

CHAPTER I

INTRODUCTION

A. BACKGROUND OF RESEARCH

Environmental problems that often occur in Indonesia can't be separated from any human intervention. Humans as one element in the ecosystem often do damage to the environment which resulted in a series of environmental disasters causing a lot of harm. This is proof that humans and nature has not become friends, so it is necessary to increase environmental awareness culture in every facet of social life. Allah SWT said in Q.S Ar-Ruum verse 41;

ظَهَرَ الْفَسَادُ فِي الْبَرِّ وَالْبَحْرِ بِمَا كَسَبَتْ أَيْدِي النَّاسِ لِيُذِيقَهُمْ بَعْضَ الَّذِي عَمِلُوا لَعَلَّهُمْ يَرْجِعُونَ
(الروم : ٤١).

Meaning: Corruption has appeared throughout the land and sea by (reason of) what the hands of people have earned so He may let them taste part of [the consequence of] what they have done that perhaps they will return (to righteousness)".¹

According to Jimly Asshiddiqie, the Constitution of 1945 as the supreme law of the land already contains the basic idea of the sovereignty of the environment and ecocracy which can also be synchronized with the values of democracy and nomocracy concept. Therefore, the norms of environmental law that exist in it expressly requires that all of laws and policies in various development sectors should obey and submit to it. In addition, properly for every

¹QS. Ar-Ruum (30): 41.

citizen laid back and reinforce the conceptual foundations of environmental problems and sustainable development which have an environment conception, considering the conditions of environment sustainability are becoming retrograde.²

The green constitution and ecocracy concept reflected in authority and human rights concept also the economic democracy concept in Constitution 1945. The highest authority of sovereignty which exist in hands of citizen is reflected in human rights concept to a good environment and healthy pointed out in article 28H paragraph (1) of Constitution 1945, while the concept of economic democracy in terms of sustainable development and environment insight affirmed in article 33 paragraph (4) of Constitution 1945.³

As explained above, green constitution which defined in Constitution 1945 also reflected in economic democracy concept. So to achieve the ecological development needed a new paradigm as win-win solution to end the policymaker debate of environment conservation and economic growth (green economy). This concept is a model of economic development based on knowledge of ecological economic which aims to address the interdependence between economy and ecosystem and the negative impact from economic activity including climate change and global warming.⁴

²Jimly Asshiddiqie, *Green Constitution: Nuansa Hijau Undang-Undang Dasar 1945* (Jakarta: Sinar Grafika, 2010), p. 7.

³Asshiddiqie, *Green Constitution.....*, p. 8.

⁴Makmun Syadullah, *Menuju Green Economy* (Yogyakarta: Ekonisia, 2010), p. 42.

To realize the green economy concept in Indonesia, needed the support from various parties, not least Islamic banking which is growing rapidly in Indonesia. On other hand, Islamic banking is bank that all activities adhere to Islamic principles, so basically the mechanism in islamic banking always there is screening of financing and investment that decide the negative list for unlawful business, as like alcohol, weapons and gambling, because that cases threaten the survival of environment sustainable.⁵ So, every monetary policy especially conducted in banking sector should be able to direct the business in a clean environment or known as green banking. The applying of *green banking* is intended as bank strategy and its activities to encourage customers to engage actively participate in the financing of alternative energy projects.⁶

The concept of green banking in financing based environmentally or known with green lending can be determined as loan facility from financing institution to customer that operate in business sector and does not have impact to the descent of environment quality and social conditions.⁷

One of the main task of Islamic banking that closely related with society economic is providing financing, it is supplying of funds to fill the needs of the parties who are defisit unit. Type of financing that often done is productive financing, where this financing is intended to increasing business, whether

⁵“Bank Sentral Dorong Bank Syariah Jadi Pelopor Green Financing”, <http://www.syariahmandiri.co.id/en/2013/05/bank-sentral-jadi-pelopor-green-financing/>, accessed at 04/09/2014

⁶Syadullah, *Menuju Green*, p.197

⁷Glen Crostom. *Starting Green: From Business Plan to Profit, Entrepreneur* (Canada: Media Inc., 2009), p. 198

production, trade, and investment.⁸ In the context of providing of financing, the Islamic banking as one of institution engaged in economic sector, should carry out the economic principles as mandated by Constitution, it is ecological development. Therefore, islamic banking in providing financing to the customers needed to apply green banking concept.

