

## CHAPTER III

### THE REGULATION OF *GREEN BANKING* AS MAIN INDICATOR OF PRODUCTIVE FINANCING IN ISLAMIC BANKING

In chapter III explained specifically and deeply related to urgency and regulation of green banking of productive financing in Islamic banking.

#### **A. Urgency of Green Banking of Productive Financing In Islamic Banking**

The term 'urgency' means the most importance necessity.<sup>1</sup> Whereas term of 'green banking' means that all of bank activities always give priority to sustainable development. Especially of financing, the balance of ecology, economic growth, and society welfare couldn't be ignored, as defined of The Dimensional Model. It explains that environment, economy, and society are related each other. They are interlinked and cannot be separated. The sustainable development concept creates an environment conservation, in order to fill human needs, economic prosperity and social solidarity keep occurred.

Thereby, the urgency of green banking means a condition seriously needed the follow up and handling. Its also mean an urge or very important condition for Islamic banking to pay attention of justice principles and environment conservation.

The urgency of green banking implementation of productive financing in Islamic banking based on three reasons. *First*, Islamic banking is one of corporation contributed in ecological development. *Second*, productive financing

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<sup>1</sup> Pius A. Partanto dan M. Dahlan Al Barry, *Kamus Ilmiah Populer* (Surabaya: Arkola, 1994), p. 770.

as an ecological development controller. *Third*, Islamic banking based on sharia principles have an equal spirit with green banking principles.

### **1. Islamic Banking As Actor of Ecological Development**

Islamic banking as actor of development mean that it is one of state corporation in monetary sector that apply economic democracy principles in its activities, and one of its principle is sustainable development and ecology. So, all of kinds of Islamic banking activity should reflect that principles. Islamic banking is a finance institution in function to smooth economy mechanism in real sector through business activity (investment, purchase, or others) based on sharia principles.<sup>2</sup> There are three main activities of Islamic banking, they are funding, financing, and service.

Besides hold on sharia principles, Islamic banking also hold on economic democracy and prudential principle.<sup>3</sup> Both of principles contain in Constitution 1945 that is called by Jimly Asshiddiqie as green constitution.

Economic democracy principles written in article 33 paragraph (4) of Constitution 1945 stated that “*Perekonomian nasional diselenggarakan berdasar atas demokrasi ekonomi dengan prinsip kebersamaan, efisiensi berkeadilan, berkelanjutan, berwawasan lingkungan, kemandirian, serta dengan menjaga keseimbangan kemajuan dan kesatuan ekonomi nasional.*” That article give an image that Islamic banking also use that principles in its activities besides sharia principles. Among principles which is closely related with Islamic banking as

<sup>2</sup>Ascarya, *Akad dan Produk Bank Syariah* (Jakarta: PT Raja Grafindo Persada, 2006), p.30.

<sup>3</sup>Article 2 Act No. 21 year 2008 on *Perbankan Syariah*.

endorser institution of implementation of national development are “sustainable and ecological”.

Sustainable development as has been described in chapter formerly means that the process of development is expected to meet the needs of today without endangering the ability of the next generation to fulfill their needs in the harness the potential of natural resources for life.<sup>4</sup> It means a Islamic bank in giving productive financing to customers, where the productive financing is synonymous with business development, Islamic bank participate in the process of state development specially in economic sector. So bank as a supplier of funds also obliged to point the customers to not exploit natural resources used in production activity. Thus Indonesia development in economic sector could be done continually until the future generations.

Then, besides sustainable principles, Islamic banking also hold on ecological principle. In this case, the green economy concept should be implemented. In fact, this concept is directing economy development basing knowledge towards ecological economic aimed at responding of interdependence between economic and ecosystem and negative impact as a result of economic activity include climate change and global warming.<sup>5</sup>

Green economy concept increasingly more important its existence in Islamic banks activity, considering national development in order economic growth often in contrast with environment conservation. As examples, the founding of factories become more and more in order to increase economic

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<sup>4</sup>Jimly Asshiddiqie, *Green Constitution: Nuansa Hijau Undang-Undang Dasar 1945* (Jakarta: Sinar Grafika, 2010), p. 134

<sup>5</sup>Makmun Syadullah, *Menuju Green Economy* (Yogyakarta: Ekonisia, 2010), p. 40.

growth, but on the other side it also have bad impact on the environment conservation. Factories in its attempt produced the waste which later be thrown into rivers and caused water pollution, also the smoke produced caused air pollutions which have on climate change.

## **2. Productive Financing As Control Instrument of Ecological Development**

Productive financing is a financing used to increase the business production, so Islamic bank in providing funds to the business looked to environmental aspect. The only business that does have worse impact to the environment got the financing. Islamic bank also supervises the customers in the management of funds. So, Islamic bank contributes actively in environmental conservation.

In order to support green economy, Islamic bank needs to apply the green banking concept. It is a financing concept that gives the priority to aspects of sustainable, good economic, environmental, social and cultural, and simultaneously technology. So, to apply it can be done by implementating of the existing components.

