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Forex Trading in the Perspective of Islamic Economic Law

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ABSTRAK

Perdagangan internasional semakin berkembang pesat. Transaksi keuangan antar negara juga semakin meningkat. Setiap negara memiliki mata uang yang berbeda-beda. Setiap mata uang juga memiliki nilai yang tidak sama. Oleh karena itu, diperlukan skema foreign exchange, as known as Forex, untuk memperlancar perdagangan internasional. Forex bermanfaat agar memberikan nilai yang seimbang saat terjadi pertukaraan mata uang sehingga perdagangan internasional dapat berjalan dengan baik. Forex telah menjadi bagian dari kehidupan modern, termasuk umat moeslem tidak dapat terlepas dari aktivitas forex. Tujuan dari penelitian ini adalah ingin mengetahui pandangan Islamic economic law tentang forex. Untuk mendapatkan jawaban tersebut, penelitian ini mengumpulkan data dari studi pustaka dan dianalisis secara kualitatif. Oleh karena itu, penelitian ini menggunakan pendekatan normatif. Penelitian ini mendapatkan bahwa Islamic economic law memperbolehkan aktivitas forex. Namun, begitu melarang forex sebagai bentuk spekulasi dan hanya memperbolehkan forex sebagai fasilitas pemenuhan kebutuhan dalam hal perdagangan. Hal ini menjadi penting karena banyak orang yang menggunakan instrumen forex sebagai sarana investasi yang mana dipenuhi ketidakpastian

Keywords
forex
foreign exchange
Islamic economic law

ABSTRACT

International trade is growing rapidly. Financial transactions between countries are also increasing. Each country has a different currency. Each currency also has a different value. Therefore, a foreign exchange scheme, as known as Forex, is needed to facilitate international trade. Forex is useful in order to provide a balanced value when a currency exchange occurs so that international trade can run well. Forex has become a part of modern life, including Muslims, cannot be separated from forex activities. The purpose of this study is to find out the views of Islamic economic law on forex. To get these answers, this study collected data from literature and analyzed it qualitatively. Therefore, this study uses a normative approach. This research finds that Islamic economic law allows forex activities. However, it prohibits forex as a form of speculation and only allows forex as a means of fulfilling needs in terms of trading. This is important because many people use forex instruments as an investment vehicle which is filled with uncertainty

A. INTRODUCTION

Indonesia adheres to three legal systems in its government, namely the civil legal system, the customary law system, and the Islamic legal system. This has been stated in the 1945 Constitution of the Republic of Indonesia in Article 1 paragraph 3 [1].

These three legal systems form the basis for determining and considering every event or phenomenon that requires legal provisions. Civil law or written law is a derivative of regulations that have existed since the Dutch colonial era. The enactment of this legal system after independence is one proof of the extent of colonial influence on the Indonesian nation.

In the beginning, adat was just the habits of a person or group of people in carrying out their daily lives. This increasingly ingrained habit then creates its own regulations which, even though they are not written down and there are no sanctions for violations, are still implemented and carried out by the people. It also has a big influence in Indonesia in determining or drafting regulations. The enactment of the Islamic legal system in Indonesia is proof that the majority of Indonesia's population is Muslim. In addition to complying with Islamic law, the application of Islamic law in Indonesia must not conflict with Indonesian law. The Islamic legal system must go hand in hand with other legal systems adopted in Indonesia. Islamic economic law is part of Islamic law which grows rapidly.[2]

One of the national development policies is to organize a comprehensive and integrated national legal system by acknowledging and respecting religious law and customary law and renewing colonial heritage legislation and national laws that are discriminatory, gender injustice and not in accordance with the demands of reform. Since then, all the laws that were deemed necessary to be updated have begun to be developed little by little so that there are no discrepancies, both in terms of discrimination and gender to matters of a general nature. This development is a form of the development of the civil law system in Indonesia which cannot be separated from the influence of the customary and religious legal systems in Indonesia.[3]

Buying and selling is usually done face to face or in terms of meeting directly between the seller and the buyer. Regarding buying and selling carried out by the community, it is an activity of exchanging one item for another item or in the form of cash to transfer the property rights attached to the item to another person on the basis of the willingness or consent of both parties, the seller and the buyer. [4]

