

1-1-2013

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### Recommended Citation

Dewi, Gemala (2013) "THE APPLICATION OF ISLAMIC ECONOMIC SECURITY SYSTEM FOR A BETTER HUMAN SECURITY IN INDONESIA," *Indonesian Journal of International Law*: Vol. 10 : No. 2 , Article 5.

DOI: 10.17304/ijil.vol10.2.297

Available at: <https://scholarhub.ui.ac.id/ijil/vol10/iss2/5>

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# The Application of Islamic Economic Security System for a Better Human Security in Indonesia

Gemala Dewi\*

*As the 2010 Indonesian demographic Statistic data predicted that in the year 2020-2030 Indonesia will have overpopulation of young people at the productive age (18-50 years old) in about 62%. So there is a need to find solution on jobs and welfare for those segments of people. Islam as the religion of majority people of Indonesia has a teaching regarding this matter that has been known as Islamic economic security system, by means of zakat, waqf, trading and business manner that could give some solutions for the betterment for human economic security to this country. By using normative and comparative method of research, this paper will lead to the conclusion that the country needs to legislate the shariah principles of contract and economic system due to secure the human rights on transactions and economic activities.*

**Keywords:** *Human Security; Islamic Economics, Human Rights*

## I. Introduction

Islam as a religion of “*tauhid*” (oness of God) that comes from Allah, the Almighty God, has a wisdom that humans all as one big brotherhood, created from God’s love to be as His “*khalifah*” (vicegerent) to maintain this universe as much benefit to human life.<sup>1</sup> Sharia revealed by God through His Messengers to bring good to the whole universe.<sup>1</sup>

Shari’a is the laws that God set for man as His servants through His Apostle in order to be carried out with full faith.<sup>2</sup> Shari’a is made to release from the pressures of human passions, and grow into the chest of human feelings are subject to the divine rules for maintaining the public body by way of maintaining five areas of priority (*daruriyah*), namely religion, soul, intellect, offspring and property.<sup>3</sup> One way to maintain

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<sup>1</sup> Allah says (which means): “*And We sent thee not, but for (a) Mercy for all creatures*” (Quran, Surat al-Anbiya ‘ ( 21): 107).

<sup>2</sup> T.M. Hasbi Ash-Shiddieqy, *Dinamika dan Elastisitas Hukum Islam*, (Jakarta: Tintamas, 1982, pge. 9.

<sup>3</sup> The five goals of Islamic law used to be called as “*al- maqashid al-khamsah*”. Al-Syathibi (d. 790 AH), in his magnum opus, *al-Muwāfaqāt*, stated that the purpose of

human property based on Shari'a is by following the path to search the wealth honestly without violating the provisions of Islamic law in it.

Indonesia as a country which has majority population of muslims, needs the involvement of muslims people on its national development.<sup>4</sup> Starting by this decade, Indonesia will enter a cycle of so-called "demographic bonus", a condition when the productive population (aged 15-64 years) dominate the national population.<sup>5</sup> Based on the statistical data recently, from 240 million of Indonesia's population, 50 % under 29 years old and 60% below 39 yeras old.<sup>6</sup> Hopefully, when it comes to be demographic bonus, economic growth would surge, per capita income soared, and production sectors will grow extraordinarily rapidly. This cycle will only come once in-a few hundred or even several thousand years for the nation. Incidentally we are going to enjoy it at 2020-2030.<sup>7</sup> According to expert estimations, the share of productive age population in 2020 will reach 69% of the total population, with approximately 180.3 million compared to 261 million people of Indonesia.<sup>8</sup> However, the huge quantity of man power will only be useful for the national development if the workers are qualified and the job opportunity available. So that the solution from muslims people is significant to be maintained due to this vast growing segment of people.

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the existence of sharia (maqasid al-Sharia) can be summed up in two things: bring serious benefits and resist harmful to humanbeings and nature. Both of these derive further into five fundamental aspects (*al-khams Necessities*) as mentioned above, which are maintained by the Shariah, namely: (1) *hifzh al-Din* (religion maintenance), (2) *hifzh al-nafs* (soul maintenance / life); (3) *hifzh al-mal* (property maintenance), (4) *hifzh al-'aql* (intellect maintenance/ property), and (5) *hifzh al-lineage* (lineage maintenance).

<sup>4</sup> According to the statistical data of the Indonesian Statistics Center (Badan Pusat Statistik) from the 2010 demography sensus, the total of muslims population are 205 million people, it is about 88.1 % out of the total population of Indonesia.

<sup>5</sup> Investor daily Indonesia, Thursday, 11th October 2012 | 11:31 <http://www.investor.co.id/tajuk/zero-growth-demi-bonus-demografi/46624> accessed on November 4, 2012 at 10.43.p.m.

<sup>6</sup> Metrolife, Tuesday, September 11, 2012, "Bonus Demografi Indonesia 2020-2030 Terancam?", <http://www.metrotynews.com/metrolife/news/2012/09/11/105621/Bonus-Demografi-Indonesia-2020-2030-Terancam?/11> accessed on November 5, 2012 at 1:27AM.

<sup>7</sup> Investor daily Indonesia, *Supra*.

<sup>8</sup> *Ibid*.

## II. The Application of Islamic Economic Securities in Social Welfare (Zakat and Wakaf) for a Better Human Security

### A. The Human Security on the system of Zakat

In the Islamic economic system, wealthy individuals are responsible for helping those who have not fared well, from a class of indigent, poor and those in need. This is done through the institutions of zakat, which requires those who are affluent spend some of their property (2.5%) to be given to those who deserve it.<sup>9</sup> By running this institution of zakat, it is prepared that there will be no social gap between the rich and the poor. Based on the Qur'an Surat At-Tawbah (9) verse 60, there are eight groups of people (*asnaf*) are eligible to receive zakat, namely: 1). *Fakir*, the poorest whose incomes below half the poverty line. 2). *Miskin* (poor), ie those whose incomes below the poverty line., 3). *Amil*, namely those who were given a mandate to collect and distribute zakat., 4). *Muallaf* (Converts), that is, those who are new to Islam and is still weak in the faith., 5). *Riqab*, namely to free the slaves., 6). *Gharimin*, namely those who owe., 7). *Fisabilillah*, namely those who fight in Allah's way.8). *Ibnu Sabil*, that is, people who were on their way.<sup>10</sup>

From the eighth *asnaf* above, the distribution of aims given for the two categories on the basis of social virtue and on the basis of the social safety assurance.<sup>11</sup> The first group received alms on the basis of the social virtues, namely: *Fakir* (indigent), *Miskin* (poor), *Amil* and *Muallaf* (converts). Indigent and the poor deserve zakat to make ends meet, *amil* zakat deserving of the responsibility or the trust was doing, and converts deserving zakat as incentives and financial assistance. In general

<sup>9</sup> This expression based on the Quran Surah az-Dzariyyat (51) : 19, which says: "and in their property (the rich) are the rights of the people who need it, whether requested or not". In the Hadith (the tradition of the Prophet), when the Prophet assigned Mu'az to Yemen, he said: "Teach them that they are subject to zakat, to be taken from the rich and given to the poor".

