

Research Paper

Good Corporate Governance Principles in Indonesian Syariah Banking

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Abstract: Sharia banks are banks that carry out their business activities based on the principles of Islamic law in banking activities based on fatwas issued by the National Sharia Council of the Majelis Ulama Indonesia. This research aims to explain the Good Corporate Governance principles in Indonesia sharia banking. The method used in this research is normative legal research. The results of the research explained that to maintain the trust of Indonesian people who are predominantly Muslim, sharia banking must apply the Good Corporate Governance principles in its management. The application of the Good Corporate Governance principles in sharia banking is strictly regulated in Article 34 Paragraph (1) of Law Number 21 of 2008, which emphasizes that sharia banks must implement good governance that includes the principles of transparency, accountability, responsibility, professionalism and fairness in carrying out its business activities. Form of application of the Good Corporate Governance principles in sharia banking is supervision conducted by the National Sharia Council of the Majelis Ulama Indonesia in general and the Sharia Supervisory Board specifically in each sharia bank.

Keyword: Good Corporate Governance Principles, Law, Sharia Banking.



1. Introduction

Banking is everything related to banks, including institutions, business activities, as well as ways and processes in carrying out their business activities. In simple terms, a bank is defined as a financial institution whose business activities are raising funds from the community and channeling the funds back to the community, as well as providing other financial services [1]. According to business activities, types of banks can be distinguished from conventional banks and sharia banks [2]. Conventional banks are banks that carry out their business activities conventionally, while sharia banks are banks that carry out their business activities based on the principles of Islamic law in banking activities based on fatwas issued by the National Sharia Council of the Majelis Ulama Indonesia [3].

The Law on Banking mandates that in carrying out its business activities, each bank is required to maintain its soundness and maintain the trust of the public who place their funds in the bank. However, the Indonesian people had lost confidence in the banking world at the time of the economic crisis in 1998. The economic crisis was the destruction of the national banking system. The real evidence that resulted was, among others, the freezing of 38 banks' businesses, including Ciputra Bank, Ganesha Bank, Pesona Bank, Alfa Bank, Aspac Bank, and so on. Furthermore, there were 7 banks that were taken over by the government, namely RSI Bank, Putera Sukapura Bank, POS Bank, Artha Pratama Bank, Nusa National Bank, Jaya Bank, and IFI Bank. In addition, there are also 4 government banks, namely Dagang Bank, Exim Bank, Bumi Daya Bank, and Bapindo which are merged into Mandiri Bank [3]. However, it turns out that sharia banks weren't affected by the economic crisis that occurred in 1998. During the economic crisis, factually Bank Muamalat Indonesia, the only sharia commercial bank in Indonesia, was categorized as a healthy bank [4].

From the introduction described above, the problem discussed in this research is how the Good Corporate Governance principles in Indonesia sharia banking?

2. Method of Research

Legal research is a scientific activity that is based on certain methods, systematics, and thoughts aimed at studying one or several specific legal phenomena by analyzing them [5]. The method used in this research is normative legal research, using the statutory approach. Normative legal research is a process to find the rule of law, legal principles, and legal doctrines in order to answer the legal issues faced [6].

Data sources used in this research are secondary data, namely data obtained from statutory regulations, scientific journals, and legal literature. The data collection technique used in this research is literature study. The data analysis technique used in this research is qualitative analysis.

3. Discussion

Sharia banks are banks that carry out their business activities based on the principles of Islamic law in banking activities based on fatwas issued by the National Sharia Council of the Majelis Ulama Indonesia [3]. The history of syariah banking was the first time the establishment of an Islamic bank in Egypt, namely the establishment of the Islamic Rural Bank in Cairo in 1963. The first Islamic bank owned by a private party was the Dubai Islamic Bank, which was founded in 1975 by a group of Muslim entrepreneurs from various country [4]. It has been a long time for Muslims, including in Indonesia, to experience various obstacles in developing their economic potential and development. One reason is the disease of dualism between the economy and sharia which is quite chronic. This dualism arises as a result of the inability of the people to combine the two disciplines, economics and sharia, which should complement and perfect each other [7].

