the truth, and recommend one another to patience."

⁹⁴ Q.S As-Saff: 4, "Verify, Allah loves those who fight in His Cause in rows (ranks) as if they were a solid structure."

⁹⁵ Muhammad M.Ag, 2011, *Manajemen Bank Syariah*, Yogyakarta: Unit Penerbit dan Percetakan Sekolah Tinggi Ilmi YKPN, page 24.

﴿ وَإِنْ كُنْتُمْ عَلَىٰ سَفَرٍ وَلَمْ تَجِدُوا كَاتِبًا فَرِهَانٌ مَّقْبُوضَةٌ فَإِنْ أَمِنَ بَعْضُكُم بَعْضًا فَلْيُؤَدِّ الَّذِي أُؤْتِمِنَ أَمَانَتَهُ وَلْيَتَّقِ اللَّهَ رَبَّهُ ۗ وَلَا تَكْتُمُوا الشَّهَادَةَ ۗ وَمَنْ يَكْتُمْهَا فَإِنَّهُ آءَانِمٌ قَلْبُهُ ۗ وَاللَّهُ بِمَا تَعْمَلُونَ عَلِيمٌ ﴾

﴿ ٢٨٣ ﴾

Q.S Al-Baqarah: 283, “And if you are on a journey and cannot find a scribe, then let there be a pledge taken (mortgaging); then if one of you entrusts the other, let the one who is entrusted discharge his trust (faithfully) and let him afraid of Allah , his Lord. And conceal not the evidence for he, who hides it, surely his heart is sinful. And Allah is All-Knower of what you do.”

Justice⁹⁶ is stated in Q.S. Al-An am: 70, where stated the existence of mutual result of what ones conduct. Any conduct would result in equal to his conduct. Good conducts brought good result and ill will would result bad result.

﴿ وَذَرِ الَّذِينَ اتَّخَذُوا دِينَهُمْ لَعِبًا وَلَهْوًا وَعَرَّتْهُمْ الْحَيَاةُ الدُّنْيَا وَذَكَّرَ بِهِ ۗ أَنْ تُبْسَلَ نَفْسٌ بِمَا كَسَبَتْ لَيْسَ لَهَا مِنْ دُونِ اللَّهِ وَلِيٌّ وَلَا شَفِيعٌ وَإِنْ تَعَدِلْ كُلُّ عَدْلٍ لَّا يُؤْخَذُ مِنْهَا ۗ أُولَٰئِكَ الَّذِينَ أُبْسِلُوا بِمَا كَسَبُوا ۗ لَهُمْ شَرَابٌ مِّنْ حَمِيمٍ وَعَذَابٌ أَلِيمٌ بِمَا كَانُوا يَكْفُرُونَ ﴾ ﴿٧٠﴾

Q.S Al-Anam: 70, “And leave those who take their religion as play and amusement, and whom the life of this world has deceived. But remind (them) with it (the Quran) lest a person be

⁹⁶ One of them, Q.S Al-Anam: 70

given up to destruction for that which he has earned, when he will find for himself no protector or intercessor besides Allah, and even if he offers every ransom, it will not be accepted from him. such are they who are given up to destruction because of that which they have earned. For them will be a drink of boiling water and a painful torment because they used to disbelieve.”

Strict action⁹⁷ means *amar ma'ruf nahi munkar*, which is the two important Islamic requisites from Al-Quran. It is the central part of Islamic doctrine for all Muslims. The enjoinder of what is right and the forbiddance of what is reprehensible. These two are considered as positive roles in helping others to take the straight path and abstain from reprehensible acts. The straight path is considered the obligation/duty while the other is the sinful/forbidden acts.

Reprimand⁹⁸ is the situation where Al-quran already mentioned that people are in loss unless they fill their time with good deeds.

وَالْعَصْرِ ﴿١﴾ إِنَّ الْإِنْسَانَ لَفِي خُسْرٍ ﴿٢﴾

إِلَّا الَّذِينَ ءَامَنُوا وَعَمِلُوا الصَّالِحَاتِ وَتَوَّصَوْا بِالْحَقِّ وَتَوَّصَوْا بِالصَّبْرِ

﴿٣﴾

Q.S Al-Asr: 1-3, “By Al-Asr (The Time). Verily, man is in loss. Except those who believe and do righteous good deeds, and

⁹⁷ *Amar ma'ruf nahi munkar*. You enjoin what is right and forbid what is reprehensible.

⁹⁸ Q.S Al-Asr: 1-3, “By Al-Asr (The Time). Verily, man is in loss. Except those who believe and do righteous good deeds, and recommend one another to the truth, and recommend one another to patience.”

recommend one another to the truth, and recommend one another to patience.”

Al-Quran also stated about the hierarchy of management as a means to reach the purpose of an institution as a manifestation of the love for Allah.⁹⁹

إِنَّ اللَّهَ يُحِبُّ الَّذِينَ يُقَاتِلُونَ فِي سَبِيلِهِ صَفًّا كَانَتْهُمْ بُنْيَانٌ مَرُصُوصٌ



Q.S As-Saff: 4, “*Verify, Allah loves those who fight in His Cause in rows (ranks) ad if they were a solid structure.*”

This shows that an institution will not work well if *akhlaq* during the process of achieving the purpose is *not* right. It’s concluded that based on al-Quran, an institution is *not* about *the form of institution*, but about *the akhlaq/ ethics* in the institution.¹⁰⁰

In Muhammad SAW’s era, Prophet Muhammad SAW established Baitul Mal that worked as the revenue collectors and expenditures that aim to reach the welfare orientation in the society. Next to Baitul Mal is the Wilayatul Hibah, which is the control system held by Muhamad SAW that in the modern system’s called enforcement agency. The aim is to control the framework of economic situation and the people. This is an important aspect because the relation between people in

⁹⁹ Q.S As-Saff: 4, “*Verify, Allah loves those who fight in His Cause in rows (ranks) ad if they were a solid structure.*”

¹⁰⁰ Muhammad M.Ag, 2011, *Manajemen Bank Syariah*, Yogyakarta: Unit Penerbit dan Percetakan Sekolah Tinggi Ilmi YKPN, page 24.

accordance to economic situation wouldn't work without the law and order.¹⁰¹

Besides the afore mentioned the base of institution (the revenue expenditure institution and the enforcement agency), Muhammad SAW also developed the ethics in business: the eradication of *riba* (that was common practice although already mentioned as prohibited in Al-Quran), the justice (the determining of price based on market, *not* monopoly by the business holder), the eradication of monopoly, and others *akhlaq* just, *ikhshan*, teamwork, *amanah*, patience, and determination.¹⁰²

5. Cases of Money Laundering in the Islamic Banking

The cases of money laundering are commonly found in the conventional banking industry, however, there are also instances that they were found in the Islamic banking industry, although not as common as the conventional banking industry. Several cases from Islamic banking industry regarding the cases of money laundering has been analyzed by the court.

