



Optimization of the Sharia Supervisory Board in Its Supervisory Function on Sharia Principles (A Study on Sharia Banking in Lhokseumawe City)

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Abstract

This study aims to determine the optimization of DPS in carrying out the supervisory function of sharia principles in Islamic banking in Lhokseumawe City, and the obstacles experienced as well as the DPS efforts to resolve obstacles in carrying out the supervisory function of sharia principles. This study uses empirical research methods and empirical juridical approaches. Data were obtained through field research and library research. Data analysis was carried out qualitatively. Research shows that in optimizing the monitoring of sharia principles, DPS as a supervisor should be active in monitoring Banks directly. In the second quarter of 2007, the company's net profit in the first half of 2007 fell to rp8.3 trillion from rp2.9 trillion in the same period last year. It is suggested that DPS can increase their supervision in supervision Islamic banks in order to create Islamic banks that comply with sharia principles in accordance with Article 32 paragraph (3) of Law Number 21 of 2008 concerning Sharia Banking and Article 45 paragraph (1) of Qanun Aceh Number 11 of 2018 concerning Islamic Financial Institutions.

Keywords: *Optimization; Sharia Supervisory Board; Sharia Principles; Islamic Financial Institutions*

Introduction

Aceh is one of the provinces in Indonesia that has privileges in the perspective of the Unitary State of the Republic of Indonesia (NKRI). One of these privileges is that it has the right to implement Islamic Sharia in its territory. (Ananda, 2020). The people of Aceh Province have been practicing the values of Islamic Sharia since 2000 with the existence of several local regulations (Perda) that regulate it, including the Regional Regulation of Aceh Special Region Province Number 5 of 2000 concerning the Implementation of Islamic Sharia (Ananda, 2020). Aceh Province has the privilege in its authority to develop and regulate the operation of Islamic Sharia, which is granted by the State, which is further regulated through Aceh Regional Regulations or *qanun* (Article 2 paragraph (1) & (2), 1999).

With the issuance of Law No. 11/2006 on the Government of Aceh, the provisions of Islamic sharia values are increasingly emphasized in several regulations. One of them is in Article 16 paragraph (2) letter a, which states that “Other mandatory affairs which are the authority of the Government of Aceh

are the implementation of Aceh's privileges which, among others, include the organization of religious life in the form of implementing Islamic sharia for its adherents in Aceh while maintaining harmony among religious communities". It means Aceh has the authority to implement religious life in the form of implementing Islamic sharia in all fields, including in the economic sector that applies sharia principles.

Financial institutions in Aceh Province must adhere to sharia principles, and this provision is regulated in Article 21 paragraph (1) of Aceh Qanun No. 8/2014 on the Principles of Islamic Sharia. This provision states that "Financial institutions that will operate in Aceh must be based on sharia principles", which means that all financial institutions in the province of Aceh, both bank and non-bank financial institutions, must be based on sharia principles in running their business. Then, Article 21 paragraph (4) which explains that "Further provisions regarding Sharia Financial Institutions are regulated in the Aceh Qanun", resulted in Aceh Qanun Number 11 of 2018 concerning Sharia Financial Institutions.

The Indonesian Ulema Council (MUI), as an institution that handles issues related to Islamic law, has the responsibility to supervise Islamic financial institutions (LKS) in Indonesia, including LKS in Aceh Province, to make sure that their businesses always adhere to sharia principles (Ilyas, 2021). For this reason, MUI officially established the National Sharia Council (DSN) in 1998. This National Sharia Council has the authority to handle issues related to the operational system of LKS (Sudi, 2016). Structurally, DSN is an institution under MUI. The establishment of DSN is intended to carry out the duties and authority of MUI to provide solutions related to problems related to Islamic economics, or those related to the operational system of LKS, one of which is in Islamic banking. (Nurjaman & Ayu, 2021).