<sup>10</sup> In the Qur'an Surat At-Tawbah (9) : 60: "Verily, alms-charity is only for poor people, the poor; the management-board charity, young converts, for freeing slaves, those in debt, for the cause of Allah, and those who were on the way, as a statute that required by Allah, and Allah is Knower. Wise. "

<sup>11</sup> Patmawati Hj. Ibrahim, "Zakat Sebagai Instrumen Takaful Sosial Dalam Kalangan Masyarakat Muslim" in Asmak Rahman et. al., *Sistem Takaful Di Malaysia (Isu – Isu Kontemporari)*, (Kuala Lumpur: Universiti Malaya, 2008), p 78.

it can be concluded that the information available to the four zakat *asnaf* above is to ensure the virtue they maintained.

While the second group received alms on the basis of a social safety assurance; *al-riqab*, *al-gharimin*, *fi sabilillah*, and *ibn sabil*. *Asnaf riqab* basically dedicated to the slaves or slaves who had been freed by his master promised to ransom in the form of a sum of money. *Asnaf gharimin* dedicated to those who owe, provided that the debt was not for unjust purposes. It aims to provide motivation to those who want to trade when in debt then there are places to turn to, and it is one of the application form in the social safety assurance. *Asnaf fisabilillah* *asnaf* covering a broad field, namely all forms of activities that do not violate the commandments of God, and intended as "lillahi Exalted". *Asnaf ibn sabil* is a form of social safety assurance for those who are carrying out the affairs of the world, provided that the matter does not conflict with Islamic Shari'a.<sup>12</sup>

From the explanation above, can be seen that zakat is a guarantee that aims to serve all

levels of society. With the classification of recipients of zakat (alms *asnaf*), any member of the public who need charity will get theirs, or in the form of social security (zakat) based on the state, forms, purposes, and problems encountered. So that Zakat as a form of social insurance does not adhere to the circumcision individual charity, but stick to the implementation of the government's regular and structured.

In relation to social security, Zakat is part of the instruments of social assuredness that comes from religious institutions. Assuredness (social security) is a public act, including those carried out by the community, to protect the poor and vulnerable from adverse changes in the standard of living, so that they have an acceptable standard of living.<sup>13</sup> Instruments related to social assuredness is job security and income, as well as some of the instruments as well as formal policies, such as assistance, social insurance and family allowances. Social assuredness is not to protect the rich but to provide an incentive effect. In the study of the ILO (International Labour Organization) 1984, there are three stages in

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<sup>12</sup> *Ibid.*

<sup>13</sup> The World Bank Research Observer, 1991, *Tim CRESCENT*, Menuju Masyarakat Mandiri, p 18 as on Susetyo, *Supra*, p 30.

the evolution of social assuredness, namely:<sup>14</sup>

- a. Donation / charity from the rich provided to the poor, but the harsh conditions and the stigma often determined unacceptable;
- b. The social insurance scheme is developed based on a liability premiums given to participants in the form of pensions and sick pay period;
- c. The concept of prevention in order to maintain and improve the quality of life.

Social assuredness is: "the compilation of benefits in cash and in kind, including services, granted to some persons. The arrangement as granting protection against the insecurity resulting from the risks related to the ascent of the industrial society, and its development or, in short, against social risk."<sup>15</sup>

From what have been mentioned above, we can see the strategic position of zakat for social security. However, there are some people who do not believe that Indonesia's zakat obligatory. For them, the charity must be based on sincerity. If not willingly, then in vain worship. This is paradoxical in Indonesia. Many needy people, while some *muzaki*<sup>16</sup> does not sure that zakat is obligatory. And Zakat is not only mandatory, but has been designated as one of the Five Pillars of Islam and mentioned right away after Sholat in the Quran.

#### B. The Human Security On The system of Wakaf

In general, Wakaf<sup>17</sup> is a kind of charitable giving that implementation is done by the holder (ownership) from the declarator (*tahbisul Ashli*), then make benefits generally. What is *tahbisul Ashli* meant is to hold items so as not inherited, sold, assigned, mortgaged, leased, and

<sup>14</sup> Eri Sadewo Perzakatan Policy: *We and our neighbors in the Political Affairs ZISWAF set of essays* (Jakarta, CID and UI Press: 2008).

<sup>15</sup> Daany Pieters, *Social Security: An Introduction to the Basic Principles* (Netherland, Kluwer Law International: 2006), p 2.

<sup>16</sup> Muzaki is the person is obligated to pay zakat.

<sup>17</sup> Literaly, waqaf means to hold an object which, according to law, remain the property of the Wakif in order to use the benefits for virtue. See: *Paradigma Baru Wakaf di Indonesia* Direktorat Pemberdayaan Wakaf Direktorat Jenderal Bimbingan Masyarakat Islam Departemen Agama RI, 2008., p 2.

the like. While to utilization is used in accordance with the will of the waqf giver (*Wakif*) without reward. In the sense of the term, there are some scholars opinion on endowments. Imam Malik was found that waqf does not release the property ownership from *Wakif*, but endowments are preventing *Wakif* action to release ownership of the property to others and duty to put the benefits as charity and should not be pulled back. Whereas Imam Abu Hanifah defines waqf as "holding an object which, according to law, remain the property of the *Wakif* in order to use the benefits to virtue".<sup>18</sup>

Traditionally, the property used as endowments are land or other immovable properties. Nowadays by the progress of *Ijtihad*, there is an extentions to movable goods even intangible goods, including in a form of Cash waqf. The Waqf fund that have been collected through the issuance of Certificates of Cash Waqf, whether committed by Islamic banking institutions or by cash waqf *Nazir* should be empowered to establish a strategic partnership involving the direct manager (*Nazhir*) strategic waqf lands, if deemed funds collected was sufficient.

