Supervision of The Financial Service Authority of Sharia Compliance as The Protection of Depositors

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Supervision of The Financial Service Authority of Sharia Compliance as The Protection of Depositors

Sri Astutik[1]

1 Faculty of Law, Dr. Soetomo University, Surabaya, Indonesia, sri.astutik@unitomo.ac.id

Abstract

One of the important roles of Sharia Bank is as a community funding agency. To maintain public trust, and protect customers, it is necessary to supervision. Supervision conducted by the Financial Service Outhority one of which is the supervision of compliance with prevailing regulations, namely compliance with sharia principles, as set forth in Article 2 of Law, number 10 of 2008 concerning Sharia Banking, that "Sharia banking in conducting its business activities based on sharia principles". On the one Sharia bank demands of customers, but on the other hand Sharia bank are tied to Sharia compliance. The difference of principle between sharia bank and conventional bank, of course there are fundamental difference in supervision system of activity of sharia bank.

Keywords: Supervision, Sharia Compliance, Protection, Depositors.

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Introduction

Sharia Bank is a trust institution, meaning that the existence of Sharia Bank depends on the public trust to the bank. The higher the public's trust, the higher the public's awareness to save the funds in the Sharia Bank. Maintaining the level of public trust to the Sharia Bank depends heavily on not only the expertise of the managers, but also depends on the integrity, competence of the managers in banking, understanding and practice of sharia principles. Therefore, the Sharia Bank in conducting its business activities should be based on the principles of sharia. The principle of sharia is the principle of Islamic law in the banking activities based on fatwa issued by the institution that has authority in the determination of fatwa in the field of sharia.

To ensure the operational activities, products and services of sharia banks are always in accordance with the principles of sharia, it is necessary to supervise the activities of these banks. With the enactment of Law Number 21 of 2011 on the Financial Services Authority, which was enacted on November 22, 2011, the regulation and supervision of the banking sector which was originally at Bank Indonesia as the central bank, was transferred to the Financial Services Authority. Supervision by the Financial Services Authority shall also apply to the Sharia Bank.

With supervision by the Financial Services Authority it is expected to: improve and maintain public trust in sharia banks; enforce legislation in sharia banking (compliance with sharia principles) and protect the interests of consumers of financial services.

Based on the background of the issues outlined, what will be discussed in this paper is the Supervision of the Financial Services Authority to Sharia Compliance as the Protection of the Depositary Customer.

Method

Writing methods used in the writing of this paper based on normative legal research methods using approach statuta approach and conceptual approach

Findings

A bank is a financial institution that functions as a "*financial intermediary*" with business activities of raising funds and channeling public funds or transferring public funds from a surplus unit to a deficit unit or transferring money from savers to users in the form of financing. In carrying out its functions, the bank must be able to protect well the funds deposited by the customer to the bank. The Customer is a consumer of business actors providing services in the banking business sector.[1]

[1] Erna Priliasari, "Banking Mediation as a Form of Protection of Bank Customers", Indonesian Legislation Journal, Volume 5 No. 2, Jakarta, Directorate General of Legislation Regulation of the Department of Law and Human Rights, 2008; 43.

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Customer is a very important element, because life customers, banks in their operations must apply prudential banking principles. Increased protection of customer funds entrusted to the bank, is also done by fulfilling the requirements of bank health requirements and compliance with sharia principles.

Law Number 10 Year 2008 on Sharia Banking, hereinafter referred to as the Islamic Banking Law, is expected to better ensure legal certainty and protection for stake holders and at the same time provide confidence to the community in using the death products of the banking world relies on the trust of the community or customers.[2]

In protecting sharia banking funds and services.[3] The establishment of a Sharia Banking Act will at least provide a strong legal foundation for the sharia banking industry for the development of various Islamic banking products and services while still referring to sharia principles and prudential principles. This is in accordance with the principles set forth in Article 2 of the Islamic Banking Act, as follows:

> "Sharia banking in performing its activities is based on Sharia principles, economic democracy, and prudential principles".

Sharia Banking Laws have the main objectives of ensuring Sharia compliance. This can be seen from several provisions, which affirm that Sharia Banks may not conduct business activities that are contrary to Sharia principles; affirmation of Shari'a Fatwa authority by Indonesian Council of Ulama, the obligation to establish Sharia Supervisory Board in every Sharia Bank and Sharia Business Unit.