DSN has the main task of studying, exploring and formulating the values and principles of Islamic law in the form of "fatwa" which is used as a guide for transaction activities in LKS (Sudi, 2016). DSN is responsible for supervising, directing, and implementing the values and principles of Islamic teachings for sharia economic business actors (Nurjaman & Ayu, 2021). In addition, DSN also has the task of assisting related parties, such as the Ministry of Finance, Bank Indonesia, and others in developing regulations for LKS in the following ways (Nurjaman & Ayu, 2021).

1. Fostering economic growth, in general, and finance, in particular.
2. Issuing fatwa on various types of financial activities.
3. Issuing fatwa on sharia financial products and services.
4. Supervising the implementation of the issued fatwa.

With its privileges, Aceh Provincial government established the Aceh Sharia Council (DSA) to assist the DSN carrying out its duties to grow the economy, especially to make the economy in line with the principles of muamalah in Islam. The Aceh Sharia Council (DSA) is a council authorized to regulate and supervise the implementation of sharia principles in all financial transactions carried out by LKS. DSA is a representative institution of DSN formed by the Aceh government through Aceh Governor Regulation Number 56 of 2020 concerning the Aceh Sharia Council. DSA is an extension of DSN in overseeing LKS business activities, so that they remain in line with sharia principles.

MUI also established the Sharia Supervisory Board (DPS) in 1999 consisting of *fuqaha'* (Islamic law experts), economic experts and practitioners in the financial sector, which functions to oversee the implementation of fatwas issued by MUI, encourage and advance the economy of the people by exploring, testing and developing sharia values or principles in transaction activities at each LKS (Pertiwi, 2019). DPS is a board established to oversee the running of Islamic banks so that they are always in line with the principles of muamalah in Islam (Zainuddin, 2012).

Islamic economic principles are then used in Islamic financial institutions. In it, some various services and products are in line with the sharia principles offered. The sharia principles are banking

principles without usury, the principle of halal and non-haram commerce, the principle of willingness between the parties in the contract, and the principle of trustworthy, honest, and responsible fund management. These principles are then known as the principles of Islamic economics (Faisal, 2015). The purpose of implementing sharia principles in Islamic banking is to convince people who doubt the sharia principles in Islamic bank operations.

Islamic economics or also known as sharia economics is an economic system based on the principles of Islamic teachings (Faisal, 2011). In Islamic law, there is economic morality, which is also called the *golden five*: justice, freedom, equality, consultation/participation, and accountability/responsibility. These golden five are the general principles that form the basis of sharia economic principles (Faisal, 2011).

According to Article 1 point 12, Law Number 21 of 2008 concerning Sharia Banking, sharia principles are Islamic legal principles in banking activities based on fatwas issued by institutions authorized to issue fatwas in the field of sharia. With these principles, Islamic banking can carry out business activities based on the fatwa that has been determined by the DSN-MUI.

LKS that carries out sharia principled business activities are required to submit a Sharia Supervisory Board which is appointed at a shareholder meeting on the recommendation of the MUI (Article 44 paragraph (1) and (2), 2018). In the DSN Decree Number 3 of 2000, it is explained that the presence of the DPS is a recommendation from the DSN-MUI, and the DPS is part of the LKS which has the authority as a supervisor, and has the obligation to develop the LKS (Hartini et al., 2021).

In carrying out its duties, DPS is obliged to follow the DSN fatwa on the suitability of products and services run by the bank, with the provisions of sharia principles issued by MUI. The main task of DPS is to supervise the business activities of LKS so that they are in line with the provisions and sharia principles that have been issued by DSN (Pertiwi, 2019). Sharia principles that are made into fatwas by MUI are then outlined in Bank Indonesia Regulations (PBI) (Article 26 paragraph 2) and (3), 2008).

In 1992, the Islamic banking system in Indonesia was started, based on Law Number 10 of 1998 on Amendments to Law Number 7 of 1992, on Banking which gave authority to banks to carry out activities with a profit-sharing system. (Roifatus Syauqoti, 2018). Initially, financial institutions in Indonesia were conventionally based, using the interest system to make a profit. In 1998, conventional banks that used the interest system went bankrupt during the monetary crisis (Roifatus Syauqoti, 2018). This makes sharia-based financial institutions, one of which is Islamic banks, in the spotlight of the public who want to avoid interest that may harm their customers (Roifatus Syauqoti, 2018).

