

## Analysis of The Merger of PT Bank Syariah Indonesia in Legal and Sharia Perspective

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### Abstract

Legal analysis are necessary to the general considerations for merging in order to create a national banking industry structure that is strong and competitive and responsive to future challenges and special considerations for the merger of PT BNI Syariah and PT Bank Syariah Mandiri into PT Bank Syariah Indonesia, namely as an effort to create new and contributing national development workers. Towards the welfare of the wider community and shows the performance of sharia banking in Indonesia which is modern, universal, and provides goodness for all nature (Rahmatan Lil 'Aalamiin). This issue has significance to be studied based on law and sharia because it can be a legal reference in the future. The research was conducted based on normative legal research and qualitative analysis. The result of this research shows that the considerations and the merger process are based on statutory regulations and have complied with sharia principles in the sense of fulfilling the values and objectives of Islamic banks, as well as being in line with the function of law as a means of development in order to achieve the benefit of the people and all the people of Indonesia.

### A. Introduction

Merger as a type of corporate action is regulated by Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as UUP). Specifically in the Amendment to Law Number 7 of 1992 concerning Banking, namely Law Number 10 of 1998 (hereinafter referred to as UUUP 1998), the term merger is known as Merger and in Article 1 point 29 of Law Number 21 of 2008 concerning Banking Sharia (hereinafter referred to as UUPS) is still referred to as a Merger which is basically defined as the legal action of one or more Banks to merge with another Bank resulting in the assets and liabilities of the merging Bank being transferred by law to the Bank that accepts the merger and the legal entity status of the Bank. which

merged ended by law.

The provisions of the UUPS indicate that mergers can be carried out between Islamic banks as well as between Islamic banks and conventional banks. According to Article 17 paragraph (2) of Law Number 21 of 2008 concerning Islamic Banking, if there is a merger (including consolidation) of a sharia bank with another bank (conventional bank), the bank resulting from the merger or consolidation is required to become a sharia bank. Article 54 paragraph (1) letter e of the UUPS further emphasizes that in the event that a sharia bank experiences problems that endanger its business activities, Bank Indonesia (read: the Financial Services Authority) has the authority to take action in the context of follow-up supervision, for example asking

sharia banks to merge. or consolidation (consolidation) with other Islamic banks.<sup>1</sup>

The practice of merging between Islamic bank entities and conventional bank entities has never been carried out in Indonesia, but the merger between Sharia Commercial Banks (BUS) in 2021 has occurred between PT Bank BRISyariah Tbk, PT Bank Syariah Mandiri, and PT Bank BNI Syariah whose results are then known as PT Bank Syariah Indonesia, which incidentally is PT Bank BRI-Syariah Tbk as the BUS receiving the merger which has changed its name and logo. If in Article 54 paragraph (1) letter e, merger is a solution for Islamic banks experiencing problems that endanger their business activities,<sup>2</sup> then in the case of PT Bank Syariah Indonesia it was carried out by BUS which is a subsidiary of a state-owned bank with strong capital.

The merger of BUS as a form of corporate action, of course, needs to be based on the principles of prudence and sharia principles.<sup>3</sup> The definition of sharia principles in this paper is not as referred to in Article 1 point 12 of the UUPS, namely the principles of Islamic law in banking activities based on fatwas issued by the National Sharia Council (DSN-MUI) and the absence of prohibited elements in the form of usury, maysir, gharar, haram and unjust, but rather on principles based on justice, expediency, balance, and universality (*rahmatan lil 'alamin*) as essential values in Islam.<sup>4</sup> The existence of these values is in line with the objectives of Islamic

1 Agus Prihartono PS, "Pengaturan Penggabungan Usaha (Merger) Bank Sebagai Upaya Peningkatan Kesehatan Bank Di Indonesia Dalam Pembangunan Hukum Ekonomi Nasional," *Jurnal Aktualita* 1, no. 1 (2018): 9.

2 Muhammad Afdi Nizar and Mohamad Nasir, "Penguatan Perbankan Syari'ah Melalui Merger Atau Konsolidasi," in *Akselerasi Dan Inklusivitas Sektor Keuangan: Jalan Menuju Kesejahteraan Rakyat* (Jakarta: PT Nagakusuma Media Kreatif, 2016), 152–156; Tim Komisi Nasional Keuangan Syariah (KNKS), *Konversi, Merger, Holding, Dan Pembentukan Bank BUMN Syariah Sebagai Bagian Dari Penguatan Bank Syariah* (Jakarta, 2019), 24.

3 Sabatika Sinung Wibawanti, "Pengaturan Prinsip Kehati-Hatian Pada Lembaga Keuangan Bukan Bank," *Jurnal Ilmu Hukum Prinsipium* 1, no. 1 (2017): 111.

4 Tri Setiady, "Pembiayaan Murabahah Dalam Perspektif Fiqh Islam, Hukum Positif, Dan Hukum Syariah," *Fiat Justitia Jurnal Ilmu Hukum* 8, no. 3 (2014): 518.

banking, namely to support national development in order to improve justice, togetherness, and equitable distribution of community welfare. This explanation is contained in Article 3 of Law Number 21 of 2008 concerning Islamic Banking.

