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LEGAL OPPORTUNITIES OF BANK INTERESTS: REINVENTING ANALYSIS OF THE *MASHLAHAT* THEORY OF AL-SYATHIBI

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Abstract

This study described the analysis of legal opportunities in a bank saving interest. In general, banks in Indonesia are very influential on the dynamics of the economic life of society. Existence evenly spread to remote. This has implications on the ease of access and services to the wider community. If the determination of the bank savings raised interest prohibition, can lead to economic turmoil in the form of a massive diversion of funds by customers that can systemically affect the stability of national economy. Considering the majority of government agencies (including ministries of religion) and private sectors to accommodate the livelihood of the general public, especially civil servants and private employees, which is increasingly dependent on the existence of a conventional bank. Mashlahat theory put forward by al-Syatibi can provide legal opportunities, both macro (general) and micro (personal). In this study, the author find that there are legal opportunities of bank savings interest in the analysis al-Syatibi's theory of Mashlahat

Kajian ini menjelaskan tentang sejumlah analisis peluang hukum bunga tabungan pada bank. Pada umumnya, bank di Indonesia sangat berpengaruh terhadap dinamika kehidupan ekonomi masyarakat. Eksistensinya menyebar secara merata hingga ke pelosok. Hal ini berimplikasi pada kemudahan akses dan pelayanan pada masyarakat luas. Jika penetapan keharaman bunga tabungan bank dimunculkan, dapat mengakibatkan gejolak ekonomi berupa pengalihan dana besar-besaran oleh nasabah yang dapat berdampak secara sistemik terhadap stabilitas ekonomi nasional. Menimbang sebagian besar instansi pemerintah (termasuk kementerian agama) maupun swasta yang mengakomodasi hajat hidup masyarakat luas, khususnya pegawai negeri dan pegawai swasta, yang semakin tergantung dengan eksistensi bank konvensional. Teori Mashlahat yang dikemukakan al-Syātibī dapat memberikan peluang hukum, baik secara makro (umum) maupun mikro (pribadi). Dalam kajian ini, penulis menemukan adanya peluang hukum bunga tabungan bank perspektif analisis teori Mashlahat

Keywords: law, saving interest, bank, mashlahat theory

A. Introduction

From the beginning the Islamic law has a very fundamental objectives, namely human benefit. This objective is stated by Allah, that Rasul saw., was not sent except as a mercy to the universe (Verse 21: 107). The principle of mercy is drawing or realizing the value and reject harm, then interpreted as maslahah[1]. The implementation of the people prosperity means the elimination and avoidance of all forms of *mafasid*[2] (damage). It is often said that the principle of ijtihad exceeded maslahah textual basis.

The notion which is based on maslahah through historical analytic has been carried out by the two companions of the Prophet Muhammad, assertiveness of Abu Bakr ra. to fight against people who are reluctant to pay zakat for the sake of prosperity[3]. The policy of Umar Ibn Khattab ra. including: *First*, not dividing the depleted soil fai' to the army, because it is based on the prosperity[4]. *Second*, do not cut the hands of thieves during the maja'ah (famine) as requested by QS al-Maidah / 5: 38[5].

Work of two companions of the Prophet Muhammad mentioned above, followed by the next mujtahid Imam, which is not only to produce (provision) law, but also be able to create a methodology known as Usul Fiqh and set maslahah as a frame of reference to Islamic law.

According to the above fact, then a theory (kaidah) fiqhiyah was created:

تصرفالامامعلىالرعيةمنوطبالمصلحة[6]

"Action / policy of the Imam (leader) toward the people must be connected to the prosperity"

One of mujtahid who helped to enliven the world of jurisprudence is al-Syatibi (d. 790 H). As to the mujtahid, al-Syatibi has left a number of works

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[1]See in Abu Hamid Muhammad Ibn Muhammad al-Gazali, *al-MustashfaMinIlm al-Usul* Juz I (Cet. I; Beirut: Dar al-Ma'rifah, 1322 H),pp. 286. See also in Wahbah al-Zuhaili, *Usul al-Fiqh al-Islami,* Jilid II(Beirut: Dar al-Fikr,1986), pp.762, and in Mustafa Zaid, *al-Maslahah fi al-Tasyri al-Islami wa Najm al-Tufi* (Ttp.Dar al-Fikr al-Araby,1984),. 211.