Initiatives regarding the establishment of sharia banks in Indonesia began in 1990. On August 18-20, 1990, the Majelis Ulama Indonesia held a 'Bank and Banking Interest Workshop' in Bogor, West Java. The results of the workshop were then discussed in more depth at the Fourth National Conference of the Majelis Ulama Indonesia in Jakarta on August 22-25, 1990 to form a working team for the establishment of sharia banks in Indonesia. The result of the team's work was the establishment of Bank Muamalat Indonesia on November 1, 1991, which officially began operating on May 1, 1992 [8]. The early development of sharia banking in the national banking system was responded quickly by the government. On March 25, 1992, Law Number 7 of 1992 concerning Banking was passed to replace Law Number 14 of 1967 concerning Banking Fundamentals to accommodate the establishment of sharia banks in Indonesia [9].

Article 6 Letter m and Article 13 Letter c of Law Number 7 of 1992 states that the business of commercial banks and people's credit banks, one of which is to provide financing for customers based on profit sharing principles in accordance with the provisions stipulated in government regulations. This provision becomes the legal basis for sharia banking in carrying out its business activities. This provision was then strengthened by the ratification of Government Regulation Number 72 of 1992 concerning Banks Based on Revenue Sharing Principles. According to Government Regulation Number 72 of 1992, banks based on the profit sharing principle are commercial banks or rural credit banks that carry out business activities solely based on profit sharing principles in accordance with sharia in determining the compensation to be given to the public in connection with the utilization of public funds entrusted with to the bank, determine the compensation to be received in connection with the provision of funds to the public in the form of financing, and determine the compensation in connection with other business activities that are commonly carried out by the bank on the principle of profit sharing.

The birth of Law Number 10 of 1998 as an amendment to Law Number 7 of 1992 further strengthens regulations regarding sharia banking in Indonesia. Article 1 of Law Number 10 of 1998 clearly states that both commercial banks and rural credit banks are banks that carry out business activities conventionally and / or based on sharia principles. The article also explains the understanding of sharia principles, namely rules of agreement based on Islamic law between banks and other parties for depositing funds and / or financing business activities, or other activities declared in accordance with sharia, including financing based on profit sharing principles (*mudharabah*), financing based on the principle of equity participation (*musharakah*), the principle of buying and selling goods with a profit (*murabahah*), and financing of capital goods based on the principle of pure lease without choice (*ijarah*) or with the option of transferring ownership of goods leased from the bank by another party (*ijarah wa iqtina*).

In 1998, in addition to being devastating for the national banking system, the economic crisis that occurred also became the starting point for the development of sharia banking in Indonesia. This is because sharia banks aren't affected by the economic crisis. Several conventional banks, both state-owned and private banks, are expanding their business by establishing sharia banks, such as Bank Syariah Mandiri which was founded in 1999, Bank Permata Syariah which was founded in 2002, Bank Mega Syariah which was founded in 2004, Bank Rakyat Indonesia Syariah which was founded in 2008, Bank Syariah Bukopin which was founded in 2008, and so on [9]. Responding to the significant development of sharia banking in the national banking system, on July 16, 2008 Law Number 21 of 2008 concerning Sharia Banking was passed as a separate legal basis for sharia banks in Indonesia.

Sharia Banking Law Number 21 of 2008, philosophically, the juridical has fulfilled the demands of a sense of justice and legal certainty of justice seekers, especially concerning sharia economic business transactions [10].