In this course, a partnership must have a shared commitment that land or building strategic interests can be empowered to increase economic benefits. But all kinds of cooperation must involve escrow last Islamic stronghold that efforts to manage cash waqf fund to lose can be overcome. Because the principles of waqf fund itself should be maintained intact and should not be reduced at all. So that within the stability of the amount of waqf property, moreover through the growth of the property, could create the national development of the country.

In developing a productive endowments can be distributed to several strategic sectors. For example, through the management of waqf, investment can be directed to the Microcredit Sector, Islamic Financial Sector Portfolio and Direct Investment Sector. These three sectors are very powerful boost economic activity and encourage increased public welfare, provided that all activities in these sectors is managed through professional management and policy support from the government.

In a rough count, Mustafa Edwin Nasution, chairman of the Association of Islamic Economics (IAEI) illustrates that the potential accumulation of cash waqf funds in the form of money donated by the

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<sup>18</sup> *Ibid.*, pp 1-4.

Muslim community in Indonesia from different levels of the profession could reach Rp 3 trillion in a year. While estimation of the Ministry of Religious Affairs if it is assumed that 140 million Muslims pay endowments of Rp 100,000 per year, it will be collected the money from endowments amounting to Rp 14 trillion. If payment is increased to Rp 500,000 per year, then the amount of funds that will be collected is Rp 70 trillion. If the results of Islamic banking about 10%, then the value of the results of about Rp 2 trillion per year. This value is only estimated 140 million Muslim population of approximately more than 200 million Muslims in Indonesia.<sup>19</sup>

Muffie (2007) estimates that if the waqf funds absorbed Rp 100 million per day with 25% growth per year invested in a range of portfolios, the results of the simulation were able to alleviate poverty in Indonesia in 32 years. Microcredit as a determinant factor of poverty is, assuming that 5 years after being given a credit of Rp 1 million per person gradually, the debtor is able to independently and entered into an established population groups. If growth funds increased to 50% per year and micro-credit fund was increased to Rp 2 million per person gradually, then accelerated poverty reduction can be as long as 18.6 years.<sup>20</sup>

If we use the estimation above for the bonus demography era of 2020-2030, the result of waqaf management could provides enough job fields to the productive young people on that time.

### **III. The Application of Islamic Economic Securities in the Law of Transactions and Human Relations (Muamalah)**

One of the teachings of human security in Islam can be seen in the form of fairness in transaction or business. There are some rules in Islamic contract law can be derived for this purpose. The contract is the concrete manifestation of human activity in the transaction of daily livelihood. All kinds of human business activities consisted in various types of contracts and deeds in accordance with the needs of the intended legal relationship.

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<sup>19</sup> Guidance Director General Directorate of Islamic Affairs Endowments RI: *Productive Development Model Endowments*, Jakarta 2008, p 27-29.

<sup>20</sup> *Ibid.* p 28.



Legal relationship in everyday transactions of muslims can be found in the books of jurisprudence known as *al fiqh al-muamalah*<sup>21</sup> (hereinafter written as *muamalah*). The law associated with the transaction to the rights of objects and services between people is called *muamalah maliyah*. In this *muamalah maliyah* field, a Muslim is obliged to understand how he do the transaction as adherence to the Shariah of Allah. If he does not understand this *muamalah maliyah*, then he may be stuck to something forbidden or *syubhat*, without realizing it.<sup>22</sup> Therefore, understanding the law of contracts as part of *muamalah* among fellow human beings becomes a very important. The rules of transaction in Islam is one way of human security expression in business.

The importance of understanding the field of Islamic law in *muamalah* agreed by muslims scholars that *Muamalat* itself is the most important humanitarian issue (*dharuriyah basyariyah*).<sup>23</sup> Abdul Sattar Fathullah Sa'id in the book *Kitab Al-Muamalah Fil Islam* states that: "*Muamalat* is the deepest core of Islamic religious purpose (*maqashid sharia*) to realize the benefit of human life. There is therefore no option for a Muslim not to practice it. Since the days of the Apostles formerly invites the people (call people) to practice *muamalah*, because it is re-

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<sup>21</sup> Tenets of the field is one part of Islamic law (*Shari'a*), which regulate the legal relations that determine the rights and obligations between fellow human beings in society. In addition to the field *muamalah*, Islamic law also regulates the relationship between man and the Creator (Allah SWT) called the field of worship. Division into two large areas of these were introduced by Ibn Taymiyyah (1263-1328 AD) (see: Mohammad Daud Ali, *Hukum Islam, Pengantar Ilmu Hukum dan Tata Hukum Islam di Indonesia*, (Jakarta: PT. Raja Grafindo Persada, 2004), pp. 198. See also Al-Syatibi, which distinguishes the materials of Islamic law into two parts also, which is part of Islamic law pertaining to worship and the second part concerns *muamalah* (custom). (Al-Syatibi, *Muwafaqat fi al-Usul al-ahkam*, (Beirut: Dar al-Fikr, 1341 AH), chapters II, sh. 211.).

<sup>22</sup> *Syubhat* is the state of law on something that is not obvious between lawful and unlawful, so that raises doubts in attitude. Of this there are Hadith Prophet Muhammad who advocate for spare him. Sound hadith of the Prophet are as follows: "... Indeed it is clear that the halal and haram is clear. Among them are the *Subhat* (the case of vague) that most people do not know. So ... and any who fell doing things they were vague, he has fallen in the case of unlawful ... " (Reported by Al-Bukhari and Muslim).

<sup>23</sup> Abdul Sattar Fathullah Sa'id , *Kitab Al-Muamalah Fil Islam*, (Kairo: Dar el-Fikr, 1406 H), p14.

garded him as a religious doctrine that must be carried out.<sup>24</sup> Then he also asserts that Islamic sharia came to set *muamalah* among humans in order to realize the goal of sharia law and explain it to them.<sup>25</sup> Under the terms of the scholars, studying *muamalah* jurisprudence is compulsory (*fardhu 'Ain*) for every Muslim.<sup>26</sup>

The most importance in studying contract in Islamic law in *muamalah* jurisprudence is to know the rules in doing business as the consequence of human security. In accordance to this matter, we will divide into the following order, section one about law of transaction, consist of: 1) (a) Contracts and, (b) Debts. And section two about Fairness, consist of (c) Weights and Measure, and (d) Bribery.