### *1. Customer Segment*

A company provided financing by Islamic bank is the company that have concern for the environment, a company that its business activities do not damage the environment, also a company that has the environmentally-friendly certification.

## *2. Value Proposition*

By providing funds to an environmentally-friendly company, Islamic banks prove to the society and state that they participate in applying economic democracy principles as mandated by the Constitution of 1945. So it is used as socialization to the society to use Islamic banks as funding and financing institutions.

## *3. Channel*

Channels used by Islamic banks towards green banking are B2C (business to customer), this means that the application of green banking started from the internal side. Islamic banks can apply efficiency programs, by applying reduce, reuse, and recycle. It can be done by optimizing innovation and creativity of employees and using technology. While externally, Islamic banks educate stakeholders to offer environmentally Islamic banking products (eco-products) to customers as always.

## *4. Customer Relationship*

The relationship between Islamic banks and customers is conducted through a personal approach (personal touch) and familial. So both of them become a good relationship and trust each other. Nevertheless, Islamic banks always do assistance and supervision to customers so the financing provided will actually be used for environmentally friendly businesses.

## *5. Revenue Streams*

Islamic banks that do financing to environmentally-friendly companies have a right to receive a share in accordance with the ratio agreed. It can be used as the brand

image because Islamic bank have financed that environmentally-friendly projects that its benefits can be perceived by the large public.

#### 6. *Key Resource*

Islamic bank need human resources who has knowledge not only in the field of syariah banking, but also knowledge of the environmental conservation. Thus, needs to be done a environmental certification as requirement of Islamic bank employee.

In indonesia, there are no requirements to its employee that requires having certificates related to environment. Different with First Green Bank, florida USA, in which human resources used have certification of Energy and Environmental Design (LEED).

#### 7. *Key Activity*

Islamic bank in order to implement green banking activities in accordance with the syariah principles and economic democracy (ecology development principle). For instance by providing financing of environment-friendly projects, like creative industry which uses industrial wastes and business models has environmental kindness. And other thing we can do is change the customers financial report from *based paper* being *based electronic*.

#### 8. *Key Partner*

Partners of Islamic bank is environmental communities who have high environment awareness, as Walhi (*Wahana lingkungan hidup*) and Tunas Hijau. Islamic bank collaborates with the communities, actively carry out the green business socialization as a environment care and society empowerment. Besides

Islamic bank also need to collaborate with the government to support green banking operational. So, the cooperation between several parties can realize green banking easily.

#### 9. *Cost Structure*

The costs needed by Islamic banking in order to realizing green banking are the cost to human resource as green banking implementer. The other cost also needed for process of screening product in order to suitable with sharia principles and economic democracy principles.

From explanation above, can be concluded that Islamic banking participation realized in the form of financing, either to individual or company. Thus, as a effort of increasing the quality of its Islamic banking participation, it can be realized by its participation to hold responsible in keeping environment quality as consequence of national development ditribution.

### **3. Islamic Banking Based on Sharia Principles Relevant to Green Banking Principles**

The relevance of Islamic banking principles with green banking principles lies in the existence of similarities between the two of them, both aimed to create a sense of fairness, balance, and good for all parties. So, both have principles in rows and complement each other's to provide a better benefit for all stakeholders.

The sharia principle is the Islamic law principle in banking activities based on a *fatwa* issued by institutions who has the authority in the determining



fatwa in the field of sharia.<sup>6</sup> Also mentioned in general explanation of Act Nomor 21 year 2008 on *Perbankan Syariah* paragraph (5) stated that “*Kegiatan usaha berdasarkan prinsip syariah yakni kegiatan usaha yang tidak mengandung unsur riba, maysir, gharar, haram, dan zalim.*”<sup>7</sup>

Sharia principle is the agreement rules between bank and other parties for funding, financing of business activities, or other activities expressed in accordance with macro sharia values. Macro values referred is justice, *mashlahah*, *zakat* system, free from usury (*riba*), free from the speculative nonproduktif activities (*maysir*), free from unlawful things (*bathil*), and the using of money as an instrument of exchange. While the micro values is the noble attribute exemplified by of Rasulullah, they are *shiddiq, amanah, tabligh, and fathanah.*<sup>8</sup>

Article 2 of Regulation of Bank Indonesia (PBI) No. 9/19/PBI/2007 explained that in funding, financing, and service activity, Islamic banking obligate to fill sharia principles. It done by fill the main provision of Islamic law, such us justice and balance principle (*‘adl wa tawazun*), beneficial (*mashlahah*), and universalism (*alamiyah*), also it does not contain of *gharar, maysir, riba, dzalim, riswah, and haram* object.

#### **a. Justice Principle, Green Banking, and Productive Financing**

According to the PBI, justice means putting something in accordance place, give something to who is entitled, as well as treating something appropriately.<sup>9</sup> In other word, justice means not *zalim*.

<sup>6</sup>Article 1 point 12 Act No. 21 year 2008 on *Perbankan Syariah*.

