

PROBLEMS OF SHARIA SUPERVISORY BOARD IN SHARIA BANKING

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Abstract

This article aims to discuss the Problems of Sharia Supervisory Board In Sharia Banking, DPS is an independent body in Islamic banking whose main function is to supervise sharia compliance in Islamic banking operations. Within this framework, DPS is an extension of the National Sharia Council (DSN), whose role is to carry out direct and local supervisory functions in Islamic banking, so that the implementation of Islamic banking practices is expected to always run in accordance with sharia values. In this article, the author uses qualitative methods, data collection is carried out using literature studies sourced from books and journals that discuss the Problems of the Sharia Supervisory Board in Sharia Banking (DPS). The Sharia Supervisory Board (DPS) plays an important role in ensuring that sharia businesses, especially sharia banking, operate in accordance with sharia principles, this role should be expanded as an extension of Bank Indonesia to ensure the development and healthy growth of sharia banking in Indonesia. This role will be optimal if DPS operational support tools are available including legislation and regulations, competent human resources, good management, and adequate infrastructure.

Keywords: *Problematics, Sharia Supervisory Board (DPS), Sharia Banking.*

1. INTRODUCTION

Sharia compliance audit is a regular inspection process of compliance with all activities of Islamic financial institutions (including financial statements, products, IT use, operating processes, parties involved in Islamic financial institution business activities, documentation and contracts, policies and procedures and other activities that require compliance with sharia principles) against sharia principles. Sharia compliance audit is a pillar in the development of Islamic financial institutions as well as the main differentiator between Islamic financial institutions and conventional financial institutions. To carry out this function, Islamic banks, including BPRS, are required to have DPS which functions to carry out tasks related to Islamic banks' compliance with sharia regulations. (Absor, Hana, & Nur, 2019)

Although every financial institution (bank and non-bank) and Islamic financing institution must have a Sharia Supervisory Board, not every unit of the institution has clear rules and supervisory mechanisms. Only a few business units already have supervisory rules, such as Islamic banking, or if the business units of Islamic financial / financing institutions

above are in the form of Limited Liability Companies. This model business unit has a strong positive legal basis for the operations of the Sharia Supervisory Board. DPS provisions in Islamic banking are regulated in Article 32 of Law No. 21 of 2008 concerning Sharia Banking, while DPS provisions in business units in the form of Sharia Limited Liability Companies are regulated in Article 109 of Law No. 40 of 2007 concerning Limited Liability Companies, although further regulations related to the supervisory mechanism have not been clearly formulated by institutions that have regulatory authority to date. (Fatmawati & Usnan, 2019)

One of the most important human resources needed by Islamic banking is the Sharia Supervisory Board (DPS). This institution supervises and justifies Islamic banking contracts and products to be in accordance with sharia principles as mandated by government regulations and fatwas of the National Sharia Council (DSN) of the Indonesian Ulema Council. Formally-juridically, the presence of DPS is needed by Islamic banking, but factually-empirically the presence of DPS in Islamic banking is less legitimized, the recommendations produced are often less considered by policy makers in Islamic banking. (Masse, 2019)

In practice, there are still many problems that cause the supervision aspect to not be optimal as expected. This is due to many factors both internal and external. Internal factors such as limited and weak human resources (HR) supervisors who have qualified knowledge in their fields, and the unavailability of facilities and infrastructure to support the smooth running of adequate supervisory tasks. External factors such as the lack or absence of a clear legal basis for supervision and the absence of good supervisory organization and management. The existence of problems in this aspect of supervision can be fatal. The business of sharia-labeled business institutions operates not in accordance with sharia. This has the effect of raising the distrust of the Muslim community in business institutions labeled sharia as a whole. (Apriliana, 2020)

Cases that often occur in tarnishing the good name of Islamic banking occur in Islamic Banks irregularities in providing credit financing facilities to fictitious customers in the amount of billions of rupiah, and costing the bank concerned up to billions of rupiah. This case involves bank employees, one of the consequences of the weak DPS supervision model that has been running so far.