Based on these matters, the legal issues that arise include, among others, what are the considerations that encourage the merger of Islamic banks, especially the merger of PT. Bank Syariah Indonesia and how the merger process is carried out, as well as the compatibility between the considerations and the process of merging the three Islamic Commercial Banks against the values-based sharia principles and objectives of Islamic banking. Analysis of the merger of Islamic banks by taking a study at PT Bank Syariah Indonesia, thus needs to be done in order to see the coherence between values, principles, and legal norms that apply in the field of Islamic banking. From this analysis, it is hoped that a solution can be found for the problems that arise, so that further through this research, it is expected to contribute to the development of national Islamic banking law.

## B. Method

This research is a normative legal research, namely legal research that focuses on secondary data in the field of Banking Law/ Sharia Banking.<sup>5</sup>

Legislation approach and conceptual approach are used in this research and writing.<sup>6</sup> In order to complete the data related to the legal issues raised, the researcher also conducted an empirical study through interviews with one of the employees of PT. Bank Syariah Indonesia Tbk.

## C. Result and Discussion

### 1. Considerations for Merging PT BNI Syariah and PT Bank Syariah Mandiri into PT Bank Syariah Indonesia

Merger as a form of corporate action has been regulated in the Company Law, 1998 UUPP, and UUPS. Even though the

5 Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: Universitas Indonesia Press, 1986), 51.

6 Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2005), 94.

**Tabel 1.** UUS/BUS Business Activities Based on BUKU Status

UUS/BUS Business Activities	UUS/BUS Business Activities Based on 3 <sup>RD</sup> BUKU Status
<p>Article 6</p> <p>Business activities carried out by Islamic commercial banks and sharia business units are grouped as follows:</p> <ol style="list-style-type: none"> <li>fundraising;</li> <li>distribution of funds;</li> <li>trade finance (trade finance);</li> <li>treasury activities;</li> <li>activities in foreign exchange;</li> <li>agency activities and cooperation;</li> <li>payment system and electronic banking activities;</li> <li>equity participation activities;</li> <li>temporary capital participation activities in the context of saving financing;</li> <li>other services; and</li> <li>other activities commonly carried out in the banking sector and in the social sector as long as they do not conflict with sharia principles and laws and regulations.</li> </ol>	<p>Article 7</p> <p>The business activities of sharia commercial banks and sharia business units that can be carried out in each BUKU are stipulated:</p> <ol style="list-style-type: none"> <li>BUKU 1 can only carry out business activities in the form of products and basic activities;</li> <li>BUKU 2 can carry out business activities in the form of products and activities as BUKU 1 with a wider scope;</li> <li>BUKU 3 can carry out all Business Activities as referred to in Article 6 both in Rupiah and in foreign currencies and equity participation in Islamic financial institutions in Indonesia and/or abroad is limited to the Asian region;</li> <li>BUKU 4 can carry out all Business Activities as referred to in Article 6 both in Rupiah and in foreign currency and equity participation in financial institutions in Indonesia and/or all regions abroad with an amount greater than BUKU 3.</li> </ol>

(Reference : POJK No. 6/POJK.03/2016 concerning Business Activities and Office Networks

procedures and mechanisms have been regulated through the said law, in its implementation by banks, careful considerations are needed and are based on the principles of Islamic banking management, particularly the prudential principle and the sharia principle.<sup>7</sup>

General considerations for merging, among others, can be found in the section on weighing (consideration) points (b) and (c) POJK No. 41/POJK.03/2019 concerning Merger, Consolidation, Acquisition, Integration, and Conversion of Commercial Banks, namely that in order to realize a strong, competitive national banking system that is able to respond to dynamic and complex future challenges, banks (including Islamic banks) are needed. ) that is resilient, efficient, and competitive through (among other things, pen) merging. A strong and competitive national banking system is one of the precon-

<sup>7</sup> Supriadi and Ismawati, "Implementasi Prinsip-Prinsip Perbankan Syariah Untuk Mempertahankan Loyalitas Nasabah," *Jurnal Hukum Ekonomi Syariah* 3, no. 1 (2020): 46.

ditions for economic growth and national stability.

One thing that is the biggest reason for the stagnation of the development of Islamic banking in Indonesia is the lack of public trust in Islamic banking due to the lack of strong capital owned by Islamic banking, when compared to its counterpart, namely conventional banking.<sup>8</sup> In BUKU status, on average, Islamic banking has only reached BUKU 1 or 2 status, especially Islamic banks resulting from the spin-off of UUS, including PT. BNI Syariah and PT. BRI Syariah. Determination of BUKU status is based on the amount of core capital owned by a bank. In the Islamic banking industry, there are at least 4 (four) Islamic banks that have a fairly high existence in the community, namely PT. Bank Muamalat Tbk, PT. BSM, PT. BNIS, and PT. BRIS

<sup>8</sup> Tim Komisi Nasional Keuangan Syariah (KNKS), *Konversi, Merger, Holding, Dan Pembentukan Bank BUMN Syariah Sebagai Bagian Dari Penguatan Bank Syariah*, 24.

Tbk.<sup>9</sup>

The comparison of business activities that can be carried out by UUS/BUS based on BUKU status is shown in the following Table 1.

Based on table 1, BUS, which is an independent legal entity and has BUKU 1 or BUKU 2 status, is limited to providing basic products and activities to the public. In order to increase the status of a higher BUKU, merging is one of the alternative mechanisms that can be implemented so that in the end it is able to compete with its counterparts, namely conventional banks in terms of providing more competitive products and activities and thereby increasing public trust in Islamic banking institutions.