[2]Mafasid as opposed to the most appropriate word maslahah, in Muhamad Khalid Mas'ud, *Islamic Legal Philosophy: a Study of Abu Ishaq al-Shatibi's Life and Thaught,* (Pakistan: Islamic Research Institute, 1977),. 149.

[3]Wahbah al-Zuhaili, *Usul al-Fiqh al-Islami,* Jilid II(Beirut: Dar al-Fikr,1986),. 801.

[4]Masdar F. Mas'udi "Meletakkan Kembali Maslahah sebagai Acuan Syariah, *dalam Ulumul Quran,* No.3, Vol. VI, Jakarta, 1995, . 94.

[5]Muhammad Said Ramadlan al-Buti, *Dawabit al-Maslahah fi al-Syariah al Islamiyah* (Beirut: Muassasah al-Risalah,1990),.131.

[6]Jalaluddin Abdurrahman Ibn Abi Bakr al-Suyuthi, *Al-Asybah wa al-Nazair fi al-Furu'* (Indonesia: Dar Ihya' al Arabiyah, tt),.83.

contained master piece about the concept of ijtihad problems. According toHamka Haq, among the many writings of al-Syatibi, only al-Muw faq t and al-I'tis m which was published,[7] while others were only mentioned in a few historical records.[8] Based on this data, it can be understood that al-Syatibi actually was a productive scholars in writing scientific papers, but most of his works did not circulate in the wider community.

Observing the dynamic development of contemporary Islamic law, one aspect that has always been controversial is the bank interest. On this study, the authors focus on discussing the theoretical approach of Mashlahat al-Syathibi. Thus, in a series of further subsequent analysis, it can explain and find opportunities of interest on savings bank law.

B. Overview of banking

Banking is a financial institution that includes banks with business activities as well as the manner and process of carrying out its business, which collects funds safely and securely in the channel system.

According to Abdurrahman, "Bank is a type of financial institution that is carrying out a wide range of services, such as providing loans, circulating currency, currency supervision, acts as a storage place for valuable goods, business finance companies and others".[9]

Somary, "Bank is an active agency providing credit to customers, either in the form of short-term loans, medium-term and long-term". Hasibuan (1992). Bank is a financial institution, the producer of money, collecting funds, and lenders, facilitate payment and billing, monetary stabilizers and a dynamic economic growth. In Act No. 7 of 1992 concerning banking which has been changed in the law No. 10 of 1998 on banking. Stated that "banks are business entities that raise funds in the community in the form of credit and other forms in order to improve the lives of many.[10]

Bank at the present time has exceeded the world's center of economic life, because it is responsible for providing credit, issue money and checks, occupy an important place in a matter of its relation with State finances is dependent on the progress of the State itself, and it is a fact that can not be

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[7]Hamka Haq, *Aspek-aspek Teologi dalam Konsep Maslahat menurut al-Syāthibī* "Doctor dissertation" (Jakarta: Pascasarjana IAIN Syahid, 1990),.p. 5

[8]According to Hamka Haq, amongst the writings of Al-Syatibi other than al-Muwafaqat and al-I'tisan but not published are *Syarh al-Jalīl 'Alā Khulāsah fī al-Nahw; al-Ifādhah wa al-Insyādah; 'Unwān al-Ittifāq* and*Ushūl al-Nahw.* The last mentioned works, only in the form of manuscript and now are stored in the library of Leiden University. See*ibid.,*.p. 45

[9]Bank Indonesia, *Statistik Ekonomi-Keuangan Indonesia*. Various edition(Jakarta: Bank Indonesia Pusat, 2000)p,. 35

[10]Bank Indonesia, *Statistik Ekonomi-Keuangan Indonesia …*,p.36

inevitable that we can not escape from the bank in the care of a particular economy. In the modern economy world, the bank is a vital economic institution, without banking institution, the economy will not be trouble-free against the fact that we must insist that all of this is perceived seek banking system, with the true history of Islam that Muslims are allowed to muamalah with banks that exist today considering an emergency condition, or in urgent situations that can not be avoided.

According to the aforementioned opinions, it can be concluded that the economic institutions that its main task is to maintain financial traffic, then to establish a banking institution for islamic law is obligatory as *kifayah*.

C. The Controversyof Interest Savings at Bank in the view of Ulama

The Islamic view about the interest of money in the bank, there are still different opinions about that, whether it is unlawful, therefore, the scholars differ about its position in Islam, and the scholars gave different opinions about the status of the money interest.