In addition, the quality qualification of DPS members, the quantity factor is also a consideration in the characteristics of DPS which has the potential to affect the risk of Islamic banks. There are several factors experienced by DPS in conducting supervision such as the presence of some DPS members who lack mastery of applied muamalah fiqh and banking science, and also there are still many DPS members who cannot distinguish between interest and murabahah margin. The obstacles experienced by DPS are related to professionalism as evidenced by certificates and DPS's business because it has other activities that interfere with focus in supervision. (Su'aidi & Zaki, 2019)

Departing from the above problem, the author is interested in discussing the Problems of the Sharia Supervisory Board in Sharia Banking (DPS)

2. IMPLEMENTAION METHODS

In this article, the author uses qualitative methods, data collection is carried out using literature studies sourced from books and journals that discuss the Problems of the Sharia Supervisory Board in Sharia Banking as for the steps taken by the author by examining, analyzing existing data to draw a conclusion from the data that according to the author is strong data. The purpose of this study is to describe the Problems of Sharia Supervisory Board in Sharia Banking by examining more deeply.

3. RESULT AND DISCUSSION

3.1 Sharia Supervisory Board (DPS)

The Shari'ah Supervisory Board is an independent body placed by the National Shari'ah Council on Shari'ah banking and financial institutions. "DPS members must consist of experts in the field of shari'ah muamalah who also have knowledge in the field of banking economics. In carrying out daily duties, DPS is obliged to follow the fatwa of DSN which is the highest authority in issuing fatwas regarding the conformity of bank products and services with the provisions and principles of Shari'ah. The Government Regulation on DPS was first contained in Government Regulation No. 72 of 1992, which explains that banks operating with sharia principles are required to have a Sharia Supervisory Board (DPS), which is tasked with providing supervision over their products to run in accordance with sharia. To maximize the supervisory role by DPS, MUI established the National Sharia Board (DSN) which specifically deals with sharia financial issues in Indonesia with DSN-MUI Decree Number: 03 of 2000 concerning Guidelines for the Implementation of the Determination of Sharia Supervisory Board Members.(Suhaimi, 2020)

The main function of DSN is to supervise the products of Islamic financial institutions to be in accordance with Islamic sharia principles. For this reason, DSN makes sharia product guidelines taken from Islamic legal sources. Another function of DSN is to research and provide fatwas for products developed by Islamic financial institutions.

3.2 Sharia Supervisory Board Size and Risk

From an agency theory perspective, the size of the board determines the board's ability to monitor and advise on management. A larger board size is more effective in large, complex companies that are more diversified and require more specialized advice. Resource dependency theory also suggests that larger boards bring diverse knowledge and experience and consequently they are able to provide better quality advice and advice to companies. Because DPS decisions involve an understanding of Islamic law, modern banking and

finance, and legal issues, having more DPS members with diverse professional backgrounds can enable greater legal Shariah decision-making and conformity with Shariah principles and therefore affect the bank's risk level.(Nurseha & Nisatasni, 2021).

3.3 Academic Qualifications of Sharia and Risk Supervisory Board

Academic qualifications are associated with cognitive abilities, skill bases, and risk attitudes. High academic qualifications tend to increase the capacity of directors to interpret and evaluate information, to integrate different proposed solutions to complex problems and to carry out in-depth assessments of the implications of decisions made. The cognitive abilities of directors with advanced academic qualifications (e.g. PhD) help to increase the effectiveness of the board of directors in decision-making and lead to stronger monitoring of opportunistic risk-taking behavior if it occurs. DPS members with advanced academic qualifications can enhance their ability to operationalize Islamic principles into banking practice, including enforcement of moral prohibitions on excessive risk-taking.(Gagarin, 2019).

3.4 DPS Problems in Sharia Banking

There are several problems with DPS that cause the role of DPS to be not optimal. These problems must be addressed so that DPS can function and work as expected.