Currently, most currencies are traded in the form of e-money. Buying and selling activities of this kind are very rare in traditional societies. Online buying and selling activities are only carried out by modern people or those who understand more about technology. [5] Therefore, money is not only a means of payment, but has become a kind of commodity that can be traded. Currency trading is often also referred to as Foreign Exchange. [6]

Not many people are familiar with futures trading when compared to stock or capital market trading. Actually futures trading is a very complex business activity, has a high risk and also involves many parties. The mechanism for this futures trading activity is to carry out futures contract transactions on futures exchanges carried out by futures brokers (as executors of customer orders/orders) and futures traders. As collateral in transactions, futures brokers withdraw a number of margin funds from customers as collateral for transaction settlement. This is also implemented in derivative contract transactions between foreign currencies and indexes outside the stock exchange. This trade is high risk high return. [7]

Forex is trading between one currency and another. Buying and selling of this kind of currency is generally used when you want to travel abroad. Of course, when someone wants to go abroad, they must exchange the currency of the country where they live into the currency of the country they are targeting or the country they want to visit, so that when they arrive in the destination country they can make buying and selling transactions in the destination country. [6]

Forex transactions can be used in terms of investment, for example transactions between Indonesia and the United States. For Indonesia, the United States dollar currency is a form of foreign exchange. On the other hand, for the United States, the Indonesian rupiah currency is foreign money or foreign currency. From this example, apart from being a medium of exchange in buying and selling, foreign money or foreign currency has also been traded like a commodity. This is because each country must have its own currency and different values. [8]

The number of foreign exchange (forex) transactions on world financial markets has far exceeded the number of transactions on the real market (export-import and domestic trade). This is evidence of the many enthusiasts who are aware of the benefits of forex transactions. At first glance, foreign exchange transactions are almost the same as goods exchange transactions. Talking about money, this still needs to be studied further because money is an item that should be a means of payment which in foreign exchange transactions turns into goods that are traded. In fact, currently foreign exchange transactions are more often carried out in the non-real sector which is still virtual (pseudo) and unclear and there is a high probability of speculation. [9]

Forex is a world market that operates 24 hours a day. The velocity of money in the forex market exceeds 3 trillion USD per day. This number proves the level of public interest in buying and selling forex. The Covid-19 pandemic is one of the causes for the rise of people participating in the forex market. As one of the buying and selling systems that is still unfamiliar to the public, legal certainty from forex still requires clarity from both the perspective of Indonesian law and Islamic law. [10]

Currently, Forex has become a trend that attracts the attention of the millennial community and has also been eyed by many investors or the public in general. There is no doubt about foreign exchange trading, because it has become the largest financial market in the world, with a daily trading volume exceeding USD 4 trillion, which makes it easy to make transactions at any time. [11]

Forex as a *muamalah* system that has recently emerged and is certainly the latest among the general public, forex can be categorized into contemporary Islamic legal issues. Because its legal status is *ijtihadiyyah*, namely a legal issue that does not have a definite legal text reference, so it can be classified into a business that is permissible or not according to Islam. [10]

This study aims to find answers to the question of how Islamic economic law understands forex. This study uses a normative approach. Thus, this study will analyze legal norms related to forex. To be able to find the answer, this research collects library data and will be analyzed qualitatively.

This study analyzes the compatibility between legal phenomena and the doctrines of written legal sources. This legal phenomenon is the condition of the forex trading. Therefore, this research is included in the category of normative-empirical legal research. Normative-empirical legal research is research to analyze the conformity between reality and the rule of law. [12]

This study aims to understand in depth the legal phenomena that occur, in this case is the forex trading. This legal phenomenon cannot be measured in quantity. Therefore, the data obtained will be analyzed qualitatively. A qualitative approach is a way of understanding data in detail and depth. This approach does not count how many phenomena occur but looks for reasons behind the occurrence of a phenomenon.[13]

Observations and documents are data that can be analyzed using a qualitative approach. This study observed the trading of forex. Official documents are obtained from trusted sources such as from government agencies, especially the Financial Services Authority.