Muhammad Abu Zahra, a professor of Islamic law at Cairo University, confirmed his opinion that bank interest is riba nasi'ah that are forbidden in Islam.[11] Dr. Yunus found 'bank interest is forbidden riba, the existing banking was originally born out of capitalist economy, when the Islamic economic system is implemented as well as possible, by itself would eliminate the interest system in banking institutions until the present day.[12]

Ahmad Abdul Aziz al-Najjar said that the important reasons that Islam abhors transaction using the system of interest are:

1) The principle of the Islamic conception actually collides directly with the interest rate system with all the obvious consequences on the lives, thoughts and mental humanity, in other words there is no place for interest practise in islam
2) The interest system is a disaster for the human race, not just against mental aqidah and the human mind, but also for the sanctity of business and life practice.
3) Relationship on the basis of interest only undermine conscience, views and feelings of someone towards his friend in the community.[13]

On the other hand, Sheikh Mahmud Syalthout expressed the opinion that the interest savings in the bank is lawful for the following reasons: By setting the laws of syara' and the correct rules, we found savings in the bank's interest lawful and not unlawful, because money saved is not debts of the owner

[11]al-Fikhry, Sayyid Ali,*al-Mu'āmalāt wa al-Adabiyah*(Kairo: Baby al-Halabi, 1948),p.134

[12]A. Chatib, *Bank dalam Islam* (Jakarta: Bulan Bintang, 1992),p. 35

[13]A. Chatib, *Bank dalam Islam*… ,p.18-19

to the bank, but the owner of the money voluntarily come to the bank and requested for the money to be received and money owners also know that the bank play the money in the rare trade field, even more there is no loss.[14]

Ahmad Abdillah said that allowing for the collection of money if the interest had been mentioned first, if the tariff is already known in advance, if the tariff is already known by people, and people who came also to borrow it, shows willingness by such considerations, and interest levied by banks are not forbidden because the bank has always stated the charge.[15]

A. Hassan, a founder of Persatuan Islam (Persis), expressed his opinion as followed: Verses of the Qur'an and hadith which forbids interest nothingexplains its boundary but QS Al-Imran / 3: 130 that prohibits multipe riba, and this verse muqayyad, and other verses are absolute. According to the rules Ushul fiqh that there are two matters in a statement that one *muqayyad*, and the other is absolute then used *muqayyid*, for example, a doctor forbids eating a lot ofrice which means we could eat rice in small quantities.[16]

D. A short Story of al-Syathibi and Theory of Mashlahat

al-Syatibi full name was Ab Ishaq Ibrahim Ibn Musa al-Gharnatiy. He came from Arab, Lakhmitribal, while his famously known name is al-Syatibi taken from the name of the country of origin family, Syat bah (Xariva or Jativa).[17] Although attributed to the country, alleged he was not born there, because, accordingly, Jativa city has fallen into the hands of Christians, and all Muslims have been expelled from there since the year 1247 (645 H), or nearly a century before life of al- Syatibi. Al-Syatibi family may have left the country when it happened and then settled in Granada.

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[14]Muchammad Parmudi,*Sejarah dan Doktrin Bank Islam*(Cet.I; Yogyakarta: Kutub, 2005),p. 110

[15]*Ibid.*, p. 91-92

[16]Hamzah Yakub, *Etika Islam* (Cet.IV; Bandung: CV. Diponegoro, 1988), 199

[17]For the Romans, the city terbut named Saetabis. The city is located in the eastern part of Spain, and including the region of Valencia. Syat bah city was very famous in the Middle Ages, with its paper industry, which not only exported to Spain, but also to every corner of the world, including Egypt. In the reign of Islam, Syat bah city was the second largest city in the region Velencia, and its inhabitants when it was much more crowded compared now. The city's history began when united with Velencia as a part of a separate kingdom that was built in the eleventh century by ‘Abd. Az z Hafid al-Haj b al-Mans r Ibn ‘Amir. The city was retaken by the Christians after King James I of Arragon attacked it in the year of 1239-1240. Soon after the city was controlled by Christian, outbreaks of violence on Muslims that ended with the expulsion of all Muslims from the town at the end of the year 1247. Adapted from Philips K. Hitti, *History of the Arabs* (London: The Macmillan Press, 1974), p , 563-564.

