

EFFORTS TO PROTECT CONSUMER'S SPIRITUAL RIGHTS IN ORGANIZING ISLAMIC MICROFINANCE INSTITUTIONS IN INDONESIA

¹Hari Sutra Disemadi, ²Ayup Suran Ningsih

¹Faculty of Law, Universitas Internasional Batam, haridisemadi@gmail.com

²Faculty of Law, Universitas Negeri Semarang, ayuupp@gmail.com

Abstract

Microfinance Institutions (MFIs) are part of non-bank financial institutions. In organizing, MFIs can be implemented with sharia principles, but not a few people who assume that this Sharia-based MFI is only a label to attract the sympathy of the Muslim community. Based on this, this study aims to determine the legal policies for the implementation of MFIs in Indonesia and to find out regulatory policies regarding sharia principles in the organization of MFIs as an effort to protect the spiritual rights of consumers. This study uses a normative juridical research method with a conceptual approach and a statutory approach. This study shows the legal basis for the organization of MFIs is Law Number 1 of 2013, POJK Number 14/POJK.05/2014, POJK Number 61/POJK.05/2015, and POJK Number 62/POJK.05/2015. The policy of regulating the application of sharia principles as an effort to protect the spiritual rights of consumers has also been regulated in the MFI Law and the implementing regulations namely POJK Number 62/POJK.05/2015 concerning Business Administration of MFIs which in the implementation of sharia-based MFIs must use mudharabah, musyarakah, murabahah, ijarah, salam, istishna, ijarah muntahiah bit tamlik or other contracts (akad) that do not conflict with sharia principles. The policy of applying sharia principles in organizing MFIs is intended to guarantee the protection of the spiritual rights of consumers from Islamic MFIs.

Keywords: *Spiritual Rights; Microfinance Institutions; Indonesia*

1. Introduction

In Indonesia, the development of technology and information has given freedom to the public to choose the services of financial institutions according to their wishes.¹ Kasmir defines a financial institution is any company engaged in finance, raising funds, channeling funds or both.² This means that the activities carried out by financial institutions are always related to the financial sector, whether their activities only raise funds or only channel funds or both collect and distribute funds.

There are 2 (two) types of financial institutions known today, namely bank financial institutions and non-bank financial institutions, or better known as the Non-Bank Financial Industry (IKNB).³ Bank financial institutions in Indonesia are divided into several types, namely

¹ Hari Sutra Disemadi and Paramita Prananingtyas, "Perlindungan Hukum Terhadap Nasabah Perbankan Pengguna CRM (Cash Recycling Machine)," *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 8, no. 3 (2019): 287, doi:<https://doi.org/10.24843/JMHU.2019.v08.i03.p07>.

² Andri Soemitra, *Bank & Lembaga Keuangan Bank Syariah* (Jakarta: Prenadamedia Group, 2018), 26.

³ Disemadi and Prananingtyas, "Perlindungan Hukum Terhadap Nasabah Perbankan Pengguna CRM (Cash Recycling Machine)," 289.

commercial banks and rural credit banks. Bank financial institutions are institutions that provide the most complete financial services.⁴ Businesses that are carried out in addition to channeling funds or providing financing/credit also make efforts to raise funds from the wider community in the form of deposits. Article 1 number (2) of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking (Banking Law) states that “banks are business entities that collect funds from the public in the form of deposits and distribute them to the public in the form of credit, and other forms to improve the lives of many people”. While the types of IKNB are Insurance Companies, Pension Funds, Financing Institutions, Microfinance Institutions (MFI), and others.

In Indonesia, in increasing the economic growth of middle to lower-income people, and MSMEs (Micro, Small and Medium Enterprises), the financial institutions that have an active role in this effort are the Microfinance Institutions (MFI).⁵ The presence of MFIs is also intended to help the community and MSMEs who have difficulty in accessing loans or financing at banking financial institutions. This means that MFIs are intended to foster the people's economy to become resilient, empowered and independent that have an impact on improving the national economy which is based on economic democracy with the principles of togetherness, equitable efficiency, sustainability, environmental insight, independence, and by maintaining a balance of progress and national economic unity.⁶

