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"Comparative Law System of Procurement of Goods and Services around Countries in Asia, Australia and Europe"



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THE ROLE OF THE SHARIA SUPERVISORY BOARD IN THE FRAMEWORK ENFORCING SHARIA PRINCIPLES AT THE INSTITUTE OF ISLAMIC BANKING IN SEMARANG

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ABSTRACT

Indonesia as the country with the largest Muslim population in the world, since approximately 25 years ago trying to get out of the slump economic problems. One effort in doing it is to fix the economic system we particularly of financial institutions with a switch using Sharia system.

Banking financial institution as the economic backbone of Indonesia sought to apply Islamic principles in accordance with the provisions of the Qur'an and Al Hadith and what is regulated in the Law Compilation of Islamic Economics. The application of Sharia principles in this new start in 1992, namely by in the operation of Bank Muamalat Indonesia. Prior to 1992, the Indonesian economy are not familiar with Islamic principles in accordance with the Qur 'syariah principle has been applied by the banking institutions including Bank Muamalat Indonesia is in a start since its establishment, the principle is divided into three areas :

1. Sharing System (avoid riba)
2. Buying and selling on margin system Advantages
3. system Services

In general principles that must be enforced by Islamic banks is to avoid the usury and uses a system of revenue sharing as well as buying and selling.

In order upholding Islamic principles that must be run by Islamic banks need supervision that have until now run by the Sharia Supervisory Board (DPS). DPS task as the supervisory board on Islamic banking is the attribution of authority. DPS is authorized by the original authority derived directly from Article 27 PBI No. 6/24 / PBI / 2004, which outlines the duties, powers and responsibilities of DPS, DPS Presence is what differentiates it from conventional banks. DPS is independent and equal position with BOC.

Keywords: Role
Sharia Supervisory Board
Sharia Principles

CHAPTER I. PRELIMINARY

1.1. Background

Muslim-majority Indonesia's population and is the country with the largest Muslim population in the world. But in the field of economic activities of Muslims in Indonesia in a minority position. Many among the Islamic community assess / understand the economic problems as a per-question the world apart from the matter of religion.¹ As a result, the issue of the economy is alienated in Islamic studies. This is evidenced by the scarcity of economic studies that in the mentioned during religious services or instruction.

If this situation continues, it is feared Muslims would be targeted profitable for non-Muslims, resulting in economies of Muslims will be set, dominated and controlled by a group of non-Muslims, for example when approaching month of Ramadan and Eid, entrepreneurs non-Muslims already started calculating how the needs of Muslims such as clothing and food. They take advantage of the needs of Muslims are not met by a group of Muslims themselves, which resulted in price- the price is high. This situation from year to year until now there has been a change, even though Muslims have started to rise from adversity.

Muslims have long been contaminated with economic pluralism, which is located in the midst of the economic system of liberal, communist and socialist.² Do not want slumped to the economic system that is not Islamic, then in 1992 the Government of Indonesia issued a regulation governing the economy in the allotment for Muslims. Undang-undang No. 7 tahun 1992 concerning Banking dated March 25, 1992, marking the Indonesian people and nation agreement to implement Dual Banking System or dual banking system in Indonesia, in 1998 the Act was changed by Undang-undang no.10 1998 dated November 10, 1998. with the release of this legislation demonstrates the growing consolidation of Indonesian people and nation deal with the dual banking system that has been in effect for more than six years earlier.

Talk economy is identical to speak to the issue of money and if we talk money certainly did not escape also our view of the institution or the institution of Finance, and, if considered

¹ Suhrawardi, Islam Economic Law, Sinar Grafika, Jakarta, 2000, p vii

² Ibid page viii

legal text contained in the provisions of Islamic law, will be found financial instruments can be broadly grouped into³ :

1. Activities of non-bank or banking.
2. Banking activity

Included in the group of non-bank among others Zakat Organization, Organization Ijarah, Rahn, Waris Syirkah and others. While that may be incorporated into the banking category are:

Al Wadi'ah, Al-Mudharabah, Al Musharaka / syirkah, Al-Bithaman Ajil and others.