There are several examples of money laundering cases in Bank Syariah Mandiri unit in Jakarta Selatan, Kediri and Jayapura.

The case from Bank Syariah Mandiri Jakarta Selatan is where two parties use another people's money in order to open a deposit with higher rate than the norm. These money are owned by other therefore it's not supposedly able to be owned by them and is not possible to use as the source of deposit.

¹⁰¹ Dr. Muhammad, MAg, page: 25-26.

¹⁰² Ibid, page 28

However by falsifying their information and data, they were able to create a deposit account in the bank Syariah Mandiri. This case has been verdicted in the Decision No. 269/PID/2015/PT.DKI.

Another case of money laundering in Bank Syariah Mandiri Kediri takes place in 2015. This case involved the former Head of Office of Bank Syariah Mandiri Ir. Heru Panbudhi, SH. In the period of 2012-2013, the defendant had misused his position as the head to use the customer's fund for his own interest. The deposited fund owned by the customers are used by the defendant to produce investment with third party. In order to gain the trust of the customers, he claimed as the representative of Bank Mandiri Syariah Kediri. These fund later is used to buy several properties including buildings and lands. However, this is later found by the internal auditor of BSM Kediri and decided that it is to cause loss to the bank for 24.5 billions because bank has to return the fund to the customers. The defendant is charged by article 63 and 66 of Law No 21 of 2008 of Islamic Banking and the Law No 8 of 2010 of The Prevention and Eradication of Money Laundering.

The case in Bank Mandiri Syariah in Jayapura also involved the former Head of Office of Bank Mandiri Syariah Jayapura periode 2010-2014, Ir. Syamsul Ansar Muis. The case has been verdicted in the Decision No. 328/Pid.B/2016/PN Jap. This case is a fraud by the defendant by using the customers' identity to make loan. The customers whose identity are used are not informed on how much fund is taken and how much installment to return to the bank.

In Islam, there is no explicit explanation on the money laundering, however, there are prohibition from Islam that could be the bases of money laundering, namely:

1. Corruption

Corruption is one of the worst predicaments that haunt many countries around the world. The abuse of power, authority and resources by governments and public servants hinders the progress of countries. In Indonesia, the existence of corruption had become grave that it causes the building of an anti-corruption institution, *Komisi Pemberantasan Korupsi* (KPK), based on the Law No 30 of 2002 about the eradication of corruption.¹⁰³

Islam itself also prohibits the corruption. There are hadiths that shows how Islam fought corruption. In Islam, it is individual and a collective responsibility to expose and stop any abuse of power and authority. Muhammad SAW said: “The son of Adam will not pass away before Allah until he is asked about five things: how he lived his life, and how he utilized his youth, how he earned his wealth, how he spent his wealth, and what he did with his knowledge”. Islam therefore considers a corrupt act as an injustice.

The concept of earning ones wealth legally and through a just means are some of the parameters for one to get God’s grace. At one point Muhammad said, “If the food

¹⁰³ Law No. 30 of 2002 on Komisi Pemberantasan Korupsi stated: “*Komisi Pemberantasan Korupsi dibentuk dengan tujuan meningkatkan daya guna dan hasil guna terhadap upaya pemberantasan tindak pidana korupsi*”.

you take is haram (forbidden), how then do you expect yours prayers to be accepted”.

Therefore corruption in Islam is considered haram (forbidden), meaning anyone involved in it is disobedient to Allah. Corruption is a prohibited act that is prohibited clearly in the laws. And by legally prohibited by the laws, the corruption is become prohibited in Islam which causes it to be the source of money laundering.

2. *Haram* industry

Islam has put certain line concerning *haram* and *halal*. The line differing both are the right of Allah and through Al-Quran and as-Sunah. And one of the principle in Islam is that if Islam has stated one thing to be *haram*, no means of receiving them could make them turn into *halal*. And any *haram* acts will also cause things to be *haram*. The money accepted which is including in the illegal conducts are regarded as illegal money, as *haram* which is not to be considered in the Islamic banking.

Islam has put certain line concerning *haram* and *halal*. The line differing both are the right of Allah and through Al-Quran and as-Sunah. As stated in Q.S Al-An-am: 119 that mentioned how Allah has explained what is *haram*.¹⁰⁴ And one of the principle in Islam is that if Islam has stated one thing to be *haram*, no means of receiving them could make them turn into *halal*. And any *haram* acts will also cause things to be *haram*.

¹⁰⁴ Syekh Muhammad page 22

Immorality is *haram*. And as mentioned previously, once *haram* will always be *haram* and no other way could make it into *halal*, thus causing the objects that is related to immorality to be prohibited to process.

In this case, the *haram* industry, which includes various things as the cause of “*haram*” would become prohibited, such as: the industry of *haram* food and beverages like the industry related to pig, dog, beer, or alcoholic beverages..

3. Human trafficking

In this era, the human trafficking has become one of the grave matter that is faced. Several cases of human trafficking has been brought to the public in the recent years, their purposes are to force labors, sexual slavery, and/or commercial sexual exploitation. Therefore, the money gotten from the ill-purposes of the trafficking is included in the *haram* money and the money would become money laundering if brought to the banking industry.

4. Entertainment industry

Entertainment industry includes the gambling and prostitution industry.

Gambling is a mean of enjoying free time. However, for gambling is closely related to profit-loss for the players, it becomes *haram*. Gambling is also prohibited

to use for money-maker. Since the position of *gambling* in Islam is already clear, it's also clear that in Islamic banking, the objects related to gambling would not be acceptable.

Prostitution is one of the livelihood permitted in the western countries. In the *jahiliyah* era, there was once time also when prostitution is allowed. However, Muhammad SAW prohibits the existence of prostitution as one of the livelihood, although the payment for this job is as huge amount as possible. This is in order to create the cleanliness of the muslims from the dirtiness of this kind of occupation. In Q.S An-Noor: 33 it's stated that : *“and let those who do not find the means to marry keep chaste until Allah makes them free from what out of His grace. And as for those who ask for a writing from among those whom your right hands posses, give them writing if you know any good in them, and give them of the wealth of Allah which he has given you; and do not compel your slave girls to prostitution, when they desire to keep chaste, in order to seek the frail good of this world's life.; and whoever compels them, then surely after their compulsion Allah is Forgiving, Merciful.”*¹⁰⁵

Both are explicitly stated in alquran to be prohibited acts. Therefore, anything got from both industries are also *haram* and thus causing the money from them to be *haram*.

¹⁰⁵ Syekh Mujammadd Yusuf Qardhawi, 1976, *Halal dan Haram dalam Islam*, Surabaya: PT Bina Ilmu, Page 179.