<sup>7</sup>Explanation of Act No. 21 year 2008 on *Perbankan Syariah*.

<sup>8</sup>Ascarya, *Akad dan Produk.....*, p. 30.

<sup>9</sup>Explanation of Act No. 21 year 2008 on *Perbankan Syariah*.



The justice principle in productive financing function as the primary control. How not, Islamic banks in financing to the customers should know the customers' background, so the Islamic banks can channel the funds appropriately.

According to green banking context, the justice principle same with customer *segment components*, which is only a business that have concern with the environment conservation can be financed. While business that has the potential to impair or pollute the environment or business couldn't process the waste, not included in the business category which is funded by a bank labeled green banking. So, bank only gives the funds to the business or a company that has certificate of environmentally-friendly of its business accordance with applicable regulations.

Besides justice principle for the business object funded, justice principle also aimed to environment. This is reflected in Constitution 1945 that gives rights to the environment to grow and develop well continually. While in green economy context, justice means giving the right to the environment to be used for humans in their business activities without followed by environmental impairment.

According to Ali Yafie, all living things is noble (*muhtaram*), does not mean a respectable, but the ecosystem to be protected. So, human beings are prohibited to massive of benefit exploiting to animals, plants, and other living things, because it led to extinction, death, and disruption of system of life. Then it has a same meaning as in fiqhiyyah *الضرر يزال* norm which means a injury should be omitted.

Still according to Ali Yafie, humans are also forbidden to intemperate a limit of their need standard. This means that production and consumption activities to be in accordance with its standard (*hadd al-kifayah*). If humans to fulfill their needs take improperly, or exploit excess and unnatural, it is called *zalim* and contrary to justice principle.<sup>10</sup>

#### **b. Balance Principle, Green Banking, and Productive Financing**

Balance or *tawazun* in Islamic banking covering the balance of material and spiritual aspects, private and public aspect, financial and real sector, business and social, and balance of utilization and sustainability aspect.<sup>11</sup>

*First*, a balance between material and spiritual aspects means that Islamic bank in carrying out all their activities, always on the basis of values contained in Islam (sharia principles). *Second*, a balance between private and public aspect means that bank as an institution based profit oriented or institution oriented to advantages seeking, should also be balanced with services provided to the public. Bank participate in financing that does not damage the humans needs..

*Third*, a balance between financial real and sector sector seen from the existence of Islamic bank as monetary policy institution which is participated in the national development. So the increasing of economic growth should also be balanced with spreading national growth. *Fourth*, a balance between business and social sectors can be realized if the banks as business institution, also participate in community empowerment. An example that could be done by Islamic banks is

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<sup>10</sup>Yafie, *Merintis Fiqh.....*,

<sup>11</sup>Explanation of Act No. 21 year 2008 on *Perbankan Syariah*.

channelling CSR' funds (Corporate Social Responsibility) to the society as sociality to the environment.

*Fifth*, a balance between conservation and utilization can be seen from funding and financing sector. In which Islamic bank that collects funds from customers then distributed to other costumers in a form of financing. The funds collected by Islamic bank are used to financing other customers at certain business. So, Islamic bank have to make sure that the funds used right and not damage to the other sectors, especially on the environment. It is performed with purpose to fill the needs of today without damaging life the future.

The fifth form of balance principle above, in accordance with the principles in green banking, it is a balance between the *key activity* and *revenue streams* and *cost structure*.

*Key activity* of green banking means that green banking do the activities concerned with environment management, it is the financing of environment-friendly projects. In other words, green banking concept demands to the bank to giving the financing just for environmental business. Relative to it, so key activity of green banking should be balanced with *revenue streams* or the ratio of sharing got by bank, because it has to fund the environmentally friendly projects that useful for general public.

So, a balance between *key activity* and *cost structure* cannot be circumvented. Because the financing of Islamic bank by implementing green banking concept need to do screening project for business will be funded.

The balance principle is also explained by Ali Yafie, where in human life needs a balance of worldly and hereafter, as well as the harmony and balance in the natural (ecosystems) conservation.<sup>12</sup>

A balance between worldly and hereafter means that the opportunity to act just in the world, while hereafter is the results of the world life. So, every human activity not only fill the wordly needs but also preparing to the next life.

Meanwhile, the harmony and balance of ecosystem means the human in utilizing of nature should always think and act for the future life. It is because humans and environment are in an ecosystem support each other, interdependent, and running on the harmony and balance principle.

### c. Beneficial Principle, Green Banking, and Productive Financing

*Mashlahah* is all form of beneficial related to worldly and hereafter, material dan spiritual, individual and collective, also should fill 3 (three) elements, are; sharia compliance (*halal*), beneficial, and carries goodness (*thoyib*) in various aspects that did not generate some injuries.<sup>13</sup> It is relevan to fiqhiyah norm;

جلب المصالح و درء المفاسد

Means, reaching the beneficial and rejecting the injury.