Al Quran is the holy book of Muslims, he is supported by Al Hadith and Al Ijtihad. Muslims believe to be the word of Allah SWT which were revealed to Muhammad, an improvement books books - book in advance, namely the Psalms, Taurot, and gospel. Qur'an shall be read, learned and understood then resume practicing by those who claim to be Muslims, every command and away from any prohibitions of Allah SWT.

Al Hadith is the story, the meaning of language is a news in *perowi-perowi* proclaim the hadith about the words, behavior and actions of the Prophet Muhammad. Experts Hadith generally equate the term with the term hadith as-Sunnah.⁴ *Ijtihad* is the consensus of the ulama against an Islamic Shari'ah.

Relating to the way of life of Muslims above, the economic system we should be in harmony right with existing rules because as said earlier one of the main factors is that the majority of Indonesia's population is Muslim, so that our lives a blessing in the world hereafter, the economic system we returned to guide the Muslims ie the Qur'an and Al-Hadith.

Financial institutions as the economic backbone of Indonesia, one of the authors take is a banking institution. The banking institutions have applied the principles of sharia under the provisions of the Qur'an and Al Hadith and what is regulated in the Law Compilation of Islamic Economics. The application of Sharia principles in this new start in 1992, namely by in the operation of Bank Muamalat Indonesia. Prior to 1992, the Indonesian economy are not familiar with Islamic principles in accordance with the Quran and al-Hadith.

Since 1992 until now the economy such as banking institutions are adhering to the principles of Islamic finance has grown so rapidly. Sharia principles should not be applied in the implementation is not necessary to do surveillance. Supervision of the banking institutions that

³ Ibid page 33

⁴ Encyclopedia of Islam Indonesia, Bridge, Jakarta, 1992, page 271

carry out the mandate of Islamic Banking Act in addition executed by the Financial Services Authority is also done by the Shariah Supervisory Board. Various monitoring is done according to the needs of the financial institution.

Based on the writing of the above reasons, the researchers interested in studying by taking the title role of the Sharia Supervisory Board in the Framework Enforcing Sharia principles At the Institute of Islamic Banking in Semarang.

1. 2. Problem Formulation

Background on the reasons for the selection of the above title and description you have in the present, the researchers are interested to take the formulation of the problem as follows:

1. What are the principles of Sharia to be enforced in the Islamic banking institutions ?
2. What is the role DPS in order to uphold the principles of sharia in Islamic banking institutions in the city of Semarang?

1.3. Research methods

This research uses descriptive analytical approach, using sociological juridical approach or approaches Socio-legal research. That is by examining the data in the form of facts about the work and role of the Sharia Supervisory Board of Islamic Banking institution in the city of Semarang.

1.4. Results and Discussion

A. The principles of sharia should be applied to the Islamic banking

Bank according to Undang-undang No. 7 tahun 1992 is an entity that collects from the public in the form of savings and channel them to the public in order to improve the standard of living of the people. The term Islamic Bank in the literature are not known. An institution that collects funds from the public and to channel back to the community, in Islamic literature known as the treasury or baitul tamwil. Another term was used for designation Islamic Bank is Bank Syariah. Academically, the term Islam and Sharia does have a different understanding. But technically to mention Islamic Bank and Islamic Bank have the same understanding. In Undang-undang No. 10 Tahun 1998 states that Commercial Bank is a bank conducting conventional business activities or is based on the Shari'ah principles in its activities provide payment services in the litas. Further explained that the principles of Shariah is Islamic law based on the rules of

the agreement between the bank and other parties to keep it, finance or other activities stated in accordance with the Shari'a. Based on the formulation of the problem, the Bank of Shariah means the procedure of bank operational procedures constituted with Islam, which refers to the provisions of the Al-Quran and Al Hadith.