Considerations for a merger between PT. BSM, PT. BNIS, and PT. BRIS Tbk, among other things, can be concluded from information about the history of BSI, which is driven by the demographic bonus of Indonesia which has the largest Muslim population in the world so that it has the potential to become a leading Islamic finance industry. Even with the largest Muslim population in the world, the penetration of sharia assets in 2019 which was only 8% (eight percent) was relatively low when compared to Saudi Arabia, Kuwait, Bahrain, Malaysia and Brunei Darussalam which averaged above 20% and some reached more than 50%. Banking institutions resulting from the Merger with a sizeable size of capital and financial assets, qualified human resources and information communication technology systems, varied products and activities are expected to meet customer needs for sharia-compliant banking services and be able to compete globally. In addition, the Bank resulting from the Merger is also coherent with the Government's efforts to realize a halal ecosystem, where Islamic banks that meet these criteria can be one of the important elements in realizing integrated Islamic finance in the State of Indonesia.<sup>10</sup>

<sup>9</sup> Ibid., 21.

<sup>10</sup> Investor Daily, "Ringkasan Rancangan Penggabungan Antara PT Bank Brisyarlah TBK., PT Bank Syariah Mandiri Dan PT Bank BNI Syariah," *Media Investor Daily* (Jakarta, October 2020), 2. From <https://ir.bankbsi.co.id/newsroom/BR1>

A more concrete consideration is that the merging of the three BUS is an effort to create new forces for national development and contribute to increasing the prosperity of the wider community and to show the performance of national sharia banking that is universal, modern, and provides mercy to the universe (Rahmatan Lil 'Aalamiin).<sup>11</sup>

Associated with the general considerations and special considerations mentioned above, the existence of a corporate action in the form of a merger, especially that which occurred on February 1, 2021 in the form of the merger of PT BSM, PT BNIS, and PT BRIS Tbk into one entity, namely PT BSI, is expected to be able to increase capital which has an impact on BUKU status and at the same time synergize the three Islamic Banks so as to provide product services and activities with a wider reach. Supported by the parent company (PT Bank Mandiri (Persero) Tbk, PT Bank BNI (Persero) Tbk, and PT Bank Rakyat Indonesia (Persero) Tbk), as well as the government's commitment through the Ministry of State Own Enterprises, PT Bank Syariah Indonesia, Tbk is encouraged to be able to compete in the global market. world level.<sup>12</sup>

## 2. Merger Process of PT BNI Syariah and PT Bank Syariah Mandiri into PT Bank BRIS Tbk (PT Bank Syariah Indonesia)

In the Limited Liability Company Law, mergers (including consolidation, takeovers, and separations) are included in the category of corporate actions, so they must go through certain procedures, including obtaining approval from the shareholders in the General Meeting of Shareholders (GMS) forum<sup>13</sup> and

[Mandiri BNI - Rancangan Penggabungan - Okt 2020 \(Bisnis Indonesia\).pdf](#) accessed 10 September 2021.

<sup>11</sup> PT Bank Syariah Indonesia, "Sejarah Perseroan," last modified 2021, accessed October 20, 2021, [https://ir.bankbsi.co.id/corporate\\_history.html](https://ir.bankbsi.co.id/corporate_history.html).

<sup>12</sup> PT Bank Syariah Indonesia, "Informasi Perusahaan," last modified 2021, accessed September 10, 2021, <https://www.bankbsi.co.id/company-information/tentang-kami>.

<sup>13</sup> Article 127 paragraph (1) of Law Number 40 of 2007 concerning Limited Liability Companies. In Article 89 said that GMS to approve the Merger, Consolidation, Acquisition, or Separation, bankruptcy, extension of duration, and the liquidation of the Company can be convened if at

considering the interests as referred to in Article 126 paragraph (1) of Law Number 40 of 2007 concerning Limited Liability Companies: (a) the Company, minority shareholders, employees of the Company; (b) creditors and other business partners of the Company; and (c) society and fair competition in doing business. Similar provisions are also contained in Article 4 PP No. 27 of 1998 concerning Merger, Consolidation, and Takeover of Limited Liability Companies, namely that mergers, consolidations and takeovers can only be carried out by taking into account: (a) the interests of the company, minority shareholders and employees of the company concerned; and (b) public interest and fair competition in doing business. While in Article 5 PP No. 28 of 1999 concerning Bank Mergers, Consolidations and Acquisitions, it is stated that Bank Mergers, Consolidations and Acquisitions are carried out with due regard to: (a) the interests of the Bank, creditors, minority shareholders and Bank employees; and (b) the interests of the general public and fair competition in conducting the Bank's business.

UUPS as *lex specialis* of UUPT and UUPT 1998 is limited to providing a definition of merger, the authority of the authority to ask Islamic banks to merge in the event that Islamic banking institutions experience problems that have the potential to pose a danger to their business continuity, affirmation that the process must obtain permission from Bank Indonesia (now must read by the Financial Services Authority), the result of the merger of BUS and BUK must be in the form of BUS, as well as an affirmation that the merger process must be in line with regulations. Thus, the rules regarding the GMS and several interests that must be considered are still based on the Company Law and the 2 PPs as referred to, as well as regulations issued by the Financial Services Authority.

