

AUTHORITY RECONSTRUCTION MODEL SHARIA SUPERVISORY BOARD OF SHARIA BANK INDONESIAN LEGAL PERSPECTIVE

JAYA MIHARJA ¹, ZAINAL ASIKIN ², HIRSANUDDIN ³ and MUHAIMIN ⁴

^{1,2,3,4} University of Mataram, Mataram, Indonesia.

E-Mail: ¹jayamiharja013@gmail.com

Abstract

The Sharia Supervisory Board (DPS) as stipulated in Law Number 21 of 2008 concerning Sharia Banking Article 32 paragraph 3, is tasked with providing advice and suggestions to the board of directors and supervising the Bank's activities to comply with Sharia Principles, while the welfare of the Sharia Supervisory Board is not considered by the sharia financial institution. So that supervision does not have an impact on the performance and progress of the sharia financial institution, and the existence of SSB supervision in Sharia Banks is between existing and non-existent. This study aims to discuss what is the nature of the Sharia Supervisory Board's regulation in supervising the activities of Sharia Banks according to the Indonesian legal system, how is the implementation of the Sharia Supervisory Board's authority in Sharia Banks, and what is the reconstruction model of the Sharia Supervisory Board's authority according to the Indonesian legal perspective. The method used in this study is normative law which analyzes secondary data and then the results of the information collection (facts) will be interpreted comprehensively using a statute approach, conceptual approach, philosophical approach, and banking. The results of this study indicate that in essence, DPS is a body that exists in Islamic financial institutions and is tasked with supervising the implementation of decisions of the National Sharia Council in said Islamic financial institutions. DPS is required to supervise audit findings or examinations and recommendations from the Bank's internal audit work unit, external auditors, the results of supervision by the Financial Services Authority, and/or the results of supervision by other authorities and institutions, related to the implementation of Sharia Principles. The reconstruction model of the Authority of the Sharia Supervisory Board according to the perspective of Indonesian law is that it is necessary to form a Law on Sharia Financial Supervision which will produce a Sharia Financial Supervisory Agency (BPKS) under the Ministry of Finance, both the supervisory function of the DSN MUI being merged into BPKS. The suggestions that the author can give from this research are: To the DPR and the Government to immediately issue a law on the DPS which is independent and has integrity in carrying out its absolute authority. In addition, we hope to State Institutions to always be authoritative and independent institutions through the manifestation of DPS attitudes and behavior that consistently uphold integrity both within and outside supervision.

Keywords: Reconstruction, Sharia Supervisory Board, Islamic Bank.

INTRODUCTION

The sharia economic/financial system in Indonesia is an attraction for economists and for Muslims in particular. This sharia economic/financial system is believed to be able to bring new hopes both in macro and micro finance and also become an option and contribution for Muslims in conducting transactions based on halal values.

In Indonesia, one form of macro and micro financial institutions is financial institutions in the form of banks and savings and loan cooperatives. The emergence of this Islamic economic/financial system has made several existing and future banks adopt and implement their financial practices based on sharia or based on halal financial practices. (Zulpawati, 2021) Financial institutions must ensure that in carrying out their business activities, whether issuing

a product or providing services, they have obtained approval for a product or providing services, they have obtained approval from the Sharia Supervisory Board (SSB).

The Sharia Supervisory Board (SSB) is a body that is authorized to supervise and closely monitor the activities of sharia financial institutions so that the institution always follows sharia rules and principles. (AAOIF, 1998) SSB is an institution that is subordinate to the National Sharia Council (DSN). SSB can be said to be a representation of DSN in sharia financial institutions. (Yeni Salma, 2012)

Along with the growth and development of sharia-based micro and macro financial institutions in Indonesia, it is deemed necessary to have operational and practice supervision both institutionally and systemically so that they can always remain compliant with sharia principles. This supervision is necessary so that the institution or system remains consistent and adheres to sharia principles. However, the existence of the Sharia Supervisory Board in Sharia Banks is still unclear in its authority and sharia banking practitioners still ignore the existence of the Sharia Supervisory Board. The Company Law requires carrying out business activities based on sharia principles in addition to having a Board of Commissioners and the formation of a Sharia Supervisory Board. The duties of the Sharia Supervisory Board are to provide advice and suggestions to the Board of Directors and to supervise the Company's activities so that they are in accordance with sharia principles.