The fulfillment of Sharia principles for Sharia Bank is implemented with the following matters:[4]

1) Complying with the basic provisions of Islamic law, among others:
   a. The principle of justice (*'adl)*, that is putting things only in place, and giving something only to the right and treating something according to its position;
   b. The principle of equilibrium (*tawazun*), namely the balance that includes the material and spiritual aspects, the private and public aspects, the financial sector and the real sector, business and social, and balance aspects of utilization and sustainability;
   c. The principle of benefit (*maslahah*), which is all forms of kindness dimension of the world and *ukhrawi*, material and spiritual and individual

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[2] Muhamad Djumhana, Banking Law in Indonesia, Bandung, Citra Aditya Bakti, 2003; 282.
[3] Rachmadi Usman, Islamic Banking Products and Accre-ditation in Indonesia, Implemen-tation and Legal Aspects, Bandung, Citra Aditya Bakti, 2009; 10.
[4] Rachmadi Usman, Legal Aspects of Syariah Banking in Indonesia, Jakarta, Sinar Grafika, 2012; 117-118.

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and collective and must fulfill 3 (*three*) element that is compliance of shariah (*halal*), useful (*maslahah*) and bring goodness (*thoyib*) in all aspects of the whole that do not cause harm;

d. The principle of universalism, that is, something can be done and accepted by, with, and for all stakeholders without distinction of tribe, religion, race and class, in accordance with the spirit of universal salvation (*rahmatan lil alamin*).

2) Does not contain elements:

a. *Gharar*, a transaction whose object is unclear, not owned, not known to exist, or cannot be delivered at the time the transaction is made unless otherwise stipulated in sharia;

b. *Maysir,* a transaction that hangs on an uncertain and speculative circumstance;

c. *Riba*, namely the unlawful addition of income (*bathil*) in the exchange of similar goods which is not the same quality, quantity, and delivery time (*fardhl*), or in a lending and borrowing transaction which requires the recipient of the facility to refund the received funds exceeding the principal because the passage of time (*nasiah*);

d. *Dzalim*, a transaction that creates injustice for the other;

e. *Haram*, which is a goods or services are forbidden in sharia.

In Article 24 Paragraph (1) sub-paragraph a, Article 24 Paragraph (2) sub-paragraph a, and Article 25 sub-paragraph a, of the Sharia Banking Law, determine that Sharia Bank is prohibited from conducting business activities contrary to Sharia Principle. This means that sharia contracts made by a bank (Sharia Commercial Bank, Sharia Business Unit and Sharia Rural Bank) with the customer shall not contain terms and conditions contrary to Sharia Principles.

One of the legal aspects of sharia banking is the regulation of Sharia compliance. Sharia compliance is becoming increasingly important in situations where sharia banking is always challenged with demand from customers to be innovative and business-oriented (for example, in offering new instruments and products), as conventional banking does. This fact can push the position of the Sharia Bank into the middle of the two driving forces. On the one hand must accommodate the demands of the customers, which may be contrary to sharia principles, but on the other hand Sharia Bank is strictly bound by Shariah compliance.

Shariah Compliance in sharia bank in concept is actually the application of Islamic principles, sharia, and traditions into financial and banking transactions and other business, consistently, and make sharia as a framework for sharia bank system and finance in resource allocation, management, production, capital market activity,

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and wealth distribution. Shariah bank operations should not only compliance with sharia in products alone, but also include systems, techniques, and corporate identity.

The importance of adherence to sharia principles, from the beginning of the development of Sharia Banks, Bank Indonesia has established the initial step of establishing the basic framework of the regulatory system that is adapted to the operational characteristics of sound sharia banking, beginning with the stages of compliance with Sharia Principles as follows: [5]

a. Enhance the understanding of the Concept of Sharia Finance.
To understand the concept of Islamic finance, extensive knowledge is needed so that it can understand well about the concept of sharia and finance in a balanced manner. Every component in the banking system needs to have a correct understanding of sharia financial concepts. The Islamic banking system needs to have a competent Shariah authority body both in the concept of shariah and banking operations to improve the quality of its operations. Bank Indonesia's support for any effort to improve the competence of the severity authority is important.

b. Encourage and Facilitate the Formulation of Islamic Financial Norms.
The standardization of shariah financial norms internationally has been initiated by international Syariah financial institutions such as AAOIFI (Accounting, Auditing and Governance Standards for Islamic Financial Institutions), Islamic Financial Services Board (IFSB), which asserts supervision before the business is run (exante) and after the business is run (ex post) and academic Fiqh.[6] However, to apply these norms in the context of Indonesia's sharia financial system, a set of norms that have been adapted and understood by all components of the sharia banking system to avoid different interpretations of the international fatwa.

c. Reviewing Integrated Mechanisms and Regulatory Systems and Supervision.
A sound financial condition and compliance with Sharia principles are two aspects to be endeavored at the same time. As long as compliance with Sharia principles is a necessity in sharia banking, sharia inspection is an important aspect, and even an integral part of Shariah compliance. So, the arrangement of sharia supervision, which includes the existence of Sharia Council is an important part in the regulation of Shari'a compliance. In practice, a clear mechanism is needed to regulate the authority and supervisory tasks as well as the concept of regulating these two different aspects.