Although Undang –undang No.21 tahun 2008 concerning Islamic Banking has been issued, but Indonesia still has the dual banking system (two banking system). This means allowing the two banking systems are *co-existence*. Two of the banking system are commercial banks and banks based on sharia

Principles of Islamic Banking which is often used by banks in Indonesia, especially in Central Java, namely:

1. Funding is based on the principle of profit sharing (*Mudharabah*)
2. Financing by equity participation (*Musharaka*)
3. The principle of buying and selling goods with profit (*Murabahah*)
4. Financing of capital goods is based on the principle of pure rental without selection (*Ijarah*)
5. Financing with ownership of the leased goods from the bank by our side (*Ijarah Wa iqtina*)

The principle should be run by the Islamic Bank, in Central Java BPD Sharia, as the bank is run by sharia activities. The Islamic banking has the same purpose as conventional banking, namely that banking institutions can generate profits by lending capital, deposit funds, fund operations, or other activities as appropriate. The principle of Islamic law forbids the elements below in banking transactions are⁵ :

1. Commerce on goods haram
2. Flowers (ربا *usury*),
3. Gambling and speculation intentional (ميسر *maisir*), as well as
4. The vagueness and manipulative (غرر *gharar*)

Although these principles may be applied in the economic history of Islam, but only at the end of the 20th century began to stand by Islamic banks that apply for incommercial private oMuslims.n When compared with conventional banks, Islamic banks have a very noticeable difference. These differences can be seen from various points below⁶:

⁵ Syafii Antonio, Muhammad, Islamic Banking, From Theory to Practice, editor Dadi MH Basri, Farida R. Dewi, Cet. 1, Jakarta: Gema Insani Press. ISBN 979-561-688-9 , 2001

⁶ Subekan Achmat, Know Basic Principles of Islamic Banking, articles Ministry of Finance, Jakarta, Tuesday, May 5, 2015

1. Islamic banks do not implement the system of interest, but the system loss and profit sharing. With this principle, the Islamic banks do not set a specific interest rate for savers and borrowers. This is the main difference between Islamic banks and bank nonsyariah. Loss and profit sharing system is relatively more complicated when compared to the system of interest. With this system, the customer community are in uncertainty as to the benefits to be obtained when they are saving in Islamic banks. Likewise the debtor, did not get the interest expense with a fixed nominal value if they take the credit or loan in Islamic banks.
2. Islamic banks put more emphasis on the development of riel sector. Because Prohibition interest, Islamic banks are looking for other strategies to generate profits. This strategy can be riel sector development to be financed or buying and selling in the fulfillment of customer consumption. Emphasis Islamic banks in this sector investments riel positive impact on the economic growth of the community in general. Customers are not educated society for the consumer, but more educated to develop the business sector riel performed.
3. The Islamic banks are only willing to finance investment halal. Islamic banks more selective in the investments that will be financed. Factors to be sized to be financed by Islamic banks is not only a gain factor, but also factors halal business sector will be financed. Illicit business field, such as gambling and prostitution business, it will not be financed from Islamic banks. Even if the business is a very lucrative field, Islamic banks still do not want to pay for it. This differs from the bank nonsyariah that ignoring the least halal business sector will be financed.
4. Islamic banks not only profit oriented, but also oriented falah, while bank nonsyariah only profit-oriented. Falah has a very broad scope, the goodness of life in this world and hereafter. In fact, the goodness of life is not just for Islamic banks concerned, but also for its customers. Orientation on falah This ultimately leads Islamic bank to care about the business / business carried out by the customer so that the two can equally benefit or advantage.
5. The relationship between the Islamic bank and the customer is on the basis of a partnership (*ta'awun*). With this partnership relationship then there are those who feel exploited by others. Parties customers are not exploited because it must pay interest in

a certain amount as well as the relationship between customers and banks nonsyariah. Even Islamic bank cares for the performance of the business / business conducted by customers (especially if the contract is agreed *Musharaka and mudaraba*). The Islamic banks also do not feel exploited by savers having to pay interest as agreed (exmple in deposits). Rewards given to savers is in accordance with the profits generated by the bank in managing customer funds. Between customers and Islamic banks are in a condition to help each other and work together (*ta'awun*).