1) Problems from the Legislative Aspect

Not all Sharia Supervisory Boards in sharia business units have a strong positive legal basis on which sharia supervision operations are based. Of all these business units, only Islamic banking, or if the business unit above is in the form of a Limited Liability Company, has a strong positive legal basis for the operation of the Sharia Supervisory Board even though further regulations related to the supervisory mechanism have not been clearly formulated by institutions that have regulatory authority to date. DPS provisions in Islamic banking are regulated in Article 32 of Law No. 21 of 2008 concerning Sharia Banking and clarified by supporting regulations such as Bank Indonesia Regulation (PBI) number 11/33/PBI/2009 concerning the Implementation of Good Corporate Governance for Sharia Commercial Banks and Sharia Business Units and also supplemented by Bank Indonesia Circular Letter No. 12/13/DPbS dated 30 April 2010 concerning the Implementation of Sharia Good Corporate Governance for Sharia Commercial Banks and Sharia Business Units.(Lukito, Merdian, & Zulkarnain, 2021)

Meanwhile, DPS provisions in business units in the form of sharia Limited Liability Companies are regulated in Article 109 of Law No. 40 of 2007 concerning Limited Liability Companies. Meanwhile, a positive legal basis related to the operation of the Sharia Supervisory Board in other business units does not yet exist. This absence is due to the

absence of a law regulating the business unit to operate in a sharia manner, or the absence of further regulations by the authorities explaining the operational details of DPS. Currently, DPS operational activities only refer to the existing legal basis of DPS such as the Sharia Banking Law and Limited Liability Companies. The absence of clear laws and regulations related to its operations can result in the neglect of DPS supervision recommendations by managers of sharia business unit activities. If this happens, it will certainly result in a loss of public confidence to continue working and investing with sharia business units, because it is possible to ignore sharia principles by sharia business managers.

Ideally, the regulation related to DPS is integrated with the sharia business regulation in each sharia business unit in the form of legislation products in the form of laws. This arrangement is described in a regulatory product by authorized officials such as relevant ministers and bodies that have been given regulatory authority such as Bapepam. The best choice is to place DSN-MUI as the party giving fatwas on sharia business shahihan and determining DPS personnel as the body that has the authority to issue sharia business regulations and supervision, so that all DSN-MUI fatwas have binding legal force that must be obeyed by all sharia business managers in Indonesia, and DPS as a supervisor appointed by DSN has a strong position to carry out functions, his duties and obligations. (Ilyas, 2021, p. 59)

2) Problems from Organizational and Management Aspects

The placement of DPS at the head office will certainly hamper the effectiveness of supervision. Whereas the main role of DPS is to provide advice and advice to the Board of Directors and supervise the activities of Islamic banks to be in accordance with sharia principles, further play a role in conducting periodic reviews of the fulfillment of sharia principles on the mechanism of raising funds and disbursing funds and bank services by supervising and checking the format of contracts in banks, how Islamic banks carry out restructuring, *resechedule*, How to determine margin, and so on, while the contract process between the bank and the customer is carried out at a branch office or unit of a bank. Thus, direct supervision of DPS in banking operations carried out at the branch or bank unit level is very important. The assumption of some experts such as Agustianto who states that there is no need to place DPS up to branches or units because in that place there is already a DPS representative, namely a sharia auditor (*Sharia compliance*) It is inappropriate, because the position of the sharia auditor is not listed in the law or regulation as the party given the authority to supervise. (Subandi, 2019, p. 324) Legislation support is an important factor for bank supervisory authorities, there are two aspects of preconditions required by bank supervisory authorities, namely:

- a. The existence of legislative products that stipulate:
 - 1) A clear, achievable, and consistent *framework of duties, responsibilities, and objectives of the Bank Supervision Institution*,
 - 2) operational independence free from political pressure,

- 3) accountability in achieving goals.
 - b. There is legal protection stipulated in the law for bank supervision personnel and bank supervision institutions, which carry out bank supervisory actions *with* good faith *in* order to carry out bank supervision duties.