[5] Zainuddin Ali, Islamic Banking Law, Second Matter, Jakarta, Sinar Grafika, 2010; 131
[6] Agus Triyanta, "Implemen-tation of Sharia Compliance in Sharia", Journal of Laws, Special Edition, Yogyakarta, Faculty of Law Universitas Islam Indonesia, 2009, October 16; 221.

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According to Adrian Sutedi [7], the reason for the supervision of banks is fundamentally:

1. Maintaining public confidence in the integrity of the banking system and individual banks. Public trust is important as a source of funds. The presence of an unhealthy bank may threaten the integrity of the banking system and should be closed soon. The public should be confident that bank supervisors will apply strict sanctions and promptly revoke the bank's business license before it is too late.[8]
2. Periodical direct inspection is the best way to determine bank obedience to the terms. Obedience to legislation is traditionally a top priority for inspectors.
3. Prevent worsening problems so that the cost of saving or payment to depositors become very large.
4. Provide input to the supervisor about the form, level of seriousness and consequence of a problem for the bank and necessary remedial measures.

There is a fundamental difference between sharia banks and conventional banks. Sharia bank in its business operations based on sharia principles, while conventional banks based on the principle of interest. This difference results in fundamental differences in good governance stability and supervisory systems in sharia activities. Sharia banking supervision basically has two systems, namely: (1) supervision of financial aspects, compliance to banks in general and the prudential principles of banks; and (2) supervision of sharia principles in bank operations.[9]

Therefore, the supervisory structure in sharia banking consists of the following two systems:[10]

1. Internall supervisory system, consisting of elements of the General Meeting of Shareholders, Board of Commissioners, Audit Board, Sharia Supervisory Board, Compliance Director, and Internal Shariah Review. This internal control system is inward and in order to be able to control system mechanism for management interest,
2. External surveillance system, consisting of elements of Bank Indonesia, National Sharia Board – Indonesia Council of Ulama (DSN-MUI), and Stakeholder). This external oversight system is basically oriented to meet the interests of customers and the public in general.

[7] Adria Sutedi, Legal Aspects of Financial Services Authority, Jakarta, Raih Asa Sukses, 2013; 157-158.
[8] Jean-Charles Rochet, Why Are There So Banking Crises, Princeton, Princeton University Press, 2008; 31.
[9] Maslihati Nur Hidayati, "Sharia Supervisory Board in Banking Law System: Study of Bank Supervision Based on Islamic Principles", Lex Journalica, Vol. 6, No. 1, 2008, December, 68.
[10] Adrian Sutedi, Legal Aspects of Financial Services Authority, Jakarta, Raih AsaSukses, 2013; 246-247.

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With the enactment of the Financial Services Authority Act, the external supervisory system previously performed by Bank Indonesia is automatically replaced by the Financial Services Authority. The purpose of the establishment of the Financial Services Authority so that all activities in the financial services sector are organized in a regular, transparent, accountable manner, capable of realizing a sustainable and stable financial system that protects the interests of consumers of financial services and the public.

In order to ensure the fulfillment of sharia principles in sharia banking operations, the Financial Services Authority must coordinate with the National Sharia Board and the Sharia Supervisory Board. Duties and Powers National Sharia Board, among others: improve the application of Sharia values in economic activities in general and finance in particular; issuing fatwas and other types of financial activities, issuing fatwas on Sharia financial products and services, and overseeing the adoption of fatwas issued.

Supervision of sharia banks can be done directly or indirectly. Indirect supervision is conducted in the form of research, evaluation of bank statements sent periodically by banks. Direct supervision is conducted through direct examination of syariah bank.[11] The purpose of supervision is to obtain information about the activities of sharia banking business, as well as to know the level of compliance of sharia banking operations, not only limited to applicable legal provisions, but also compliance with sharia (shariah compliance).

The legal consequences of non-compliance of sharia banking to sharia principles, means an offense or injury to the existing regulatory framework, in which the penalty will be imposed. The punishment may consist of various penalties, ranging from administrative nature to a warning letter, to the revocation of the license. Criminal penalties may also be imposed on persons responsible for managing the business concerned, as long as they can be proved to have committed a false violation of sharia principles.

Conclusion

Legal protection for sharia bank customers in legislation shows the obligation for sharia banks in carrying out their operational activities based on sharia principles. To ensure the implementation of Sharia compliance, supervision by the Financial Services Authority.

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