In productive financing, *halal* means that business financed is not forbidden by sharia of Islam. While useful means the product offered by Islamic bank can provide a benefit for the customers needs. And *thoyib* means bringing the goodness for all aspects without incurring an injury. So those described that

<sup>12</sup>Yafie, *Merintis Fiqh.....*,

<sup>13</sup>Explanation of Act No. 21 year 2008 on *Perbankan Syariah*.

the Islamic bank financing aimed to provide beneficial (*mashlahah*) to all parties, specially to customers.

In green banking context, beneficial principle in line to componen of *value proposition*. *Value proposition* means the practice of bank in environment conservation would get a place in a society and state. Because, the implementing of financing to environment-friendly business gives benefits to various aspect, both economic, social, and environment it self. This benefit in Islamic law called as *mashlahah*.

Beneficial principle also delivered by Ali Yafi, who stated that the beneficial is Islam soul, it is aimed to creating a harmonic relationship between humans and environment. According to him, the prime beneficial should be done is primary beneficial (*al-dharuriyat*), because it is be a primary needs fo r every humans to strengthen their humance dimension. If the primary beneficial filled, the secondary and tertiary beneficial also filled indirectly.<sup>14</sup>

#### **d. Universalism Principle, Green Banking, and Productive Financing**

Universalism means can be done by, with, and for all parties who having an interest (*stakeholders*) without dicrimination of quarter, religion, race, and class base on spirit of gracefully universe (*rahmatan lil alamin*).<sup>15</sup>

There are some principles of universalism contained in green banking. *First*, green banking builds a channel with several parties such as the customer as the using of Islamic bank products, stakeholder as head of the company, government as policy makers, and corporate as a bank partners.

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<sup>14</sup>Yafie, *Merintis Fiqh*.....,

<sup>15</sup>Explanation of Act No. 21 year 2008 on *Perbankan Syariah*.

*Second*, green banking builds good relationships with customers (good customer relationship) by doing some assistances and evaluations of financing has been given in order to the businesses running well and bank received for maximum results.

*Third*, the application of *key partner* components is one way to support the operational of green banking. It is done by interlacing partnership with environmentalists who concern to the activities of environmental conservation.

*Fourth*, a good relationship with human resources who works in green banking should be conducted. Because human resources who have knowledge and about understand the concept and practice of green banking.

A same concept also delivered by Ali Yafie who said that human is the doer of universe management that determine the environmental sustainability. Because human as *muhtaram* in the front row, so humans should responsible for all of acts of environmental conservation, especially due to economic growth and national development.<sup>16</sup>

#### **e. The Sharia Basic Principles, Green Banking, and Productive Financing**

The sharia basic principles are the general principles used in Islamic banking activities. Among of them are forbidden to *maysir*, *gharar*, *haram*, *riba*, and *zalim*.

Green banking concept did not recognize the existence of the practices above. There are several critical explanation could be presented. *First*, green banking is unrecognized with speculation. Especially productive financing in

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<sup>16</sup>Yafie, *Merintis Fiqh.....*, 172

Islamic banking, it used clear agreement both of parties, including the ratio of sharing for each party. So in one component of green banking, *revenue streams*, explained that the bank are entitled to a distribution properly because of funding of environmentally-friendly projects that the benefits can be perceived by the general public.

*Second*, there is a screening process of productive financing in Islamic banking. So it is clear what the business would be funded by Islamic bank, including its allowed or unlawful. If in the process of screening funded unlawful products, then Islamic banks will not distribute the funds to the that business. Related to financing provided by Islamic banks, bank also issued an agreement relating to all of requirements forms that should be fulfilled by both parties. So there are not the negative appeared, as the increasing of funds unnaturally (*riba/usury*), or taking funds not accordance with the agreement (*dzalim*).

#### **f. *Maqashid Al-Syariah*, Green Banking, and Productive Financing**

*Maqashid al-syariah* or the purpose of sharia always needed in each human actions, no exception on productive financing in Islamic banking. As we know that Islamic bank always hold on sharia principles and it is in accordance with *hifdzu al-din*.

Then, in distributing funds to customers, Islamic bank just funding the environmentally-friendly business (based on green banking principle), thus Islamic banks contributes in protecting of environment needed by humans life, then in this case Islamic bank also contributes in keeping of human soul (*hifdzu al-nafs*) and their descendants (*hifdzu al-nasb*).



The financing in Islamic banking also be seen from unowful or allowed kinds of business in business. Bank does not fund the unlawful business as beer or alcohol drinking which can damage the human intellect. This means that Islamic banks also contribute in maintaining human mind (*hifdzu al-aql*) in order to avoided from unlawful drinking.