These Islamic banks are spread throughout the territory of the Republic of Indonesia, including in Aceh Province. Islamic banks located in Aceh Province include Bank Syariah Indonesia (BSI), Bank Muamalat and Bank Aceh. Bank Muamalat is the first sharia bank in Indonesia which pioneered the establishment of other sharia banks. Bank Muamalat operates on May 1, 1992 until now (Munawarah, 2019). BSI BSI is a merger of three banks from a group of state-owned banks; Bank Syariah Mandiri, BNI Syariah, and BRI Syariah which were merged and inaugurated on February 1, 2021. Bank Aceh is a regional-owned bank in Aceh Province whose operational activities have only changed to the sharia system on September 19, 2016, because previously the Bank Aceh operational system used the conventional concept (Maghfira, 2019).

Qanun Number 11 of 2018 concerning Islamic Financial Institutions was legally promulgated on January 4, 2019. In its provisions, three years after this qanun became legal, all financial institutions in Aceh Province must apply sharia principles in all their business activities. This Qanun requires all LKS in Aceh Province to implement article by article, including Article 42 paragraph (1) of Qanun Number 11 of 2018 concerning Islamic Financial Institutions. One of them, in implementing sharia principles, LKS

requires supervision in line with Article 42 paragraph (1) of Qanun Number 11 of 2018 concerning Islamic Financial Institutions. This article requires DPS to carry out supervisory functions, which in this study focus on BSI, Bank Muamalat and Bank Aceh.

Of course, this is a new challenge for DPS as the supervisor of sharia principles for several sharia banks in Aceh, since they are required to implement all articles of this qanun (Safitri et al., 2021). Based on the problems above, it is necessary to carry out further research to find out, explain, and describe how DPS can be optimized in carrying out its duties and functions based on Article 42 paragraph (1) of Qanun Number 11 of 2018 concerning Islamic Financial Institutions.

Research Methods

Based on the background description above, the problem discussed in this research is the optimization of DPS in carrying out its duties and functions based on Article 42 paragraph (1) of Qanun Number 11 of 2018 on Islamic Financial Institutions. In addition, this research will also describe the obstacles that occur and the efforts made by the Sharia Supervisory Board (DPS) in optimizing the DPS carrying out its duties and functions based on Article 42 paragraph (1) of Qanun Number 11 of 2018 on Islamic Financial Institutions.

This research is a qualitative research study. A qualitative research is a research procedure that produces descriptive data in the form of written or spoken words from people and observed behavior. Qualitative research methods have a detailed, flexible design, and the actual design can be concluded after conducting research (Muhaimin, 2020).

The approach method used is empirical juridical. Empirical juridical approach is a legal research method that aims to analyze and study how law works in society (Ishaq, 2017). According to Soerjono Soekanto and Sri Mamudji, empirical or sociological legal research is legal research conducted by examining primary data (Soerjono Soekanto, 1986). Approaches that are often used in empirical legal research include legal sociology approaches, legal anthropology approaches, and legal psychology approaches (Ishaq, 2017). This research is descriptive in nature, a study that aims to provide a clear picture of an object that is being researched through existing data, as well as reviewing applicable laws and regulations, then linking them with legal theories and practice in implementation concerning problem to be researched (Soemitro, 1994).

Result and Discussion

1. Optimization of the Sharia Supervisory Board in Its Supervisory Function on Sharia Principles

In general, Bank Indonesia (BI) oversees Islamic banks. However, special supervision is carried out by the Sharia Supervisory Board (DPS) for banks that run their business based on sharia principles. Based on the decision of the National Sharia Council of the Majelis Ulama Indonesia (DSN-MUI) Number 3 of 2000 on the Implementation Guidelines for the Determination of Members of the Sharia Supervisory Board in Islamic Financial Institutions, members of the Sharia Supervisory Board are required to have good morals, competency expertise in the field of sharia muamalah and knowledge in banking and/or or finance in general, and eligibility to become a sharia supervisor, as evidenced by a letter/certificate from the DSN.