In Article 6 paragraph (1) POJK Num-

least 3/4 (three-fourth) of the total shares issued with voting rights are present or represented and the resolutions thereof shall be valid if approved by more than 3/4 (three-fourth) of total votes cast at the meeting except the articles of association stipulates a bigger quorum and/or a provision regarding the adoption of resolution in the GMS.

ber 41/POJK.03/2019 concerning Merger, Consolidation, Acquisition, Integration, and Conversion of Commercial Banks it is stated, among other things, that a Bank wishing to conduct a Merger is required to make a statement to OJK and the GMS that the Merger is to be carried out. taking into account the various interests of stakeholders in accordance with the applicable laws and regulations.

Based on the legislation in question, the author divides the discussion of this sub b into two stages, namely the pre-merger stage and the merging stage. The explanation of the two stages is as follows:

#### a. Pre Merger

At this stage, there are two things that need to be stated, namely the GMS and the plan for the settlement of rights and obligations related to the parties whose interests need to be considered as stated in the Company Law and its implementing regulations, as well as POJK Number 15 / POJK.04/2020 concerning the Plan and Organizing of the General Meeting. Shareholders of Public Companies and POJK Number 41/POJK.03/2019 concerning Merger, Consolidation, Takeover, Integration, and Conversion of Commercial Banks.

**First**, the GMS, based on Article 43 of POJK No. 15/POJK.04/2020, in essence it was emphasized that the agenda for the transfer of assets of a public company was held by way of a GMS which was attended by shareholders representing at least 3/4 (three-fourths) ) part of the total number of shares with valid voting rights, unless the articles of association of the Public Company specify a larger quorum. GMS resolutions are valid if approved by more than 3/4 (three quarters) of the total shares with voting rights present at the GMS. The 2nd GMS can be held provided that the second GMS is valid and has the right to make decisions, if the GMS is attended by shareholders who represent at least 2/3 (two thirds) of the total shares with valid voting rights, unless the articles of association of the Public Company determine the amount larger quorum. If not achieved, the third GMS can be held provided that the third GMS is

valid and has the right to make decisions if attended by shareholders of shares with valid voting rights in the attendance quorum and decision quorum determined by the Financial Services Authority at the request of the Public Company. The GMS for the approval of the merger of PT Bank BRISyariah Tbk, PT Bank Syariah Mandiri and PT Bank BNI Syariah was held on December 15, 2020.

**Second**, the plan for the settlement of rights and obligations related to the parties that need to be considered is contained in the Additional Information which is an Amendment to the Summary of the Merger Design between PT BRIS Tbk, PT BSM and PT Bank BNIS which can be briefly stated as follows:

a) *Employee*

Employees of PT BSM and PT Bank BNI will join employees of PT Bank BRIS Tbk as recipients of the merger with the stipulation that the employment criteria and HR policies at PT BSM and PT Bank BNIS will not change until the effective date of the Merger, so that on that date the employment relationship of the employees who join with the bank accepting the merger being transferred by law to PT Bank BRISyariah Tbk as the bank accepting the merger. Harmonization will be carried out after the effective date and will not have an impact on decreasing salaries and benefits for employees, so that employees of PT BSM and PT Bank BNIS will continue to work at PT BSI and vice versa for employees who are not willing to continue their tenure at PT BSI, their rights will be given in accordance with applicable regulations, including laws and regulations in the field of labour.

b) *Shareholders Right*

There is a notification to shareholders that there is a mechanism for shareholders who object to the merger, having the opportunity to purchase shares by the company based on a fair price. Until the announcement of the GMS related to the plan to merge PT BSM and PT Bank BNIS into PT Bank BRIS Tbk, the minority shareholders of PT BSM, namely PT Mandiri Sekuritas and the minority shareholder of PT Bank BNIS, na-

mely PT BNI Life Insurance, did not plan to sell the shares that were issued. they have in the merger process as stated in the statement letter obtained from PT Mandiri Sekuritas dated December 7, 2020 and PT BNI Life Insurance dated November 13, 2020.

c) *Rights and Obligations to Third Parties*

All contracts that have been signed by PT BSM and PT Bank BNIS as the merging banks are transferred by law to the merging bank on the effective date. Thus, the Bank that accepts the merger takes over all the rights and obligations of the two Islamic banks, unless agreed otherwise. The agreements made by PT Bank BRISyariah will continue to run and will not be invalidated by the merger.

d) *Business competition*

As stated in the Merger Design, the Directors of PT Bank BRIS Tbk, PT BSM and PT Bank BNIS have jointly conducted a feasibility study by considering the interests of the three BUSs, as well as providing guarantees to continue to fulfill the rights of employees and minority shareholders. However, related to the aspect of fair competition in doing business, it is not disclosed in it, so the analysis of the dominant position issue the author puts forward at the merger stage.

b. *Merger*

Starting from the effective date of the merger, which is February 1, 2021, some of the things mentioned in the previous subchapter are undergoing the execution stage and from that date also legally merged into PT Bank Syariah Indonesia (PT BSI ex PT Bank BRISyariah Tbk) , while PT BSM and PT Bank BNI have ended by law. There are three things that are used as the main points by PT. BSI. First, the name and office status of the merged bank will change to PT Bank Syariah Indonesia Tbk. with its head office located on Jl. Abdul Muis No. 2-4, Central Jakarta 10160. Second, there is a change in the composition of holders and the capital and share structure of PT BSI, namely PT Bank Rakyat Indonesia (Persero) Tbk, PT Bank BNI (Persero) Tbk and PT Bank Mandiri (Persero)

Tbk. Third, management and supervision will undergo changes, especially in the merging recipient Bank (PT BSI, ex-PT Bank BRISyariah Tbk). The bank that accepts the merger changes the composition of the company's organs, namely the board of directors and board of commissioners, and the sharia supervisory board (DPS) based on the approval of the EGMS on December 15, 2020.