*Hifdzu al-mal* also could be separated of Islamic banking activities in monetary sector. In fact, Islamic bank only provides the financinf to business in accordance with the sharia principle. So Islamic bank only received the lawful sharing. This proves that Islamic bank contributes in maintaining the property (*hifdzu al-aml*) in productive financing

From analysis above can be concluded that the sharia principles in accordance with green banking concept on productive financing in islamic banking. To know more about the relevancy of sharia principles and green banking principles could be seen in table as follow;

**Table 3.1 : The similarity of syaria principles and green banking principles of productive financing in Islamic banking**

No.	Sharia Principles	Green Banking Principles	Fiqh Basic Principles of Environment According to Ali Yafie	Explanation
1.	' <i>Adl</i> (justice) = Prohibition of <i>zalim</i>	<i>Customer Segment</i> (The customers segment of green banking are business entities that have concern with the environment preservation and companies that have environment certification dan memiliki in its business operational)	Production and consumption should be suitable with worthy of human needs ( <i>hadd al-kifayah</i> ). Prohibition to exploit nature source	That the green banking principles also viewed on sharia principle namely justice. In which the business funded by banks is concerned with the environment. It does not exploit natural resources. So its production and consumption activities should be in accordance to the needs.
2.	<i>Tawazun</i> (balance)	<i>Key Activity</i> (the financing of <i>environment-friendly projects</i> ) <i>Revenue Streams</i> (sharing base on ratio) <i>Cost Structure</i> (cost of <i>screening product</i> )	A balance of worldly and hereafter Harmony and balance nature (ecosystem) absolute enforced.	<i>Tawazun</i> or balance also consist in green banking concept where the financing of environmentally-friendly projects also balanced with the sharing in accordance with the agreement. In addition, green banking that provide financing to environmentally-friendly business also means that bank participate in keeping a balanced ecosystem. So human

				beings in any activities not only oriented to fill the worldly needs but also prepare for hereafter life.
3.	<i>Mashlahah</i> (beneficial)	<i>Value Proposition</i> (bank that practice on environment concern will receive a place in the society and the state)	Creating the harmonic relationship between human and environment	The implementation of green banking of productive financing in Islamic bank would provide benefits for humans and environment, so the bank also will get a positive response from the society and government.
4.	<i>Alamiyah</i> (universal)	<p><i>Channel</i> (cooperation with many parties such of ustomers, stakeholder, government, and corporation).</p> <p><i>Customer Relationship</i> (build a good relationship with its customers)</p> <p><i>Key Partner</i> (cooperation with environmental organization)</p> <p><i>Key Resource</i> (the relation with human resource who work at green banking)</p>	Humans are the main doer of universe processing that determines the sustainability life.	The impemention of green banking needed cooperation from various parties, among customers, stakeholders, government, corporate, and environmental organization. And all these elements are humans as the main doer of universe management and environmental sustainability.

5.	Sharia basic principles			
	<i>Maysir</i>	<i>revenue streams</i> (sharing base on ratio)		The productive financing in Islamic banking used a clear contract ( <i>aqad</i> ), including the sharing both of parties.
	<i>Gharar</i>	<i>Customer Segment</i> (clear the green banking financing objects)		In Islamic bank there is a screening process of financing. So it is clear what the business would be funded, including its lawful or unlawful.
	<i>Haram</i>	<i>Key Activity</i> (the financing given to green business that benefit to the customer and environment, means that it is lawful ( <i>halal</i> ) clearly).		
	<i>Zalim</i>	<i>Customer Segment</i> (green banking take part in environment conservation because it only giving financing to business that concern on environment)		There are requirements of financing agreement that should be filled by both of parties. So there aren't the negative things risen, as increasing of funds fictiously ( <i>riba</i> ) or using of funds improperly with agreement ( <i>dzalim</i> ).
	<i>Riba</i>	<i>revenue streams</i> (sharing base on ration, there is not the additional out of the agreement).		

## **B. The Regulation of *Green Banking* of Productive Financing in Islamic Banking**

Article 1 Constitution 1945 states that Indonesia is the law state, so it is requiring Indonesia rules to have written rules used to adjust and create public orderliness. The legal rules that consist in public are necessary to ensure a balance of society relations. Therefore the law consist in society should reflect the law basic values and containing of a certainty, justice, and benefits.

To ansure the certainty that law can function as a rule that should be adhered, so needed an arrangement of regulation by competent authorities. The existence of green banking regulation of productive financing in Islamic banking, expected to bring up the clear legal certainty concerned the financing provisions to costumers and also providing juatice for many interests

A good legislation, having legal validity, effective in society, and apply to the length time, should be based to legislation base. In regulating of green banking at least consist of three aspects, are; philososophy, sociology, and juridical, or in other word effective law product always be propped by philosophy, sociology, and juridical pillar.<sup>17</sup>

### **1. Philosophical Aspect of Regulation of Green Banking**

Based on philosophical aspect, then a legislation should in accordance with state's philosophy that contained nation moral values or ethics. Pancasila as Indonesia philosophy, consist of values that is been as Indonesia life view. Focusing on regulation of green banking, the suitable moral principles of pancasila are the deity and justice values.

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<sup>17</sup>Satjipto Rahardjo, *Ilmu Hukum* (Bandung: Citra Aditya Bhakti, 1991), p. 178.