5. Narcotics and psychotropic¹⁰⁶

Al-khamru maa kaamaral aqla is the expression that had been expressed by Umar Ibnul khatab to explain about *khamr* . It means that *khamr* is all kind of concoctions that could cover how one thinks. Therefore, all kinds of concoctions that nowadays called as the narcotics, including cannabis and marijuana that had been known to influence the consciousness and thought, that cause one to see far away things to be near and vice versa, could forget the reality. People who drink this kind of drink could forget about his own self, his religion, and his reality, often living in his imagination.

Narcotics and psychotropic's are not dissimilar with *khamr*. Besides them could resulting in the immorality, they are also poison to the body. Previously, the reason of *haram* is that it bears ill consequences if done. Therefore, narcotics and psychotropics are also included in *haram*. And everything related to them are considered haram, including the money related to them being dirty. Narcotics and psychotropic are also included in the base of money laundering. Although it is not explicitly stated in the Quran, it could be regarded as one of the matters in the *haram* criteria, thus causing them to be the bases of money laundering.

As mentioned above, money laundering in Islamic banking is broader than the conventional banking, including the conducts prohibited by the laws in Indonesia, such as the narcotics, psychotropic, corruption, and the similar law in the

¹⁰⁶ Ibid, Page 100.

same nature. Besides those mentioned in the laws explicitly as prohibited acts, there are also those that are not included in the laws but stated in the Islamic law, which causes the broader spectrum of the things that could be bases of money laundering.

CHAPTER III

THE PREVENTION AND THE LEGAL ENFORCEMENT OF ISLAMIC BANKING TOWARDS MONEY LAUNDERING

In order to conduct the aims and purposes of Islamic banking, there are several procedures including the regulations concerning the Islamic banking itself. In the internal of banking, there is audit as the body that monitors the bank, the procedures taken by bank, especially Islamic banking, in order to ensure that there is no contradiction to the procedures of the bank regarding the principles used by bank.

Bank auditing is the procedure of reviewing the services and procedures adopted by banks and other financial institutions. It is a routine procedure that all financial services entities must undergo in order to ensure that they are in compliance with industry standards and jurisdictional regulations.

A. Audit in the Islamic Banking

Audit is official inspection of an organization's accounts, typically by an independent body. In Islam, there are various verses regarding audit and control in Al-Quran. Several of them could be used as the ground for the bank employees and the monetary practitioners¹⁰⁷:

يَتَأْتِيهَا الَّذِينَ ءَامَنُوا كُونُوا قَوَّامِينَ لِلّٰهِ شُهَدَاءَ بِالْقِسْطِ وَلَا يَجْرِمَنَّكُمْ
شَنَّانُ قَوْمٍ عَلَىٰ ءَلَّا تَعْدِلُوا ءَعْدِلُوا هُوَ اَقْرَبُ لِلتَّقْوٰى وَاتَّقُوا اللّٰهَ اِنَّ اللّٰهَ
خَبِيرٌۢ بِمَا تَعْمَلُونَ

¹⁰⁷ Muhammad Syafi'I Antonio, 2001, *Bank Syariah dari Teori ke Praktik*, Jakarta: Gema Insani, page 208

Q.S. Al-Maidaah: 8 stated: O you who believe! Be upright for Allah, bearers of witness with justice, and let not hatred of people incite you not to act equitably; act equitably, that is nearer to piety, and be careful of (your duty to) Allah; surely Allah is Aware of what you do.”

وَالْعَصْرِ ﴿١﴾ إِنَّ الْإِنْسَانَ لَفِي خُسْرٍ ﴿٢﴾

إِلَّا الَّذِينَ ءَامَنُوا وَعَمِلُوا الصَّالِحَاتِ وَتَوَاصَوْا بِالْحَقِّ وَتَوَاصَوْا بِالصَّبْرِ

﴿٣﴾

Q.S. Al-Ashr:1-3 also stated: “I swear by the time. Most surely man is in loss. Except those who believe and do good, and enjoin on each other truth, and enjoin each other patience.”

يَتَأْتِيهَا الَّذِينَ ءَامَنُوا إِنْ جَاءَكُمْ فَاسِقٌ بِنَبَأٍ فَتَبَيَّنُوا أَنْ تُصِيبُوا

قَوْمًا بِجَهْلَةٍ فَتُصِيبُوا عَلَىٰ مَا فَعَلْتُمْ نَادِمِينَ ﴿١﴾

Q.S. AL-Hujurat: 6 stated: O you who believe! If an evil-doer comes to you with a report, look carefully into it, lest you harm a people in ignorance, then be sorry for what you have done.”

The activities in bank have high risks because people have business with money in large amount and it could cause the people in the business to have ill-will to the money in the process. This is a risk that could cause the loss of the bank. In order to anticipate such risk, the bank has multilayer audit system. In Islamic banking, they have this multilayer audit system¹⁰⁸:

¹⁰⁸ Muhammad Syafi’I Antonio, 2001, *Bank Syariah dari Teori ke Praktik*, Jakarta: Gema Insani, page 209

1. Self Control

Self control is the first layer and the most important matter for the employees of the Islamic bank, so that the role of human resources in choosing the right employees is the utmost important.

Every employee has to hold the belief that every action is being recorded by Allah and that those actions will be asked for each person's responsibility in the Afterlife.

a. Q.S Qaaf : 16-18

وَلَقَدْ خَلَقْنَا الْإِنْسَانَ وَنَعْلَمُ مَا تُوَسْوِسُ بِهِ نَفْسُهُ وَنَحْنُ أَقْرَبُ
إِلَيْهِ مِنْ حَبْلِ الْوَرِيدِ ﴿١٦﴾

إِذْ يَتَلَقَّى الْمُتَلَقِّيَانِ عَنِ الْيَمِينِ وَعَنِ الشِّمَالِ قَعِيدٌ ﴿١٧﴾

مَا يَلْفِظُ مِنْ قَوْلٍ إِلَّا لَدَيْهِ رَقِيبٌ عَتِيدٌ ﴿١٨﴾

“And certainly We created man, and We know what his mind suggests to him, and We are nearer to him than his life-vein. When the two receivers receive, sitting on the right and on the left. He utters not a word but there is by him a watcher at hand.”

b. Q.S. Al-Anaam : 59

﴿ وَعِنْدَهُ مَفَاتِحُ الْغَيْبِ لَا يُعَلِّمُهَا إِلَّا هُوَ وَيَعْلَمُ مَا فِي الْبَرِّ وَالْبَحْرِ وَمَا تَسْقُطُ مِنْ وَرَقَةٍ إِلَّا يَعْلَمُهَا وَلَا حَبَّةٍ فِي ظُلْمَتِ الْأَرْضِ وَلَا رَطْبٍ وَلَا يَابِسٍ إِلَّا فِي كِتَابٍ مُبِينٍ ﴿٥٩﴾

“ And with Him are the keys of the unseen treasures – none knows them but He; and he knows what is in the land and the sea, and there falls not a leaf but He knows it, nor a grain in the darkness of the earth, nor anything green nor dry but (it is all) in a clear book.”

c. Q.S. Ya-Seen : 12

﴿ إِنَّا نَحْنُ نُحْيِي الْمَوْتَىٰ وَنَكْتُبُ مَا قَدَّمُوا وَعَثْرَهُمْ وَكُلَّ شَيْءٍ أَحْصَيْنَاهُ فِي إِمَامٍ مُّبِينٍ ﴿١٢﴾

“Surely We give life to the dead, and We write down what they have sent before and their footprints and We have recorded everything in a clear writing.”