6. All products and operations of Islamic banks is based on Shari'a. Islamic bank products should be a banking product is kosher. Operations of Islamic banks must also be in accordance with Islamic law, for example, the service ethic and clothing worn by the employees of the Islamic bank must also comply with Islamic law. To keep the products and operations of Islamic banks remain within the corridor of the Shari'a, the Islamic banks include / supervised by a Shariah Supervisory Board. The council is an internal control to safeguard the halal products and operations of Islamic banks. In addition, there is also a nationally Sharia Council Which became a reference for the national sharia board of the bank for supervising Islamic banks.

The difference begins with the difference between the customer agreement with the banks. In the Islamic banking we know some of the usual contract and the principles that should be implemented by banks with Islamic principles.

Akad in Islamic banks

In connection with the above principle is no less important is the beginning of the contract or agreement is done between the customer and the bank.

The contract is a legal event between two parties which contain consent and *kabul*, legally by Personality and lead to legal consequences. If we associate with a design contract then we will try to relate it to the bank institution because the contract is the basis for an instrument in these institutions, especially in the Islamic Bank, the contract becomes the most important thing it is linked to be or not, halal haram against something done in Islam.

Akad an agreement, treaty, or the bond between the customer and the bank where there sighat (Islamic marriage contract), in accordance with the Shariah and the effect on the object to befastened.

The basics of the contract include:

Allah says in the Qur'an Surah Al Maidah paragraph (1), and in the rule of jurisprudence that the legal origin of the transaction is *keridlaan berakad* both sides, the result is valid is valid according to the contract. Some of the terms of the contract in the banking world, which are summarized from various sources:

- 1. Akad Istishna '**
- 2. Akad Kafalah**
- 3. Akad Ijarah**
- 4. Akad Hiwalah**
- 5. Akad Murabaha**
- 6. Akad Qardh**
- 7. Akad Rahn**
- 8. Akad Salam**
- 9. Akad Sharf**
- 10. Wakalah**

According to jurists, each contract will result in the law, namely the achievement of the targets to be achieved from the beginning. Like to transfer ownership from the seller to the buyer. And the contract was binding on the parties who have a contract, should not be canceled unless caused things syarak justified. As there are defects on the object of the contract, or a contract that does not meet one of the pillars or the terms of the contract. Besides, the contract could be something lawful or unlawful, so that in order to realize the Islamic banking Islamic principles that should be applied is necessary to contract the corresponding predetermined rules.

Not all of these principles is run by Islamic banks, in Central Java BPD Sharia, which is often used is mudhorobah contract, contract wadiah and wakalah.⁷

B. Role of the Sharia Supervisory Board/DPS in Islamic banking.

Along with the development of the banking sector, especially Islamic banking, it is necessary to control inherent in every person involved in banking activities in the form of religious motivation or through institutional supervision. In carrying out its institutional

⁷ Interview with BPD Sharia in October 2016

functions so that operations of the Bank Islam does not deviate from the demands of Islamic law, established "Supervisory Board"⁸

Sharia Supervisory Board is a board of economic experts and scholars who master the *mu'amalah fiqh (Islamic commercial jurisprudence)* stand-alone and the duty to observe and oversee the operations of Islamic financial institutions and products to comply with the provisions of Islamic law, ie by keeping under carefully how the forms of engagement / contract held by islamic financial institutions⁹

All in the compulsory Islamic Bank has Sharia Supervisory Board, it is based on:

1. Bank Indonesia Regulation (PBI) No. 6/17 / PBI / 2004 dated July 1, 2004 on Rural based on Sharia Principles.
2. Bank Indonesia Regulation No. 6/24 / PBI / 2004 dated October 14 on Commercial Banks conducting business based on Sharia Principles last amended by Bank Indonesia Regulation No.7 / 35 / PBI / 2005 dated September 29, 2005 on Commercial Banks conducting business based on Sharia Principles.
3. Bank Indonesia Regulation No. 8/3 / PBI / 2006 dated January 30 about changes in the business activities Conventional Commercial Bank to Commercial Bank conducting business based on Sharia Principles and Opening of Bank conducting business based on Sharia Principles by Conventional Commercial Bank.