MFI regulation in Indonesia has been regulated in Law Number 1 of 2013 concerning Microfinance Institutions (MFI Law). Article 1 (1) of the MFI Law states “Micro Finance Institutions, hereinafter referred to as MFIs, are financial institutions specifically established to provide business development services and community empowerment, either through loans or financing in micro-scale businesses to members and the community, savings management, or providing business development consulting services that are not solely for profit”. This definition implies that the MFI is a profit motive institution that is also a social motive, whose activities are more community development without ignoring its role as a financial intermediary institution.⁷ As a financial institution that functions as an intermediary institution, MFIs also carry out

⁴ Erma Defiana Putriyanti, “Legal Status of Credit Bank Guarantee in Indonesia's Legal Guarantee,” *Sriwijaya Law Review* 1, no. 2 (2017): 128, doi:<http://dx.doi.org/10.28946/slrev.Vol1.Iss2.38.pp128-141>.

⁵ Ayup Suran Ningsih, Duhita Driyah Suprapti, and Nurul Fibrianti, “The Importance of Applying the Membership Value Toward Savings and Loans Cooperatives in Indonesia,” *Sriwijaya Law Review* 3, no. 2 (2019): 230, doi:<http://dx.doi.org/10.28946/slrev.Vol3.Iss2.235.pp225-234>.

⁶ Hari Sutra Disemadi and Kholis Roisah, “Kebijakan Model Bisnis Bank Wakaf Mikro Sebagai Solusi Pemberdayaan Ekonomi Masyarakat,” *Law Reform* 15, no. 2 (2019): 179, doi:10.14710/lr.v15i2.26176.

⁷ I Gde Kajeng Baskara, “Lembaga Keuangan Mikro Di Indonesia,” *Buletin Studi Ekonomi* 18, no. 2 (2014): 115, <https://ojs.unud.ac.id/index.php/bse/article/view/7788>.

savings and loan activities, whose activities in addition to providing loans but are also required to provide awareness of saving to the community, especially low-income people.⁸

In organizing MFIs in Indonesia, it cannot be separated from the regulation and supervision of the Financial Services Authority (OJK). The regulation and supervision of MFIs by OJK are intended to achieve the OJK mission itself contained in Article 4 of Law Number 21 of 2011 concerning the Financial Services Authority (OJK Law), namely: 1). Realizing the implementation of all activities in the financial services sector in an orderly, fair, transparent and accountable manner; 2). Creating a financial system that grows in a sustainable and stable manner, and 3). Protect the interests of consumers and society.

Talking about protecting consumer rights in the organization of MFIs, it is closely related to the recognition of consumer rights as human rights.⁹ In Indonesia, the protection of consumer rights as human rights has been poured into the form of laws and regulations namely Law Number 8 of 1999 concerning Consumer Protection (Consumer Protection Law). But it is also recognized that outside the Consumer Protection Law there are also other regulations whose substance protects consumers.¹⁰

Previous research regarding consumer protection have been carried out by: 1). Inosentius Samsul in 2013 which focused on the protection of consumers of financial services after the formation of the OJK¹¹; 2). Rati Maryani Palilati in 2017 which focuses on protecting consumer banking by the OJK¹²; 3). Agus Suwandono and Devina Yuanitasari in 2016 which focused on the position of alternative dispute resolution institutions in consumer protection¹³; and 4). Heldia Natalia in 2017 which focuses on consumer protection in e-commerce transactions.¹⁴ Although previous research have the same theme of consumer protection, the focus of this research is the protection of the spiritual rights of consumers in the organization of MFIs in Indonesia.

⁸ Baskara, "Lembaga Keuangan Mikro Di Indonesia."

⁹ Inosentius Samsul, "Perlindungan Konsumen Jasa Keuangan Pasca Pembentukan Otoritas Jasa Keuangan (OJK)," *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan* 4, no. 2 (2016): 154, doi:<https://doi.org/10.22212/jnh.v4i2.201>.

¹⁰ Samsul, "Perlindungan Konsumen Jasa Keuangan Pasca Pembentukan Otoritas Jasa Keuangan (OJK)."

¹¹ *Ibid.*, 153.

¹² Rati Maryani Palilati, "Perlindungan Hukum Konsumen Perbankan Oleh Otoritas Jasa Keuangan," *Jurnal IUS: Kajian Hukum Dan Keadilan* 5, no. 1 (2017): 49, doi:<http://dx.doi.org/10.29303/ius.v5i1.414>.