The birthdate of al-Syatibi also unknown for certain, but in general people just mention the year of his death in 1388 (790 H). Nonetheless, Hamka Haq stated that al-Syatibi born and live his life in Granada in the reign of Joseph Ab al-Hajjaj (1333-1354 AD) and Sultan Muhammad V (1354-1359), and 1362-1391 AD).[18] This allegation, apparently based on the calculation of the ratio between the death year of al-Syatibi with a period of two powers of the sultan of Granada, when the Granada was a city of education.

al-Syatibi first learned Arabic which was attained from Ibn al-Fakhkh r al-Ilbir y (d. 754 H) and Abu al-Qasim al-Saur f al-Sabt y (d. 760 H). The knowledge of his Usul al-Fiqh, he obtained from Imam al-Maqqari 'who came to the city of Granada in the year of 757 H. He studied philosophy and theology from Ab al-'Aliy al-Mansur (d. 770 H) who also had been visited Granada in the year 753 H), and received an award from the vizier of Granada, Ibn al-Khatib, although in the end expelled in the year of 765 H. the same lesson, also obtained from al-sayr f al-Tilims ni (d. 771 H).[19]From his two teachers latter mentioned, al-Syatibi could certainly acquire knowledge about thinking Mu'tazila and other rational thought.

Al-Syatibi were familiar to books of Mu'tazila through Ab al-' liy al-Mansur, such as *Kitab al-Dalail* in theology and *Mu'tamad* in *usul al-fiqh*. Both were written by Ab al-Husayn al-Basriy. He also studied the work of the book Al-Tafsir al-Qadi 'Abd. al-Jabbar and *Tafsir al-Kasysyāf* work of al-Zamakhsy riy.[20] In addition, al-Syatibi also learned many sciences of philosophy and other Islamic sciences, especially islamic jurisprudence (*Ushul Fiqh*) from renowned teachers. This is an indication that al-Syatibi has a depth knowledge and breadth thought, causing him to appear as a mujtahid.

With a depth of knowledge and breadth of his thinking, then al-Syatibi, spawned a variety of papers, as has been mentioned among other well-known work is al-Muw faq t which discuss more about fiqh.

Al-Syatibi divided ijtihad into two, namely ijtihad which lasts until the end, as it relates to tahqiq al-Manat, and ijtihad which the object can be stopped before the Day of Judgment, because it is related to *tanqīh al-manat* and *takhrij al-Manat*.[21]*Tahqiq al-Manat* is the view / thought to know is illat in parts of the desired form of qiyas towards its origin. While *tanqīh al-Manat* is thought to establish a fixed *illa*t with *nash* or *ijma*'. While, *Takhrij al-Manat* is the view

[18]Hamka Haq, *op. cit.* p., 6-7

[19]About al-Syatibi mentors, see more in *ibid.,* pp. 31-32. Another source is Muhammad Khalid Masud, *Islamic Legal Philosopy* (Islamabad: Islamic Research Institue, 1977), p. 100-101

[20]*Ibid.*

[21]Al-Sy tib , *al-Muwafaqāt*, juz I (Cet. III; Bair t: D r al-Kutub al-'Ilmiah, 1424 H), p.21-22

and ijtihad in conclude nature of the cause of the laws that have been shown by *nash* or *ijma*.

Furthermore, al-Syatibi in al-Muw faq t stated that after the ijma 'and qiyas, then the next method is al-mashlahah, namely al-mas lih al-mursalah defined as a method of ijtihad in force when something has no source of nash in islamic law, in this case if also no source of consensus and in others such as *qiyas*[22]. *al-Masālih al-mursalah* (*maslahah*) has actually been practiced since the time of the Prophet. It is, have been carried out by friends, and the Prophet themselves justify it. Textually companions have violated syara ', because they do outside conditions. However companions saw a great al-maslahah behind it, and will not cause mafsadat if it did, then the text is left behind and switch to the context, because in certain circumstances the text is irrelevant, and that is what condition wants to switch to a more maslalah, although there are no rules explicitly.

Maqashid al-Shariah was understood as the values and objectives of targeted syara' that is implied in all legal reasoning. In this case, as al-maslalah as one of the goals of the Shari'a should be enforced. Say so, because many cases at the time of the Prophet and the Companions were raised in the literature, one of which can be stated as an example, namely; once the prophet of Allah so that the Muslims issued a rule to keep the meat of sacrificial except within certain limits, a provision to three days. A few years later, a number of friends violate that rule. The case was submitted to the Prophet. Then, he justifies his friend actions, while explaining that meat was kept based on the interests of our guests were made up of poor people. Now there is no more coming, then save.[23] From this information, that maqashid al-shari'ah has been taken into consideration in determining the law. The needs of society towards the law in a particular period can be changed with the law in another form, due to the development time.