Based Leadership Council Decision concerning the composition of the board MUI DSN-MUI, No: Kep-98 / MUI / III / 2001, the Sharia Supervisory Board are:

existing bodies in the Islamic financial institutions and oversees the implementation of decisions DSN in the Islamic financial institutions.

Based Leadership Council Decision concerning the composition of the board MUI DSN-MUI, No: Kep-98 / MUI / III / 2001, the Sharia Supervisory Board are:

existing bodies in the Islamic financial institutions and oversees the implementation of decisions DSN in the Islamic financial institutions.

The board is appointed and dismissed in Islamic Financial Institutions by the AGM on the recommendation of the DSN.

⁸ Warkum Sumitro, Principles of Islamic Banking and Related Institutions (BAMUI, Takaful and Islamic Capital Market) in Indonesia, Ed. Revision, Cet- 4, (Jakarta: PT. RajaGrafindo Persada, 2004), p. 51.

⁹ Heri Sudarsono, Banks & Islamic Financial Institutions, description and illustration, Ed. 3, Cet- 1, (Yogyakarta: Ekonisia, 2008), p. 45.

Every Islamic Banks or Conventional Banks that have Sharia should have at least 2-5 people as a member of the Sharia Supervisory Board. As for the rural credit banks Sharia least have 1-3 members of DPS. If the DPS in any Islamic financial institution has more than one member of the one of the member shall be the chairman of the DPS instituted Sharia Finance.

The main requirements for the Sharia Supervisory Board is they must have the ability in the field of Tenets Law, Economics and Banking Law. In addition, members of DPS also must fulfill the following requirements;

- a. Integrity
- b. Competence, and
- c. financial reputation

DPS members who meet the integrity requirements, among other parties who have good character and moral values, a commitment to comply with the legislation in force. Have a high commitment in developing Islamic banking is healthy and does not include a list of NOT PASS in accordance with the provisions stipulated by Bank Indonesia.

DPS members who meet the competency requirements are parties who have knowledge and experience in the field of sharia *muamalah* and knowledge in the field of banking and finance knowledge in general.

While the DPS members who meet the requirements are the financial reputation of the parties;

1. Not included in the credit / financing jammed.
2. Never declared failed or become directors or commissioners found at fault for causing a company to be declared failed within 5 years prior to nomination.

DUTIES, AUTHORITY AND RESPONSIBILITY DPS

In conventional banks, supervisory structures held by the board of commissioners. However, in Islamic banks, you will see the regulatory structure is more complex, ranging from commissioners, sharia supervisory board, to national sharia board.

The t duties as, the authority and responsibility of the Sharia Supervisory Board (DPS), among others;

1. Ensure and oversee compliance Bank operations against the fatwa that has been set by the DSN-MUI.
2. Assessing sharia aspect to operational guidelines. And products issued by the Bank.
3. Giving an opinion sharia aspect to the overall operations of the Bank and the Bank published reports.
4. Reviewing new products and services that no fatwa to request the DSN-MUI fatwa.
5. Delivering results sharia supervision at least every six months to the Board of Directors, Commissioners, DSN-MUI and Bank Indonesia.

Against the duties and authority of DPS can say that in fact they are the DPS has been working in accordance with what is already in *amanah*, they are very careful in conducting their duties, because the tasks that must be in the waistband also relates to do with accountability to Allah SWT.