In Indonesia, one of Islamic banking got appreciation on Indonesia Green Award 2012 in green banking category is Bank Syariah CIMB Niaga. Handoyo Soebali, director of Commercial Banking & Syariah CIMB Niaga said that CIMB Niaga done Green Office concept since 2010. It is a policy that is effective on saving in cost by do efficiency natural source using in the office area. The application of CIMB Niaga green lifestyle not only on operational activity, but also on projects financing applied the ecological development concept.⁹

Bank Indonesia as the central bank have issued the Regulation of Bank Indonesia No.8/21/PBI/2006 on 5th October 2006 of “Penilaian Kualitas Aktiva Bank Umum Yang Melaksanakan Kegiatan Usaha Berdasarkan Prinsip Syariah”. On article 9 paragraph (1) stated that “*kualitas aktiva produktif dalam bentuk pembiayaan dinilai berdasarkan prospek usaha*”, than continued with article 10 paragraph (1) point (e) stated that “*penilaian terhadap prospek usaha meliputi penilaian terhadap upaya yang dilakukan nasabah dalam rangka memelihara lingkungan hidup*”, especially for customers who have large scale business that have a significant impact on the environment.

⁸Muhammad Syafi'i Antonio, *Bank Syariah: Dari Teori Ke Praktik* (Jakarta: Gema Insani, 2001), p. 160.

⁹“CIMB Niaga Raih Penghargaan Indonesia Green Awardss 2012”, https://www.cimbniaga.com/?ch=gen_about&pg=gen_about_news&ac=132, accessed at 07/01/2015.

Furthermore Bank Indonesia also issued a Circular Letter of Bank Indonesia No. 8/22/DPbS on 18th October 2006 to all commercial banks in Indonesia that conducting business based on Islamic principles concerning *Penilaian Kualitas Aktiva Bank Umum Yang Melaksanakan Kegiatan Usaha Berdasarkan Prinsip Syariah.*” In roman III on quality of financing explained that criteria for determination of quality of financing valued based on effort of environment management that obligated to put down Environmental Impact Assessment (EIA or AMDAL). In roman II Number (1) point (b) mentioned that *“Kegiatan berdampak penting yang dilakukan tanpa AMDAL dapat membawa dampak yang merugikan di kemudian hari karena tidak adanya perencanaan pengelolaan lingkungan yang memadai oleh nasabah sehingga tidak akan diketahui dampak yang mungkin timbul dari kegiatan usaha nasabah”*. Besides the obligation to include EIA, the effort to manage the environment also should be done continuously as mentioned in point (d) which states that *“Selain pada awal pelaksanaan kegiatan usaha, upaya pengelolaan lingkungan hidup juga wajib dilakukan oleh nasabah secara terus-menerus”*.

However it seems that the implementation of *green banking* by Islamic banking can't be done comprehensively considering Islamic banking in an attempt to channel the financing required to take things that do not harm him, as mentioned in article 36 of Law No. 21 of 2008 of Islamic Banking that *“Dalam menyalurkan Pembiayaan dan melakukan kegiatan usaha lainnya, Bank Syariah dan UUS wajib menempuh cara-cara yang tidak merugikan Bank Syariah*

dan/atau UUS dan kepentingan Nasabah yang mempercayakan dananya".¹⁰ So with these regulations, reflecting the shift in the banking function of intermediary institutions into agencies rent seeking and speculation. Banks prefer to make a profit faster by utilizing the growing consumption in Indonesia. As a result, banks are not interested in lending to the real sector.¹¹

Referring to the description above can be stated that the regulations related to green banking have been made by Bank Indonesia as in the Regulation of Bank Indonesia and the Circular Letter of Bank Indonesia implicitly contains the substance of green banking, but explicitly did not mention green banking. In the normative legal terminology, this phenomenon is called vague of norms, mean that the existing norms can't regulate directly and firmly. Thus, raises public confusion especially Islamic banking practitioners and also customers ignored the relevant regulations of green banking.

To find out more the regulation of *green banking* in financing activities in Islamic banking, needs to be done normative legal research entitled "The Regulation of Green Banking as Main Indicator of Productive Financing in Inslamic Banking". The urgency of this research became clear after it turns out there has been no similar studies with similar topics and approaches.

