



Normative Juridical Review Regarding Bank Interest in Islamic Law

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Abstract

This journal aims to examine the concept of bank interest (riba) within the framework of Islamic law (Sharia). The practice of charging and receiving interest has been a topic of significant debate and controversy among Islamic scholars and jurists. This paper provides an in-depth analysis of the philosophical underpinnings of bank interest in Islamic law, taking into account various perspectives and interpretations within the Islamic legal tradition. The journal begins by exploring the foundational principles of Islamic law and its ethical framework, highlighting the prohibition of riba as outlined in the Quran and the Hadith. It discusses the historical context and evolution of Islamic banking and finance, emphasizing the need for alternative financial mechanisms that comply with Islamic principles. The study then delves into the philosophical considerations surrounding bank interest from an Islamic legal perspective. It examines different schools of thought and the rationale behind their positions, including the arguments for and against the permissibility of bank interest. The utilitarian perspective evaluates the societal consequences of interest-based transactions, while the deontological approach emphasizes the adherence to moral principles. The contractualist viewpoint focuses on the voluntary agreements between parties, and the concept of justice and equality is examined in relation to interest-based transactions. Furthermore, the journal analyzes contemporary practices in Islamic banking and finance, including the development of Islamic financial instruments that adhere to Sharia principles. It explores the role of regulatory bodies in overseeing and ensuring compliance with Islamic law in the financial industry. The research concludes by synthesizing the diverse perspectives and providing a comprehensive understanding of the philosophical considerations surrounding bank interest in Islamic law. It emphasizes the importance of contextual interpretation and critical analysis within the Islamic legal tradition to address the challenges and complexities posed by modern financial systems.

Keywords: bank interest, usury, Islamic law, Sharia, philosophy, Islamic finance, ethical considerations, contractualist, utilitarian, deontological, justice, equality

Introduction

The modern financial system has experienced rapid development in various countries, including in the Muslim world. One of the main aspects of the financial system is the practice of giving and taking interest by banking institutions. However, amid strong religious views and sharia principles governing Muslim life, questions arise as to the legitimacy of bank interest in Islam.(Setyowati & Prabowo, 2021)

Bank interest, better known as usury, has become a highly controversial topic among Muslim scholars and scholars. Bank interest is considered to violate the principles of economic justice and sustainability maintained in Islamic law. Therefore, it is important for the Muslim community to understand the law of bank interest in the perspective of Islamic law and its consequences in their financial practices.(Lee & Isa, 2023)

In this journal, an in-depth analysis of bank interest in Islamic law will be conducted. This journal aims to explore the different views of Muslim scholars and scholars on this issue, and identify the arguments and legal bases used in support or against the existence of bank interest.

First, this journal will introduce the concept of riba and provide an explanation of the prohibition of riba in the Quran and Hadith. It is important to understand the legal basis that is the main foundation in the legal valuation of bank interest in Islam. Next, the journal will present the opinions of scholars who banned bank interest and the arguments they used to support the ban.

However, this journal will also provide space for opinions that allow bank interest in certain contexts. Arguments will be discussed from scholars who view bank interest as a reasonable reward for the risk and time involved in lending. In this section, the journal will explain the principles used by those who allow bank interest, as well as the reasons they put forward.

In addition, the journal will also look at the practical implementation of sharia principles in Islamic financial institutions. It will be discussed how these institutions provide alternatives in accordance with Islamic law, through financial products such as mudharabah financing contracts, murabahah, musharakah, and others.(Dewantara & Bawono, 2020)

The main objective of the journal is to provide a deeper understanding of this complex issue and encourage dialogue and further reflection on the role of bank interest in Muslim economic life. By examining different perspectives, it is hoped that we can achieve a better understanding of bank interest law in Islam, as well as its implications

In Islamic law, there is a difference of opinion among scholars about the law of bank interest. This opinion relates to the interpretation of sharia principles governing financial activities.

Some scholars state that *riba* (interest) is forbidden in Islam based on the prohibitions listed in the Quran and Hadith. They argue that usury is exploitative and unfair because it benefits from the return of more than the loan amount given.

Meanwhile, there are also scholars who allow bank interest in certain contexts. They argue that bank interest can be considered a reasonable reward for the risk and time associated with loans. These opinions are often based on the principle of fairness and the economic benefits that can be derived from a well-functioning financial system.

Literature Review

In many countries with a majority Muslim population, Islamic financial institutions have been developed to provide an alternative that complies with the principles of *sharia*. These institutions provide various financial products that avoid conventional bank interest, such as *mudharabah*, *murabahah*, *musharakah*, and others. (Siregar & Irmayuliana, 2022)

It is important to note that the legal provisions of bank interest may vary among Muslim countries and individual interpretations. Therefore, if you want to know the law of bank interest in a particular context, it is advisable to consult the cleric or competent religious authority in the region concerned.