¹³ Agus Suwandono and Deviana Yuanitasari, "Kedudukan Lembaga Alternatif Penyelesaian Sengketa Sektor Jasa Keuangan Dalam Hukum Perlindungan Konsumen," *Jurnal Bina Mulia Hukum* 1, no. 1 (2016): 14, doi:<https://doi.org/10.23920/jbmh.v1n1.2>.

¹⁴ Heldia Natalia, "Perlindungan Hukum Terhadap Konsumen Dalam Transaksi E-Commerce," *Melayunesia Law* 1, no. 1 (2017): 111, doi:<http://dx.doi.org/10.30652/mnl.v1i1.4497>.

Upon the explanation that has been described previously, the formulation of the problem in this study is: 1). How are the regulation for organizing MFIs in Indonesia ? and 2). What is the form of a policy to protect the spiritual rights of clients in the organization of MFIs in Indonesia?

2. Methods

The type of legal research used is legal research which is included in the normative legal research typology where this study focuses on positive legal norms in the form of legislation. Analytical descriptive is the nature of the research specifications used by the author because the specifications of this study describe and describe the problem of the object being studied.¹⁵ The data that has been obtained is then collected and then arranged to be analyzed and explained to get the conclusions of the research conducted. Secondary data is used in writing this article. Secondary data used comes from primary legal materials such as Law Number 1 of 2013 concerning Microfinance Institutions, Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, and Law Number 21 the of 2011 concerning the Financial Services Authority. As well as secondary legal materials and tertiary legal materials in the form of books and other legal research journals. The technique used in collecting secondary data is through library research or documentary study, which is a study that examines various documents both related to legislation and other available documents.¹⁶ The last thing is compiling data-data that have been obtained so that it becomes legal writing that can answer the problems that have been formulated beforehand to help the author make a correct conclusion.

3. Results and Discussion

3.1. Regulation for Organizing Islamic MFIs in Indonesia

In Indonesia, many developing non-bank financial institutions conduct business activities in the financial sector which helps a lot to the community.¹⁷ These institutions need to be developed especially in terms of their institutionality and legality because they have helped to improve the economy of the community, especially the poor and/or low-income people.¹⁸

¹⁵ Suteki Suteki and Galang Taufani, *Metodologi Penelitian Hukum (Filsafat, Teori Dan Praktik)* (Depok: Rajagrafindo Persada, 2018), 148.

¹⁶ *Ibid.*, 149.

¹⁷ Hari Sutra Disemadi, "Risk Management In The Provision Of People's Business Credit As Implementation Of Prudential Principles," *Diponegoro Law Review* 4, no. 2 (2019): 195, doi:10.14710/dilrev.4.2.2019.194-208.

¹⁸ Juli Andria, Darmawan Darmawan, and Azhari Azhari, "The Implementation of Musyarakah by PT Bank Aceh Branch of Banda Aceh, Indonesia," *Sriwijaya Law Review* 3, no. 1 (2019): 110, doi:http://dx.doi.org/10.28946/slrev.Vol3.Iss1.195.pp99-110.

Developments in society today, financial institutions that provide funds or capital for micro-scale businesses and small scale businesses are very important and urgent.¹⁹ Micro-scale financial institutions are indeed only focused on micro-community businesses. This micro-scale financial institution is known as the MFIs that implement sharia principles (Islamic MFI).²⁰

Article 33 paragraph (1) of the 1945 Constitution of the Republic of Indonesia (UUD 1945), emphasizes that the economy is structured as a joint effort based on the principle of kinship. Furthermore, Article 33 Paragraph (4) of the UUD 1945 that the national economy shall be implemented based on economic democracy with the principles of togetherness, equitable efficiency, sustainability, environmental insight, independence, and by maintaining the balance of progress and national economic unity. MFIs are formed based on the spirit contained in Article 27 paragraph (2) and Article 33 paragraph (1) and paragraph (4) of the UUD 1945. The existence of MFIs in principle as a financial institution providing micro-scale Savings and Financing services, to the public, is expanding employment and can act as an instrument of equity and increase community income, as well as improve the welfare of the poor and/or low-income people. Based on this, to meet the needs of financial services for the poor and/or low-income, a law on microfinance institutions needs to be developed to provide a legal basis and legal certainty for the activities of the Islamic MFI. It was mentioned earlier that Islamic MFI regulations in Indonesia have been regulated in Law Number 1 of 2013 concerning Microfinance Institutions (MFI Law).