B. DISCUSSION

1. The Definition of Forex

Foreign exchange is a foreign currency and as another means of payment that can be used to make a payment or finance financial economic transactions at the international level and which has an official exchange rate record from the authorized central bank. Another term for Forex is a decentralized global market where all the world's currencies trade with each other. The global market is a form of the world's largest liquid market.[14]

Foreign Exchange is a type of transaction that trades foreign currency or one country's currency against another country's currency which can involve the main money markets in the world for 24 hours continuously adjusting the ups and downs of currency values. The movement of the foreign exchange market revolves starting from the New Zealand and Australian markets which take place at 05.00-14.00 western Indonesian time, then continues to the Asian markets namely Japan, Singapore and Hong Kong which take place at 07.00-16.00 western Indonesian time, switching to the European markets namely Germany and the UK which take place 13.00-22.00 western Indonesian time, until the United States market which takes place at 20.30-10.30 western Indonesian time. In the historical development of forex, the central bank owned by every country with even the largest foreign currency reserves can be defeated by the power of the free foreign exchange market.[15]

In the demand and supply of foreign exchange that will shape the exchange rate of a domestic currency with the currency in other countries. Supply and demand for foreign exchange will arise because of international relations in trade in goods, services or capital. The supply of foreign currency is due to exports of goods, services or grants from foreign parties as well as capital inflows. Meanwhile, the demand for foreign currency is due to imports of goods, services and capital, so that in completing a transaction, it is necessary to exchange a domestic currency for foreign currency and vice versa. [16]

As for the foreign exchange process, there are several differences in exchange rates. Looking at the different exchange rates, there are several things that cause these differences in exchange rates to arise. First, the difference between the buying and selling rates by foreign exchange traders or banks. This buying rate is meant to be the rate used when foreign exchange traders or banks buy foreign currency and the selling rate when they have sold it. The exchange rate difference is an advantage for traders. Second, the second exchange rate difference is caused by a difference in the time of payment. The telegraphic transfer rate is higher than the mail transfer rate, because an order or payment order using a telegram is for banks a form of immediate delivery of foreign currency or faster in the delivery process compared to delivery by letter. Third, the third difference is the difference in the level of security in receiving payment rights. It often happens in receipts that receipts of payment rights originating from well-known foreign banks have a higher exchange rate than those that are not yet well-known. The foreign exchange market does not only concern foreign exchange rates or prices, but also other parties, including: exporters, importers, banks, traders acting as intermediaries, and the central bank. [17]

The nature of foreign exchange rates will depend on the nature of the market. If foreign currency buying and selling transactions can be carried out freely in the market, the foreign exchange rates will fluctuate according to changes in demand and supply from the buyer. If the government implements a policy of stabilizing the exchange rate, but does not affect private transactions, the exchange rate will only fluctuate within small limits, although these limits may change or be changed from time to time according to existing conditions. The government itself can also fully control foreign exchange transactions. In this case the exchange rate is no longer influenced by the supply and demand. This system is called exchange control. In the gold standard monetary system, foreign exchange rates are relatively fixed or only fluctuate when within the limits determined by the cost of transporting gold. [18]

2. The type of Foreign Exchange

There are several types of foreign exchange transactions that occur in the forex market, namely spot, forward, swap, and options. Spot transactions are foreign exchange transactions with delivery and payment on the spot, although in practice spot transactions will be settled in the following two working days. For example, a sale and purchase contract for a spot currency is executed or closed on August 10, 2007, the delivery and settlement of the contract is carried out on August 12, 2007, if August 12, 2007 happens to be a holiday or Saturday, the settlement will be on the next business day and settlement Such transactions are called value dates. Transfer of funds in spot transactions can basically be done in several ways. [19]

First, cash is the delivery of funds made on the same date as the day the transaction (contract) is held. Second, Tom (short for tomorrow), namely the delivery of funds is made on the next working day or the working day after the contract is held. Spot, namely delivery made two working days after the date of the transaction.