Those are several verses mentioned in the Al-Qur’an about how important it is to hold the belief that every action is being recorded by Allah and that those actions will be asked for each person’s responsibility in the Afterlife. This kind of control comes from individual’s characteristics that one will try to take care of their actions to prepare their selves for the responsibility they will be asked in the Afterlife.

2. Built-in control

Built-in control is the regulations made by the banks in order to control them. These controls are incorporated into the daily life in the forms of dual control, dual custodian, maker checker approval, limitation, segregation of duties, verification, and etc.

3. Internal auditor

For built-in control to be always controlled, there is internal auditor who will analyze whether a certain conduct is appropriate with the built-in control or not. The internal auditor is also made into layers:

a. Data control auditor

This auditor is also called as verifier, the one who will examine transactions, and one of the products is the zero defect program, that is an audit program that will warn if there is a fault in the book. Besides that this audit will also play the monetary audit on monetary report, especially the verification of the materials by cash count, stock opname, bank reconciliation, and etc.

b. Resident auditor and control inspector

The two auditors are controlling the operational audit besides the monetary auditor. The main function is to examine the internal control system that covers the availability of the human resources, organization aspects and the healthy bank practice.

The resident auditor is the part of the control inspector who is in the main office. Even though the resident auditor works in the branch office, they will also report to the main office.

The result of this auditor is the image of the condition currently progressing in the bank. Auditor will also give suggestion and correction related to the intern control system.

4. External auditor

External auditor will give suggestion to the bank management about the condition of the bank. From the external auditor, it's expected to be neutral assessment from the assessed objects. The external auditors are mainly Indonesian bank and public accountant.

In general, the audit in the Islamic banking is the same as the conventional banking. However for the control, besides the general laws used by the conventional banking, it is also added with the Islamic laws as the regulations. However, there are several points that is specialized in the Islamic banking in comparison to the conventional banking, namely:¹⁰⁹

- a. Besides the fittingness of the monetary report, there are also the Islamic fittingness aspects.
- b. The difference in the accounting regarding the product made by the banks, both the financing and the source of the principals.
- c. The inspection of the profit distribution.
- d. The income from cash basis and real.

¹⁰⁹ Antonio, page 222

- e. The charge based on accrual basis.
- f. In relation with the correspondent banks. Especially depository correspondent, the principle of profit-sharing is a must.
- g. The examination of the source and the usage of *zakat*.
- h. The existence of the elements that is not in accordance to the Islamic law.

Based on an interview with Sakti Nur Ahmad S.H¹¹⁰, the transaction made by the bank with the customers would be verified based on the written evidence as well as the unwritten evidence (could be visual evidence). The verification is conducted by agents for verification. Other verification, in relation with financial of the customers would be verified by the financing analysts. The result of the verification would decide if the transaction is accepted. If the transaction is accepted, there would be follow-up regularly by the bank.

B. Banking Principles

There are several principles in banking industry that insist on the legality between the bank and the customer:

1. Fiduciary Principles

In managing the fund from the people, bank has the fiduciary principle. The customers put their trust to bank in managing their fund, and the fund could be taken back by the customers anytime and the bank is always ready to return it to the customers.

In the banking law, Law No. 10 of 1998 on the Alteration of Law No. 7 of 1992 on Banking, article 29, it is mentioned that bank works with the fund from the customers with fiduciary principles. Therefore in turn, banks is to be careful on managing the fund, and for the interest of

¹¹⁰ Legal Consultant in Bank Muamalat Indonesia, Jln Slamet Riyadi Branch Surakarta.

the customers, bank is obliged to provide information in accordance to the transaction made by the customers.

In article 8 paragraph (1) of the aforementioned law, it is mentioned that in providing the credit or funding based on Islamic law, the conventional bank is obligated to possess firm belief based on deep analysis of the purpose of the conduct and the ability of the customer to return the credit or fund in accordance to the contract made.

In order to warrant the implementation of the fiduciary principle, bank is obligated to explain the risks that might occur if the customer saves their fund in the bank and bank is to carefully conduct the transactions of the customers.

2. Confidential Principles¹¹¹

The secrecy of bank is prominent factor in banking industry. This is to warrant the trust between the customers and the bank. The concept of confidential principle is started by the enthusiasm to protect the customers who have trusted the bank with their fund. This enthusiasm is important to note and to implement because of the characteristics that is fundamental and substantial for the protection and the comfort of the customers. This is also to increase the credence of the public towards the bank.¹¹²

The confidential principles is regulated in the article 40 of Law No 10 of 1998 about banking which obliges bank to keep the information about the customers and their transactions, unless regulated otherwise. The bank is permitted not to keep the information if there is an interest of the relation to criminal procedure, and there is permit from the head of Bank Indonesia given to the police, attorney, or judge to get the information from the bank about the criminal.

¹¹¹ Adrian Sutedi, 2006, *Hukum Perbankan: Suatu Tinjauan Pencucian Uang, Merger, Likuiditas, dan Kepailitan*, Jakarta: Sinar Grafika, page 5.

¹¹² Yopi Gunawan, Kristian, 20013, *Tiindak Pidana Perbankan*, Bandung: Nuansa Aulia, page 127.

The elements of confidential principle covers:¹¹³

- a. The confidentiality is related to the information about the customers and their transactions.
- b. Point a, unless regulated otherwise based on the valid procedure and regulations.
- c. The parties prohibited to uncover the confidentiality are the bank itself as well as the parties affiliated with the bank. The affiliated parties are including:
 - 1) The members of commissary board, supervisors, the managers or their proxies, and the employees of the bank.
 - 2) The members of managers, supervisor, the executives, and the employees of the bank, specifically for the bank in the form of cooperation based on the valid regulations.
 - 3) Parties of service industries related to the affiliated banks, including but not limiting to public accountants, law consultation assessors, and other consultants.
 - 4) Parties who are based on the assessment of Bank Indonesia influence the management of the bank, not limited to share owners and their relatives, the commissaries' relatives, supervisors' relatives, directors' relatives, and managers' relatives.