Explanation of MFI Law states that the drafting of MFI Law aims: 1). facilitate the access of the poor and/or low-income earners to obtain Micro Loans / Financing; 2). empower the economy and productivity of the poor and/or low-income people, and 3). increase the income and welfare of the poor and/or low-income people. This law contains the main substance regarding the provisions of the scope of the MFI, the concept of Savings and Loans / Financing in the MFI's definition, principles, and objectives. The MFI Law also regulates institutions, both those concerning the establishment, form of a legal entity, capital, and ownership. The legal entity form of an Islamic MFI according to this Act is a Cooperative and a Limited Liability Company. MFIs in the form of limited liability companies, the majority of shares owned by Regency/City Governments or village-owned enterprises.

¹⁹ Novita Dewi Masyithoh, "Analisis Normatif Undang-Undang No. 1 Tahun 2013 Tentang Lembaga Keuangan Mikro (LKM) Atas Status Badan Hukum Dan Pengawasan Baitul Maal Wat Tamwil (BMT)," *Economica: Jurnal Ekonomi Islam* 5, no. 2 (2014): 19, doi:<http://dx.doi.org/10.21580/economica.2014.5.2.768>.

²⁰ Disemadi and Roisah, "Kebijakan Model Bisnis Bank Wakaf Mikro Sebagai Solusi Pemberdayaan Ekonomi Masyarakat," 180.

In addition, the MFI Law also regulates Islamic MFI business activities including business development services and community empowerment, both through loans or micro-scale financing to members and the community, saving management, as well as providing business development consulting services, as well as the business area coverage of an MFI that located in a village, sub-district, or district/city area in accordance with the permit (multi-licensing).²¹ To give trust to the depositors, an MFI savings guarantor institution established by the Regency/City Government and/or MFI can be formed.²² In case it is needed, the Government can also co-establish an MFI deposit guarantee institution together with the Regional Government and MFI.

Article 3 of the MFI Law states that Islamic MFIs aim to: a). increasing access to micro-scale funding for the community; b). help increase economic empowerment and community productivity, and c). help increase the income and welfare of the community, especially the poor and/or low income. Then Article 4 of the MFI Law also states that the establishment of an MFI must meet at least the following requirements: a). legal entity form; b). capital; and c). get a business license whose procedures are regulated in the MFI Law. In the case of the legal entity form referred to in Article 4 must be in the form of a Cooperative or Limited Liability Company, this is stated in Article 5 of the MFI Law.

OJK Regulation or POJK Regulation Number 62/POJK.05/2015 concerning Amendment to Financial Services Authority Regulation Number 13/POJK.05/2014 concerning Business Operations of Microfinance Institutions and Government Regulation Number 89 of 2014 concerning Interest Rates on Loans or Returns on Financing and Area The scope of business of the Microfinance Institution mentions that the business area of an MFI is within a village, sub-district, or district/city area by the scale of business of each MFI. The scale of the intended MFI business is determined based on the borrower's or Financing customer's distribution as follows: 1). MFI has a village business scale if providing loans or financing to residents in 1 (one) village; 2). An MFI has a sub-district business scale if it provides loans or financing to residents in 2 (two) villages or more in 1 (one) sub-district area, and 3). The MFI has a regency/city scale of business if it provides Loans or Financing to residents in 2 (two) districts or more in 1 (one) same regency/city area. Whereas Islamic MFI capital consists of paid-up capital for MFIs with legal PT status or principal savings, mandatory savings, and grants for MFIs with Cooperative

²¹ Hans Dieter Seibel, "Islamic Microfinance in Indonesia: The Challenge of Institutional Diversity, Regulation, and Supervision," *SOJOURN: Journal of Social Issues in Southeast Asia* 23, no. 1 (2008): 90, <https://www.jstor.org/stable/41220061?seq=1>.

²² Jay K. Rosengard and et al, "The Promise and the Peril of Microfinance Institutions in Indonesia," *Bulletin of Indonesian Economical Studies* 43, no. 1 (2007): 93, doi:<https://doi.org/10.1080/00074910701286404>.

legal status in the amount of a). Village business area: IDR 50,000,000; b). District business area: IDR 100,000,000; c). District / city business area: IDR 500,000,000.