## A. The Human Security Concept in Islamic Law of Transaction

### 1. Contracts

The usual corresponding to Arabic term for the word "contract" is "al-'Aqd", which literally means conjunction, tie or knot, bond, and so on.<sup>27</sup> In legal terminology, the term *al-Aqd* or "contract" means an agreement which contains an offer (*Ijab*) and an acceptance (*qabul*) between at least two parties or human beings on a particular subject

<sup>24</sup> In this context, Allah says: "And to the people of Madyan, We sent their brother Shoaib. He said: O my people worship Allah, occasionally there is no god other than Him. And ye shall not reduce the dose and scales. I see thee in good condition. Indeed, I worry about you will doom day destroy (Resurrection). And Shoaib said: "O my people complete the measure and weight with justice. You shall not harm humans against their rights and do not make the evil in the world to make mischief. "(Surah Hud (11): 84-85). And also in the answer from call of the prophets for his people to improve behavior in *muamalah* can be seen in the Qur'an, (Surah Hud (11) : 87), which says: "They said, "Hey Syu'aib, if your religion is telling us to leave what our fathers worshiped by prohibiting us or perpetrate what we want on our property. Verily ye are more intelligent people of trustees. "SimakBaca secara fonetik

<sup>25</sup> Abdul Satar, *Supra*, p 16.

<sup>26</sup> *Id.* In the Era of Umar Chaliphate there is a market controller sistem according to shariah law, whic was called "Hisbah". Umar himself is the one who put obligation to everybody who enter the market to understand first the rule of the transactions before entering it.

<sup>27</sup> There are also some other terms using in Arabic which share the similar meaning and characteristic as the term *al-Aqd*. *Al-Mithaq*, which means covenant, *al-Wa'd*, which means promise, and *al-Ittifaq*, which means agreement. See Mohd. Ma'sum Billah, *Shar'iah Standard of Business Contract*, (Kuala Lumpur: Zafar Sdn. Bhd, 2006), p 8.

matter for a particular consideration, giving rise to an obligation which is enforceable or recognized by law.<sup>28</sup>

Surah al-Maidah (5) opens with the words: "O believers, perform your contracts." Also in Surah al-Mu'minun (23) : 8 we are told that the true believers are those "who tend well their trusts and covenants." In Surah al-Baqarah (2) the matter is treated more fully; verse 283 says:

*"If it be a present bargain which ye transact between yourselves, it shall be no crime in you if ye write it not down. And take witnesses when ye sell one to the other, and let no harm be done to the writer nor to the witnesses, which if ye do, will be injustice in you ... And if ye be on a journey, and cannot find a writer, then let a pledge be taken. But if one of you trust another, then let him who is trusted return what he is trusted with, and let him fear God his Lord. And conceal not the testimony for he who conceals it hath surely a wicked heart."*

Here Islamic Law impresses upon his followers the duty of strictly fulfilling their contracts, and gives directions as to the mode of procedure under different circumstances.

When a contract or bargain is made the parties concerned may or may not commit the same to writing. All such transactions are to take place in the presence of witnesses. Although the prophet does not say so, we may take it that two witnesses at least are necessary, as in the case of debts, etc. Further, Islamic Law speaks against the molesting of such persons as write down the contracts, or are witnesses thereto, a thing which such persons are always open to.

If the parties concerned be on a journey, and no writer available, the one may give to the other a pledge. But in cases where the parties are well known to each other, and have implicit faith in each other's honesty, no such pledge is necessary.

Those are some rules in Islamic Contract law in the Quran which can be applied in business in which we can see human security in it.

## **2. Debts**

In sura al-Baqarah (2) is treated also the question of debts. Islamic Law urge its followers to deal leniently with those who are in financial

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<sup>28</sup> *Ibid.*, p 9.

difficulties. The provisions of the law did much to put down injustice and oppression. The enactments concerning the treatment of debtors in Islamic teaching can be seen in the following quotations. In Surah Al-Baqarah (2) v. 280 it is stated that: “if anyone be in difficulties (regarding a debt), then wait for easy circumstances; but that ye remit it as alms is better for you, if ye did but now.” And in Surah al-Baqarah (2) v. 282:

*“O ye believers, if ye engage to one another in a debt for a stated time, then write it down; and let a scribe write it down between you faithfully; nor let a scribe refuse to write as God taught him, but let him write, and let him who owes dictate. But let him fear God his Lord, and not diminish therefrom aught. But if he who owes be foolish, or weak, or cannot dictate himself, then let his agent dictate faithfully; and let them call two witnesses out from amongst their men; or if there be not two men, then a man and two women, form those whom he chooses for witnesses, so that if one of two should err, the second of the two may remind the other. And let not the witness refuse when they are summoned; and let them not distain to write it, be it large or small, with its time of payment. This will be more just for you in the sight of God, better suited for testimony, and the best for avoiding doubt.”*

It will thus be seen that Islamic Law is very lenient towards debtors. Nothing is said in the Qur'an itself regarding the punishment of debtors. In the opposite, if the debtor is in a hardship condition, then the creditor should give more time or if he is indigent, so much so that if he cannot pay back the loan at all, the creditor is asked to write it off.<sup>29</sup> The “law” however, ordains that a debtor shall be imprisoned for the non-payment of his debt, if he able to. But if he can establish his insolvency he is to be liberated.<sup>30</sup> Further, if in good health, he may be compelled to work for discharge of his debt. But it must be remembered

<sup>29</sup> Quran Surah Al-Baqarah (2): 280 says: “And if the debtor is in straitened circumstances, then (let there be) postponement to (the time of) ease; and that ye remit debt, as almsgiving would be better for you if ye but knew”. See also: Ahmad Iqbal Siddiqi, *Model of An Islamic Bank*, (Lahore: Kazi Publications, 1986), p 24.