The Aceh government has the privilege of forming the Aceh Sharia Council (DSA) as a representative of the DSN in carrying out its duties to foster the growth of the economy, especially to comply with sharia principles in Islam. DSA is a DSN representative institution formed by the Aceh government through Aceh Governor Regulation Number 56 of 2020 concerning the Aceh Sharia Council.

DSA is an extension of DSN in supervising the business activities of Islamic Financial Institutions (LKS) so that they remain following sharia principles. DSA and DSN have differences in carrying out their duties and authorities. The DSA cannot issue a fatwa if there is a problem. He tries his best, collects and reports problems to the DSN, and will be followed up by the DSN which has the authority to deal with these problems to avoid bank losses. (Interview with Dr. Zaki Fuad, M.Ag., Member of the Aceh Sharia Council, 18 February 2023).

In carrying out its authority, the DSA coordinates with the DSN and/or the Aceh Ulama Consultative Assembly (MPU). Article 18 of the Governor of Aceh Regulation Number 56 of 2020 concerning the Aceh Sharia Council states that the DSA has the authority to:

- a. Regulate and supervise financial institutions that do not yet have DPS following statutory provisions;
- b. Act as a liaison between LKS and the Aceh government;
- c. Carry out DPS certification after coordinating with the DSN-MUI;
- d. Give a warning to LKS to stop deviating from the DSN fatwa; and
- e. summon and conduct an investigation of the DPS that has problems from a sharia compliance standpoint.

DSA has the authority to encourage the formation of DPS based on statutory provisions in regulating and supervising financial institutions that do not yet have DPS. DSA also monitors and gives warnings to LKS that have not proposed DPS candidates (Pasal 18, 2020). The DSA also has the authority to supervise and give a warning to the DPS if there is an error in its supervision (Interview with Dr. Zaki Fuad, M.Ag., Member of the Aceh Sharia Council, 18 February 2023).

Article 35 paragraph (1) of Bank Indonesia Regulation Number 03/11/PBI/2009 on Islamic Commercial Banks states that the duties and responsibilities of the DPS are to provide advice and recommendations to the directors and supervise bank operations following the principles of Islamic law. Supervision of bank operations by the DPS is very important to see and check the conformity of sharia principles, and this also allows the DPS to recommend new products needed by the bank.

The position of DPS determines sharia compliance which is a key element in the existence and continuity of business for the sharia financial industry (Nurhisam, 2016). Through the supervisory function of the Sharia Supervisory Board, the implementation of sharia compliance by LKS can be assisted and run optimally.

DPS is a party affiliated with a bank, its position is categorized as a party providing services to the bank, such as public accountants, legal consultants and appraisers. Structurally, DPS is part of the bank. The amount of remuneration and facilities provided to DPS members are also determined by the bank, through recommendations from the remuneration and nomination committee (Sudi, 2016).



Figure 1. The relation between DPS, Bank, DSN-MUI, and Bank Indonesia.

DPS as a party affiliated with a bank, must still follow and comply with the rules made by BI, in the form of Bank Indonesia Regulations (PBI) and Bank Indonesia Circular Letters (SEBI), as bank (including sharia bank) regulators and supervisors. In making regulations related to sharia, Bank Indonesia refers to the DSN fatwa. The DSN fatwa in the law is also referred to as sharia principles, and to be legally binding, it needs to be made into positive law following regulations in Indonesia. To bridge the fatwa and PBI, the DSN fatwa requires a PBI. Therefore, a Sharia Banking Committee was formed as mandated by Law Number 21 of 2008 on Sharia Banking (Sudi, 2016).