The condition of society at the time of the Prophet was not like the conditions experienced by the people today, in turn, will bring a logical consequence of the development of the law itself, in which the Islamic world has been in contact with civilization, and of course ijtihad to conform with the

[22]See al-Syatibi statement in kitab *al-Muwāfaqāt*, *ibid.,* 27 as follow:
ويدخل تحت هذ ضرب الاستدلال المرسل : اى المصالح المرسلة وهي التي لم لها أصل شرعي من نص أو إجماع لا بالاعتبار ولا بالإلغاء، وذلك كجمع المصحف وكتابه فإنه لم يدل عليه نص من قبل الشارع، ولذا توفق فيه أبو بكر وعمر أولا، حتى تحققوا من أنه مصلحة فى الدين تدخل تحت مقاصد الشرع فى ذلك، ومثله ترتيب الدواوين وتدوين العلوم الشرعية وغيرها. ففى تدوين النحو مثلا لم يشهد له دليل خاص، ولكنه شهد له أصل كلى قطعى يلائم مقاصد الشرعى وتصرفاته، بحيث يؤخذ حكم هذا الفرع منه وأنه مطلوب شرعا، وإن كان محتاجا إلى وساءط لإدراجه فيه.

[23]See that case in hadits by Malik ibn Anas, *al-Muwaththā'* (Bair t: D r al-mal yin, t.th), p.299

law always needed. That concept maqashid al-syari 'ah offered by al-Syatibi in al-Muw faqatwere based on *al-maslahah*.

According to al-Syatibi, mashalah which is the purpose of God in Islamic law is should be embodied because the safety and welfare would not be possible without mashalah, especially those that are dharuriyah and includes five things, namely; maintenance of religion, life, intellect, lineage, and wealth.[24] Furthermore, al-Syatibi asserts that *maqashid al-Shariah*when associated with welfare, it can be viewed from two aspects. *First*, God's purpose (maqasid al-Shari'ah) and *second,* mukallaf purpose (maqasid al-mukallaf). Viewed from the first aspect contains four issues, namely (1) the original purpose *syāru'*;law establishes that the benefit of the human family in the world and the Hereafter (2) the determination of law as something that should be understood; (3) the determination of law as something that should be implemented; (4) the determination of human law to bring down legal protection.[25] God's purpose in establishing a law for the benefit of man is none other than the man himself. Therefore, God requires us to understand and implement the law based on their ability levels. By understanding and implementing the Shari'a, people will be protected from the chaos caused by lust.

The purpose of the law if seen from *mukallaf* aspect is that every *mukallaf* should comply the four goals of Sharia as outlined by the shari'ah 'at above. So that the goal can be achieved, namely human welfare in this world and in the hereafter.

Various examples of *al-maslahah* presented by al-Syatibi in al-Muw faq t. Among them is to make the Qur'an in the Manuscripts and the effort to publish it, including this category is codifying Shari'a sciences and much more, for example; *Nahwu*(arabic grammar) which in this case did not reveal any proposition to the effort.

Maslahah in its plural form "*Masālih*", according to al-Syatibi is what underlies the perfection of human life and allows humans to obtain the necessities of life so that they can prosper. This can not be achieved simply by *i'tiyād* (according normally) only, instead an attempt to achieve the welfare of human beings confronting various difficult challenges. As well as a matter of eating, drinking, clothing, housing, transportation, weddings and others, will probably not be obtained except by hard work.[26]

Furthermore, al-Syatibi classified *maslahah* into three levels, namely *dharūriyah, hājiyah*, and *tahsīniyah*. What is meant by *dharūriyah mutlaq* is everything there for the sake of life and well-being in the world and the

[24]al-Sy tib , *al-Muwāfaqāt, op. cit*, juz I, pp. 15 and juz II, p.25
[25]*Ibid.,* juz II, p. 2
[26]*Ibid.,* p.14

hereafter. If this *dharūriy* prosperity is not embodied, than the human life is endangered and for the life hereafter, man threatened by torture.[27] Dar riy prosperity include five things, namely the guaranteed obligations to believe in Allah, ensuring the obligation to live, the maintenance of reasonable health, the conservation of descent and the preservation of property. In this case, the continuance property also from the influence of currency devaluation.