<sup>30</sup> See: Robert Roberts, *The Social Laws of The Qāoran-Considered and Compared With Those of The Hebrew and Other Ancient Codes*, New Delhi: Kitab Bhavan, 1977), pp 101-102.

that no muslim is allowed to be reduced to the position of a slave. That is strictly forbidden.<sup>31</sup>

When we turn to the old testament enactments concerning debtors, we will find that the position of an Israelite was by no means light. A debtor could be reduced to slavery; he was not, however, to be treated as an ordinary slave, but rather as an hired servant, and was to be released in the year of jubilee. In later times we could find an endeavour made to better the position of a debtor. He was to work for a certain time in order to wipe out his debt.<sup>32</sup> On the other hand, in dealing with the rules of codification of Islamic laws on economic, political and social matters, the general principles of commutation of rigorous laws must also be briefly considered. Islamic law has made ample provision for commuting the rigor of laws according to circumstances and needs. The Tradition of the Holy Prophet (peace and blessings of Allah be on him) states: "*In Islam there is no harm or hardship.*" Hence it is an established principle of Islam that where rigor or harm is involved, the law shall be softened.<sup>33</sup> In view of the aforementioned doctrine of Islam, Islam cannot under any form of interest-bearing transactions. The matter is referred to several times in the Qur'an. Surah al-Baqarah (2) : 276 reads:

*"Those who devour usury shall not rise again, save as he riseth whom a satun hath paralysed with a touch; and that is because they say, 'selling is only like usury; but God hath made selling lawful and usury unlawful; and he to whom the admonition from his Lord has come, if he desists, what has gone before is his; his matter is in God's hands. But whosoever returns (to usury) these are the fellows of the fire, and they shall dwell therein forever. God shall blot out usury but shall make almsgiving profitable; for God loves not any sinful unbeliever."*

31 *Ibid.*

32 We can compare the rule above with Hammurabi §117: "*If a man a debt has seized him, and he has given his wife, his son, his daughter, for the money, or has handed over to work off the debt, for three years they shall work in the house of their buyer or exploiter, in the fourth year he shall fix their liberty.*" *Ibid.*, p 102.

33 The condition for commutation or removal is that the hardship should be positively harmful, for instance the hardship of journey, illness, repression and persecution of a tyrant, poverty, extraordinary calamity, civil war or physical defect. Under these particular circumstances the shari'a has commuted the rigor of many laws and commutation may be allowed on their analogy. (See: Siddiqi, *Supra*, p 25.)

The other surah is in Surah al-Baqarah (2): 278 which said: "O ye believers, fear God and remit the balance of usury, if ye be believers. And if ye will not do it, then hearken to the proclamation of war from God and His apostle. But if ye repent, your capital is yours. Ye shall not wrong, nor shall ye be wronged." And another ayat is Surah ar-Ruum (30): 38 said: "Whatever ye put out at usury to increase it with the substance of others, shall have no increase from God." The interest-bearing transaction in these verses of Qur'an, is called as *riba*. On the word *riba*, however there is no definite explanation from tradition of the Prophet (The Hadits). Dr. Zaharuddin Abd Rahman remarks a definition as follows: "Any increment incurred upon specific (usurious) and upon debt, due to the deferred payment term."<sup>34</sup>

In the cooperative system envisaged by Islam, the affluent sections will not only lend money to the poorer sections whenever required, but also assist them in repaying the loans for the sake of Allah. Among others, one head of expenditure of zakat is "relieving the debtors of their burden of debt" as the *asnaf* "*gharimin*". By contrast from some passages in the newtestament we learn that imprisonment was the penalty in the time of Christ. Matt. 5:25 f. states:

*"Agree with thine adversary quickly, whilst thou art with him in the way; lest haply the adversary deliver thee to the judge, and the judge deliver thee to the officer, and thou be cast into prison. Verily I say unto thee, Thou shalt by no means come out thence, till thou have paid the last farthing."*<sup>35</sup>

In conclusion, we may say that the law of the Qur'an as well as the enactments of the muslim scholars, when compared with those of the old testament are lenient and just. And especially so when we futher compare them with the Roman law of debt, according to which a debtor might even be put to death, and where the cruel exactions of creditors several times led to serious disturbances.<sup>36</sup>

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34 *Ibid.*

35 See Robert Roberts, *Supra.*

36 *Ibid.*, p103.

## **B. The Human Security Concept in Islamic Law of fairness**

### **1. Weights and Measures**

The use of unjust weights and measures in another matter which comes in for condemnation in early Islam, which shows there was activity of fraudulent dealing at that time. The following passages on the subject are found in the Qur'an. Surah al-An-Am (6):153 mentioned: "...Use a full measure, and a just balance." Surah al-A'raf (7):83 says: "...Give good weight and measure, and be not niggardly of your gifts to men, and do not evil in the earth after it has been righted." And Surah ar-Rahman (55):6 says: "...He (God) hath appointed the balance, that in the balance ye should not transgress. Weight, therefore, with fairness, and stint not the balance." Also in surah al-Mutafifin (83), entitled "Those who give short weight," in this verse, there is a use of strong words against such offenders."

Those are some examples of the rules on fairness that is taught in the Qur'an. There we can also see, that there had been occurs some big scale of business activities took place in the era of Prophet, including the wrong or misconduct on business that occurs at that time. Such as in Qur'an sura 83:1 said: "... when they measure against others take full measure; but when they measure to them or weight to them, diminish."

The Islamic Law and Hebrew codes agreed in some way, that no corporeal punishments or pecuniary fines are imposed on those guilty of this dishonest practice, as is the case, for instance, with common theft. Such as for stealing, Islamic law enacts that the hands shall be cut off. And this very punishment was inflicted among the ancient Egyptians for the falsification of weights and measures. Also in Hammurabi code we find this severe law concerning this matter. At section § 108 said<sup>37</sup>: "If a wine-seller has not received corn as the price of drink, but has received money by the great stone, and has made the price of drink less than price of corn, that wine-seller one shall put her to account, and shall throw her into the river."