The effective date of the merger which has an impact on the expiration of the legal entity status of PT BSM and PT Bank BNIS, but still leaves the operational stages of the merger, including:

#### 1) Corporate culture alignment

The corporate culture of the three BUS that have joined of course has its differences. Therefore, in order to realize synergy, it is necessary to strive for a culture (one culture) of the merged bank, namely PT BSI. Efforts to realize this have been carried out, namely by introducing corporate values, known as AKHLAK. AKHLAK is an acronym for Amanah, Competent, Harmonious, Loyal, Adaptive and Collaborative. Amanah can be interpreted as maintaining trust; Competence can be interpreted as lifelong learning in order to develop capacity (continuous improvement); Harmonious can be interpreted caring with mutual respect for differences;

Loyal can be interpreted as being dedicated and prioritizing the interests of the nation and state; Adaptive can be interpreted as continuing to innovate and enthusiastic in facing change; and Collaborative means building synergy and cooperation.<sup>14</sup>

#### 2) Operational Integration, especially in the Information and Technology Sector

Operational integration at the office network level basically still uses the office network owned by each BUS with the adjustment of names and logos on passbooks, ATMs and so on. Each BUS that joins has a different segment and efforts are made to synergize it, so that it becomes the BSI segment as a one stop sharia solution, namely Wholesale, Micro Small Medium Enterprise, Retail Consumer, Go Global. For each of these segments, digitization of services has been developed.<sup>15</sup>

#### 3) Product Advantage Alignment

The three previously merged BUS already have superior products and activities, so that the merging of products and activities

<sup>14</sup> PT Bank Syariah Indonesia, "Nilai-Nilai Perusahaan," last modified 2021, accessed October 20, 2021, [https://ir.bankbsi.co.id/corporate\\_values.html](https://ir.bankbsi.co.id/corporate_values.html).

<sup>15</sup> Abdullah Firman Wibowo, "Integrasi Perbankan Syariah, Untuk Indonesia Maju" (Yogyakarta, 2021).

**Tabel 2.** Legacy Products and Activities

Products & Activities	BSM	BNI Syariah	BRI Syariah	Information
Wholesale Banking UMKM	V		V	Greater exposure with mitigated risk - Digital Bisnis Process (APPEL, i-Kurma) - Sharia KUR Management
Retail Banking		V		- Value Proposition with Wadiah Savings - Griya Hasanah Housing Financing
Digital Banking	V			- BSI Mobile Application - Core Banking
Gadai Emas Kartu Pembiayaan	V	V		EmasInstallment Financing & Gold Pawn Hasanah CardSharia Financing Card Products – Hasanah Card
Go Public			V	BRIS has IPO in 2018

(Reference: Wibowo, 2021: 16)

from each BUS needs to be synergized. Currently, the products and activities of PT BSI which is a legacy of the BUS that have joined are as follows:

Based on table 2, the author emphasizes that PT BSM has advantages in the areas of Wholesale Banking, Digital Banking, and Pawn Gold; PT Bank BNIS has advantages in the fields of Retail Banking and Financing Cards; and PT Bank BRIS Tbk has advantages in the financing sector for the MSME sector and has the status of Go Public (PT Tbk). By maintaining the superior products and activities of each BUS, the Merged Bank (PT BSI) is expected to get one of the benefits from this corporate action called "Sinergi" so that it is more than just an amount and with a simple formula the Merged Bank is  $1 + 1 + 1 = 4,5, 6$  etc.

#### 4) Contract adjustment

The adjustment of the contract used in PT BSI's products and activities is carried out based on the DSN-MUI Fatwa and the Product & Activity Codification Book issued by the Financial Services Authority. Different standards related to pricing (profit margin, ujah/fee, profit sharing ratio) are adjusted in the operational merger process and apply prospectively to new PT BSI customers, while ex-BUS customers prior to joining still base on the pricing standards of the previous BUS.

#### 5) Dominant Position Prevention

This section is basically not mentioned in the merger plan as mentioned above. However, if the goods and/or services in question have no substance, the business actor (person or legal entity should be suspected or deemed to exercise control over the production and/or marketing of the said goods and/or services; or at least create obstacles for other business actors). to enter; or there is control of 50% (fifty percent) or more of the market share of a certain type of goods or services.<sup>16</sup>

In the case of the merger of PT. BSI, it is reasonable to suspect that it will lead to mo-

nopolistic practice because the customers of the three BUSs are large and are ranked 1, 2, and 3 in terms of assets and liabilities. Thus, some contra assume that 50% of the market share will be controlled by PT. BSI. However, it is difficult to bring up elements of harm to the public interest in the sense of causing unfair business competition. PT. BSI is here as a government initiative to create a national sharia banking structure that is strong, competitive, and responsive to complex and dynamic future challenges. By joining, it creates synergies related to governance, products and activities, and has a good impact on the community in obtaining the best service. On a macro level, PT BSI is expected to be able to provide support for the country's economic development.