To obtain an effective and optimal supervisory role, it is necessary to create a tiered supervision mechanism. Preferably, the Sharia Supervisory Board (DPS), whose existence is parallel to the Board of Commissioners in the organizational structure of a sharia bank, is an institution that also has its own organizational structure under the direct supervision of the National Sharia Board of the Indonesian Ulema Council (DSN-MUI), and is tiered from the center to the lowest level to adjust the organizational structure of a bank. Thus, DPS performance in a bank can be controlled by DPS which has higher authority in its organization. The organizational structure of DPS is expanded, tiered and interrelated between DSN-MUI, DPS is domiciled in the central bank, DPS is domiciled in a Branch Office of a bank, to DPS is domiciled in Unit Offices and even smaller units, adjusting the organizational structure of an Islamic bank.(Ansori, 2019)

3) Problems from Human Resources and Performance Aspects

The position of DPS is a strategic position to ensure that sharia business run by a sharia unit has truly run in accordance with Islamic law. For this purpose, a supervisor is needed who is not only an expert in the field of muammalah / sharia business but also has a variety of knowledge covering legal aspects such as the Civil Code (burgerlijk wetboek), KUHD (wetboek van koophandel) and various laws and regulations such as company law, guarantees, agreements, bankruptcy, etc.

Therefore, a DPS recruitment mechanism is needed that considers the above qualifications, or if they cannot be met, adequate DPS education and training facilities must be provided. In practice, many DPS members are recruited not on the basis of the above qualification considerations, but on other considerations, as mentioned by Agustianto that they are placed in these positions in their capacity as charismatic scholars and jurists, whereas to become DPS it is not enough just to rely on the ability of muammalah jurisprudence normatively, but also must have knowledge in finance and the banking system, Especially the operational mechanism of Islamic banks.(Nelli, 2021)

To obtain qualified DPS human resources, DSN-MUI organizes DPS certification. This certification is tiered into three levels, namely level I (*basic*) in the form of industry introduction according to its type or field, level II intermediate stage, where knowledge of sharia supervision will be given at this level, such as how to read and prepare a sharia supervision audit checklist. As well as level III advance which began to be taught sharia opinion preparation methods for DPS.¹⁵Chairman of the National Sharia Board of the Indonesian Ulema Council (DSN MUI), currently only around 200 DPS have participated in

the basic level I certification program, this means that they do not have a thorough understanding of sharia products and rules. Meanwhile, to improve performance, DPS in Islamic banking must also understand supervisory concepts that have been developed internationally such as The Basel Committee on Banking Supervision (*Basel Committee*).

This is a minimum requirement for bank supervision and is expected to be endorsed and enforced by all bank supervision authorities in all countries internationally. Because it is a minimum requirement, a country's bank supervisory authority may be supplemented with designed policies, in order to address certain conditions and other risks in the country's financial system. DPS can apply several important principles in carrying out its duties, and in order to assist BI in conducting supervision of Islamic banks, including:

Principle 1: "An effective bank supervision system has clear responsibilities and objectives for each institution or body that carries out bank supervision. Each body involved in banking supervision must have operational independence and sufficient resources. Such conditions must be supported by an adequate legal framework, including those governing the authority of supervisory organizations, the power to regulate compliance with regulations, and legal protection for supervisors, the regulation of information sharing between supervisors and the confidentiality of information must also be clearly regulated". This principle should also exist in DPS. States should facilitate effective and independent DPS supervision by authorizing larger supervisory organizations as outlined above, in an effort to assist BI supervision and provide adequate laws and regulations. (Su'aidi & Zaki, 2020)

Principle 2: "The most important part of a supervisory system is the assessment of bank policies, practices and procedures in relation to lending, investing, and managing loans and investment portfolios that have been undertaken". This principle is the main task of DPS, to be able to ensure that all practices and procedures related to lending, investment and management of loans and investment portfolios are carried out in accordance with sharia principles".

Principle 3: "Banking supervisors should ensure that banks implement policies, practices and procedures for the evaluation of asset quality, accuracy of anticipation of bad loans, and accuracy of bad loan reserves". DPS, should also be given this authority, evaluating asset quality, accuracy of anticipation of bad loans, and accuracy of bad loan reserves, by reviewing current contracts and ensuring sharia-compliant contracts.