But in the Qur'an, as Old Testament, men are taught to abstain from dishonest dealing lest they be deprived of God's blessing. So we read in Deut. 25:15 reads: "A perfect and just weight shalt thou have; a perfect and just measure shalt thou have; that thy days may be long upon the

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<sup>37</sup> Roberts, *Supra*.

land which the lord thy God giveth thee.” Baidawi in his commentary on the words in sura 83 which we have already quoted, refers to a tradition of Muhammad called *Khamsa bi khamsi* in which the prophet says:

*“A people do not break a covenant without God giving the enemy power over them; and they do not give judgement contrary to what God reveals without poverty spreading among them; and wickedness does not appear among them without death spreading in their midst; and they do not give short weight without being deprived of the plants, and being overtaken with barren soil; and they do not keep back alms without the rain being held back from them.”*<sup>38</sup>

At the present day, however, this, like many other crimes, is dealt with in Egypt, India, etc., by the ordinary courts of justice.

## 2. Bribery

There is only one direct reference made to bribery in the Qur’an, in sura 2:184 where we read: *“Devour not your wealth among yourselves vainly, nor present it to the judges that ye may devour a part of the wealth of men unjustly, the while ye know.”* In these words we have another example of the way in which Islamic law urged upon its followers the duty of dealing justly with each other. At the same time it seems somewhat strange that the prophet should give to this important matter, as he did also to that of theft, such scant attention. The space given to the subject in the Qur’an by no means corresponds to the wide prevalence of the evil of bribery among the Muslims. On the other hand, it cannot be said that the matter is ignored by the Jewish legislators. For we find it referred to, and severely condemned, in several passages both in the old testament and the Talmud. On no account were the Jews allowed to take bribes.<sup>39</sup> Thus Deut. 16:19 says: *“Thou shalt not wrest judgement; thou shalt not respect persons; neither shalt thou take a gift; pervert the words (cause) of the righteous.”* And in Job 15:34 says: *“For the company of the godless shall be barren, and fire shall consume the tents of bribery.”*<sup>40</sup>

Thus has bribery at all times been regarded as a grievous sin, and

38 *Ibid.*

39 *Ibid.*

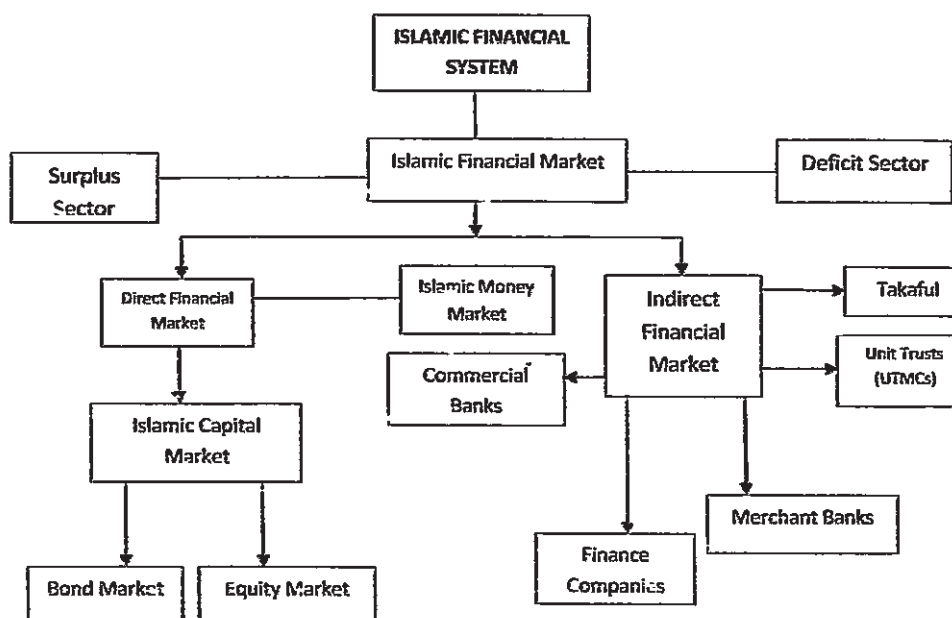
40 *Ibid.*



rightly so, since its practise may lead to the most serious consequences both to the individual and the state. Among the Romans, the corruption of a judge was reckoned among the crimes which were considered worthy of death.<sup>41</sup> And had Islamic law given more notice to the matter in the Qur'an, perhaps one would not find so much bribery in moslem's countries. On some occasions, particularly in long litigations, bribes are given by each party, and decision is awarded in favour of him who pays highest.

#### **IV. The Application of Islamic Economic Securities in Financial Sector of Business**

Financial sector in economy of a country is very important. So many progress of development can be done by a means of finance. In Islamic worldview, the development of finance sector is very significant. Almost all of the branches of finance already have Islamic system on their



<sup>41</sup> Lately, this kind of capital punishment for corruption also was executed in some modern country, such as China.

operation, in which based on the requirement of Shariah compliance. In general, the system of Islamic finance can be seen as in the diagram below. However due to the limitation of pages in this article herein only will be explain about banking and insurance sector of business only.

#### A. The Human security Application in Banking Business

Islamic goal to create social welfare is supposed to be the soul and spirit to the Islamic banking industry as the institution itself to attribute a sharia. Thus, Islamic banks are not banks just concerned with the formal-legal aspects that are formulated with the ban “maghrib”-which is an acronym of gambling (gambling), gharar (speculation) and riba (usury). But more than that, Islamic banks are the financial industry too *shibghah* the spirit of social welfare as the embodiment of universal human values (*habl minannās*) in the context of worship and devotion to Him (*habl minallāh*).

If we see the principle in Islamic banking system which avoiding the collection of interest on which in the conventional bank practice as the core of their business, simply because Islamic law prohibits the payment and collection of interest, which also commonly called as riba (usury). The main argument against interest is that money is not used as a commodity to make profit via providing lending and borrowing facilities. Money is considered as medium of exchange. However, profit can be earned by entering into contracts of exchange such as dealing in goods and services or via an investment such as contracts of partnership. With this system Islamic banking can be operated in the concept of murabaha, mudharaba and ijarah principles.

Thus, Islamic banks avoid speculative stuff (*gharar*) which causes the bubble economy, so it has a tendency to deliver financing to the real sector. This has contributed positively to the increase in Gross Domestic Product (GDP) and social welfare in the country.

Another thing that was carried by Islamic banks in an effort to improve the social welfare is concerned about the Small and Medium Economy (SME) sector which is the bottom of the pyramid in the economic sectors in Indonesia. Toughness of the SME sector in the face of changing economic conditions has been proven. The sector continued to grow during the crisis. From year to year, the number of employers

who engage in this sector continue to increase so that SMEs and the main drivers of the Indonesian economy.