The development of sharia banking in Indonesia has been rapid. One of the unique and interesting periods of a long series of developments in sharia banking in Indonesia is the period of maturation of concepts and initial pioneers that took place in the decade of the 90s. At that time there was still a sharia commercial bank, Bank Muamalat Indonesia. With its status as the first sharia commercial bank in Indonesia, Bank Muamalat Indonesia became the pilot project and trademark of the rise and implementation of massive Islamic economic legal thinking in Indonesia. The decade in which Bank Muamalat Indonesia stood became a momentum that has been eagerly awaited by the Indonesian people since tens or even hundreds of years ago. This period is very strategic because it becomes a stepping stone of success or failure of sharia banking in the next era. The long stretch of sharia banking dynamics in Indonesia can't be separated from the existence of Bank Muamalat Indonesia [11].

Based on data from the Financial Services Authority in 2017, currently there are 13 sharia banks in Indonesia, 21 sharia business units from conventional banks, and 102 sharia rural Banks. This is evidence of the existence and development of sharia banking that is significant in the national banking system. That is, sharia banks are financial institutions that can develop rapidly on the basis of the trust of Indonesian people who are predominantly Muslim.

In contrast to conventional banks, in addition to having legal responsibility for the applicable laws and regulations, sharia banks have moral responsibility towards the community and religious responsibility to God. Sharia banks have a moral responsibility to the community means that the

community considers employees who work at sharia banks have good morals in accordance with Islamic teachings, for example honest in working. Sharia banks have the responsibility of worship to Allah means that sharia banks have indirectly preached to run Islamic sharia in the field of muamalah, for example, encourage people to leave usury.

To maintain the trust of the majority of Indonesian people who are Muslim, sharia banking must apply the Good Corporate Governance principles in its management. The application of the Good Corporate Governance principles is very necessary to build public trust and the international world as an absolute requirement for the banking sector to develop properly. Therefore, the Bank for International Settlement as an institution that studies the principle of prudence that must be adhered to by banks has issued guidelines for implementing Good Corporate Governance for the banking sector internationally.

In the principle of openness, banks must:

- (1) Disclose information in a timely, adequate, clear, accurate, comparable and easily accessible manner to stakeholders in accordance with their rights.
- (2) The information that must be disclosed includes, but isn't limited to matters related to the company's vision, mission, business goals and strategy, financial condition, composition and compensation of management, controlling shareholders, cross shareholding, executive officers, risk management, systems internal supervision and control, compliance status, systems and application of the Good Corporate Governance principles, as well as important events that can affect bank conditions.
- (3) The principle of openness adopted by banks doesn't reduce the obligation to fulfill bank secrecy provisions in accordance with applicable laws and regulations, confidentiality of position, and personal rights. Finally, bank policies must be written and communicated to interested parties and those entitled to obtain information about these policies.

In the principle of accountability, the bank must:

- (1) Establish clear responsibilities for each organ of the organization that is aligned with the company's vision, mission, business goals and strategy.
- (2) Banks must believe that all organizational organs of the bank have competencies in accordance with their responsibilities and understand their role in applying the Good Corporate Governance principles.
- (3) Banks must ensure there is a check and balance system in bank management. Finally, banks must have performance measures for all levels of the bank based on agreed-upon measures consistent with the company's value, business goals, and bank strategy, and have a rewards and punishment system.

In the principle of responsibility, the bank must:

- (1) Maintain business continuity, banks must adhere to the principle of prudence and ensure the implementation of applicable regulations.
- (2) Act as good corporate citizens, including caring for the environment and carrying out social responsibility.

In the principle of independence, the bank must:

- (1) Avoid the occurrence of unfair domination by certain stakeholders and free from conflicts of interest.
- (2) Banks in making decisions must be objective and free from all pressures from any party.

In the principle of reasonableness, the bank must:

- (1) Always pay attention to the interests of all stakeholders based on the principle of equality and fairness.
- (2) Provide opportunities for all stakeholders to provide input and express opinions for the interests of banks and have access to information in accordance with the principle of openness.