In terms of ownership, Article 8 of the MFI Law states that Islamic MFIs can only be owned by: a). Indonesian citizens; b). Rural / urban-owned business entities; c). Regency / City Regional Government; and / or d). Cooperative. Before running a business activity, the MFI must have a business license from the Financial Services Authority. To obtain an MFI's business license as intended, the MFI must meet the minimum requirements regarding organizational structure and management, capital, ownership, and feasibility of the work plan. Conducting a licensing process for an MFI is an implementation of the mandate of Article 9 of the MFI Law which states "before running a business activity, the MFI must have a business license from the Financial Services Authority". Granting Islamic MFI business licenses in general, grouped into 2, namely: 1). Application for new MFI business licenses, especially for MFIs that were established since the MFI Law came into effect, namely after January 8, 2015; and 2). Application for an MFI's business license through the inauguration, especially for MFIs that have been established and are operating before the MFI Act is effective, namely before January 8, 2015. Related to licensing of MFIs is further regulated in OJK Regulation or POJK Number 61/POJK.05/2015 concerning Amendment to Regulation of Financial Services Authority Number 12/POJK.05/2014 concerning Business Licensing and Institution of Microfinance Institutions.

The implementation of Islamic MFIs as one of the financial services sectors is expected to be organized regularly, fairly, transparently and accountably, Islamic MFIs are expected to be able to realize a financial system that grows sustainably and stably and can protect the interests of consumers. For this reason, OJK has a function in regulating, guiding and supervising Islamic MFIs as mentioned in Article 28 of the MFI Law. Development, regulation, and supervision of Islamic MFIs are carried out by OJK in coordination with the ministries that organize cooperative affairs and the Ministry of Home Affairs.²³ The development and supervision of the Islamic MFI are delegated to the district/city-regional government or other designated parties. Further regulations regarding the development and supervision of Islamic MFIs by OJK are regulated in OJK Regulation or POJK Number 14/ POJK.05/2014 concerning Development and Supervision of Microfinance Institutions.

²³ Hesty D. Lestari, "Otoritas Jasa Keuangan: Sistem Baru Dalam Pengaturan Dan Pengawasan Sektor Jasa Keuangan," *Jurnal Dinamika Hukum* 12, no. 3 (2012): 559, doi:<http://dx.doi.org/10.20884/1.jdh.2012.12.3.127>.

Legal basis regulating for organizing MFIs that implement Sharia Principles (Islamic MFI) in Indonesia, namely Law Number 1 of 2013 concerning Microfinance Institutions, Government Regulation Number 89 of 2014 concerning Interest Rates on Loans or Returns on Financing and Area of Coverage of Microfinance Institutions, POJK Number 14/POJK.05/2014 concerning Development and Supervision of Microfinance Institutions, POJK Number 61/POJK.05/2015 concerning Amendments to Financial Services Authority Regulation Number 12/POJK.05/2014 concerning Business Licensing and Institutional Micro Finance Institutions, and POJK Number 62/POJK.05/2015 concerning Amendments to the Financial Services Authority Regulation Number 13/POJK.05/ 2014 concerning Conducting Business of Microfinance Institutions.

3.2. Legal Policies for Protecting the Spiritual Rights of Islamic MFI Consumers in Indonesia

Today, in Indonesia the development of the Islamic economic system can be said to be very significant. This is certainly good news for Islamic economic practitioners. Bearing in mind, currently, the growth of sharia business has started to get special attention from the public.²⁴ This growth can be seen from various types of financial institutions that are labeled Islamic or Sharia. The presence of MFIs that apply sharia principles can at least be used as an indicator of the development and growth of Islamic financial institutions in Indonesia.²⁵

Although MFIs labeled as having an Islamic presence have mushroomed in Indonesia, some people assume that the Sharia-based MFI is just a label that is used to attract the sympathy of Indonesian people who are predominantly Muslim. There are still many people who assume that Islamic financial institutions are conventional financial institutions using Islamic terms, with the part *akad* or agreement that is affixed with the phrase “*Bismillahirrahmaanirrahiim*” and employees who wear Muslim clothing and say hello, but the public still believes that in the implementation of *akad* or sharia MFI agreements still use methods that are prohibited by Islam.²⁶

²⁴ Muhamad Mustaqim, “Prinsip Syariah Dalam Manajemen Sumber Daya Manusia (Studi Atas Implementasi Manajemen Sumber Daya Manusia UMKM Di Kudus),” *Jurnal Penelitian* 10, no. 2 (2016): 400, doi:<http://dx.doi.org/10.21043/jupe.v10i2.1817>.