While the definition of hajiyah is the fulfillment of all human needs in the form of facilities so that human life can be spared from trouble (masyaqqah). If this second kind of requirement is not met, then human life will face many obstacles that make it difficult, even though that constraints would not destroy his life. The last one is *tahsīniyah* are all things that help to perfecting human life decently by rationality and tradition and avoiding human life from defects and deficiencies. Although merely complement, not less important is tahsiniyah prosperity since many associated with the good life ethics (*Makarim al-Akhlaq*).[28]

From the descriptions of al-Syatibi about maslahah as a method of ijtihad, As it is in al-Muw faq t, then he came into the conclusion that the establishment of the life of the world, can only be achieved if maslahah is well implemented.[29] Thus, anything that contains only the benefit of a world without the benefit of the hereafter or not to support the realization of the benefit of the afterlife, according to al-Syatibi it is not *maslahah*. With this conclusion, it can be understood that the man in realizing *maslahah* must be free from lust, because the benefit is not measured according to the desire of lust.

Based on the above descriptions, illustrated clearly that the needs of human life from the ladder *tahsiniyat* to *daruriyat*, none of which do not contain *maslahah*. Thus the study of al-Syatibi about *maqashid al-Shari'ah* in his book *al-Muwaāfaqāt*.

E. Rationalization of the Legal Opportunity of Interest in Bank Savings:From the Perspective of the Theory of Maslahat al-Syathibi

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[27]*Ibid.,* p. 7

... وهذه المقاصد لا تعدو ثلاثة أقسام، احدها: ان تكون ضرورية، والثانى : ان تكون حاجية، والثالث : ان تكون تحسينية. فأما الضرورية فمعناها أنها لا بد مهخا فى قيام مصالح الدين والدنيا، بحيث إذا فقدت لم تجر مصالح الدنيا على استقامه، بل على فساد وتهارج وفوت حياة. وفى الأخرى فوت النجاة زالنعيم، والرجوع بالخسران المبين

[28]*Ibid.,* p. 9

وأما الحاجيات فمعناها أنها مفتقر إليها من حيث التوسعة ورفع الضيق المؤدى في الغالب الى الحرج والمشقة الاحقةبفوت المطلوب. فإذا لم تراع دخل على المكافين على الجملة – الحرج المشقة، ولكنه لا يبلغ مبلغ الفساد العادي التوقع فى المصالح العامة ...وأما التحسينيات فمعناها الأخذ بما يليق من محاسن العادات، وتجنب الأحوال المدنسات التى تأليفها العقول الراجحات، ويجمع ذلك قسم مكارم الأخلاق.

[29]*Ibid.,* p.37

This group of scholars who consider that the interest is not the same as riba, although basically the same in addition to the capital that loaned. In the world economy, debt-receiveables money has made a habit, oftenly many traders base their company's capital by borrowing money to anyone and with it they are expecting profits in the company.

Borrowing money is a good and effective way in the world of trading today. It is based on the fact that banks base their work on the system of capital borrowing, and the work must be subjected to interest in hopes of obtaining a profit, this means that a portion of the profits will be given to the owner of the money.

Interest and *riba* can arise from the process of debt or credit, therefore borrowing money can be viewed as a fundamental base for the emergence of interest from *riba*. In essence,*riba*was forbidden to prevent man to fall into misery and squalor because its form *riba*were coercion and extortion, and indeed its damage far outweigh the benefits. As for earning interest with the economic problems that created people to pursue more profits, and therefore it brings benefits not only to the owners of the principal, but also for borrowers, for people who worked together will benefit greatly, for the people who borrowed the calculation is based on the possibility to profit from the use of the money, and the money that can be used to trade or to buy homes, which may be withheld rent, if the money was loaned it must ask for interest as lost profits. If calculated that if use the loan money will result is loose, and certainly he did not borrow, even though his own money, to be sure not to use the money earlier in the field of business to be disadvantageous. It is logical and a principle for every trader, then picked up the interest of people so it does not mean maltreatment on him and no extortion in it so that it becomes forbidden as *riba*, so long as they do and act according to the agreement that they agree upon. It is not fair, if people who use the loan money that earns a temporary profit.