Based on the 2019 KNKS report (now named KNEKS) it was emphasized that the joining of the three BUS was the first step to build other Islamic banking, especially small banks which until now have not been able to separate themselves from their parents due to lack of capital. However, in the end the dominant position is rather difficult to avoid. Based on Article 1 point 4 of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, the Dominant Position is basically defined as the situation and condition of a business actor/group of business actors having no significant competitors in the relevant market with regard to the market share controlled, or a business actor has the highest position compared to its competitors in the relevant market in relation to the financial capability of access to supply or sales, as well as adjustment of supply or demand for certain goods and/or services. Seeing this definition, the potential for the emergence of a dominant position is very strong because the three BUSs that have merged include banks that already have a large number of customers.

Article 25 of Law Number 5 of 1999 provides regulations regarding the dominant position, which are as follows:

*"Business actors shall be prohibited from using dominant position either directly or indirectly to:*

<sup>16</sup> Art. 25 paragraph (2) Law No. 5 Year 1999 on Prohibition of Monopolistic Practices and Unfair Business Competition



- a. determine the conditions of trading with the intention of preventing and or barring consumers from obtaining competitive goods and or services, both in terms of price and quality; or
- b. limiting markets and technology development; or
- c. bar other potential business actors from entering the relevant market.

Business actors shall have a dominant position as intended in paragraph (1) in the following events:

- a. if one business actor or a group of business actors controls over 50% (fifty per cent) of the market segment of a certain type of goods or services; or
- b. if two or three business actors or a group of business actors control over 75% (seventy-five per cent) of the market segment of a certain type of goods or services.

Based on Article 25 of Law Number 5 of 1999, it is necessary to prove the fulfillment of these elements before making judgments on the occurrence of abuse of dominant position, because this prohibition is a rule of reason. With the large potential for sharia banking customers that has not been exploited and no efforts to prevent potential customers from becoming customers of a sharia bank and/or sharia banking business players from entering the market, the possibility of abuse of the dominant position is small.

In relation to this issue, the Ministry of SOEs has stated that the existence of PT. BSI is not allowed to shut down the business activities of smaller Islamic banks. This is anticipated by means of PT. BSI can only be established in certain areas and as much as possible make partnerships with other small Islamic banks. Thus, unfair business competition between business actors in carrying out production and/or distribution activities that are carried out dishonestly or against the law or hinder business competition can be minimized.<sup>17</sup>

In the perspective of understanding

<sup>17</sup> Taufik Machrus, "Mengapa Bank Syariah? Update Dan Overview Perbankan Syariah Nasional, Regional, Dan Global" (Jakarta, 2021).

sharia fiqh, the term business competition is matched with the term al-munafsah at-tijariyyah and given the legal status of permissible (permissible), as long as it does not have a bad, detrimental, and destructive impact. Thus the original rule of the term business competition is allowed or ibahah. Business competition with legal status may (ibahah) is the practice of fair business competition, bringing benefits, and fulfilling the requirements for the validity of a business competition in the form of the absence of elements of fraud and misdirection, control over the business involved in order to realize a good product, and not harm other parties. Meanwhile, business competition that is prohibited by sharia is containing elements of fraud (al-ghisysyu), fake offers (najsy), and intercepting sellers (talaqqi rukban).<sup>18</sup>

Thus, from a sharia perspective, in order to ensure that there is no abuse of dominant position, PT BSI in utilizing the comparative advantage it obtains in the form of synergies in capital, human resources, products and activities must uphold the practice of fair competition in doing business, bringing benefits, and meet the requirements of the validity of a business competition. In addition, PT BSI needs to avoid the practice of business competition containing elements of fraud (al-ghisysyu), fake offers (najsy), and intercepting sellers (talaqqi rukban) or in this case other Islamic banks who want to offer their products to the public. This is of course also in line with the fiduciary principle as the most essential principle of the banking business.

### **3. Conformity of PT Bank Syariah Indonesia Merger Considerations and Processes with Sharia Principles**

As described in the introductory section above, that conformity to Sharia principles in this paper is defined as the fulfillment of justice, benefit, balance, and universality (rahmatan lil 'alamin) as essential values in Islam, as well as fulfilling the objectives of Islamic banking institutions as supporting development. national level in order to improve

<sup>18</sup> Rumadi Ahmad et al., *Fikih Persaingan Usaha*, ed. Marzuki Wahid (Jakarta: Lakpesdam PBNU dan KPPU, 2019), 59–65.

justice, togetherness, and equitable welfare in the midst of society. Values are abstract, so they need to be more concreted by looking at the norms that are explicitly stated in the regulations and their realization needs to be seen in the articles of association of PT BSI, as well as the products and activities of PT BSI. When viewed from the laws and regulations, to realize the values referred to, one of them can be seen from the arrangement of the merger from the statutory level to the implementing regulations and their implementation by the merging bank, while to find out the fulfillment of the objectives of Islamic banking institutions as supporting development This can also be seen from the articles of association of PT BSI in particular regarding the aims and objectives of PT BSI as a result of the merger process, as well as the products and activities provided after the merger are effective.