The exceptions of confidentiality of banks are mentioned explicitly in the Law No. 10 of 1998 on the Alteration of Law No. 7 of 1992 on Banking as follows:

- a. interest of taxation;¹¹⁴

¹¹³ Adrian Sutedi, 2006, *Hukum Perbankan: Suatu Tinjauan Pencucian Uang, Merger, Likuiditas, dan Kepailitan*, Jakarta: Sinar Grafika Ibid, page 6

¹¹⁴ Law No. 10 of 1998 on the Alteration of Law No. 7 of 1992 on Banking article 41 stated "Untuk kepentingan perpajakan, Pimpinan Bank Indonesia atas permintaan Menteri

- b. settlement of bank credits transferred to *Badan Urusan Piutang* and *Lelang Negara/Panitia urusan Piutang Negara*;¹¹⁵
- c. interest of criminal courts;¹¹⁶
- d. interest of private courts between banks and customers;¹¹⁷
- e. exchanging information between banks;¹¹⁸
- f. written request or proxy from customers;¹¹⁹
- g. request of inheritor of deceased customer.¹²⁰

For further explanation, there is Regulation of Bank Indonesia No 2/PBI/2000 dated September 7, 2000 on the *Persyaratan dan Tata Cara Pemberian Perintah atau Izin Tertulis Membuka Rahasia Bank* that covers the procedure to uncover confidentiality.¹²¹

Keuangan berwenang mengeluarkan perintah tertulis kepada bank agar memberikan keterangan dan memperlihatkan bukti-bukti tertulis serta surat-surat mengenai keadaan keuangan Nasabah Penyimpan tertentu kepada pejabat pajak."

¹¹⁵ Law No. 10 of 1998 on Banking article 41A stated "Untuk penyelesaian piutang bank yang sudah diserahkan kepada *Badan Urusan Piutang dan Lelang Negara/Panitia Urusan Piutang Negara, Pimpinan Bank Indonesia* memberikan izin kepada pejabat *Badan Urusan Piutang dan Lelang Negara/Panitia Urusan Piutang Negara* untuk memperoleh keterangan mengenai simpanan nasabah debitur."

¹¹⁶ Law No. 10 of 1998 on Banking article 42 stated "Untuk kepentingan peradilan dalam perkara pidana, *Pimpinan Bank Indonesia* dapat memberikan izin kepada *Polisi, Jaksa, atau Hakim* untuk memperoleh keterangan dari bank mengenai simpanan tersangka atau terdakwa pada bank."

¹¹⁷ Law No. 10 of 1998 on Banking article 43 stated "Dalam perkara perdata antara bank dengan nasabahnya, doreksi bank yang bersangkutan dapat menginformasikan kepada *Pengadilan* tentang keadaan keuangan nasabah yang bersangkutan dan memberikan keterangan lain yang relevan dengan perkara tersebut."

¹¹⁸ Law No. 10 of 1998 on Banking article 44 stated "Dalam rangka tukar menukar informasi antar bank, *direksi bank* dapat memberitahukan keadaan keuangan nasabahnya keppada bank lain."

¹¹⁹ Law No. 10 of 1998 on Banking article 44A (1) stated "Atas permintaan, persetujuan atau kuasa dari nasabah penyimpan yang dibuat secara tertulis, bank wajib memberikan keterangan mengenai simpanan nasabah penyimpan pada bank yang bersangkutan kepada pihak yang ditunjuk oleh nasabah penyimpan tersebut."

¹²⁰ Law No. 10 of 1998 on Banking article 44A (2) stated "Dalam hal nasabah penyimpan telah meninggal dunia, ahli waris yang sah dari nasabah penyimpan yang bersangkutan berhak memperoleh keterangan mengenai simpanan nasabah penyimpan tersebut."

¹²¹ Regulation of Bank Indonesia No 2/PBI/2000 dated September 7, 2000 on the *Persyaratan dan Tata Cara Pemberian Perintah atau Izin Tertulis Membuka Rahasia Bank* regulates in article 2 verse 1 that Bank is obliged to keep secret on the information about the costumers as well as their savings. However it's also mentioned that in verse 4 that there are exceptions and in order to conduct based on the verse 4, there are further procedures need to be conducted in the later articles of the same regulation.

3. Prudential Principles

The prudential principle is mentioned in the article 2 of Law No. 10 of 1998 on the Alteration of Law No. 7 of 1992 on Banking. Based on Black's Law Dictionary, prudence is carefulness, precaution, attentiveness, and good judgment, as applied to action or conduct, that degree of care required by the exigencies or circumstance under which is to be exercised.

In article 16 to article 28 of Banking Law, there are regulations on the founding of a bank, which include: the permit for bank founding, the form of the bank, and the ownership of the bank. For the founding of a bank, there are strict regulations, because bank business sector is a business that is closely related to trust. Therefore, it is prohibited for a person who had criminal record to be included in the founding of a bank.

In the SKBI No. 27/118/KEP/DIR and SEBI No. 274/4/UPPB dated 25 January 1995, there are the criteria of people prohibited to be included in the founding of a bank:

- a. embezzlement or manipulation that inflicts loss to bank;
- b. collusion with customer or other party that inflicts loss to bank;
- c. fictive transaction, either in active or passive;
- d. internal dispute that troubles bank;
- e. manipulation on the bank reports;
- f. improper compromise that causes the bank to divide.

4. Know Your Customer¹²²

Knowing your customer (Know Your Customer principle/KYC) is what institutions conduct in order to verify the identity of their clients

¹²² Adrian Sutedi, 2006, *Hukum Perbankan: Suatu Tinjauan Pencucian Uang, Merger, Likuiditas, dan Kepailitan*, Jakarta: Sinar Grafika, page 72.

either before or during the time that they start conducting business with them. It is common for bank to require that their customers provide them with the detailed information in order to ensure that they are not involved with illegal conduct such as corruption, bribery, and/or money laundering. The implementation of KYC is not only to lessen the probability of bank being the tool of money laundering, but also in order to strengthen the prudential banking implementation in the bank, protecting them from various risks that are related to customers.

In the development of technology and globalization in the banking industry, the banking and financial business sectors are susceptible to crimes, especially to money laundering, which makes this principle more concerning to uphold.

The Know Your Costumer principle has become very important to combat the illegal transaction. It allows bank to protect themselves from illegal means of business.

For the effectiveness of the KYC principle implementation, bank is obligated to receive information regarding the customers beforehand:¹²³

- a. the identity of the customer;
- b. the aim and purpose of the customer's;
- c. the other information to create a profile of the customer's;
- d. the identity of the other parties in case the customer is acting on the other parties' behalf.