Forward transactions are foreign exchange transactions in the form of delivery at some future time in a certain amount of currency based on a certain amount of another currency. The exchange rate in a forward transaction is determined in advance, while delivery and payment are made sometime in the future when the contract is due. Swap transactions are buying and selling transactions together with a certain amount of currency with different delivery dates. Whereas in principle a swap transaction is an exchange transaction using a currency for a certain period of time.

Contracts for buying and selling foreign currencies at Spot prices combined with purchases between sales of foreign currencies that are the same as Forward prices. Among Traders, the term Swap means fees that arise when forex transactions are held for more than 1 day. And this is considered interest or usury.[20] Option Transactions are contracts to obtain the right to purchase or the right to sell which do not have to be exercised over a number of units of foreign currency at a certain price and period of time.

Transactions that occur in the foreign exchange market can be divided into two categories, namely between banks and clients. Transactions that occur in the interbank market are usually very large, for example in multiples of millions of dollars. Meanwhile, contracts between banks and customers are usually made in a certain amount and can be in relatively small amounts.

3. The Implementation of Forex Trading

The foreign exchange market is a form of commodity market where sellers and buyers of foreign exchange meet, although it is not quite as tangible as the usual market. A person who carries out trading activities or transactions in the foreign exchange market is usually called a trader. Meanwhile, intermediaries between investors and the foreign exchange market are called brokers. Everything is done through an internet connection. Unlike the market or stock exchange, the foreign exchange market has distinctive characteristics. The foreign exchange market is continuously active in trading transactions 24 hours a day. Transactions take place all over the world through a system called the Interbank Market System. Interbank is a network of institutions that are interconnected with one another, in this case banking institutions and multinational companies that regularly carry out online forex trading transaction activities. [21]

In carrying out forex trading, there are several traders who actively participate in exchanging currency values from one country to another. The traders are divided into 7 groups, namely Companies, Society or Individuals, Brokers or Brokers, Commercial Banks and Non-Banks, Government, Arbitration and Speculators, and finally the Central Bank.[22]

Companies use the foreign exchange market to facilitate the execution of investment or commercial transfers. This group consists of international investors, importers and multinational companies. They use the forex market for investment purposes. Individuals make transactions in forex trading to make ends meet. And can also be as additional income apart from a permanent job. Brokers are intermediaries that connect traders with online forex trading activities, usually individuals or companies.

Commercial Banks operate in both the interbank and customer markets. They serve customers who want to transact forex. They make a profit by buying foreign currency at the ask price and reselling it at a price slightly higher than the bid price. The government carries out forex/forex trading for various purposes, including to cover debts to other countries, because payments are made in a different currency.

Speculators carry out transactions in the foreign exchange market to make a profit. Arbitrage is principally a form of speculation in foreign exchange, in which they buy forex commodities at a financial center and then they resell them at another financial center to make a profit. It is possible to transfer arbitration activities easily and quickly using telegraphic devices between one financial center and another world financial center. While speculators seek all the benefits of simultaneous price changes. Large amounts of speculation and arbitrage are usually carried out by traders. Banks in this case can act as dealers, speculators and arbitrators.

The central bank is not under government control, it is an independent institution tasked with stabilizing the economy. Central banks use the forex market to acquire foreign exchange reserves and also influence the prices at which currencies are traded. The central bank may take steps solely intended to support or boost the value of its own currency. Policies or strategies like this are mostly carried out by central banks.

4. Forex Trading in The Islamic Economic Law Perspective

Islamic Economic law regulates all forms of trade. The law provides guidance on what is prohibited. So, Muslims need to comply with these rules. [23] Masjfuk Zuhdi explained that Forex is allowed in Islamic Law. Foreign exchange trading arises because of international trade in goods or commodities between countries. This export and import trade certainly requires a means of payment, namely money, which each country has its own provisions and differs from one another according to the supply and demand that exists between these countries, so that a comparison of currency values arises between countries around the world. [24]

Comparison of currency values between countries is collected in an exchange or market that is international in nature and bound in a mutual agreement that is mutually beneficial to one another. The value of a country's currency with other countries will always change (fluctuate) at any time according to the demand and supply. It is this demand and supply that creates currency transactions which in reality are simply exchanging currencies of different values.