²⁵ Zeehan Fuad Attamimi, Hari Sutra Disemadi, and Budi Santoso, “Prinsip Syariah Dalam Penyelenggaraan Bank Wakaf Mikro Sebagai Perlindungan Hak Spiritual Nasabah,” *Jurnal Jurisprudence* 9, no. 2 (2019): 12, doi:<https://doi.org/10.23917/jjr.v9i2.8897>.

²⁶ Maslihati Nur Hidayati, “Dewan Pengawas Syariah Dalam Sistem Hukum Perbankan: Studi Tentang Pengawasan Bank Berlandaskan Pada Prinsip-Prinsip Islam,” *Lex Journalica* 6, no. 1 (2008): 65.

Apart from the lack of awareness and trust of the public towards MFIs that apply sharia principles in Indonesia (Islamic MFI).²⁷ Therefore, this research wants to show that the Indonesian Government has arranged the implementation of Islamic MFIs as an effort to increase consumer confidence and as a form of protecting the spiritual rights of consumers who are predominantly Muslim. This research is intended to provide a deeper understanding of the MFI applying sharia principles, which are not just labeled to attract the sympathy of the Muslim community but for the benefit of the people and the welfare of the people.

Microfinance Institutions which are based on sharia principles are regulated in Article 12 of the MFI Law. The legal policy regarding the implementation of sharia principles is the main differentiator between Sharia-based MFIs and other conventional MFIs. The principles of sharia refer to Islamic law which is guided by the Qur'an and the Hadith. Islam itself is a religion that has a comprehensive and universal concept of regulating human life both about Allah (*Habluminallah*) or fellow human relations (*Hablumminannas*). The main pillars in the teachings of Islam are *Aqeedah*, Sharia, and *Akhlaq* which will be elaborated as follows:²⁸ 1). *Aqeedah* is a component or part of the teachings of Islam that regulates belief in the power and existence of Allah SWT, so it must be the faith of someone who is Muslim when doing various activities in the world solely to get the pleasure of Allah SWT., As a caliph who gets the mandate from Allah SWT; 2). Sharia is a component or part of the teachings of Islam that regulates the lives of people who are Muslim both in the field of worship (*Habluminallah*) and in the field of *muamalah* between fellow humans (*Hablumminannas*) which is the actualization of the *Aqeedah* which is his belief. *Muamalah* itself includes matters relating to the economy or property and commerce that can be referred to as (*Muamalah Maliyah*); and 3). *Akhlaq* is a component of Islamic teachings that contains the foundation of behavior and personality that will later characterize him as a devout Muslim based on sharia and *aqeedah* which becomes his life's guidance or guide so that he has a morality.

Mentioned above *muamalah* is a component that concerns the economic life of Islam. There are quite several guidelines or guidelines of the Islamic Religion which regulate the economic life of the *Ummah* especially in the field of Sharia-based MFIs which among other

²⁷ Amir Mu'allim, "Persepsi Masyarakat Terhadap Lembaga Keuangan Syariah," *Al-Mawarid Journal of Islamic Law* 10 (2003): 18.

²⁸ Muslimin Kara, "Kontribusi Pembiayaan Perbankan Syariah Terhadap Pengembangan Usaha Mikro Kecil Dan Menengah (UMKM) Di Kota Makasar," *Asy-Syir'ah: Jurnal Ilmu Syariah Dan Hukum* 47, no. 1 (2013): 281–83, doi:<http://dx.doi.org/10.14421/asy-syir'ah.2013.%25x>.

things outline are:²⁹ (1). Do not allow the element of speculation and gambling in economic activities which are believed to bring harm to the community. Islamic religion places money as a medium of exchange rather than serving as a commodity to be traded let alone containing an element of uncertainty or speculation (*gharar*); (2). The property must revolve (initiate) so that it should not only be centered on a handful of people so that humans as caliphs who receive the mandate from Allah SWT, must be productive and make their wealth useful for the prosperity and welfare of many people; (3). Working is worship and must be done by everyone, meaning that every human being must be prepared to face risks from work such as getting profit or benefits compared to benefits that only stop by without the risks and benefits that are fixed (interest on deposits); (4). Islamic economic activities must be carried out transparently and fairly based on like without coercion from any party; (5). *Zakat* as an instrument to fulfill the obligation to set aside assets which are also the right of others.