The profile is at least provides information on: the occupation and business, the amount of income, the other owned accounts, the normal activity, the aim and purpose of opening a new account. If there is a suspicious transaction in the costumer's account, the bank is to report their findings to Bank Indonesia in seven days after the findings.

¹²³ Ibid, page 75.

C. The Bodies Related to Islamic Banking and Money Laundering

There are several institutions that are related to Islamic banking and money laundering

1. Bank Indonesia (BI)

Bank Indonesia is the central bank of Indonesia that holds the objectives as follows:

- a. maintain the monetary stability,
- b. maintain the financial sustainability of the bank of Indonesia,
- c. strengthen the effectiveness of monetary management,
- d. create a sound and effective banking system and financial system stability,
- e. maintain the security and effectiveness of the payment system,
- f. increase the effectiveness of Good Governance implementation,
- g. strengthen the organization and build highly competent human resources with the support of a knowledge-based work culture,
- h. integrate the Bank Indonesia's transformation in line with Bank Indonesia's destination statement of 2008.

In accordance to Islamic banking, as stated in the article 50 of Law No. 21 of 2008 on Islamic Banking, Bank Indonesia would manage and supervise the Islamic banking in Indonesia.¹²⁴ Bank Indonesia would proceed on-site supervision and off-site supervision

¹²⁴ Law No. 21 of 2008 on Islamic Banking on article 50 of stated: "*Pembinaan dan pengawasan Bank Syariah dan UUS dilakukan oleh Bank Indonesia.*"

over the Islamic banking in Indonesia, both the Islamic banking and the window Islamic banking in the conventional banking.

In general, the central bank is an important aspect in the realizing the healthy and efficient banking system in Indonesia.¹²⁵ Bank Indonesia holds the authority to manage¹²⁶ and supervise¹²⁷ the permit of banking in order to support the healthy banking system. This task of Bank Indonesia is also referred as monetary supervision.

2. Otoritas Jasa Keuangan (OJK)

Otoritas Jasa Keuangan (OJK) is to support the body that holds the function, task, and responsibility to oversee the conducts in the monetary services in cohesive, independent, and accountable. It means that the regulation and monitoring of the monetary bodies is on one single body instead of being separated in various bodies.¹²⁸ OJK is an independent body that is basically independent and works outside the government. However, OJK holds the responsibility to report to both *Badan Pemeriksa Keuangan* (BPK) and *Dewan Perwakilan Rakyat* (DPR). Therefore, the aim of OJK is to realize the monetary system in continuously and stable, as well as protecting the interest of consumers and public.¹²⁹

¹²⁵ Law No. 21 of 2008 on article 51 stated “(1) *Bank Syariah dan UUS wajib memelihara tingkat kesehatan yang meliputi sekurang-kurangnya mengenai kecukupan modal, kualitas aset, likuiditas, rentabilitas, solvabilitas, kualitas manajemen yang menggambarkan kapabilitas dalam aspek keuangan, kepatuhan terhadap Prinsip Syariah dan prinsip manajemen Islami, serta aspek lainnya yang berhubungan dengan usaha Bank Syariah dan UUS*” and on “(2) *Kriteria tingkat kesehatan dan ketentuan yang wajib dipenuhi oleh Bank Syariah dan UUS sebagaimana dimaksud pada ayat (1) diatur dengan Peraturan Bank Indonesia.*”

¹²⁶ Law No. 21 of 2008 on article 52 (1) stated “*Bank Syariah dan UUS wajib menyampaikan segala keterangan dan penjelasan mengenai usahanya kepada Bank Indonesia menurut tata cara yang ditetapkan dengan Peraturan Bank Indonesia.*”

¹²⁷ Law No. 21 of 2008 on article 54 (4) stated “*Atas permintaan Bank Syariah, Bank Indonesia dapat mencabut izin usaha Bank Syariah setelah Bank Syariah dimaksud menyelesaikan seluruh kewajibannya*” and on article 54 (5) stated “*Ketentuan lebih lanjut mengenai persyaratan dan tata cara pencabutan izin usaha Bank Syariah sebagaimana dimaksud pada ayat (4) diatur dengan Peraturan Bank Indonesia.*”

¹²⁸ Muhammad Djumhana, 2012, *Hukum Perbankan di Indonesia*, Bandung : Penerbit PT Citra Aditya Bakti, page 38.

¹²⁹ *Ibid*, page 40

OJK is needed to underlay the reformation of the organizational structure of the bodies in charge of the regulating and monitoring of the financial sectors, including banking, venture capital, insurance, retirement funds, funding service, and other financial services. This reformation is in order to reach the more effective coordination in solving problems related to finance, so that there is insurance of the stability of the financial stability. The regulating and monitoring is to be integrated.¹³⁰

In conducting their tasks and responsibility, OJK is based on several principles, namely:¹³¹

a. Independency principle

This principle means that OJK in making its decision and the conducting of the function, task, and authority is independent, based on the valid regulations.

b. Legal certainty principle

It means that OJK in making its decision is based on the valid regulations and fair in its decision.

c. Public interest principle

OJK is to support the consumers and public interest and to aim for the public prosperity.

d. Openness principle

The meaning is that OJK is open to the public in providing the information that is right, honest, and not discriminative on the conduct of *Otoritas Jasa Keuangan*, while taking a note on the individual rights and community rights and the state secret.

e. Professionalism principle

¹³⁰ Ibid.

¹³¹ Ibid.

That is the principle that means OJK is expertise in the conducting of tasks and functions based on the ethical and laws.

f. Integrity principle

OJK is based on the moral values in its decision making.

g. Accountability principle

This principle means that every decision made by OJK could be responded to the public.

In line with the aforementioned principles, OJK is to possess check and balance principle in its structure. This is realized by the clear separation of the function, tasks, and authority on monitoring.

3. *Pusat Pelaporan dan Analisis Transaksi Keuangan (PPATK)*

Indonesian Financial Transaction Reports and Analysis Centre (PPATK) is a financial intelligence unit that is significant in the eradication of money laundering in Indonesia, because if PPATK does not proceed their functions, the effectiveness would not be reached.

The functions of PPATK, as mentioned in the article 26 of the Law of Money Laundering are:¹³²

- a. gathering, saving, analyzing, evaluating information,
- b. observing the note of exception list made by the *Penyedia Jasa Keuangan*,
- c. creating the manual of the procedure of reporting the Suspicious Monetary Transaction,
- d. contributing suggestion and assistance to competent institution over the information received by PPATK,

¹³² Sutan Remy page 251

- e. producing manual and publication to *Penyedia Jasa Keuangan* over the obligation determined by the law and assisting to detect the suspicious customer,
- f. recommending the government on the prevention and eradication of money laundering,
- g. reporting the result of money transaction indicated as money laundering to the police and the attorney,
- h. creating and giving the report on the money transaction and other transaction every 6 months to the President, DPR, and the institution that hold the responsibility on the monitoring of *Penyedia Jasa Keuangan*.