¹⁰Pasal 36 Undang-Undang No. 21 Tahun 2008 Tentang Perbankan Syariah.

¹¹Syadullah, *Menuju Green*, p.215.

B. STATEMENT OF THE PROBLEMS

Based on explained above there are two problems raised, they are;

1. Why are the principles of green banking important applied in productive financing in islamic banking?
2. How are the regulation of green banking as main indicator of productive financing in islamic banking?

C. OBJECTIVE OF RESEARCH

The purpose of this research are;

1. To know the principles of green banking important applied in productive financing in islamic banking.
2. To know the regulation of green banking as main indicator of productive financing in islamic banking.

D. SIGNIFICANCE OF RESEARCH

Hopefully this research benefit theoretically and practically,

1. Theoritically

This research is useful for development of Sharia Business Law knowledge, especially concerned on concept and development of green banking as important indicator in productive financing in Islamic banking. Because the principles of green banking in compliance with Islamic banking principles.

2. Practically

This research useful for some perties. *Firt*, the Islamic banker can take this research as substance opinion to consolidate and compleate the orientation or mechanism of financing offering by customer. And its also benefical in making

new strategic policy that care about environment conservation. *Second*, both the Islamic and conventional business can utilizing as a reference of arranging financing application in Islamic banking. *Third*, the academicians also can utilizing it to arrange the material studies or writing a journal. *Fourth*, especially for Sharia Business Law student can utilizing it as manual or comparison material to do the research that related with this topic.

E. CONCEPTUAL DEFINITION

The conceptual definition covered some concepts as follows;

1. *Green banking*

Is a concept of financing and banking services products that prioritizes sustainable aspects of economic, environmental, and socio-cultural equally.¹²

2. Productive Financing

Financing is intended to fill the needs of the business, whether production, trade, and investment.¹³

F. RESEARCH METHOD

The term of research method consists of two words, they are research and methods. Method is an appropriate and fast way in doing something,¹⁴ so the method of work measure should be computable scientifically. Thus, a method always produce a tested experiment.¹⁵

¹²Syadullah, *Menuju Green*, p.198.

¹³ Syafi'i, *Bank Syariah*, p. 160.

¹⁴John M.Echols, *Kamus Inggris Indonesia* (Jakarta: PT Gramedia Puskata Utama, 1996), p. 379.

¹⁵R. Setiawan Comy, *Metode Penelitian Kualitatif : Jenis, Karakter, dan Keunggulannya* (Jakarta: Grasindo, 2010), p. 66

1. Kind of Research

In this study, researcher used a type of juridical normative research. Normative legal research is the study of literature, or library based, focusing on reading and analysis of the primary and secondary materials. Normative research by Ronald Dworkin also called doctrinal research, it is a study that analyzes both the law as law as it written in the book, and the law as law as it by the judge trough judicial process.¹⁶

2. Research Approach

The approach used in this research is statute approach which is use the legislation and regulation. The product called *beschikking*/decree is a concrete and special decree issued by administrator, such us presidential decree, ministerial decree, or the other.¹⁷ This research beat out the multiple legislation and regulation related to green banking and environment law issues.

And this research also use conceptual approach that is mean some concepts included opinions and doctrines developed in law and religion knowledge.¹⁸ Conceptual research done when the researcher agreed with the regulation is in, because there is not the regulation regulated the problem faced.¹⁹ As well as green banking concept that there is not the specific regulation regulated it yet.

¹⁶Bismar Nasution, *Metode Penelitian Hukum Normatif dan Perbandingan Hukum* (Medan: Majalah Hukum, 2003), p. 1.

¹⁷ Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2007), p. 97.

¹⁸Tim Penyusun, *Pedoman Penulisan Karya Ilmiah* (Malang: Fakultas Syariah UIN Maulana Malik Ibrahim Malang, 2013) p 21.

¹⁹Marzuki, *Penelitian Hukum*, p. 137.