The Sharia Supervisory Board as stipulated in Law Number 21 of 2008 concerning Sharia Banking Article 32 paragraph 3, is tasked with providing advice and suggestions to the board of directors and supervising the Bank's activities to ensure they are in accordance with Sharia Principles. The task of the Sharia Supervisory Board in Sharia Banking is merely to provide advice and suggestions to the bank, and the welfare of the Sharia Supervisory Board is not considered by the sharia financial institution. So that supervision does not have an impact on the performance and progress of the sharia financial institution, and the existence of DPS supervision in Sharia Banks is between existing and non-existent.

The weaknesses of the Sharia Supervisory Board are: First, until now there are no special regulations used as a reference for special supervision of Islamic banking; Second, DPS is only used as a complementary object in an existing Islamic banking institution, the structure can be filled without specific criteria based on expertise; Third, DPS members are appointed as figures who have charisma and popularity among the community, not because of their expertise in the field of economics and Islamic banking; Fourth, DPS members are appointed and given salaries by the Islamic banks they supervise, making them less free and not objective in supervision; Fifth, DPS members are people who are busy with their main professions, so they do not have enough time to carry out supervision. Supervision of Islamic banking is only carried out as a side job; Sixth, DPS does not have the freedom to act firmly on the results of its supervision. DPS can only give warnings but cannot close problematic banking businesses, so supervision by DPS tends to be ignored; Seventh, Islamic banking is very vulnerable to shared errors; Eighth, The weakness of the legal level for the assessment of sharia compliance by the DPS due to the ineffectiveness and inefficiency of the sharia supervision mechanism in sharia banking; Ninth, The limited expertise of the DPS in auditing, accounting, economics, and

business law; Tenth, The absence of an effective working mechanism and structure of the DPS in carrying out the function of internal sharia control in sharia banks; and Eleventh, There are still many cases of violations. Based on the background description above, the researcher believes that it is very necessary to conduct a legal study on the model for reconstructing the authority of the Sharia Supervisory Board from an Indonesian legal perspective. With the following problem formulation: What is the nature of the Sharia Supervisory Board's regulation in supervising the activities of Sharia Banks according to the Indonesian legal system?; How is the implementation of the authority of the Sharia Supervisory Board in Sharia Banks?; as well as How is the reconstruction model of the Sharia Supervisory Board's Authority from an Indonesian legal perspective?.

RESEARCH METHODS

In an effort to obtain and collect information, the research used in this study is included in the normative research category, namely an approach that examines secondary data and then analyzes it first, where the results of the information collection (facts) will be interpreted comprehensively, (Amiruddin & Zainal Asikin, 2004) using the Statute Approach, Conceptual Approach, Philosophical Approach, and Banking Approach. Secondary data collection consisting of primary, secondary and tertiary legal materials Using legal documentation techniques, namely legal document sources including: 1) (Maker) of Legislation 2) (Judge) Court 3) Interested parties 4) Legal experts 5) Legal researchers. Researchers use documentation on statutory regulations Law on the sharia supervisory board of Islamic banks. (Muhaimin, 2020)

All legal materials obtained from library research are then analyzed and processed by building arguments based on logical thinking, and also interpreting various legal materials. (Nasution S, 1992) The stages used by researchers include: a) Formulating legal principles, both from social data and from written positive legal data; b) Formulating legal definitions; c) Establishing legal standards; and d) Formulating legal rules. Furthermore, it is analyzed using descriptive analysis which contains activities that are of a reviewing, describing, explaining, and evaluating nature. The analytical tool used is legal interpretation. While for Islamic Law, the rules of ushul fiqh will be used, with the ijthihad method through qiyas and al-mashalih al murshalah (consideration of public interest or welfare).

DISCUSSION

1. The Nature of the Regulation of the Sharia Supervisory Board in Supervising the Activities of Sharia Banks According to the Perspective of Indonesian Law

In the Indonesian context, the fatwa of the National Sharia Council (DSN) cannot be used as a legal regulation. Law Number 12 of 2011 concerning the Formation of Legislation, Article 7 paragraph (1) stipulates that the types and hierarchy of legal regulations consist of: the 1945 Constitution, MPR Decrees, Laws/Government Regulations in Lieu of Laws (Perpu), Government Regulations, Presidential Regulations, Provincial Regulations and Regency Regulations. Likewise, in Article 8 paragraph (1) and (2) as explained, the Types of Legislation