The PPATK, as mentioned in the article 18 of Law No. 15 of 2002, is an independent institution, which means that it is free from the influence of any other institution and any party is prohibited to interfere with the work in the PPATK. The meaning is that any party is prohibited to act in the manner that caused the reduction of the freedom of PPATK in processing their functions and aims. The party that is responsible to decline the interference of the other parties in the PPATK is on the hand of the leader and vice-leader of PPATK.¹³³

D. Prevention and the Legal Enforcement of Islamic Banking Towards Money Laundering

There are several laws concerning the banking system in Indonesia, namely:

¹³³ Sutan Remi page 260

- 1) Law No 23 of 1999 on Indonesian Bank and the law No 3 of 2004 on the alteration of Law No 23 of 1999 on Indonesian Bank;
- 2) Law No 7 of 1992 on Banking and the Law No 10 of 1998 On the alteration of Law No 7 of 1992 on Banking;
- 3) Law No 21 of 2008 on Islamic Banking;
- 4) Law No 21 of 2011 on *Otoritas Jasa Keuangan*

The aforementioned laws are specifically regarding the banking industry, covering also the Islamic banking.

1. Law No 23 of 1999 on Indonesian Bank and the law No 3 of 2004 on the alteration of Law No 23 of 1999 on Indonesian Bank

The Law No 23 of 1999 and Law No 3 of 2004 gives status, aims, and tasks to Bank Indonesia, as stated in the paragraphs of the mentioned laws:¹³⁴

- a. Bank Indonesia has the aim to reach and oversee the stability of *rupiah*. In order to achieve this aim, Bank Indonesia conducts continuous monetary policy, consistency, and transparency by overseeing the general policies on economy by the government.¹³⁵ This causes the tasks given to bank Indonesia to determine and conduct the monetary policy, regulate, and oversee the flow of payment, as well as regulate and supervise banks.
- b. Bank Indonesia, in conducting its tasks and functions could accommodate the Islamic principles in its conduct.¹³⁶

¹³⁴ Muhammad Djumhana, 2012, *Hukum Perbankan di Indonesia*, Bandung : Penerbit PT Citra Aditya Bakti, page 22

¹³⁵ Law No 3 No 3 of 2004 on the alteration of Law No 23 of 1999 on Bank Indonesia paragraph 7

¹³⁶ Law No 3 No 3 of 2004 on the alteration of Law No 23 of 1999 on Bank Indonesia paragraph 10 (2)

- c. Bank Indonesia in conducting its tasks as regulator and supervisor has the authority to determine regulation and permit of bodies and banking conduct and the sanction for banks.¹³⁷
- d. Bank Indonesia is an independent body, but also a body with the principle of public accountability.

By the public accountability principle, Bank Indonesia is obligated to be transparent and open to the public on their conducts of decisions. This is in order to fill the aims for the public to control and oversee the conduct of bank Indonesia.

- 2. Law No 7 of 1992 on Banking and the Law No 10 of 1998 On the alteration of Law No 7 of 1992 on Banking;

The aim on the Law No. 9 of 1992 is to develop the banking industry in order to reach the public prosperity through the transformation of the banking. The existence of the Law No. 7 of 1992 is to keep up with the globalization, to increase the modernization of the banking system in Indonesia. There are several points that are different with the previous laws regarding banking:¹³⁸

- a. There is simplification of banking; the conventional banking and *Bank Perkreditan Rakyat* (BPR), in which BPR previously is under *Bank Rakyat Indonesia* (BRI).
- b. Bank is given clearer regulation that covers the various services provided by the bank; including the

¹³⁷ Law No 3 No 3 of 2004 on the alteration of Law No 23 of 1999 on Bank Indonesia paragraph 34

¹³⁸ Muhammad Djumhana, 2012, *Hukum Perbankan di Indonesia*, Bandung : Penerbit PT Citra Aditya Bakti, page 27

revenue principles and trust which is for Islamic banking.

In the Law No 10 of 1998 on the alteration of Law No 7 of 1992 on Banking, there are several alterations:

- a. The conventional bank could provide services based on Islamic principles, such as the full branch Islamic bank, however it is not working vice versa which means that the Islamic banking could not provide services based on conventional bank principles.
- b. *Bank Perkreditan Rakyat* is to provide service either in conventional principles or the Islamic principles.
- c. The permit of banking services is provided by Bank Indonesia.
- d. The information in the banking system is to be more open in order to achieve the transparency of banking industry.
- e. BPK could monitor the bank where the state's fund is managed.
- f. There is delegation of authority by Bank Indonesia as the bank oversees public accountant in the matter of local audit.

The aforementioned alterations are closely related to Islamic banking. The existence of the alterations itself is that to aim for the better national banking and to strengthen the banking as a trusted institution by the public.¹³⁹

3. Law No 21 of 2008 on Islamic Banking;

The Law No 21 of 2008 is the law specifically made in order to develop the Islamic banking in Indonesia. The Islamic banking, as one of the banking system, needs

¹³⁹ Ibid, page 30

support in order to gather maximum contribution in the development of the national economic..¹⁴⁰

The regulation on Islamic banking is previously in the Law No7 of 1992 of banking. However, the matter was not specific and not enough to accommodate the operational of Islamic banking as whole. In order to develop the dual-banking system, it is needed for the conventional banking and the Islamic banking to be synergy, supporting the mobilization of the public's fund for the funding of the national economical sectors. The aim of Islamic banking is mentioned in the article 2 and 3 of the Law No 21 of 2008; supporting the conduct of national economical development.

In the explanation of the aforementioned law, it is explained that it regulates about the types of the services provided by the Islamic banking, the conduct of Islamic law, the propriety of the services, the channelization of fund, and the prohibition of Islamic banking. The regulations are to be the warranty of legal certainty for the stakeholders as well as to give the warranty to the public who use the Islamic banking services. Besides that, in order to give the warranty to the public of the Islamic principles used in the Islamic banking, it is also regulated about the operational of the Islamic banking that does not contradictive with the Islamic principles, that covers the services that did not hold *riba*, *maisir*, *gharar*, *haram*, and *zalim*.¹⁴¹

As a specific regulation on the Islamic banking, law No.. 21 of 2008 also regulates the syariah compliance

¹⁴⁰ Ibid, page 36

¹⁴¹ Ibid, page 38

that is overseen by *Majelis Ulama Indonesia* (MUI) that is represented by *Dewan Pengawas Syariah* (DPS).