3. Law Material

The juridical research is different from social research. Solving the issues about the law and concurrently give properly prescription, reearcher use the research sources called law material.²⁰ There are three law sources used, they are;

a. Primary law material is the authoritative law material, it means have the authority.²¹ The primary law materials used in this research are;

- 1) Undang-Undang Republik Indonesia Nomor 21 Tahun 2008 Tentang Perbankan Syariah.
- 2) Peraturan Bank Indonesia No. 8/21/PBI/2006 Tentang Penilaian Kualitas Aktiva Bank Umum Yang Melaksanakan Kegiatan Usaha Berdasarkan Prinsip Syariah.
- 3) Surat Edaran Bank Indonesia No. 8/22/DPbS Perihal Penilaian Kualitas Aktiva Bank Umum Yang Melaksanakan Kegiatan Usaha Berdasarkan Prinsip Syariah.
- 4) Undang-Undang Republik Indonesia Nomor 23 Tahun 1997 Tentang Pemeliharaan dan Pengelolaan Lingkungan Hidup.

b. Secondary law material is all of law publications which is shaped as informality document. This publicaton is instruction or explanation of primary law material.²² The secondary law material used in this research are;

- 1) Books talked about the related theme studied, such us; “Green Constitution” written by Prof. Dr. Jimly Asshiddiqie, S.H., “Menuju Green Economy” written by Makmun Syadullah, “Green Economy” written by Surna Tjahja

²⁰Ali, *Metode Penelitian Hukum* (Jakarta: Sinar Grafika, 2011), p. 47.

²¹Marzuki, *Penelitian Hukum*, p. 141.

²²Ali, *Metode Penelitian.....*, p. 54.

Djajadiningrat and friends, “Bank Syariah: Dari Teori Ke Praktik” written by Dr. M. Syafi’i Antonio, “Bank Islam” Analisis Fiqh dan Keuangan” written by Ir. Adiwarman A. Karim, and the others.

- 2) Law thesis, such us; thesis entitled “Urgensi Pengaturan *Green Banking* dalam Kredit Perbankan di Indonesia” by Ajeng Radyati and tesis berjudul thesis entitled “Green Banking dalam Kebijakan Kredit Perbankan di Indonesia” by Sabtia.
- 3) Law journals, likes *Keuangan dan Perbankan* journal, Vol. 17, No. 3 September 2013 and *e-Journal Unsrat*, 3 (April-Juni, 2013).
- c. Tertiary law materials, likes the materials given instruction or explanation of primary and secondary law materials.²³ Tertiary law materials used are *Marketeers* magazine, online news, and the Black’s Law Dictionary written by Bryan A. Garner.

4. Method of Collecting Law Material

This research used statue approach, so in the term of collecting the law materials, researcher search the legislations related to the law issues settled, it is green banking. The material used are legislation and regulation or delegated legislation and delegated regulation.²⁴

Researcher also used conceptual approach, so in the term of collecting the law materials done by investigating law books (treatises). So many concepts contained in those books.²⁵

²³Johnny Ibrahim, *Teori dan Penelitian Hukum Normatif* (Surabaya: Bayu Media Publishing, 2005), p. 294.

²⁴Marzuki, *Penelitian Hukum*, p. 194.

²⁵Marzuki, *Penelitian Hukum*, p. 196.

5. Analysis of Law Material

The analysis of law material of juridical normative research done by doing interpretations that well known in law knowledge. The interpretation have *hermeneutik* character that meant as a process of changing an unknown situatuion into understood situation.²⁶

The implemantation of *hermeneutik* (interpretation) to the law always related with the content. Each law have two side, written (explicit) and unwritten (implicit). In this matter, language can be important. The comprehension accuracy (*subtilitas intellegendi*) and defining accuracy (*subtilitas explicandi*) are most relevant to the law. *Hermeneutik* (interpretation) needed to explain the law material.²⁷

The law *hermeneutik* (interpretations) method used in this research are;

- a. Grammatical interpretation is giving meaning of a term or words appropriate with common language or law language.
- b. Contrastive interpretation is find out the opposite of a law term researched.
- c. Extensive interpretation is extend the meaning or term contained in a legislation. This interpretation stil hold on legislation provision, so it can be tasted by another party (objectively).
- d. Anticipation interpretation is answering a law issue based on the regulation happen.²⁸

²⁶Amiruddin dan Zainal Asikin, *Pengantar Metode Penelitian Hukum* (Jakarta: PT Raja Grafindo Persada, 2006), p. 163.

²⁷Amiruddin dan Zainal Asikin, *Pengantar Metode.....*, p. 164.

²⁸Amiruddin dan Zainal Asikin, *Pengantar Metode.....*, p. 164-166.