As a contribution to the development welfare of the economy, we can see the profile of Islamic banking system in compare to the conventional banking system as follows.

On the mobilization of funds in Islamic banking system, shown in the form of togetherness for the results obtained from the banking business, either at the time of the economy and the economy is sluggish passionate, automatic savings account holders and deposits *mudaraba*, *mudaraba* follow the ups and downs along with the ups and downs of revenue for banks operating results, because the situation economy prevailing at that time. On the other hand, the holders of savings accounts and fixed deposit accounts at conventional banking system should be given the agreed rate, although banks are actually experiencing difficulties.

On the distribution side in Islamic banking shown in the form of community between banks and customers to obtain the results of the business, which of course could not free himself from the influence of the national economy. Customer financing recipient, and the recipient of *Musharaka* financing is not subject to any fixed charges, except share proceeds in accordance with the agreement that has been agreed upon. Of course, only the results that the execution should be in accordance with the results actually obtained. Thus, the amount of revenue that the bank give, will be small at the time of lethargic, and great at passionate times. Meanwhile, clients receiving a conventional bank loan to pay interest on the loan is fixed and on time despite its lethargic. Delays in paying interest on the loan at the time set will be an additional burden, since interest on loans that are not paid will creates interest (compound interest).

Theother thing that is obviously as the diference between islamic banking than the conventional bank is the existance of *Qard al Hassan* product. This product prepare business for its customers using the charity fund that is collected by the bank during the day by day transactions with its customers. In case the bank got permission by the government, the bank also can accept cash waqf to be managet. In Indonesia, this product helpful to solve the unpaid debt problems caused by force major or catastrophe, to create continuation of payment by the custom-

er. In Malaysia, *Qardhul* used as a lending by the country's citizens to their Government.<sup>42</sup> In Iran, *Qard al- Hassan* product used in a form of bank grant, for the purpose of; 1) manufacturing and service companies (other than commercial and mining) whose activity create jobs and meets the essential needs of society; 2) those directly engaged in agriculture and animal husbandry; and 3) to meet the needs of people in case of: marriage expenses, dowry preparation, treatment, housing repairs, scholarship, help to build houses in the country side.<sup>43</sup> ,

#### B. The Human security Application on Insurance Business

Takaful is a 'Shariah Compliance' mutual risk transfer arrangement, which involves participants and operators. Shariah is based on the Qur'an and As Sunnah. Takaful as a concept that to some extent is similar to conventional mutual risk sharing such as Mutual Insurance and Protection and Indemnity Club (P and I Club). It is a mutual sharing of risk based on the concept of *Ta'awun* (Mutual Protection).<sup>44</sup>

The difference between Takaful and conventional insurance rests in the way the risks is assessed and handled, as well as how the Takaful fund is managed. Further, difference are also present in the relationship between the operator (under conventional insurance it is the insured or the assured). In risk assessment (underwriting) and handling, Takaful do not allow what is called *gharar* (i.e. uncertainty or speculation) and *maisir* (i.e. gambling). In investment or fund management, *riba* (i.e. usury) is also not allowed. These three *gharar*, *maisir* and *riba*, are the areas that must be totally avoided by the Takaful operation, and where it differs with the conventional insurance.

*Riba* (usury) is totally prohibited under the Shariah Law and under a Takaful arrangement. In order to avoid the *riba*, Takaful treats participants contribution to the risk sharing scheme not as premium in the way conventional insurance does. In Takaful terms, it is treated as being a

42 Bank Islam Malaysia Berhad, *Islamic Banking Practice From The Practitioner's Perspective*, (Kuala Lumpur: bank Islam Malaysia Berhad, 1995), p 35.

43 Dr. Sayyid Abbas Mousavian, *Usury-Free Banking (The Case of Iran)*, Paper presented on "Symposium on Role of Higher Education in Providing Innovation and Solutions", University of Indonesia Campuss, 30 January, 2012, p 35.

44 Muhairain Iqbal, *General Takaful Practice: Technical Approach to Eliminate Gharar (uncertainty), Maisir (gambling), and Riba (usury)*, Gema Insani Press, Jakarta, 2005, pp 2-3.

contribution (*mushahamah*) in the form of donation with a condition of compensation (*tabarru*). Furthermore, the pool of funds secured from those participants' contribution or donations, must be managed and invested in accordance with the shariah.

A Takaful company serves as a trustee or a manager on the basis of wakalah or mudharabah to operate the business. The operator and the partners who take any policy contribute to the takaful fund. Claims, are paid from the Takaful fund and the underwriting surplus or deficit is shared by the participants. In life policies, a part of the contribution is also kept as an investment fund. The operator uses the funds in the business on the basis of wakalah (agency) or mudharabah (partnership). The underwriting surplus or deficit belongs to the policyholders / partners, while distribution of profit arising from the business depends upon the basis of wakalah (agency) or mudharabah (partnership).<sup>45</sup>

By this kind of Insurance, that combined the donation funds and investment funds, there will be productive even if there is no accident in this country. This kind of insurance also can be as anticipation for the demography bonus era.

### C. The Application in Capital Market Business

In current business practice, the term *sukuk* means a claim similar to a note or certificate, like a trust certificate.<sup>46</sup> This claim, however, is not simply a financial claim to a cash flow, but an ownership claim. A *sukuk* represents either a proportional or an undivided interest in an asset or pool of assets. Whether or not the ownership interest drives to tangential ownership rights. It is those rights that carry with them the right to a proportionate share of cash flow or other benefits and risks of ownership. Sukuk, therefore, as one international law firm characterises them, an entitlement to rights in certain assets inclusive of some degree of asset ownership. The difference between sukuk and bond in capital market practice can be seen as in the table below.

<sup>45</sup> Muhammad Ayub, *Understanding Islamic Finance*, John Wiley & Sons Ltd, England, 2007, pp 422-423.

<sup>46</sup> Nathif J. Adam and Abdulkader Thomas, *Islamic Bonds: Your Guide to Issuing, Structuring and Investing in Sukuk*, Euromoney Books, London, 2004, p 42.