Principle 4: "In order to prevent confusion due to interrelated lending, banking supervisors should arrange for banks that lend to interrelated companies or individuals independently and do not dominate, so that they can be effectively monitored and other measures need to be taken to control the risks" In this case, DPS plays a role so that the distribution of financing is evenly distributed to all parties in need, and discourage financing that focuses only on certain groups.

Principle 5: "Banking supervisors should require banks to have adequate policies, practices and procedures in place including strict "know your customer" regulations to create professional standards and uphold codes of ethics in the financial sector so as to prevent intentional or unintentional misuse of banks for criminal purposes". DPS must ensure that the survey mechanism for prospective customers runs well, so that the contract to be implemented can run as expected.

Principle 6: "An effective banking supervision system must include on-site inspection and indirect supervision (*Off-Site Supervision*)". DPS, in accordance with the mandate of the Sharia Banking Law, can directly implement these two supervision models, by directly looking at the agreed contract and assessing its compliance with sharia, as well as carrying out indirect supervision through reports of parties related to the contract. (Su'aidi & Zaki, 2020, p. 60)

Principle 7: "The supervisor should be in regular contact with bank management in order to understand the bank's operations thoroughly". DPS plays a role, by regularly holding meetings and meetings with the Board of Commissioners and Board of Directors to discuss various issues arising in Islamic banking.

Principle 8: "Supervisors should have tools to collect, review and analyze bank statistical reports and performance both individually and on a consolidated basis". DPS prepares all tools to facilitate and facilitate the analysis and examination of written reports from supervised Islamic banks".

Principle 9: "Supervisors should have independent validation tools for supervisory information obtained either through direct examination or by the use of external auditors". DPS must understand the data validation method from various data reported by parties who are bound by the contract, to ensure that the contract has run in accordance with sharia provisions."

Principle 10: "An important element in bank supervision is the supervisory ability to supervise bank business groups on a consolidated basis". DPS can conduct comprehensive supervision, not only limited to bank relationships with customers but also bank relationships with banks or other parties, so that all transactions run in accordance with sharia contracts and principles.

Principle 11: "Supervisors should be confident that each bank has documented consistent accounting policies and practices. Such documentation allows the supervisor to obtain correct and reasonable information on the bank's financial condition and profitability of its business. The supervisor must also be sure that the bank has published its financial statements regularly that reflect the actual condition of the bank." With the concept of continuous supervision, each level of supervisor can carry out their respective functions, so that it can be guaranteed that all banks have carried out operational procedures in accordance with applicable sharia regulations.

Principle 12: "Supervisors should have adequate measures of supervisory arrangements in place to take prompt corrective action when banks fail to meet prudential needs (e.g. capital adequacy provisions), when there is a breach of the provisions, or when depositors are in a threatened position. In extreme situations, the supervisor should have the ability to revoke a bank's business license or recommend such revocation." (Su'aidi & Zaki, 2020, p. 63) In this regard, DPS assists Bank Indonesia by providing recommendations to BI regarding critical matters which, according to its observations, banks are in a very unhealthy condition or there are persistent violations of sharia principles, hence the need to take action to revoke business licenses.

4) Problems from the Aspects of Facilities and Infrastructure

To expedite the supervision process, banks need to equip facilities and infrastructure to support DPS activities, such as offices and equipment, computers, transportation facilities, telecommunications and internet access. The problem is, there are still many Islamic banks that do not provide DPS's work needs, and this greatly hampers the supervisory work activities carried out by DPS. The availability of complete facilities and infrastructure will make supervision more effective and efficient. Supervisors can consult with higher supervisors and fellow supervisors in addressing various problems that arise to determine the best action taken by the bank in carrying out its business activities. (Absor et al., 2019)

CONCLUSION

The Sharia Supervisory Board (DPS) plays an important role in ensuring that sharia businesses, especially sharia banking, operate in accordance with sharia principles, this role should be expanded as an extension of Bank Indonesia to ensure the development and healthy growth of sharia banking in Indonesia. This role will be optimal if DPS operational support tools are available including legislation and regulations, competent human resources, good management and adequate infrastructure.

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