

Criticism of Sharia Supervisory Board Position at Islamic Financial Institution: Evidence from Indonesia

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Abstract: *This research aims to analyze and critique the role of Sharia Supervisory Board (SSB) at Islamic Financial Institution. This is considered important because SSB is a core organization of Islamic Financial Institutions (IFIs) to legitimate and maintain all IFIs' operational activities that have to be appropriate through sharia compliance. Nevertheless, the position of SSB in Indonesia is lack of power and independence while doing its duties, which absolutely this issue does not correspond through the fatwa of National Sharia Council regarding SSB's position and function. This research criticizes the position and function of SSB on sharia audit for IFIs. This is qualitative research with a library method approach. Furthermore, this research delineates that there is such a decentralization position and function of SSB due to lack of power and decentral position of SSB when carrying out its duties regarding supervising IFIs whether are appropriate through sharia compliance or not. Thus, it requires such training in order to boost the independence of SSB when supervising IFIs.*

Keywords: *sharia supervisory board, sharia audit, islamic financial institution*

Abstrak: *Penelitian ini bertujuan untuk menganalisis dan mengkritisi peran Dewan Pengawas Syariah (SSB) pada Lembaga Keuangan Syariah. Hal ini dinilai penting karena SSB merupakan organisasi inti dari Islamic Financial Institutions (IFIs) yang berfungsi untuk melegitimasi dan mengawasi seluruh kegiatan operasional IFI yang harus sesuai dengan tingkat kepatuhan syariah. Namun demikian, posisi SSB di Indonesia dinilai tidak cukup kuat dan kurangnya tingkat independensi saat menjalankan tugasnya, yang tentu saja masalah ini tidak sesuai melalui fatwa Dewan Syariah Nasional mengenai posisi dan function SSB. Penelitian ini mengkritisi kedudukan dan fungsi SSB terhadap audit syariah bagi IFI. Penelitian ini mengkritisi kedudukan dan fungsi SSB terhadap audit syariah pada IFI. Lebih lanjut, penelitian ini merupakan jenis penelitian kualitatif dengan pendekatan metode kepustakaan. Penelitian ini mengemukakan, bahwa terdapat posisi desentralisasi dan fungsi SSB karena kurangnya tingkat independensi ketika melaksanakan tugasnya terkait supervising IFI apakah telah sesuai dengan tingkat kepatuhan syariah atau tidak. Dengan demikian, perlu adanya pelatihan untuk meningkatkan tingkat independensi SSB dalam mengawasi IFI.*

Kata kunci: *sharia supervisory board, sharia audit, islamic financial institution*

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INTRODUCTION

Sharia Supervisory Board (SSB) is an autonomous body that holds a significant position within Islamic Financial Institutions (IFIs). Therefore, the primary purpose of SSB is to uphold, oversee, assess, and guarantee the adherence of all operational activities of Islamic Financial Institutions to the rules of the Sharia (Baklouti, 2022; Mollah & Zaman, 2015; Neifar et al., 2020; Domínguez & Gámez, 2014). SSB mostly experiences such a lack of power condition regarding performing its duties and functions to legitimate the operation of IFIs and checks their compliance with sharia rules. SSB has to ensure that IFIs fully implement sharia rules in each of its operational activities (products and management aspects). The significance of sharia compliance holds paramount importance for Islamic financial institutions (Baklouti, 2022; Neifar et al., 2020; Ulfi et al., 2020). On the other hand, SBB somehow has no strong enough power in the presence of directors, board of commissioners, and managers who are actually authorized to take all decisions in order to determine such projects or businesses which considering profitable despite the risk of non-compliance with sharia to satisfying the shareholders (Baklouti, 2022). Thus, this kind of condition leads to a decentralization position of the Sharia Supervisory Board, and absolutely, this condition is not appropriate through the general position and function of SSB on *Fatwa* of National Sharia Council.

Furthermore, this scenario is indicative inefficient implementation of sharia governance in Islamic financial institutions (Abozaid, 2016; Ulfi et al., 2020). SSB itself has no strong power enough to control IFIs activities. Meanwhile, regarding IFIs operationalization it is controlled by the board of directors as well as SSB, which has equal position in order to the decision-making of its operationalization, and ensures the maximization of stakeholders' funds by the board of directors. SSB is controlling whether IFIs are in line through sharia compliance or not (Baklouti, 2022; Mollah & Zaman, 2015; Neifar et al., 2020; Yusuf, 2018). Hence, if the SSB identifies the presence of prohibition or *gharar* (uncertainty) in a transaction, the SSB has the authority to invalidate transaction, even though it contradicts with decisions reached by management and board of directors (Baklouti, 2022; Mollah & Zaman, 2015).