Optimizing the role of DPS is very important to ensure that transactions are carried out in accordance with sharia principles, which refer to fatwas issued by DSN based on the Al-Quran and Hadith. Supervision by the Sharia Supervisory Board is intended so that the activities of Islamic banks do not violate the provisions of sharia principles. Thus, when a problem occurs between an Islamic bank and a customer, the DPS can act to re-check if there is an error, and it will be raised as a report so that further examination and in-depth study is carried out (Interview with Prof. Al Yasa' Abu Bakar, M.A, as Member of the Sharia Supervisory Board, 27 February 2023).

The less-than-optimal supervision of sharia banking is due to the DPS also having to do other jobs. In addition, the supervision carried out by DPS through reports from banks and DPS who are not part of the branch bank, can make supervision by DPS less than optimal because it is far from its reach.

2.Problems Faced by the Sharia Supervisory Board in Carrying out the Sharia Principles Oversight Function

Problems were encountered in efforts to optimize DPS in its sharia principles supervisory function following the provisions of Article 45 paragraph (1) of Qanun Aceh Number 11 of 2018 concerning Islamic Financial Institutions and Article 32 paragraph (3) of Law Number 21 of 2008 on Islamic Banking. Problems in supervising sharia principles will become urgent for bank quality. This problem occurs due to the supervisors, who become obstacles in the supervision of sharia principles at banks. They include DPS who are only domiciled at the bank's head office, DPS who hold concurrent positions but are not members of the DPS, and a supervisory system that is not carried out directly but through reports.

Following laws and regulations, DPS is only positioned in the central bank office. However, its presence at the bank's head office is not an obstacle for DPS in supervising Islamic banks. The worry is that if there is an DPS at the branch bank level, there may be overlap in supervising the bank which can lead to differences in the supervision carried out by the DPS at each bank. Problems that will occur in the future will be processed by collecting existing problems and will be reported to DSN every 6 (six) months to find solutions to these problems. (Interview with Dr. Zaki Fuad, M.Ag., Member of the Aceh Sharia Council, 18 February 2023).

Article 19 paragraph (2) Decree of the Board of Directors of Bank Indonesia Number 32/34/KEP/DIR, 12 May 1999, concerning Commercial Banks Based on Sharia Principles, states that banks are required to have DPS at the bank's head office. Placement of DPS which is only at the bank's head office, can hinder optimization of supervision of bank branches, because they are far from the reach of DPS.

One of the experts, Agustianto, stated that there was no need to place the DPS at the branch or unit because there was already a DPS representative, a sharia auditor (sharia compliance). This assumption is inaccurate, because the position of the sharia auditor is not listed in laws or regulations as a party that has the authority to carry out supervision (Ansori, 2013).

The reality shows that, even though DPS has been assigned to supervise islamic banks, there are still violations that occurred. It illustrates the bank's lack of concern for DPS as a supervisor and provider of advice and suggestions. The DPS, which is endowed with tasks of supervising, giving advice and suggestions, cannot do more because of its limitations only as a supervisor and is not authorized to give sanctions for cases of violations that have occurred (Interview with Prof. Al Yasa' Abu Bakar, M.A, as Member of the Sharia Supervisory Board, 27 February 2023).

Sharia auditors ensure sharia compliance, by conducting regular reviews of business transactions before the occurrence of transactions, supporting DPS in carrying out their functions, monitoring and providing sharia input in developing applicable policies and processes, developing compliance programs and reviewing sharia compliance according to plan and structure (Arrazi, 2021).

DPS who have other activities besides being a supervisor, such as serving in other agencies, can make supervision run not optimally. It is because he has to divide his time between supervising and other jobs. Supervision of sharia principles should be carried out directly and focused, so that DPS can assess banks directly in terms of compliance with sharia principles occurring. Another obstacle that makes DPS supervision less than optimal is that it only supervises through monthly reports and receives information from the bank regarding the activities carried out by the bank. Therefore, it is possible that if there is a violation committed by the bank, it is this lack of attention from the Sharia Supervisory Board that causes the bank to not comply with sharia principles (Interview with Dr. Zaki Fuad, M.Ag., Member of the Aceh Sharia Council, 18 February 2023).