Speaking of human rights, it is first necessary to explain the basic understanding of rights themselves. Fundamentally, rights are a normative element that serves as guidelines for behavior, protection of freedom, and immunity in guaranteeing the opportunity for humans to maintain their dignity.³⁰ Human rights can also be said as natural rights that are very fundamental (fundamental) for life and life that no power in the world can revoke it.³¹ Related to the implementation of MFIs in Indonesia, every customer has the right to legal certainty in guaranteeing the protection of his rights as mentioned in Article 1 Paragraph (1) of Law Number 8 of 1999 concerning Consumer Protection, namely “consumer protection is an effort that guarantees certainty law to provide protection to customers”. The intended protection includes general protection and special protection. General protection is material protection in the form of the safety of customer funds, transparency of information, advocacy, etc. while special protection is the spiritual protection of customers. The spiritual protection in question is one of the important components in the economic life of Islam, namely *muamalah*.

Speaking of spiritual protection, it can be said that every customer has a spiritual right that needs to be protected. Spiritual rights are religious rights that are owned by every human being. Especially in Indonesia, spiritual rights are more identical to the rights of Muslims, because the

²⁹ Taufiqul Hulam, “Jaminan Dalam Transaksi Akad Mudharabah Pada Perbankan Syariah,” *Mimbar Hukum* 22, no. 3 (2010): 526–28, doi:<https://doi.org/10.22146/jmh.16237>.

³⁰ Tim ICC UIN Jakarta, *Demokrasi, Hak Asasi Manusia Dan Masyarakat Madani* (Jakarta: Preneda Media, 2003), 199.

³¹ Masyur Effendi, *Dimensi Dan Dinamika Hak Asasi Manusia Dalam Hukum Nasional Dan Internasional* (Jakarta: Ghalia Indonesia, 1994), 3.

majority of Indonesia's population is Muslim. Consumer protection perspective, Ro'fah Setyowati said that consumers of Islamic financial institutions have spiritual or religious rights, in Indonesia those rights are guaranteed or protected through the form of sharia principles in the implementation of sharia-based MFIs. This thinking arises from the spiritual aspects inherent in each person, especially in consumers.³²

The actualization of a good economic life based on sharia principles needs to be supported and paid attention to by the government, society or community associations. Implementation of this support can be through regulations, and an active role related to the spiritual rights of the community.³³ As mentioned above from the perspective of consumer protection, the application of sharia principles in Islamic financial institutions is a form of guaranteeing the protection of spiritual rights. The spiritual nature itself has been explained in the principles of consumer protection in the Consumer Protection Law. Also, adherence to sharia principles in Islamic financial institutions has been regulated in various laws and regulations related to their respective fields.³⁴

It has been mentioned in Article 12 of the MFI Law that in carrying out its business activities the Islamic MFI can be carried out based on sharia principles which must be carried out by sharia fatwa issued by the National Sharia Council-Indonesian Ulama Council (DSN-MUI). OJK Regulation or POJK Number 62/POJK.05/2015 states that “business activities of financing distribution are carried out using *mudharabah*, *musharaka*, *murabahah*, *ijarah*, *salam*, *istishna*, *ijarah muntahiah bit tamlik* or other contracts that do not conflict with sharia principles and approved by the OJK”.

Mudharabah financing provisions are regulated in DSN Fatwa Number 07/DSN-MUI/IV/2000 concerning *Mudharabah (Qiradh)* Financing and DSN-MUI Fatwa Number 115/DSN-MUI/IX/2017 Concerning *Mudharabah* Agreement. The provision of *musyarakah* financing is regulated in DSN fatwa Number 08/DSN-MUI/IV/2000 concerning *Musyarakah* financing and DSN-MUI fatwa Number 105/ DSN-MUI/X/2016 concerning Guarantee of Capital Reimbursement for *Mudharabah*, *Musyarakah*, and *Wakalah Bil Istitsmar* Financing. *Murabaha* provisions are regulated in DSN Fatwa Number 04/DSN-MUI /IV/2000 Concerning

³² Ro'fah Setyowati, “Consumers Spiritual Rights In The Islamic Banking Dispute Out Of Court Settlement In Indonesia,” *Journal Of Social Studies Education Research* 9, no. 4 (2018): 334, <https://www.jsser.org/index.php/jsser/issue/view/24>.

³³ M. Erfan Riadi, “Kedudukan Fatwa Ditinjau Dari Hukum Islam Dan Hukum Positif (Analisis Yuridis Normatif),” *Ulumuddin* 7, no. 1 (2013): 471.