For example in the framework of the provision of financing a hotel in the city of Solo, the DPS of BNI Syariah asked for clarity about what activities will be undertaken by the hotel, after receiving information from the hotel is not necessarily the bank immediately disburse financing requested. Assessment by the DPS in doing, after several weeks of undertaking an inquiry, it was decided by the bank on the recommendation of the DPS, the funds financing proposed for the establishment of the hotel is not in the grant in consideration one is worried about the activities undertaken by the hotel are not sharia-compliant.¹⁰

Duties and authority DPS has been on the run well, even tenure can DPS lifetime in the bank indefinitely, it was also not violate the rules.

APPLICATION PROCEDURE MEMBER DPS

Before you get a determination of the DSN-MUI and the approval of Bank Indonesia the Bank is required to submit a candidate for the DPS. Filing this petition addressed to the Bank Indonesia and the recommendation tie DSN-MUI.

There were two things that made Bank Indonesia in terms of giving approval of the application for DPS, namely;

1. Research on the completeness and correctness of documents.
2. Conducting interviews of candidates for DPS.

¹⁰ Interview with Mr. Basuki, BNI Syariah 46 Unissula

Two things are done to comply with Bank Indonesia, especially for competence regarding operational understanding of Islamic Banking. While the determination of the DSN-MUI made to the competence of understanding of the Sharia.

ISLAMIC BANK OF LIABILITY DPS

Islamic Bank shall provide facilities to the DPS to support performance monitoring Sharia to carry out the tasks and authorities and responsibilities as the DPS, among others;

1. Accessing data and the necessary information related to the execution of their duties and clarify the Bank's management.
2. Call and ask for accountability in terms of sharia to the management of the Bank.
3. Obtaining adequate facilities to carry out their duties effectively.
4. Obtaining payment in accordance with the rules of the company.

Obligations that must be carried by the Islamic Bank of the DPS, Alhamdulillah already implemented properly.

1.5. Conclusions and recommendations

A. Conclusions

Islamic principles that should be applied in Islamic banking, Islamic Banking Principles that are often used by banks in Indonesia, especially in Central Java, namely:

1. Funding is based on the principle of profit sharing (*Mudharabah*)
2. Financing by equity participation (*Musharakah*)
3. The principle of buying and selling goods with profit (*Murabahah*)
4. Financing of capital goods is based on the principle of pure rental without selection (*Ijarah*)
5. Financing with ownership of the leased goods from the bank by our side (*Ijarah Wa iqtina*)

These principles should be applied by the Bank and the Islamic system

Along with the development of the banking sector, especially Islamic banking, it is necessary to control inherent in every person involved in banking activities in the form of religious motivation or through institutional supervision. In carrying out its institutional functions so that operations of the Bank Islam does not deviate from the demands of Islamic law, established "Sharia Supervisory Board" Based on the DSN-MUI, No: Kep-98 / MUI / III / 2001, DPS are existing bodies in the Islamic financial institutions and oversees the implementation of

decisions DSN in the Islamic financial institutions. During the formation of DPS until now Alhamdulillah they have been carrying out their duties in accordance the *amanah*.existing bodies in the Islamic financial institutions and oversees the implementation of decisions DSN in the Islamic financial institu During the formation of DPS until now Alhamdulillah tg out their duties in accordance the.

B. recommendations

The development of Islamic Bank which has been running for more than 25 years showed good results, the Islamic banks from year to year is increasing, this is not separated from the role of Allah SWT through scholars to give an understanding to the Muslims, so expect the Muslims continue to increase faith and practice. Let's turn to the Bank Syariah together to carry out any economic transaction, who else will take advantage of Islamic banks otherwise we of Muslims

Parties Islamic banks should further improve services to customers, more visible sharf her that we as customers are more comfortable and interested in Islamic banks, so at home and do not want to switch to a conventional bank. It is also not free from DPS role as the supervisory board of the performance of Islamic banks.

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