The deity value confirmed that there has been the recognition and confidence nation against to Allah as the whole creator. This is proven by an existence of some religions which has grown and developed in Indonesia, including Islam. Islam teaches moslem to always run the religion lessons. One of Islamic lesson is protecting the environment, not makes the damage, and preserve its existence. It has been described completely in the Al-Quran and Al-Hadits as a life guideline of moslem.

Al-Quran as moslem holy book mentioned any verses relating to environment, either implicitly or explicitly. In its verses stated the sign of environmental concept in cosmological perspectives (creating of universe) commonly in theological and unethcal paradigmatic. Al-Quran explained the paradigm of environment damage caused by destructive behavior of human. It also explained the sanction for a destroyer.<sup>18</sup>

#### a. Environment concept in cosmological perspective

Some verses of Al-Quran explained that the whole created by Allah as a proof of Allah affection to humans. As His saying in QS. Al-Hijr ayat 19-20;

وَالْأَرْضَ مَدَدْنَاهَا وَأَلْقَيْنَا فِيهَا رَوَاسِيَ وَأَنْبَتْنَا فِيهَا مِنْ كُلِّ شَيْءٍ مَوْزُونٍ (١٩) وَجَعَلْنَا لَكُمْ فِيهَا مَعَايِشَ وَمَنْ لَسْتُمْ لَهُ بِرَازِقِينَ (٢٠)

Meaning: We have spread out the earth and set mountains upon it; and caused to grow every suitable thing therein. And We have made for you therein means of living and [for] those for whom you are not providers.

<sup>18</sup>Sukarni, *Fikih Lingkungan Hidup: Perspektif Ulama Kalimantan Selatan* (Jakarta: Kementerian Agama RI, 2011), p. 35.

In QS Al-A'raf verse 10, Allah said as follow;

وَلَقَدْ مَكَّنَّاكُمْ فِي الْأَرْضِ وَجَعَلْنَا لَكُمْ فِيهَا مَعَايِشَ ۗ قَلِيلًا مَّا تَشْكُرُونَ (١٠)

Meaning: And We have certainly established you upon the earth and made for you therein ways of livelihood. Little are you grateful.

Both verses above explained that Allah prepared the balance of life facilities as life supporting. Allah also prepared the life sources like water, plants, and animals, provided for human life.

#### **b. Nature damage as destructive activity of human**

Allah explained in Al-Quran that nature damage caused by human behavior (*zalim*). As explained in QS. 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).”

Human as chaliph in the earth should save the earth from any kinds of damage caused. Doing the positive act as a care to the environment. Not doing on the contrary, utilizing the nature infinite and unrules, exploit the nature greatly without balanced with nature conservation, thus caused the nature damage.



### c. Sanction for the nature destroyer

In Al-Quran also explained that Allah will gives sanction for human as punishment of damage has done. As explained in QS. QS. Ar-Ruum verse 41;

ظَهَرَ الْفَسَادُ فِي الْبَرِّ وَالْبَحْرِ بِمَا كَسَبَتْ أَيْدِي النَّاسِ لِيُذِيقَهُمْ بَعْضَ الَّذِي عَمِلُوا لَعَلَّهُمْ يَرْجِعُونَ  
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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).”

Besides Al-Quran, in the hadith also mentioned some concepts related to the environment. If in the Al-Quran are still mentioned in general, then in the hadith explained more special, as an example the prophet Muhammad teach us to do environmental conservation with a greening program, as the prophet said;

قال رسول الله ص.م ما من مسلم يغرس غرسا أو يزرع زرعاً فيأكل منه طير أو إنسان أو بهيمة إلا كان له به صدق<sup>19</sup>

By the existence of command to do greening as always, then it means that there is the prohibition to do environment destruction which causes the loss of environmental benefits.

Then in addition to the daity value, green banking also in accordance with justice value, as stated in the fifth moral principle of Pancasila as Indonesian goals. Every Indonesian has the right to be treated as fairly both in the field of

<sup>19</sup> Sukarni, *Fikih Lingkungan Hidup*:....., p. 48.

economic, social, and law. None of the minority and majority class, so it occurred to balance and harmony between rights and obligations.

An effort to protect the environment by an Islamic bank could be done by financing activities. Where an Islamic bank launched the financing only business operators who participate in environment conservation and avoid the injury to the nature. Thus the environment conservation and the maintaining of justice in production activity of business keep occurring.

The concept of green banking in various sectors can provide justice. In the economic sector, the implementation of green banking done by an Islamic bank, where it is one of economic activators and also participates in the national development. The number of financings by an Islamic bank, makes many entrepreneurs can do their production activities, so it will make increasing of state economic growth.

Later, justice also occurs in the social sector, where a bank only provides funds to green business development, then environmental sustainability is maintained, so the society can benefit the environment to their life needs. Thus the society life that generally filled by nature will be provided as always, both for the present and the future.

Justice in the economic and social sector will not work if there is no justice in the field of law. Where needed a regulation that is firmly set about the regulation of implementation of green banking in an Islamic bank. So both parties who violate it may be penalized as a form of justice.