Bank interest in legal philosophy involves the analysis and understanding of the philosophical concepts underlying the view of the validity and implications of interest in the financial system. Several schools of legal philosophy provide different perspectives related to bank interest and its implications. The following are some approaches to legal philosophy that can be used to analyze bank interest. (Wahyanto & Setyadi, 2023)

Utilitarianism: The utilitarianism approach involves evaluating bank interest based on its positive and negative impact on society as a whole. Adherents of utilitarianism will judge bank interest based on its contribution to economic and social well-being. If bank interest is considered to provide greater benefits to society, then this practice is philosophically acceptable.

Deontological Ethics: The perspective of deontological ethics will emphasize moral rules or principles that are absolute and cannot be violated. In the context of bank interest, this approach will evaluate the validity of interest based on moral or ethical principles that are firmly held by a particular society or religion. If bank interest violates ethical principles that are considered absolute, then this practice will be considered unethical. (Fink et al., 2023)

Contractualism: Contractualism focuses on understanding the contractual relationship and agreements between the parties involved. In the context of bank interest, this approach will assess the validity of interest based on a contractual agreement between the lender and the borrower. If bank interest is considered a legitimate part of a contractual agreement, then this practice can be philosophically justified. (IMRAN & APRIPARI, 2022)

Fairness and Equality: This approach emphasizes on aspects of fairness and equality in the context of bank interest. Legal philosophers will question whether the practice of bank

interest ensures fairness and equality for all parties involved. If bank interest is considered detrimental to one party or creates significant inequality, then this practice may be questioned from the point of view of legal philosophy.

Research Method

The research method in this study uses normative juridical research methods, Normative juridical research methods are approaches used in legal research to analyze legal regulations and other legal documents. This method focuses on the analysis of existing legal norms and the use of legal arguments to understand and explain the legal issue under study.

In normative juridical research, researchers collect data from relevant legal sources, such as laws, regulations, court rulings, constitutional documents, and legal literature. Then, the data is critically analyzed using theoretical approaches and legal arguments to explore the meaning, purpose, and impact of existing legal regulations.

Normative juridical research methods involve the following steps:

1. Legal data collection: Researchers collect data from a variety of relevant legal sources, such as laws, regulations, and court rulings. These sources provide the legal basis on which research is focused.
2. Legal analysis: The collected legal data is then analyzed using appropriate legal arguments and theoretical approaches. Researchers identify relevant legal norms, interpret the meaning and purpose of legal regulations, and analyze the relationship between different legal regulations.
3. Conclusions: Based on the legal analysis conducted, researchers draw conclusions related to the legal issues studied. These conclusions are based on legal reasoning and a deep understanding of existing legal regulations.

Normative juridical research methods have several advantages. First, this method allows researchers to understand and explain the existing legal framework as well as provide an in-depth understanding of applicable legal norms. Second, this method allows researchers to provide legal recommendations or advice based on consistent and tested analysis of legal arguments.

Result and Discussion

In the context of Islamic Economics, consuming usury is one of the great sins. However, in practice there are still many people who are confused by the practice of *riba* in everyday life, especially those related to banking transactions. Thus, conventional banks are still the choice of Muslim customers, including to borrow funds. Of course, in conventional banking, interest applies, both loan interest and deposit interest. *Riba* in Arabic is *az-ziyadah*, which means addition or excess. If in a general context, the excess in question is an addition to the main property or principal. Quoting MUI Fatwa No. 1 of 2004, *riba* is an addition (*ziyadah*) without remuneration (*bila 'iwadh*) that occurs due to a suspension in payment (*ziyadah al-ajal*)

previously agreed (this is called *riba nasi'ah*). In the Qur'an, *riba* is described in QS. Ali Imran verse 130 about the prohibition of eating usury, which is interpreted as follows It means: "O believers, do not eat *riba* multiplied and be devoted to Allah so that you may have good luck." (Khofiya, 2023)