3.Efforts by the Sharia Supervisory Board to Resolve Obstacles in Carrying out the Sharia Principles Oversight Function

In carrying out a business activity, there may be problems or obstacles. Therefore, efforts are needed to optimize the supervision of Islamic banks which are very risky in their business activities that adhere to sharia principles. People who want to carry out muamalah activities with Islamic banks, where customers and banks both benefit from a profit-sharing system, will pay close attention to this. The slightest obstacle and error must be detected as quickly as possible to avoid bank losses. Optimization of supervision of sharia principles in banks by DPS can be carried out in many ways, efforts to overcome and minimize the occurrence of violations of sharia compliance can be carried out by DPS in the following ways (Interview with Dr. Zaki Fuad, M.Ag., Member of the Aceh Sharia Council, 18 February 2023).

1.Optimizing sharia bank supervision

In improving the quality of sharia supervision, it is necessary to cooperate with other departments such as bank internal supervision, to assist DPS in supervising sharia compliance. Continuous supervision from DPS can optimize bank performance, by carrying out their duties and responsibilities overseeing bank operations in implementing fatwas that have been issued by DSN-MUI. The DPS must prioritize supervision of the bank being supervised and set aside other work, so that the bank's performance and supervision can run optimally.

2.Avoiding violations that may occur

DPS plays a very important role to avoid banks's possible violations. The DPS must focus more on supervising and developing the products and activities of the banks it supervises so that they always run according to sharia principles. The active DPS in supervising the bank can prevent the bank from violations that will disrupt the performance and quality of the bank. The presence of DPS can act as a liaison between banks and customers to ensure bank sharia and all products in bank operations.

Direct supervision by DPS can optimize supervision of Islamic banks. Sufficient time and active DPS members can make their supervision more optimal. Lack of supervision time can affect bank quality, thereby reducing public trust in Islamic banks and giving rise to the notion that there is no difference between Islamic banks and conventional banks. In accordance with the Financial Services Authority Regulation Number 24/POJK.03/2018 concerning Implementation of Governance for Sharia People's Financing Banks, DPS members are required to provide sufficient time to carry out their duties and responsibilities optimally. In addition to the role of the Sharia Supervisory Board mentioned in the legislation, the Islamic Sharia Supervisory Board also provides more roles to optimize bank performance, such as providing inspiration to develop bank products and services through innovative thoughts. This aims to optimize supervision on the implementation of bank sharia principles.

DSA, which was born based on Article 5 paragraph (1) of Aceh Governor Regulation Number 56 of 2020 on the Aceh Sharia Council, can help optimize the role of DPS in supervising sharia bank principles. In addition, DSA and DPS also have the same duty, which is to oversee the implementation DSN-MUI fatwas in LKS, one of which relates with Islamic banks.

Conclusion

The role of DPS in carrying out the supervisory function of sharia principles is to supervise all sharia banks and banks that have UUS regarding the implementation of fatwas issued by DSN-MUI. This role is following Article 32 paragraph (3) of Law Number 21 of 2008 concerning Islamic Banking and Article 45 paragraph (1) of Qanun Aceh Number 11 of 2018 on the Islamic Financial Institutions. Focused supervision, strong commitment, and DPS activeness in supervising the bank directly, allows the bank's sharia principles to run optimally.

Obstacles in supervising sharia principles are partly caused by the lack of focus and inactivity of DPS in directly supervising sharia banks. The DPS which supervises indirectly by conducting supervision through reports, is feared to make mistakes in the reports made by the bank, either intentionally or unintentionally. DPS which is only in the center will hinder the supervision of sharia principles in banks. It is feared that branch banks will commit violations and make the bank's credibility worse, public trust in Islamic banks will decrease. The DPS, whose role is to bring customer confidence in the bank, makes the position of DPS very important. Efforts that can be made by DPS to resolve obstacles in supervising sharia principles include improving the quality and activeness of sharia supervision, especially if there is a violation in the bank's operations and DPS capacity. Collaboration with sharia auditors is also needed to better supervise the activities of branch banks that are far from the DPS' oversight.

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