Norms regarding mergers in this paper are limited to the norms contained in the UUPS and POJK No. 41/POJK.03/2019 concerning Merger, Consolidation, Acquisition, Integration, and Conversion of Commercial Banks. The substance related to merging is briefly summarized in the following table:

From Table 3 as referred to, in essence, it would be emphasized that there was a change in the institution authorized to grant the permit for the Merger, which was originally granted by Bank Indonesia, after the transfer of regulatory functions in the microp-ruudential area from the Central Bank, namely Bank Indonesia to the Financial Services Authority as of December 31, 2013, then the permission to carry out the Merger is granted by the Financial Services Authority. Further POJK No. 41/POJK.03/2019 concerning Merger, Consolidation, Takeover, Integration, and Conversion of Commercial Banks reaf-

**Tabel 3.** Sharia Bank Merger Arrangements

No.	Setting Scope	UUPS	POJK 41/POJK.03/2019
1.	Definition	sda	In principle the same as the definition in UUPS
2.	Permissions	Bank Indonesia (Refers to OJK)	OJK
3.	Merger between Commercial Banks	BUS+BUK → BUS BUS+BUS → BUS	BUK+BUK → BUK BUS+BUS → BUS BUK+BUS → BUS
4.	In the event that Islamic Banks experience difficulties	Merger at the request of Bank Indonesia (Read OJK)	-
5.	BUK+BUS Liability	-	settlement of assets and liabilities from conventional activities no later than 1 (one) year from the effective date of the merger
6.	Interests to pay attention to	-	Banking institutions, the public, fair competition in doing business, and guarantees for the fulfillment of the rights of shareholders and employees in accordance with the laws and regulations
7.	Requirements	-	There is a merger plan from the Board of Directors which is approved by the Board of Commissioners of each Bank
8.	GMS	Required	Required

(Reference: Primary legal materials are processed)

firms that in order for the Merger to be carried out, first: (1) banks (conventional or sharia) that are participants in the Merger need to first conduct a GMS (LB) with a quorum and decision-making mechanism as stipulated in the Company Law; (2) prepare and announce the merger plan from the Board of Directors which is approved by the Board of Commissioners of each Bank; (3) taking into account the interests of the Bank, the public, fair competition in business, and guarantees that the rights of employees and shareholders will be fulfilled in accordance with applicable regulations; and (4) in the event that the Merger occurs between a Conventional Bank and a Sharia Bank, it is obligatory to settle assets and liabilities from conventional activities no later than one year or 360 (three hundred and sixty) days from the effective date of the merger.

Based on the statutory regulations, one that is relevant to justice ('adl), benefit (maslahat), balance (tawazun), and universality (rahmatan lil 'alamin) as essential values to be achieved by merging activities is the fulfillment of the interests must be considered. In principle, the interests of the Bank, the public, and the guarantee that the rights of employees and shareholders in accordance with the laws and regulations have been planned and fulfilled, however related to fair competition in conducting business have not received a review in the published merger plan.

The general considerations are to realize a strong and competitive national Islamic banking industry structure and responsive to future dynamics and complexities, so that a strong, efficient, and competitive bank is needed, as well as special considerations for the merger of three BUS as an effort to create new national development workers and contributing to the welfare of the wider community and showing the performance of national sharia banking which is modern, universal, and gives mercy to the universe (Rahmatan Lil 'Alamiin) is certainly in line with Sharia principles. Ensuring that the merger does not have an impact on monopolistic practices and unfair business competition between Islamic banks is also important and

necessary in order to realize justice, benefit, balance, and universality (rahmatan lil 'alamin) as essential values in Islam.

Fulfillment of the goals of Islamic banking institutions as supporting national development in order to improve justice ('adl), togetherness (ukhuwah), and the distribution of community welfare normatively can be seen from the Articles of Association of PT BSI as a result of the merger, which is manifested in the Purpose and Objectives of PT. BSI based on Deed Number 38 concerning Statement of Meeting Resolutions on Amendment of Articles of Association Change of Name of PT. Bank BRIS Tbk. become PT. Bank Syariah Indonesia Tbk., namely the implementation of activities in the banking sector based on Sharia principles and applicable regulatory provisions, as well as the Vision of PT. BSI as Top 10 Global Islamic Bank.

The way to realize the Vision to become a Top 10 Global Islamic Bank is reflected in the mission of PT BSI, namely:

1. Providing access to Islamic financial solutions in Indonesia (Serving >20 million customers and becoming a top 5 bank based on assets (500+T) and book value of 50T in 2025)
2. To become a large bank that provides the best value for shareholders (Top 5 most profitable banks in Indonesia (ROE 18%) and strong valuation (PB>2)
3. To be the company of choice and the pride of Indonesia's best talents (a company with strong values that empowers the community and is committed to employee development with a performance-based culture).<sup>19</sup>

To realize the three missions as intended, starting from the effective merger, PT BSI seeks to provide products and activities that are divided into four major clusters, namely products and services for individuals, products and services for companies, digital banking, and cards. Individual services and products are provided for Small and Micro Business actors, BSI gold installments and BSI

<sup>19</sup> PT Bank Syariah Indonesia, "Visi Dan Misi," last modified 2021, accessed October 20, 2021, [https://ir.bankbsi.co.id/vision\\_mission.html](https://ir.bankbsi.co.id/vision_mission.html).

pawn gold, hajj and umrah, various investment services, financing, services for priority customers such as safe deposit boxes, various savings products, and transactions.<sup>20</sup>

Bearing in mind that Islamic banks also carry out social functions, starting from the effective date of the merger, PT BSI has also implemented corporate social responsibility/CSR. With the aim of:<sup>21</sup> (1) Creating a harmonious relationship between the company and the community; (2) Supporting accountable and responsible business operations; (3) Building a positive image, as well as raising support and community participation; (4) Identification and empowerment of the potential of MSMEs by channeling funds (financing) based on partnership/collaborative principles; and (5) Participate in environmental conservation programs, improve the quality of education and teaching, health services, improve welfare, religious life, and improve other public facilities. Some of the activities carried out are BSI training millennials to become sociopreneurs, building villages, conducting training for 1000 MSMEs in collaboration with online shopping platforms, collaborating with UNHCR to distribute aid to refugees.