From the description above can be known that philosophically, the setting of green banking in Islamic banking has fulfilled. Because this concept containing values that live in society, particularly the principle and value sourced from the Al-Quran and hadith, and also in accordance with a Indonesian view of life, its called Pancasila especially first and fifth moral principle of it.

## **2. Sociological aspect of regulation of green banking**

The analysis of regulation of green banking in Islamic banking sociologically is stated that regulation made should be in accordance with general belief or legal awareness of society. Thick of society with different cultures (local wisdom) that has been assumed had become a part of their life. Not a few cultural lived in society aimed to be a part of the environment as a thank to Allah. A number of cultural activities such as 'Bersih Desa', 'Jumat Bersih', 'Tanam Pohon', and the others.

The various activities above are cultures conducted together by a society in certain areas. So, it means that these activities were not separated from social interaction of society who had a reciprocal relation. Besides containing the value of togetherness and social culture it also not loose of mutual assistance principle, where there is a feeling of helping each other to obtain the same purpose, it is environmental cleanliness.

Togetherness, social awareness, and mutual assistance values to maintain the balance and harmony nature relevant with green economy values that is started the green banking emergence. Green economy is a model of economic development approach that is no longer rely on economic development based

exploitation of natural resources and environment excessive, thus the environment stay awake.

Green economy teaches that a human banned exploit the natural as denude forest, cutting down trees illegally, increasing land settlement, building the factories that produces the emission into air, water and others. Due in the exploitation of nature will result on climate change and global warming that threatening human life and environment.

Thus, various social culturals in order to show the concern of environment rised. The society clean the village, cleaning the river, and supported by the government that recently had is 'Tanam Sejuta Pohon' program. It suggests that the environment is really should be preserved, so as to smooth needed a clear regulation, no exception green banking regulation in accordance with general belief that grows in society.

### **3. Juridical Aspect of Regulation of Green Banking**

Analysis arrangement of green banking in Islamic banking juridically can be expressed that the legal basis is a main base consist in legal provisions, began the highest to the lowest grade of hierachy legislation of Indonesia. In this case the spirit of juridical of green banking have been seen in Indonesia legislations either in the form of regulation or another legislation.

In Constitution 1945, the spirit of green banking consist in article 28H paragraph (1) stated that *"Setiap orang berhak hidup sejahtera lahir dan batin, bertempat tinggal, dan mendapatkan lingkungan hidup yang baik dan sehat serta berhak memperoleh pelayanan kesehatan.* Then also affirmed in article 33

paragraph (4) stated that *“Perekonomian nasional diselenggarakan berdasar atas demokrasi ekonomi dengan prinsip kebersamaan, efisiensi berkeadilan, berkelanjutan, berwawasan lingkungan, kemandirian, serta dengan menjaga keseimbangan kemajuan dan kesatuan ekonomi nasional.”*

Then, the spirit of green banking also consist in Indonesia regulation, such us;

- a. The explanation of article 8 Act Nomor 7 year 1992 as changed to Act Nomor 10 year 1998 on *Perbankan*

*“Bank dalam memberikan kredit atau pembiayaan berdasarkan prinsip syariah harus pula memperhatikan hasil Analisis Mengenai Dampak Lingkungan (AMDAL) bagi perusahaan yang berskala besar dan atau risiko tinggi agar proyek yang dibiayai tetap menjaga kelestarian lingkungan”.*

- b. Article 22 Act Nomor 23 year 1997 on *Pengelolaan Lingkungan Hidup* as changed to Act Nomor 32 year 2009 on *Perlindungan dan Pengelolaan Lingkungan Hidup*

*“Setiap usaha dan/atau kegiatan yang berdampak penting terhadap lingkungan hidup wajib memiliki AMDAL.*

In Government Regulation also stated on green banking, such us;

- a. Government Regulation Nomor 27 year 1999 on *AMDAL*

On general explanation of that stated that *“Setiap rencana usaha dan/atau kegiatan yang kemungkinan dapat menimbulkan dampak besar dan penting terhadap lingkungan hidup wajib memiliki analisis mengenai dampak lingkungan hidup.”*

b. Government Regulation Nomor 37 year 2012 on Pengelolaan Daerah Aliran Sungai (DAS)

Article 1 mentioned that *“Pengelolaan DAS adalah upaya manusia dalam mengatur hubungan timbal balik antara sumberdaya alam dengan manusia di dalam DAS dan segala aktivitasnya, agar terwujud kelestarian dan keserasian ekosistem serta meningkatnya kemanfaatan sumberdaya alam bagi manusia secara berkelanjutan.”*

c. Government Regulation Nomor 38 year 2011 on Sungai

Article 1 mentioned that *“Pengelolaan sumber daya air adalah upaya merencanakan, melaksanakan, memantau, dan mengevaluasi penyelenggaraan konservasi sumber daya air, pendayagunaan sumber daya air, dan pengendalian daya rusak air.”*