Tabel.1 Comparison Sukuk, Conventional Bond and Stocks

<b>COMPARISON SUKUK, CONVENTIONAL BOND AND STOCK</b>			
<b>Description</b>	<b>Sukuk</b>	<b>Conventional Bond</b>	<b>Stock</b>
<b>Basic Principles</b>	is not a debt, but the ownership of an asset / project / service	debt securities of issuers	ownership share in the company
<b>Claim</b>	claims of ownership based on the specific asset / project / service	issuers declared as the borrower	claimed ownership of the company
<b>Guarantee</b>	secured by the ownership rights to the assets / projects as additional collateral for the bond structure	secured by assets (optional)	not guaranteed
<b>Principal and Returns</b>	not guaranteed by the issuer	Secured by the issuer	not guaranteed by the issuer
<b>Use of Funds</b>	should be used for a lawful business	can be used for anything	can be used for anything
<b>Type of Incomes</b>	compensation, profit sharing, margin	Interest/coupon, capital gain	Dividen / capital gain
<b>Underlying Assets</b>	necessary	Not necessary	Not necessary
<b>Sharia Endorsment</b>	necessary	Not necessary	Not necessary

On the table above, the concept seems more akin to the concept of sukuk investment contract than contract of debts. The concept of sukuk has changed the paradigm of the original bond certificate connotes a certificate of participation debt investments.

From the description of the changes in the business activities of Bank, Insurance and Islamic Sukuk above, then we can see a complete overhaul of the initial construction contract (contract) which was introduced in the conventional business world into a new form of contracts, which are totally different from the original conventional system. Similarly, it can be seen that there has been a transfer of the business practices of lending to investments, accounts payable of the world into the world capital development where all parties share the profits and losses as noted above.

## **V. The Importance of Legislation as A Legal Security on the Application of Islamic Economic Principles in Indonesia**

Today's fast-growing of Islamic Economic System, especially in the fields of finance, create the importance of studying Islamic law concepts of contracts and other Islamic economic principles based on Shari'a. In order to be ruled within national legislation to meet the practical needs in the society, it is urgently by government political will to produce legislation to cope with the need.

On the other side, as the user of the Islamic economic institutions, the majority Muslim populations in Indonesia need a legal protection of the products for economy with the provisions of sharia Islamic law (shariah compliance) in its application, because the products are created from Islamic high spirit. Such legal protection should appear in the form of legislation that is created for operational purposes in these institutions.<sup>47</sup>

In the field of social welfare, especially in anticipation for the bonus demography era of 2029-2030, need also coordination done by the government. It is time now Jurisprudence of zakat status removed from the individual to societal fiqh (economic, political and social). With social jurisprudence, then Zakat funds will accumulate greater.

Another way to uncover the larger charity is to set policy zakat tax deductible and this can only be done by the government. Meanwhile the community through various organizations and institutions Amil Zakat (LAZ) merely advocating. There are other benefits to charity tax-deductible policies, the status of individual charity fiqh, Islamic jurisprudence circuitry immediately boosted into society.<sup>48</sup>

With the new law of zakat Act No. 23 year 2011 on Zakat Manage-

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47 Abdul Kadir Audah mentions that Powers Act against the society will be effective if it meets two elements: 1) Purely psychological elements and 2) elements of the sanctions. In each of the laws usually there is always a good element of sanction in the form of administrative sanction or criminal sanctions, but not any purely spiritual element, the element that connects the texts laws by the souls of individuals it governs, so that they receive texts the law to obey it and accept the same. (Abdul Kadir Audah, *Islam dan Perundang-undangan*, (without a place: International Islamic Federation of Student Organizations, 1978), p 5.

48 Erie Sadewo., *Supra*, p 185.

ment, the operational management of Zakat will be more organized. This due to the centralization on management by creating the government's zakat organizer (Badan Amil Zakat). If the centralizing plan of zakat collection by government worked well, it will open up more job opportunities. This will happen by using the mobilized zakat funds from the majority muslims. Hopefully by the year of 2030, at the bonus demography era, there will be enough source of funds to give better human security to the productive populations by the year of 2030 hopefully when the bonus demography happened.

From the business perspective, currently in the field of Banking, has issued an Act to regulate specifically the operational system of Islamic banking in Indonesia, namely Law No. 21 Year 2008 About Islamic Banking and earlier also in some capacity in the field of Capital Markets has issued a special Act governing the State Securities Sukuk (SBSN), namely through Law No. 19 of 2008 which regulates one type of Islamic securities in the capital market operations in Indonesia.

However, until recently Indonesia does not have laws regulating the capital market to accommodate Sharia provisions in the practices of Sharia Funds. It is important to be as a reference for law enforcement for trial judges to make decision on Islamic economics matters, especially in the fields of Shariah Funds. In conceptual, the existence of Islamic investment in Indonesian Capital Market, especially on corporate basis have legal basis, particularly for investment through Shariah Funds, which certainly has its own characteristics in its regulation, especially in terms of contract law as well as other legal aspects that following the operation.

Therefore it is necessary to pursue legal reform, especially to the creation of new legislation that accommodative, including the establishment of the Capital Market Law of Sharia. Since handing over authority in the field of Islamic economics to Islamic Court by Law number. 3 Year 2006 regarding Amendment to the Act. No. 7 / 1989 regarding Religious Judicature, settlement guidelines drawn only from the fatwa of the National Islamic Council of Ulema Council of Indonesia (DSN-MUI) and the applicable provisions of the Book of Positive Civil Law Act (KUH Per), which later was also accompanied by Law Compilation Sharia economics confirmed by the Supreme Court Regulation No. 2 Year 2008, used as guidelines in deciding cases on Islamic Court



Islamic economics. In addition, if the parties have choice of forum by the contract stipulation which use arbitration clause, which allows the settlement of disputes through the National Sharia Arbitration Board (Basyarnas), under the Law. 30 Year 1999 on the Alternative Dispute Resolution and Arbitration.

## **VI. Conclusion**

With the emerging of Bonus Demography in the nex two decades, become an opportunity to anticipate it with the preparation in every field of possibility in order to get maximum benefit of the era. With the huge number of productive young workers, it is needed to arrange job opportunity and funds. By using the Islamic Economic System as mentioned on the explanation on this paper, hopefully the better human security could be created. For that purpose, the government needs to lagislate the shariah principles of contract and economic system due to secure the human rights on transactions and economic activities. So that big numbers of people and the existence of awareness on ethics in business activities could create economic growth with material and spiritual welfare in Indonesia.

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