According to a lecturer of the Islamic Economics Study Program (PSEI) UII, Mr. Adi Wicaksono, SE., MEI, "Riba in conventional banking, in the form of interest, may have been understood by all Ekis friends. However, there is also usury that is commonly found in the neighborhood around households, namely loan interest on RT RW cash. Usually *desawisma* mothers or something like that, have unemployed cash. Well, the funds are lent to *dasawisma* members with an interest system" "In addition, there is also interest in the conventional capital market, which occurs in margin trading transactions. Investors are loaned funds from securities to transact, and on these loan funds investors are charged interest," added Mr. Adi. Member of the MUI National Sharia Council, Hidayatulloh SHI MH in a conversation with mui.or.id said, there are several types of *riba* according to scholars. According to Hanafi, Maliki, and Hanbali *riba* is divided into *riba fadhl* and *nasi'ah*. Shafi'iyyah divides *riba* into *fadhl*, *nasi'ah*, *yad*, and *qardh*. While Ibn Ruysd divided it into usury for sale (*bai'*) and *riba* for debt. As mentioned above, that usury is not only in the form of bank interest. So, let's get to know the types of *riba* that are forbidden in the Qur'an and hadith below: (Zainuddin & Zainuddin, 2022)

1. *Riba Jahiliah*

Riba Jahiliah is a type of *riba* in the form of debt repayment with an amount greater than the principal loan. Generally, this kind of usury is imposed when the borrower is unable to pay the debt in accordance with the promised time.

2. *Riba Qardh*

Riba Qardh is the most common type of *riba* when someone borrows money with a certain repayment time (tenor) and interest. For example, borrowing IDR 60 million with an interest rate of 15% and a repayment time of 6 months. The amount of interest is usually a requirement given by the lender.

3. *Riba Fadhl*

Riba fadhl is the addition of value from the activity of exchanging goods or buying and selling transactions. For example, when exchanging Rp100,000 denominations for Rp2,000 sheets, but only get 48 bills, not 50 so that the total is no longer like the initial value, which is only Rp96,000.

4. *Riba Nasi'ah*

Riba nasi'ah is an advantage obtained through buying and selling transactions within a certain time. The goods used in the transaction are of the same type, it's just that in the payment there is a suspension

5. *Riba Yad*

Riba yad occurs in transactions (both buying and selling and exchanging goods) that initially occur without excess. However, due to a delay in payment due to one of the parties leaving the contract before the handover of goods, the value increases.

In terms of religion, it is not only Islam that condemns the practice of usury. All religions have denounced usury, to the point that even the Jews forbade it among them despite allowing it in their business relations with nations other than the Jews, as recorded in their statement, that "there is no sin for us against the ummi (Arabs)" as expressed in Ali Imran (3): 75

وَمِنْ أَهْلِ الْكِتَابِ مَنْ إِنْ تَأْمَنَهُ بِقِطْعَةٍ بِيَدَيْهِ لَا يُؤَدِّهِ إِلَيْكَ إِلَّا مَا دُمْتَ عَلَيْهِ قَائِمًا ذَلِكَ بِأَنَّهُمْ قَالُوا لَيْسَ عَلَيْنَا فِي الْأُمِّيِّينَ سَبِيلٌ وَيَقُولُونَ عَلَى اللَّهِ الْكَذِبَ وَهُمْ يَعْلَمُونَ

There is no sin for us against the ummi people. They tell lies against God, knowing them. (Departemen Agama, 2007)

In the Qur'an it is found that the word riba is repeated eight times, contained in four letters, namely QS al-Baqarah, QS Ali Imran, QS al-Nisa, and QS al-Rum. The first three suras are "Madaniyyah" (descended after the Prophet migrated to Medina), while Surat al-Rum is "Makiyyah" (descended before he migrated). This means, the first verse that comes down about riba is the one listed in Sura al-Rum (30): 39. This verse gives a definition of the forbidden usury: (Haqiqi et al., 2022)

وَمَا آتَيْتُمْ مِّن رَّبًّا لِّيَرْبُوهُ فِي أَمْوَالِ النَّاسِ فَلَا يَرْبُوا عِنْدَ اللَّهِ وَمَا آتَيْتُم مِّن زَكَاةٍ تُرِيدُونَ وَجْهَ اللَّهِ فَأُولَٰئِكَ هُمُ الْمُضْعِفُونَ

And any usury (i.e. addition) that you put on in order to add to the possessions of men, then it does not add to the side of Allah. And what you give in the form of zakat, which you intend to achieve the pleasure of Allah, then those who do so are those who multiply (the reward). (Rodin et al., 2021)

In that verse, what is meant by usury is the value or price added to property or money lent to others. In the above paragraph there is no or no legal provision regarding the haram of usury. Presumably this is a presumption against the prohibition of usury in the verses that will come down later. According to alMaraghi and al-Shabuni, that the stages of the Qur'anic talk about riba are the same as the stages of talking about khamr (liquor), which in the first stage merely describes the presence of negative elements in it (QS al-Rum/30: 39), then followed by the gesture of haram eating usury, is something very inhuman (QS al-Nisa/4: 161). Furthermore in the third stage, explicitly, it is declared haram in one form (QS Ali Imran/3:130), and in the last stage, riba is totally forbidden in its various forms (QS al-Baqarah/2:275, 280). (Shihab, 2005)