Basically, all buying and selling activities are permissible as long as there is no law or explanation that stipulates its prohibition. There are hadiths that give a description of the exchange of money, ie:

” Abu Bakr ra. Said: Rasulullah SAW said: 'do not buy and sell gold with gold except in the same amount, silver with silver except with the same amount and buy and sell gold with silver or silver with gold as you wish.”[25]

Based on this hadith, it can be concluded that the Messenger of Allah allowed currency transactions at that time, namely gold or silver, on condition that the value must be the same, and one of them must not exceed the other.

The exchange of currencies whose value is not equal is illegal, because it is considered that there is an additional element in the transaction. while the exchange of different types of money is still permitted, such as currency differences between Rupiah and Ringgit. It can be concluded that forex or al-sharf in Islam is permissible because the provisions have also been mentioned in the fatwa of the Indonesian Ulema Council (MUI). So, foreign exchange (forex) is permissible as long as it does not contain elements of speculation, usury, or trade in illicit goods.

In the fatwa of the National Sharia Council Number 28/DSN-MUI/III/2002 concerning the Sale and Purchase of Currency (Al-Sharf), based on the verses of the Koran and several hadiths of the Prophet, as well as the ima' scholars determine that the transaction of buying and selling currency foreign currency is basically allowed with several conditions, namely not for speculation, there is a need for transactions or just as a precaution, if transactions are carried out with similar currency values, the value exchanged must be the same and in cash, and lastly if the transaction is different types, it must use the exchange rate (exchange rate) that applies at the time of the cash transaction.

As for several types of foreign exchange transactions (al-sharf) or forex trading that are allowed according to this fatwa, namely SPOT transactions. Transactions are a form of buying and selling of foreign currency, the delivery of which occurs on the spot or within a period of two days at the latest. This transaction is legal. The second transaction is a FORWARD transaction, which is a foreign exchange transaction whose value is set at the time the transaction is made or at the beginning and is valid for one year in the future. This type of transaction is considered unlawful because it is regarded as speculation, unless there is an unavoidable need.

SWAP transactions, namely contracts to purchase foreign currency at spot prices combined with purchases between sales of foreign currencies that are the same as forward prices. This transaction is considered like maisir (speculation) so the law is haraam. The last transaction is an OPTION transaction, which is a contract to obtain the right to buy or sell which does not have to be made in foreign currency at a certain time or price. This transaction also contains speculation and is illegal.

C. CONCLUSION

Trading Foreign Exchange (Forex) is a type of transaction that trades foreign currency or one country's currency against another country's currency which can involve the main financial markets in the world for 24 hours continuously adjusting the ups and downs of currency values. The demand and supply of foreign currency will shape the exchange rate of a domestic currency with the currency of other countries. Supply and demand for foreign exchange will arise because of international relations in trade in goods, services or capital.

Foreign exchange (Forex) is a transaction activity in which the currency of one country is traded with another country's currency with benefits based on the fluctuations in the value of a country's currency in the world market. Forex in practice does not have to use real money, but only in the form of balances in applications or banks that are directly connected to the foreign exchange market. Therefore, forex is a form of investment financial asset. Forex in Indonesia is included in commodity futures trading, so the law that regulates the regulation is Law no. 32 of 1927 concerning Commodity Futures Trading and in Law no. 10 of 2010 concerning Amendments to Law no. 32 of 1927 concerning Commodity Futures Trading.

Forex or al-sharf in Islam is permissible because in addition to the provisions stated in the fatwa of the Indonesian Ulema Council (MUI) it is also permissible as long as it does not contain elements of speculation, usury, or trade in illicit/unclean goods. The existence of differences in the size of the exchange can make the transaction unlawful, because it is considered to contain elements of speculation or usury.

Fatwa of the National Sharia Council Number 28/DSN-MUI/III/2002 concerning the Sale and Purchase of Currency (Al-Sharf), has stated that foreign currency buying and selling transactions are permitted, provided that it is not for speculation, based on the need for transactions or simply as a precaution, if transactions are made with similar currency values, then the exchange rate must be the same and in cash, whereas if transactions are made with different types, then the exchange rate that applies at the time of the cash transaction must be used.

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