The implementation of this CSR is one proof that in the implementation of the merger of PT. BSI contains justice ('adl), expediency (maslahat), balance (tawazun), and universality (rahmatan lil 'alamin) as essential values in Islamic teachings. The activities as mentioned above are a reflection that PT. BSI provides benefits to the wider community. Universal value can be seen through the involvement of various groups in the events held. Starting from millennials to MSMEs.

Based on an analysis of the considerations and the process of merging PT BSI in relation to the values and objectives of Islamic banks, there are two relevant theories to be used as a knife for further analysis, namely

the theory of development law which basically emphasizes that law is a means of development and the theory of *maqashid sharia* which has a core on the concept of *maqashid sharia*.

First, the legal theory of development is basically more related to legal policy or legal politics. The implication of this theory is that it is more related to government policies on legal aspects which are carried out from top to bottom (top-down), bottom to top (bottom-up), and back from top to bottom (top-down) continuously and simultaneously.<sup>22</sup> That the idea of merging between BUS as happened in the case of PT BSI is basically driven by the government's desire to build and establish a Sharia Bank that is contributive to the development of the sharia economy for the welfare of the people and all the people of Indonesia.<sup>23</sup> This happens because there is a great potential for the development of Islamic economics or Islamic economics in Indonesia, but this does not happen in a reality where the size and market share of Islamic banking which has been introduced since 1992 is still far behind from conventional banking, not to mention when compared regionally. and globally. Law as a means of development becomes a necessity, because without being supported by the legal sector that encourages the emergence of strong Islamic banks in terms of capital, it will be difficult to realize development goals, especially with regard to the development of Islamic banking. The existence of the provisions for the merger between BUK and BUS which must become a BUS and the provisions regarding the obligation to separate Sharia Business Units from Conventional Commercial Banks contained in the UUPS are one of the government's coherent political wills with the spirit of strengthening the sharia banking sector which is expected to have an impact on improving people's welfare. .

Second, the Benefit Theory, which is centered on the *maqashid sharia* concept, is also relevant to the consideration and pro-

20 PT Bank Syariah Indonesia, "Produk Dan Layanan," last modified 2021, accessed October 20, 2021, [https://ir.bankbsi.co.id/vision\\_mission.html](https://ir.bankbsi.co.id/vision_mission.html).

21 PT Bank Syariah Indonesia, "Corporate Social Responsibility," last modified 2021, accessed October 20, 2021, <https://www.bankbsi.co.id/company-information/csr>.

22 Shidarta, *Mochtar Kusuma-Atmadja Dan Teori Hukum Pembangunan: Eksistensi Dan Implikasi*, ed. Shidarta (Jakarta: Epsitema Institute dan Huma, 2012), 67, 72.

23 Abdullah Firman Wibowo, "Integrasi Perbankan Syariah, Untuk Indonesia Maju."

cess of merging BUS. That the concept of protection of faith and piety (deen), descent or generation (nasl), salvation of life (nafs), property or property (maal) and rationality or reason ('aql)<sup>24</sup> is essential for mankind. State intervention to provide regulation through the regulation as intended and the implementation of the merging of three BUS into PT BSI is universally expected to provide protection for other assets, because the merger will produce a strong BUS in terms of capital, so that increasing BUKU status has an impact on increasing wider reach and more varied products that can be provided to the public. The ability to compete with conventional banks to provide products and activities that are accessible to the entire community with affordable returns has the potential to improve the welfare of the people and all the people of Indonesia.

#### D. Conclusion

The general consideration for the merger is to create a strong, competitive and responsive national banking system that is dynamic and complex in the future, so that a strong, efficient, and competitive bank (including Islamic banks) is needed, while the special considerations for the merger of PT BNIS and PT BSM into in PT Bank Syariah Indonesia (former PT BRIS Tbk), namely as an effort to create new national development workers and contribute to the welfare of the wider community and show the performance of national Islamic banking that is modern, universal, and gives mercy to the universe (Rahmatan Lil 'Aalamiin) . The merger process was carried out starting from the GMS, settling the rights and obligations of the interested parties, and currently the operational merger process is still ongoing in the form of corporate culture alignment, operational integration, product excellence alignment, and contract adjustments. The considerations and the merger process as referred to have complied with sharia principles in the sense of fulfilling justice ('adl), benefit (maslahat), balance (tawazun), and universality (rahmatan lil 'alamin) as

24 Fathurrahman Djamil, *Hukum Ekonomi Islam: Sejarah, Teori, Dan Konsep* (Jakarta: Sinar Grafika, 2013), 54–55.

essential principles in Islamic teachings, as well as fulfilling the objectives of Islamic banks as supporting national development in order to improve justice ('adl), togetherness (ukhuwah), and equitable distribution of community welfare.

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