According to terminology, riba means the additional taking of principal property or capital in a bathil manner. The same understanding was conveyed by a number of scholars from various schools of fiqh, including: (Kasdi, 2013)

1. What the Qur'an and Sunnah forbid is the addition of Imam an-Nawawi from the Shafi'i madhhab: "One form of riba over the principal property is due to the element of time. In the banking world this is known as credit interest according to the length of the loan (An-Nawawi, .).

2. Badruddin al-Ayni, author of *Umdatul Qâri'* Syarah Saheeh al-Bukhari, gives the following definition of riba: "The main principle in riba is addition. According to sharia riba means addition to the principal property without any real business transaction" (Al-Ayni, 1995)
3. Imam Sarakhsi of the Hanafi madhhab: "Riba is an addition required in a business transaction in the absence of iwad} (or equivalent) which is sanctioned by the Shari'a for such addition."
4. Imam Ahmad ibn Hanbal, founder of the Hanabilah madhhab: "Imam Ahmad ibn Hanbal when asked about riba he replied: Verily riba is a person having a debt so it is told to him whether to pay off or pay more. If he is unable to pay off, he must increase funds (in the form of borrowed interest) for the additional time given" (Al-Jauziyyah, 1996).

There are several opinions in explaining usury, but in general there is a common thread that asserts that riba is an additional take, both in buying and selling transactions and borrowing bathil or contrary to the principle of muamalat in Islam. Regarding this Allah Almighty reminds in his words: "O believers, do not eat one another's property in a false way, except by the way of consensual business among you. and slay yourselves not; Verily God is merciful to you." (QS. An-Nisâ': 29) Regarding the vanity meaning in the above verse, Ibn al-Arabi al-Maliki, in his book *Ahkâm al-Qur'an*, explains that the linguistic meaning of riba is an addition (ziyadah), but the meaning of riba in the Qur'anic verse is that any addition is taken without any substitute or counterbalance transaction justified by the Shari'ah." What is meant by a substitute or counterbalance transaction is a business or commercial transaction that legitimizes the addition fairly. Such as buying and selling transactions, pawns, rents, and so on. (Aly & Bustomi, 2022)

Understanding Debt in Islamic Perspective Sukarno (2010) Debt in a general sense means receiving loans from other parties that must be returned in accordance with agreements made by transaction ethics (P. Sukarno's Commercial Law lecture). It is also stated that it is a rule of Fiqh that debt should not bring profit to the creditor "that every debt that brings profit is the law of usury". Islamic accounts receivable should be based on religious commandments and advice so that we in this life always help each other and help each other in virtue. This is reinforced in: (Budiutomo, 2014)

1. Qur'an Surah Al Ma'idah verse 2:
"Help ye in goodness and in the exercise of piety, and do not seek help in sin and enmity. Fear Allah. Allah is very harshly punished".
Thus, the giving of debts or debtors must be based on sincere intentions as an effort to help each other in good. This verse means that the granting of a debt or loan to a person must be based on taking advantage of work advocated by religion or if there is no prohibition in doing so. Because giving debt to others is an act of virtue, someone who gives a loan is not allowed to take advantage. However, lenders should not be harmed either?
2. Qur'an Surah Al-Baqarah verse 282

"O believers, if you transact on the basis of debt within the prescribed time, write it. Let a writer among you write correctly, and let him not be reluctant to write as God has taught."

In debt transactions, Allah has given signs to run in accordance with sharia principles: namely avoiding fraud and actions prohibited by Allah, guaranteeing the certainty of debt receivables in writing, of course, also in accordance with applicable laws and positive customs (for example defective in a Notary).

3. The Qur'an Surah Al-Hadid verse 11 gives guarantees to lenders:

"Whoever lends Allah a good loan, Allah will multiply for him and at His side abundant and more glorious rewards." This guarantee is extraordinary, especially for Muslims who believe and are devout, because this guarantee requires goodwill, faith and sincerity.

Conclusion

The conclusion of the text is that in Islamic economics, eating usury is a grave sin. Even so, many Muslim communities are still confused by the practice of riba in everyday life, especially those related to banking transactions, so conventional banks are still the choice of Muslim customers to borrow funds. In the Qur'an, riba is described in QS. Ali Imran verse 130 about the prohibition of eating usury. In addition, there are various types of riba that are forbidden in the Qur'an and hadith, such as riba jahiliah, riba qardh, riba fadhl, riba nasi'ah, and riba yad. Although usury is not only bank interest, bank interest is one example of usury practice that occurs in many communities.