G. PROVIOUS RESEARCH

For the consideration and for the originality assure of this research, mentioned some previous research as follows;

1. Research by Sabtia

Research conducted by Sabtia, who studi at Master of Notary, Faculty of Law Medan North Sumatra University, with the title "*Green banking dalam kebijakan kredit perbankan di Indonesia*". Her research explained that the policy of credit in bank to the result of EIA as one of the products of green banking focuses on compliance credit application to operate the credit policy that based on environment concept as one of requirement in bank rating.²⁹

2. Research by Ajeng Ratyati

The other research conducted by Ajeng Ratyati, student at Master of Legal Studies, Law Faculty of University of Brawijaya Malang, entitled "*Urgensi pengaturan green banking dalam kredit perbankan di Indonesia*". Her research explained that legal certainty of *Green Banking* regulation in credit of bank in Indonesia is now indispensable, so no more reason for the banking industry not to do it, because it is protected by the regulation regulated on *Green Banking* especially in credit of Indonesia banking today.³⁰

3. Research by Nicholas F. Maramis

Then the research entitled "*Tanggung jawab perbankan dalam penegakan green banking mengenai kebijakan kredit*", also conducted by

²⁹Sabtia, *Green Banking dalam Kebijakan Kredit Perbankan di Indonesia*, Tesis MA, (Medan: Universitas Sumatra Utara, 2010), p. 5.

³⁰Ajeng Ratyati, *Urgensi Pengaturan Green Banking dalam Kredit Perbankan di Indonesia*, Tesis MA, (Malang, Universitas Brawijaya, 2014), p. 1.

Nicholas F. Maramis, student at Master of legal, University of Sam Ratulangi Manado. He said that in terms of lending between banks and customers must be based on trust. Besides of trust, elements of the agreement itself is essential to underpin the legal relationship between the parties, so the loan agreement is also closely related to the environmental laws in order to prepare the EIA of customer activities.³¹

Generally this research different from the research conducted by researcheres above, where they focused on green banking in the term of credit. Also the locus using of this research is Islamic banking, different with the researcheres above used conventional banking. The following table can clarify the differences and similarities the research above with the research conducted by writer.

Table 1.1 : The Similarities and Differences of Previous Researchs

No	Name/Year/ Institution	Title	Formal Object	Material Object
	2	3	4	5
1	Sabtia/ 2010/ Sumatera Utara Uniersity	Green Banking in Bank Credit Policies in Indonesia	Green banking	Credit policy
2	Ajeng Ratyati/ 2014/ Brawijaya Uniersity	Urgency of Green Banking Regulation in Bank Credit in Indonesia	Green banking	Credit of conventional banking
3	Nicholas F. Maramis/ 2013/ Sam Ratulangi University	Responsibility of Bank in Enforcing Green Banking Concerning of Credit Policy	Green banking	The responsibility of bank

³¹Nicholas F. Maramis, "Tanggung Jawab Perbankan dalam Penegakan Green Banking Mengenai Kebijakan Kredit," e-Journal Unsrat, 3 (April-Juni, 2013), p. 103.

1	2	3	4	5
4	Walida Lathifatuz Zahro' / 2015/ Sharia Faculty of UIN Malang	The Regulation of Green Banking As Main Indicator of Productive Financing in Islamic Banking	Green banking	Productive financing in Islamic banking

H. DISCUSSION STRUCTURE

Chapter I : Introduction

This chapter consists of the background of the problem, statement of the problem, objective of research, significance of research, conceptual definitions, research method, previous research, and discussion structure.

Chapter II : Review of Related Literature

This chapter consist of concepts, theories, and/or juridical thought as the theoretical basis for the assessment, there are; theory of legislation, *green constitution*, *green economy*, *green banking*, and productive financing.

Chapter III : The Urgency and Regulation Green Banking As Main Indicator of Productive Financing In Islamic Banking

This chapter described and discussed about the regulation of green banking as the main indicator of productive financing in Islamic banking. This chapter contains of the urgency of green banking of productive financing in islamic banking and the regulation of *green banking* of productive financing in Islamic banking.

Chapter IV : Closing

This chapter consists of conclusions and suggestions. The conclusion is the short answer of the statement of the problems that has been set. While suggestions is proposed or recommended to the related parties or who have more authority to the themes studied for the good of society, also as a recommendation for research in the future.