other than those referred to in Article 7 paragraph (1) include regulations stipulated by the People's Consultative Assembly, People's Representative Council, Regional Representative Council, Supreme Court, Constitutional Court, Audit Board, Judicial Commission, Bank Indonesia, Ministers, agencies, institutions or commissions of the same level which are established by Law or by the Government on the orders of Law, Provincial People's Representative Council, Governor, Regency/City People's Representative Council, Regent/Mayor, Village Head or the equivalent. Thus, it can be concluded that the DSN fatwa is not included in the hierarchical structure of legislation in Indonesia. The DSN fatwa can only be said to be part of national law if it has gone through the legislative process, as regulated in the laws and regulations. Fatwa is a legal opinion. Therefore, in practice, fatwa does not have binding legal force. The difference between a fatwa and a court decision is different because of the different authorities that make them. Fatwa is made by an institution that is not supported by the authority that must be followed. While government regulations are regulations that must be followed by every citizen of the country. There are three types of categories in the issue of fatwa. First, countries that still consider Islamic sharia law as the basis and apply it in part or all of their systems. Second, countries that completely abolish Islamic law and replace it with secular law. Third, countries that try to compromise these two areas of law, by including secular law and maintaining Islamic sharia law at the same time. (Shofiah Tidjani, 2015)

The National Sharia Council (DSN) is recognized in the Decree of the Board of Directors of Bank Indonesia Number 32/34/KEP/DIR/1999 concerning general banks based on sharia principles (Khotibul Umam, 2012), namely as a body authorized to ensure the conformity between products, services, and business activities of banks with sharia principles. Furthermore, the DSN has the authority to approve the appointment and assign tasks to the Sharia Supervisory Board (DPS) placed in banks that carry out business activities based on sharia principles. Viewed from the perspective of the company organization, the DPS complements the duties of the company's supervisor, namely the commissioner. This is because the commissioner does not specifically supervise the sector of compliance with sharia principles. In addition, DPS members are expected to be professionals in their fields who have adequate academic/intellectual qualifications and are integral in the field of muamalah jurisprudence and modern Islamic financial economics. In addition to the existence of the DSN, there is also the Sharia Banking Committee as an institution related to the DPS. The essence of the Sharia Supervisory Board does not have the power in terms of authority in the Indonesian legal system, the determination of the Sharia Supervisory Board is determined by the Mass Organization, namely the MUI. In the constitutional order, the Sharia Supervisory Board must be determined by the MUI which is not in accordance with the legal system in Indonesia.

2. Implementation of the Authority of the Sharia Supervisory Board in Sharia Banks

The Sharia Supervisory Board and the National Sharia Supervisory Board are institutions under the auspices of the MUI since 1999, which have begun to resonate nationally and accommodate all LKS needs for fatwa guidance. DSN-MUI has the task of publicizing the application of Islamic economics to the public through its fatwas as guidelines for implementation for Islamic economic actors and supervising the products of Islamic financial institutions to comply with

Islamic sharia. (Ma'ruf Amin, 2004) The authority held by the DSN is to issue fatwas that bind the DPS in each Islamic financial institution. This has been regulated in more detail in the Circular Letter of Bank Indonesia (hereinafter written as SEBI). Fatwas issued by authorized bodies become the basis for provisions/regulations and become the basis for legal action by related parties, such as the Ministry of Finance (Depkeu) and Bank Indonesia (BI). The implementation of DPS duties and responsibilities includes, among others:

- a. Assess and ensure compliance with Sharia Principles for operational and product guidelines issued by the Bank;
- b. Supervise the Bank's new product development process to ensure it complies with DPS-DSN fatwas;
- c. Request a fatwa from DSN-MUI for new Bank products for which there is no fatwa;
- d. Conducting periodic reviews of the fulfillment of Sharia Principles regarding the mechanism for collecting funds and distributing funds as well as Bank service provision; and
- e. Requesting data and information related to sharia aspects from the Bank's work units in carrying out its duties.

The Sharia Supervisory Board (SSB) is a body that is authorized to supervise and closely monitor the activities of Islamic financial institutions so that the institution always follows the rules and principles of sharia. The Sharia Supervisory Board is obliged to directly monitor the implementation of a sharia financial institution so that it does not deviate from the provisions that have been issued by the National Sharia Council which is a member of the Indonesian Ulema Council (MUI) based in Jakarta. The Sharia Supervisory Board sees in general terms that the management and administration aspects must be in accordance with sharia, and most importantly, approve and supervise the product. Implementation of the authority of the Sharia Supervisory Board in Sharia Banks Based on a copy of the Regulation of the Financial Services Authority of the Republic of Indonesia Number 2 of 2024 concerning the Implementation of Sharia Governance for Sharia Commercial Banks and Sharia Business Units, dated February 15, 2024, the DPS is required to supervise the follow-up of the Board of Directors on audit findings or examinations and recommendations from the Bank's internal audit work unit, external auditors, the results of supervision by the Financial Services Authority, and/or the results of supervision by other authorities and institutions, related to the implementation of Sharia Principles.