Author propose two opinions of several scholarls opinion whose their skills are related in emergencies, those opinions are:

First, al-Syathibi expressed his opinion that if we had been chained by the unlawful and lawful path to the God is already closed then it is an emergency, as the purposes of Islam not only to make living alone but also include the need for food and clothing and shelter as well as other welfare, if we do not follow them, but even though we are allowed to do that, it should not make us to use it excessively, it should be used normally.[30]

Second, K.H. Mas Mansyur expressed his opinion that banks build it, take care of it, working and dealing with the illicit, but reality will prove its

[30]Sugardi Gunarto,*Usaha Perbankan dalam Perspektif Hukum,*(Cet. V; Yogyakarta: Kanisius, 2007), p. 197

importance, if we are not associated with the bank, we will of urgency and recede backward.[31]

Theoretically that saving money in a bank and provide loans with interest is a blackmail against one of the parties, but in practice, there has been a lot of evidence we can see that the loan with interest will offer benefits for many individual or public interest.

There are several reasons the author inclined to statenthat this is an emergency *muamalah*, the reasons are:

1) A number of conventional banks provide easy access to capital for micro-enterprises communities, especially in rural areas. This ease of access has not been optimally accommodated by islamic trademarked banks.
2) The discussion about the Indonesian version of Islamic bank with an international version has not finished yet.
3) The existence and mechanisms of Islamic banking currently is not considered in line with expectations and needs of the community. Thus, conventional banking tends to be an option that can be "trusted".[32]
4) The operation of banks which use the system's interest now in fact have rejected the various damaged faced by society at the macro and the micro for the entrepreneurs.
5) In general, conventional banks in Indonesia have been rooted at each joint economic life of society. Thus, the existence spread evenly up to the corners. This has implications on the ease of access and services to the wider community. If the determination of the prohibition of interest on savings bank raised systematically, it can result in macro-economic shocks in the form of a massive diversion of funds by customers that can affect the stability of national economy sistemically
6) Considering the majority of government agencies (including The Ministries of Religion) and private sector which accommodates the livelihood of the general public, especially civil servants and private employees, which is increasingly dependent on the existence of a conventional bank. Thus, there is still a chance of saving the legal permissibility of interest in conventional banks.
7) The rules of jurisprudence (fiqh) :

الحاجة تنزل منزلة الضرورة تبيح المحظورات[33]

[31]*Ibid,* p. 198

[32]Winda Citra Sari and Dewi Prastiwi. "Upaya Preventif yang harus Dilakukan Perbankan Syariah dalam menjaga Kredibilitas dan Kepercayaan Publik tentang Produk Pembiayaan Murabahah, Musyarakah, dan Mudharabah." *Jurnal Akuntansi Unesa* 1.2 (2013), p.23

[33]Minhajuddin, *Diktat Fiqh Tentang Muamalah Masa Kini: al-Fiqh al-Mu'ashir Fil-Muamalat* (Ujung Pandang Berkah : 1990), p.33

Urgently hajat (important purposes) is occupies in a forced place, while the circumstances causing the implementation of forbidden things.

F. Conclusion

Based on the results of the above studies, it can be concluded that interest in the present context is still likely to be allowed, considering:

Basically, saving money in the bank already entrenched in Indonesian society for many different reasons, some of which are intended for the safety of money from theft, fire, etc., and there is also aimed at taking profit through the produce so that the money could be growing solidly and continuously, in the implementation of the existing savings, there are depositors who became permanent and non-permanent. That the loan with interest in fact will provide good for the benefit of individuals or public interest.

Borrowing and lending money is a good and effective way in the world of trading today. It is based on the fact that the bank base the works on capital borrowing and lending system, and the work must be subjected to interest in hopes of obtaining a profit, this means that a portion of the profits will be given to the owner of the money.

The operation of banks which use the system's interest now in fact have rejected the various damaged faced by society at the macro and the micro for the entrepreneurs.

In general, conventional banks in Indonesia have been rooted at each joint economic life of society. Conventional banks also offer an easy acces and prime service to the society. If the determination of the prohibition of interest on savings bank raised systematically, it can result in macro-economic shocks in the form of a massive diversion of funds by customers that can affect the stability of national economy sistemically

The majority of government agencies (including ministries of religion) and private sector which accommodates the livelihood of the general public, especially civil servants and private employees, which is increasingly dependent on the existence of a conventional bank. Thus, the author observed the chance of saving the legal permissibility of interest in conventional banks.

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