As a trust institution, both conventional banks and sharia banks, in carrying out their business activities must apply the principle of openness, have performance measures from all levels of the bank

based on measures consistent with corporate values, business goals and bank strategies as reflecting bank accountability, adhering to prudential banking practices and ensuring the implementation of the provisions that apply as a form of responsibility, objective and free from pressure from any party in making decisions, and always pay attention to the interests of all stakeholders based on the principle of equality and fairness [12].

Basically, the application of the principles of Good Corporate Governance in conventional banks and sharia banks is the same, because it refers to the 'Guidelines for Good Corporate Governance of the Indonesian Banking' issued by the National Committee on Governance [13].

The application of Good Corporate Governance principles in sharia banks is strictly regulated in Article 34 Paragraph (1) of Law Number 21 of 2008, which emphasizes that sharia banks must implement good governance that includes the principles of transparency, accountability, responsibility, professionalism and fairness in carrying out its business activities. Form of application of the Good Corporate Governance principles in sharia banking is supervision conducted by the National Sharia Council of the Majelis Ulama Indonesia in general and the Sharia Supervisory Board specifically in each sharia bank.

The National Sharia Council of the Majelis Ulama Indonesia is tasked with fostering the application of sharia values in economic activity in general and finance in particular, issuing fatwas on types of financial activities, issuing fatwas on sharia financial products and services, and overseeing the application of fatwas that have been issued.

The Sharia Supervisory Board is tasked with overseeing the development process of new sharia bank products, requesting fatwas from the National Sharia Council of the Majelis Ulama Indonesia for new sharia bank products for which there is no fatwa, periodically reviewing the mechanisms for raising funds and channeling funds and providing sharia banking services, and requesting data and information related to sharia aspects from sharia bank work units in the context of carrying out their duties.

4. Conclusion

Sharia banks are banks that carry out their business activities based on the principles of Islamic law in banking activities based on fatwas issued by the National Sharia Council of the Majelis Ulama Indonesia. To maintain the trust of the majority of Indonesian people who are Muslim, sharia banking must apply the Good Corporate Governance principles in its management.

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References

- [1] Kasmir, *Banking Basics*. Jakarta: Rajawali Pers, 2012.
- [2] D. S. Gazali and R. Usman, *Banking Law*. Jakarta: Sinar Grafika, 2012.
- [3] A. S. Utama, "History and Development of Islamic Banking Regulations in the National Legal System of Indonesia," *Al-'Adalah Journal*, vol. 15, no. 1, 2018.
- [4] A. G. Anshori, *Sharia Banking in Indonesia*. Yogyakarta: Gadjah Mada University Press, 2009.
- [5] S. Soekanto, *Introduction to Legal Research*. Jakarta: Rajawali Pers, 2007.
- [6] P. M. Marzuki, *Legal Research*. Jakarta: Kencana, 2011.
- [7] S. M. Antonio, "Business and Banking in the Perspective of Islamic Law," *Al Mawarid Journal*, Ed. VII, 2012.
- [8] R. Usman, *Legal Aspects of Sharia Banking in Indonesia*. Jakarta: Sinar Grafika, 2012.
- [9] A. S. Utama, "History dan Development of Regulations Regarding Sharia Banking in the National Legal System in Indonesia," *Wawasan Yuridika Journal*, vol. 2, no. 2, 2018.
- [10] A. M. Mansyur, "Legal Aspects of Sharia Banking and Its Implementation in Indonesia," *Dinamika Hukum Journal*, Ed. Khusus, vol. 11, 2011.

- [11] M. N. Yasin, "Arguments for the Early Emergence of Sharia Banking in Indonesia," *De Jure Journal*, vol. 2, no. 1, 2010.
- [12] A. S. Utama, "Comparison of the Implementation of Good Corporate Governance Principles in Conventional Banks and Sharia Banks," *Daya Saing Journal*, vol. 2, no. 1, 2016.
- [13] D. S. Hasnati, and A. S. Utama, "Comparison of Good Corporate Governance Principles in Conventional Banks and Sharia Banks in the Legal System in Indonesia," *Mizan Journal*, vol. 3, no. 2, 2019.