3. Reconstruction Model of Sharia Supervisory Board Authority According to Indonesian Legal Perspective

The author sees that the reconstruction of the authority of the Sharia Supervisory Board of Islamic Banks according to the perspective of Indonesian law in the form of either a Law by making its main supervisory function merged into the Sharia Financial Supervisory Agency under the Ministry of Finance or a collaboration of the main supervisory function together between the Sharia Supervisory Board and BPKS, or the third alternative by establishing a law

that regulates the sharia profession such as the Sharia Supervisory Board, the three proposals have an important position and are equally aimed and oriented towards the objectives of a comprehensive sharia economic supervision system, and produce benefits to protect religion from efforts by individuals who want to damage the image of Islam through deviations in sharia economic practices that can harm other people's material. Although Indonesia as a country of law that adopts the Civil Law system, where all forms of provisions must be regulated in legal positization, while it is known that the concept in the system is identical to always being left behind by the development of society. However, with the idea of reconstructing the authority of the Sharia Supervisory Board of Sharia Banks according to the perspective of Indonesian law in the form of the Sharia Financial Supervision Law or the Sharia Supervisory Board Law, it will not reduce or deconstruct the institution of the DSN MUI which continues to develop following the times and needs of society.

Apart from that, by using the perspective of *masalah mursalah*, this study also wants to initiate a new answer to the unclear legal imperative power of the Indonesian Ulema Council (MUI) Fatwa in Indonesia. The author in the results of this study will also introduce a new joint regulatory pattern between the MUI and the Sharia Financial Supervisory Agency in Indonesia, namely with the mandate of the Sharia Financial Supervisory Law, that all forms of legal products issued by the Sharia Economic Supervisory Agency in Indonesia will apply as part of the laws and regulations as legal products such as Bank Indonesia regulations, OJK regulations and others.

Before the author ends the review in this research, the author emphasizes again that in fact the realization of this problem of *murlah* will be more helpful if in the application of the functional system for the formulation of legal ideas it is able to produce a legal hierarchy, namely that there is a Value of Justice as the highest hierarchy that is aimed at, there is a basis for legal principles or the rule of jurisprudence, namely *La Yunkiru Tagayyur Al-Ahkam Bitagayyur Al-Azman wa Al-Ahwal*, which means that it is not denied that changes in a law are due to changes in times and circumstances, and the principle of *fiqh dar'u al mafasid muqaddamun 'ala jalbi al-maslahih* which means that rejecting something that is greater in *mafsadat* (something negative) is preferred over carrying out something that is *masholih* (something positive), but the level is not greater than the *mafsadat* that arises, and finally norms or regulations as ideas from the research results that the author proposes.

CONCLUSIONS AND SUGGESTIONS

1. Conclusions

- a. In essence, the Sharia Supervisory Board (SSB) of Sharia Bank, replacement and/or appointment of SSB by the General Meeting of Shareholders (GMS) and recommendations from the National Sharia Council – Indonesian Ulema Council (DSN-MUI). The appointment of SSB must meet the requirements of having passed the fit and proper assessment in accordance with the provisions of the Financial Services Authority (OJK) regarding the fit and proper assessment (Fit and Proper Test).

- b. Regulation of the authority of the Sharia Supervisory Board (DPS) in the Law, and government regulations. As regulated in Bank Indonesia Regulation (PBI) Number 6/24/PBI/2004 DPS is a board that supervises sharia principles in the business activities of sharia financial institutions.
- c. The reconstruction of the authority of the Sharia Supervisory Board is relevant to efforts to strengthen the integrity of the Sharia Supervisory Board. That the law enforcement in a country is needed depends on the authority of an independent and impartial Sharia Supervisory Board based on the honest attitude and integrity of the Sharia Supervisory Board. Thus, to strengthen the authority with integrity is an absolute must. The reconstruction of the authority of the Sharia Supervisory Board can be realized in the form of the Sharia Finance Law and the Sharia Financial Supervisory Agency (BPKS).

2. Suggestions

To the House of Representatives (DPR) and the Government to immediately issue a law on an independent Sharia Supervisory Board with integrity in exercising absolute authority. Regulation of the authority of the Sharia Supervisory Board (DPS) in the Law, and government regulations. As regulated in Bank Indonesia Regulation (PBI) Number 6/24/PBI/2004 DPS is a board that supervises sharia principles in the business activities of sharia financial institutions. In addition, to the community, especially universities, to always be proactive in supervising the Sharia Supervisory Board as part of an effort to contribute positively to realizing an authoritative and independent institution.

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