4. Law No 21 of 2011 on *Otoritas Jasa Keuangan* (OJK)

The Law no. 21 of 2011 mentioned that the goal of *Otoritas Jasa Keuangan* (OJK) is to support the body that holds the function, task, and responsibility to oversee the conducts in the monetary services in cohesive, independent, and accountable. It means that the regulation and monitoring of the monetary bodies is on one single body instead of being separated in various bodies.¹⁴²

The other reason of the birth of OJK is that the mandate of the Law No. 23 of 1999 on Bank Indonesia; the formation of a monitoring body that covers banking. Insurance services, retirement fund, security, ventura, funding bodies, and the other bodies that provide funding to the public. By the existence of a specific cohesive, independent, and accountable body, it is expected that the monetary services sector could be developing continuously and stability, and conducted organized, fairly, transparently, and accountability. OJK is an independent body that is basically independent and works outside the government. However, OJK holds the responsibility to report to both *Badan Pemeriksa Keuangan* (BPK) and *Dewan Perwakilan Rakyat* (DPR). Therefore, the aim of OJK is to realize the monetary system in continuously and stabile, as well as protecting the interest of consumers and public.¹⁴³

In accordance to the aim mentioned previously, Law No. 21 of 2011 of *Otoritas Jasa Keuangan*, OJK is

¹⁴² Ibid.

¹⁴³ Muhammad Djumhana, 2012, *Hukum Perbankan di Indonesia*, Bandung : Penerbit PT Citra Aditya Bakti, page 40

needed to underlay the reformation of the organizational structure of the bodies in charge of the regulating and monitoring of the financial sectors, including banking, ventura, insurance, retirement funds, funding service, and other financial services. This reformation is in order to reach the more effective coordination in solving problems related to finance, so that there is insurance of the stability of the financial stability. The regulating and monitoring is to be integrated.¹⁴⁴

In conducting their tasks and responsibility, OJK is based on several principles as previously mentioned, namely:¹⁴⁵ independency principle, legal certainty principle, public interest principle, openness principle, professionalism principle, integrity principle, and accountability principle

In line with the aforementioned principles, OJK is to possess check and balance principle in its structure. This is realized by the clear separation of the function, tasks, and authority on monitoring, which is conducted by the commissioners. The tasks of the commissioners cover the tasks regarding the ethical code; internal monitoring through audit mechanism; education and protection of consumers; function, tasks, and authority in of the financial sectors, including banking, ventura, insurance, retirement funds, funding service, and other financial services.

¹⁴⁴ Ibid.

¹⁴⁵ Ibid.

CHAPTER IV

CONCLUSION

A. The Activities Classified as Money Laundering in Islamic Banking

In Islamic banking, the product and services are tied to Islamic law, meaning that it will not have possibility to hold a product or service that is prohibited by any of the Islamic laws (i.e. al-Quran, al-hadith). While money laundering is simply an act of crime in which purpose is to make *some illegal* wealth property as the result of illegal doing *to be legal* wealth property through various means. Specifically for Islamic bank, the source of money laundering being the “dirty” money from illegal doing is based on the laws, it is also the money got from the prohibited acts based on the Quran and hadith. These prohibitions from Islam could be the bases of the criteria of money laundering.

Therefore, there are prohibitions from Islam that could be the bases of money laundering, namely:

1. Corruption

Corruption is a prohibited act that is clearly not allowed in the laws. Therefore the corruption becomes prohibited in Islam which causes it to be the source of money laundering.

2. *Haram* industry

One of the principles in Islam is that if Islam has stated one thing to be *haram*, there is no means of receiving them could make them turn into *halal*. *Haram* industry, which includes various things as the cause of “*haram*” would

become prohibited, such as: the industry of *haram* food and beverages like the industry related to pig, dog, beer, or alcoholic beverages.

3. Human trafficking

The money gotten from human trafficking which purposes are to force labors, sexual slavery, and/or commercial sexual exploitation of the trafficking is included in the *haram* money and the money would become money laundering if brought to the banking industry.

4. Entertainment industry

Entertainment industry includes the gambling and prostitution industry, are explicitly stated in Quran to be prohibited acts. Therefore, anything gotten from both industries are also *haram* and thus causing the money from them to be *haram*.

5. Narcotics and psychotropic

Narcotics and psychotropic are also included in the base of money laundering. Although it is not explicitly stated in the Quran, it could be regarded as one of the matters in the *haram* criteria, thus causing them to be the bases of money laundering.

As mentioned above, money laundering in Islamic banking is broader than the conventional banking, including the conducts prohibited by the laws in Indonesia, such as the narcotics, psychotropic, corruption, and the similar law in the same nature. Besides those mentioned in the laws explicitly as prohibited acts, there are also those that are not included in the laws but stated in the

Islamic law, which causes the broader spectrum of the things that could be bases of money laundering.

B. The Roles of Islamic Banking in the Prevention of Money Laundering

Islamic banking is based on the Islamic laws. The aforementioned conditions apply to the contracts made in the Islamic banking area. The main difference is that of the point where both subjects and objects are both not to contradict with the Islamic laws, especially the *haram* and *halal* principle. Substantially, both the contracts in the Islamic banking and the conventional banking is the same.¹⁴⁶ Therefore, it could be stated that even though the substantial of the contracts are basically the same, the principles of *haram* and *halal* cause the contracts in the Islamic banking become more specific compared to the conventional banking.¹⁴⁷

Islamic banking has the same structure as the conventional banking, such as the commissary and the directors. However, there is a certain structure that differs in the Islamic banking, *Dewan Pengawas Syariah* (DPS). The obligation of the Islamic banking is to posses DPS that is not available in the conventional banking. The function of DPS is to supervise the operational of the Islamic banking and the products provided in the Islamic banking so that both are based on the Islamic laws. The position of DPS is usually put in the same level as the commissary in each bank. This is to ensure the effectiveness of the opinion of the DPS in each bank. The decree of the DPS members is usually in the hand of the Board Meetings after the members of DPS are recommended by *Dewan Syariah Nasional* (DSN).

Therefore, in conclusion, the Islamic banking and the conventional banking are basically the same. However, several points

¹⁴⁶ Abdul ghoful 25

¹⁴⁷ ibid

are explicitly different, causing some special points that differ the Islamic banking to the conventional banking, namely:

- a. the objects of the contract in Islamic banking must be *halal* that means the smaller scope in comparison to objects in the conventional banking
- b. the existence profit-sharing principles in the Islamic banking is not available in the conventional banking which uses the rate-principle
- c. the Islamic banking use sharing, sell-purchase, and renting principle
- d. the existence of DPS is solely in the Islamic banking and not available in the conventional banking

These differences between the conventional banking and Islamic banking are the points that enable the Islamic banking to be more precise in preventing the existence of money laundering, because what is including as money laundering in conventional banking is also included as money laundering in Islamic banking. Therefore, **it is** possible for the Islamic banking to be more prominent in the prevention of the money laundering through their institution.

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