References

- Aly, H. N., & Bustomi, B. (2022). The Use of Economic Jargon as A Method of Quranic Education for Business People. *Madania: Jurnal Kajian Keislaman*, 25(2). <https://doi.org/10.29300/madania.v25i2.5751>
- Budiutomo, T. (2014). BUNGA BANK DALAM PERSPEKTIF ISLAM. *Academy of Education Journal*, 5(1 SE-Articles). <https://doi.org/10.47200/aoej.v5i1.110>
- Departemen Agama, R. (2007). Alquran dan terjemahan. *Al-Qur'an Terjemahan*.
- Dewantara, A., & Bawono, A. (2020). INFLUENCE ANALISYS OF MUDHARABAH, MUSHARAKAH, AND MURABAHAH FINANCING TO PROFITABILITY OF SHARIA COMMERCIAL BANK IN INDONESIA : *Jurnal Ekonomi Islam*.
- Fink, M., Gartner, J., Harms, R., & Hatak, I. (2023). Ethical Orientation and Research Misconduct Among Business Researchers Under the Condition of Autonomy and Competition. *Journal of Business Ethics*, 183(2). <https://doi.org/10.1007/s10551-022-05043-y>
- Haqiqi, M., Ikhsan, M., Fahruli, S., Mahfudz, Y. N., & Saputra, O. (2022). TADARRUJ FI

- AT-TASYRI' KEHARAMAN RIBA DALAM TAFSIR AL-MISBAH DENGAN PENDEKATAN LINGUISTIK. *BASHA'IR: JURNAL STUDI AL-QUR'AN DAN TAFSIR*. <https://doi.org/10.47498/bashair.v2i1.888>
- IMRAN, S. Y., & APRIPARI, A. (2022). Determination Of The Judges Freedom In Indonesia On The Straf Minimum Rules. *Protection: Journal Of Land And Environmental Law*, 1(1). <https://doi.org/10.38142/pjlel.v1i1.281>
- Kasdi, A. (2013). Analisis Bunga Bank Dalam Pandangan Fiqih. *Iqtishadia: Jurnal Kajian Ekonomi Dan Bisnis Islam STAIN Kudus*, 6(2).
- Khofiya, K. (2023). "Riba Bukan Hanya Soal Bunga Bank?! Apa Penjelasannya?" Program Studi Ekonomi Islam. <https://islamic-economics.uui.ac.id/riba-bunga-bank/>
- Lee, S. P., & Isa, M. (2023). Environmental, social and governance (ESG) practices and financial performance of Shariah-compliant companies in Malaysia. *Journal of Islamic Accounting and Business Research*, 14(2). <https://doi.org/10.1108/JIABR-06-2020-0183>
- Rodin, D., Anwar, R., Truna, D. S., & Darmalaksana, W. (2021). THE STATE AND THE HOLY QURAN: POLITICS OF THE QURAN TRANSLATION BY THE MINISTRY OF RELIGIOUS AFFAIRS. *ILMU USHULUDDIN*, 8(1).
- Setyowati, R., & Prabowo, B. A. (2021). Sharia principles in the financial services authority regulation on dispute settlement alternatives. *Sriwijaya Law Review*, 5(1). <https://doi.org/10.28946/slrev.Vol5.Iss1.603.pp56-70>
- Shihab, M. Q. (2005). Tafsir Al-Mishbah Jilid 10. In *Lentera Hati*.
- Siregar, E. S., & Irmayuliana, I. (2022). The Effect of Murabahah, Mudharabah, and Musharakah Financing on Net Profit Growth in Bank Muamalat Indonesia. *Jurnal BAABU AL-ILMI: Ekonomi Dan Perbankan Syariah*, 7(1). <https://doi.org/10.29300/ba.v7i1.6487>
- Wahyanto, T., & Setyadi, Y. (2023). RIBA ANALYSIS IN BANK INTEREST VIEWED FROM THE PERSPECTIVE OF ISLAMIC LEGAL PHILOSOPHY. *INTERNATIONAL JOURNAL OF HUMANITIES*
- Zainuddin, Z., & Zainuddin, A. S. (2022). Lafaz Al Bai'u Mistlu Al Riba dalam Surah Al Baqarah Ayat 275. *Jurnal Ilmiah Al-Mu'ashirah*, 19(1). <https://doi.org/10.22373/jim.v19i1.12309>