³⁴ Setyowati, “Consumers Spiritual Rights In The Islamic Banking Dispute Out Of Court Settlement In Indonesia,” 334.

Murabahah and DSN-MUI Fatwa Number 84/DSN-MUI /XII/2012 Concerning Methods for Recognition of the Advantages of *AL-Tamwil bi Al-Murabahah* (*Murabahah* Financing) at Institutions Islamic Finance. Provisions regarding *ijarah* financing are regulated in DSN Fatwa Number 09/DSN-MUI /IV/2000 Regarding *Ijarah* Financing and DSN-MUI Fatwa Number 112/DSN-MUI / IX / 2017 Regarding *Ijarah* Agreement. Provisions on the *Salam* contract are regulated in DSN Fatwa Number 05 / DSN-MUI / IV / 2000 Concerning Sale and Purchase Greetings. Provisions on *istishna* contract 'are regulated in DSN Fatwa Number 06/DSN-MUI/IV/2000 Concerning Sale and Purchase of *Istishna*' and DSN Fatwa Number 22/DSN-MUI/III/2002 Concerning Sale and Purchase of *Istishna*'Parallel. Whereas the *ijarah muntahiah bit tamlik* contract is a new contract made by the Islamic Financial Institution and its customers (*ex-murabahah*). This contract arrangement is stated in DSN Fatwa Number 49 / DSN-MUI / II / 2005 concerning the Conversion of *Murabahah* Contracts.

The provisions of the agreements mentioned above are one form of clear legal policy related to guaranteeing the protection of spiritual rights from the application of MFI governance that applies sharia principles. Provisions regarding the use of *akad*/agreements based on the DSN-MUI Fatwa are a form of fulfilling sharia principles in the organization of MFIs.³⁵ Attention to the protection of spiritual rights is very much needed to build Islamic-based MFIs that have high credibility, to reduce or undermine “scepticism” from the public regarding Islamic financial institutions in Indonesia.³⁶ This high credibility is also intended to gain public trust that Shariah-based MFIs uphold sharia principles.

4. Conclusions

The implementation of MFIs is an actualization of the mandate of the 1945 Constitution in the welfare of the Indonesian people. Regulatory policies that provide a legal basis for the organization of Islamic MFIs in Indonesia are regulated in the Law on Microfinance Institutions, Government Regulations on Loan Interest Rates or Financing Results and Coverage Areas for Microfinance Institutions, Micro Financial Institutions OJK Regulations concerning Development and Supervision of Microfinance Institutions, Regulations OJK concerning Business Licensing and Institutions of Microfinance Institutions, and OJK Regulations

³⁵ Ro'fah Setyowati, Lastuti Abubakar, and Nunung Rodliah, “Sharia Governance On Islamic Banking: Spiritual Rights Perspective On Consumer Protection In Indonesia,” *Diponegoro Law Review* 2, no. 1 (2017): 227, doi:10.14710/dilrev.2.1.2017.227-244.

³⁶ *Ibid.*, 230.

concerning Business Conduct of Microfinance Institutions. Islamic MFIs in Indonesia can be held conventionally or by applying sharia principles aimed at providing funding to reduce inequality in society. The establishment of Islamic MFIs is intended to be able to continue to contribute to empowering members and low-income communities as micro-entrepreneurs.

In the perspective of consumer protection, two types of customer or community rights must be protected, namely material rights and spiritual rights that have been regulated in the Consumer Protection Act. Material rights are rights relating to customer secrets, customer funds, and consumer advocacy. While spiritual rights are religious rights that should be protected about the freedom of the people to carry out economic activities according to their religion. The organization of an MFIs that applies sharia principles in protecting the spiritual rights of its customers is by applying financing agreements that have been regulated by applicable regulations and by the DSN-MUI Fatwa. The policy of regulating the application of sharia principles as an effort to protect the spiritual rights of consumers has regulated in the MFI Law and the implementing regulations namely POJK Number 62/POJK.05/2015 concerning Business Administration of MFIs which in the implementation of sharia-based MFIs must use *mudharabah*, *musyarakah*, *murabahah*, *ijarah*, *salam*, *istishna*, *ijarah muntahiah bit tamlik* or other contracts (*akad*) that do not conflict with sharia principles. The policy of applying sharia principles in organizing Islamic MFIs is intended to guarantee the protection of the spiritual rights of consumers from Islamic MFIs.

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