Then in Decision of Environment Ministry Nomor 17 year 2001 on *Jenis Usaha atau Kegiatan yang Wajib Dilengkapi dengan AMDAL*, exist the spirit of green banking as explained in Nomor 1 point H concerning Bidang Perindustrian, stated that *“Kegiatan bidang perindustrian pada umumnya menimbulkan pencemaran air, udara, tanah, gangguan kebisingan, bau, dan getaran. Beberapa jenis industri menggunakan air dengan volume sangat besar, yang diperoleh baik dari sumber air tanah ataupun air permukaan. Penggunaan air ini berpengaruh terhadap sistem hidrologi sekitar. Berbagai potensi pencemaran, gangguan fisik dan gangguan pasokan air tersebut di atas menimbulkan dampak sosial. Beberapa jenis industri yang sudah memiliki teknologi memadai untuk mengatasi dampak negatif yang muncul, sehingga tidak termasuk dalam daftar berikut, tetapi menggunakan areal yang luas tetap wajib dilengkapi dengan AMDAL.”*

The *green banking* spirit in Islamic banking also consist in Regulation of Bank Indonesia (PBI) No.8/21/PBI/2006 concerning *Penilaian Kualitas Aktiva Bank Umum Yang Melaksanakan Kegiatan Usaha Berdasarkan Prinsip Syariah*. The second part on financing, article 9 paragraph (1) mention that “*kualitas aktiva produktif dalam bentuk pembiayaan dinilai berdasarkan prospek usaha, kinerja (performance) nasabah, dan kemampuan membayar.*” Next, article 10 year (1) mention that “*penilaian terhadap prospek usaha meliputi penilaian terhadap beberapa komponen yang meliputi (a) potensi pertumbuhan usaha, (b) kondisi pasar dan posisi nasabah dalam persaingan, (c) kualitas manajemen dan permasalahan tenaga kerja, (d) dukungan dari grup atau afiliasi, (e) upaya yang dilakukan nasabah dalam rangka memelihara lingkungan hidup.*”

Furthermore, the implementation of PBI above regulated in Circular Letter of Bank Indonesia No.8/22/DPbS 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*. The circular letter explains that the effort of environment conservation is one of the criteria in assessment of business prospect, especially for costumer having big scale of his business activity that is had important impact to the environment. So, one of thing need to considered in order of financing is the result of Environmental Impact Aessment (EIA/AMDAL)

Mentioned on roman II point 2 of b, stated that EIA is a study of the large and important impact of business planned to environment required for the taking decision on the organization of business or an activity. The results of AMDAL is



needed to ensure the feasibility of projects funded by environmental aspects. The activities that have the important impact undertaken without AMDAL can bring an adverse impact in the next day because the absence of environmental management planning adequate by customers, so as not be known the impact that may arise from the customers activities. This is could impact the survival of businesses and the ability of customers to restore financing .

From the regulations above, it was clear that green banking based on some regulations which already exist before, Constitution 1945, Act, government regulation, the decision of ministry, regulation of Bank Indonesia, and circulars letter of Bank Indonesia. Thus green banking have fill the juridical base to be formed as a legislation that stand alone.

The discussion about regulating green banking in Islamic banking on Indonesia legislation above shows the existence of accommodating of principles of implementation of legislation, which is general, comprehensive, and universal.<sup>20</sup>

*First*, general. Green banking regulation should apply generally to all of Indonesian citizen. There is no discrimination of it. Means that anyone of Indonesian citizens and anyone foreigners who live in Indonesia should be ready to be law object of green banking regulation. Thus, the participation of Islamic banking in the regulating of green banking through its productive financing in Indonesia makes strengthens more the general principle forcing in Indonesia legislation.

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<sup>20</sup>Rahardjo, *Ilmu Hukum* ....., p. 83.

*Second*, comprehensive. Green banking should accommodate aspects of the philosophical, sociological, and juridical that grow, life, and to behave in Indonesia citizen life. No one of third aspects that was overlooked in the green banking regulation. Neglect one aspect will bring ineffectiveness of law forcing, because it may simply will obtain the resistance of Indonesian citizen. Therefore, the contribution of the sharia principle of green banking strengthening through productive financing in Indonesia truly has aligned with comprehensive principle that should be enliven of green banking legislation to be animating in Indonesia .

*Third*, universal. Green banking regulation may not in contradiction with universal values applied in society. Among universal values are; beneficial, justice, togetherness, democracy, orderliness, harmony, peace, prosperity, and humanity. Regulation of green banking in Islamic banking should accommodate those values, so the regulation of green banking not transcend and not imposing the human ability, especially the Indonesia citizen.

As examples are the obligation charged to customer do not excessive, and also the rights received by customers also does not contain elements of harassment or degrading dignity and humanity. Understating the meaning of humanity in the green banking regulation would result in the loosing of universal values. Thus can be affirmed that the accomodation of emancipation spirit contained in the overall Islamic principle into green banking through productive financing clearly relevant to the universal principle that enliven in Indonesia legislation.