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In the realm of shariah audit, the adherence to sharia principles serves as the fundamental pillar supporting the operational business of Islamic Financial Institutions. This is attributed to the fact that Islamic financial institutions have a greater susceptibility to sharia non-compliance risk as a result of inadequate governance practices leading such a risk reputation for IFIs branding, which absolutely take long-term serious effect, and it would be decreased the confidence of depositaries, consumers, investors, as well as shareholders. Moreover, this condition is also able to emerge due to drop down such competitiveness, which is leading to a mass withdrawal of funds or even bankruptcy. However, although sharia financial institution has experienced a tremendous development and evolution in today's world, it still has few of accounting scandals, where such sharia financial institutions still doing sharia non-compliance whether in the term of contract or management, but auditors and SSB issued a clean opinion even if the IFIs have minor or even mayor sharia non-compliance risk in order to keep the reputation as well as the position of the institutions in public view.

Danamon Sharia Bank, involves such derivative transactions as an example. Danamon Sharia Bank is known to have conducted sharia derivative transactions, which absolutely contradict with sharia principle. As a sharia bank institution, Danamon Sharia Bank should not offer such unclear products whether are halal or not. Through this case, then it is questioned the credibility, and the role and performance of the shariah supervisory board *concerned* on that sharia bank. Why is the performance of SSB on Danamon Sharia Bank questioned? This is because the SSB of Danamon Sharia Bank passes such products with derivative transactions (Detik Finance, 2009). Based on the issue, it could be seen that there are such omissions or may be intentional condition which done by SSB that makes Danamon Sharia Bank passes to offer such product with derivative transaction, and this issue also represent such lack of credibility and independency of SSB in order to determine whether such institutions are fulfilled of sharia compliance or not.

Based on the explanation, throughout a library research method approach this article tries to criticize the position of Sharia Supervisory Board on shariah audit in Islamic Financial Institutions as the novelty of this research, considering that previous researches only focused on the regulation, function and jurisdiction, as well as the characteristic of Shariah Supervisory Board. This research also contributes to broadening horizons both for government, public, and academicians regarding the importance of the position of SBB in the world of shariah audit.

LITERATURE REVIEW

Maqāṣid Asy-syariah as a Fundamental Principle of Islamic Financial Institutions.

The term of Sharia compliance has gained popularity alongside the growth of Islamic Financial Institutions. Moreover, the phrase in question is acknowledged within the context of the evolution of Islamic economic law, which constitutes an applied field of study within the realm of Islamic jurisprudence (Setyowati et al., 2019). Besides, sharia compliance also becomes an indicator of Islamic Disclosure Index, which is relevant as a form of accountability for the provision of sharia compliance (Jamal et al., 2019). The existence of sharia compliance is intended for IFIs in order to command its operational activities related with the principles of sharia. This is because sharia principles are the backbone of IFIs operational activities.

Sharia compliance strengthens the mechanism of compliance with sharia law and ensures that all sharia banking regulations are relevant to the filled. Sharia compliance is one form of control to guide whether the sharia institutions have carried out the principles of sharia (Jamal et al., 2019). For IFIs, sharia compliance is a necessity. This is because when IFIs have such good sharia compliance it means that the IFIs perform better sharia governance, which is able to boost IFIs' performance and avoid such trust issue of society (Setyowati et al., 2019; Ulfi et al., 2020).

Moreover, through sharia compliance, IFIs are able to gain a huge financial market, and this is also to be a differentiating aspect with conventional financial institutions (Setyawan, 2016). As the IFIs, every transaction and economic activity should refer to the sharia principle, which is reflected by *maqāṣid asy-syariah* as the grand theory of sharia principle. That is to say, the operational activities both in terms of contract and management of IFIs should be avoided from *riba*, *gharar*, and *maysir* (Nakib, 2017).

Theoretically, there are three main aspects of *maqāṣid asy-syariah*, *ḍaruriyyah* (primary needs), *hājiyyah* (secondary needs), and *tahsiniyyah* (tertiary needs) (Auda, 2019). Based on the theory the existence of sharia compliance in Islamic Financial Institution is a must, which categorized as *ḍaruriyyah* (primary needs). This is because when sharia compliance aspects are not fulfilled by IFIs, it would be averse to Islamic economic development as a whole. This also makes the IFIs lose their spirit of originality. Moreover, it would trigger such trust issues from society regarding the credibility of the IFIs in order to implement the sharia compliance (Auda, 2019).

In addition, one of the most consideration *ḍaruriyyah* aspects is *Hifdz al-māl*. This aspect is one of five essential aspects of *maqāṣid asy-syariah* to protect such wealth or properties from such damage (*riba*, *gharar*, *maisir*) (Auda, 2019). This is happening due to the primary function of Islamic Financial Institutions as industry which has a strong-bond relationship with economic

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activity. Thus, they have to ensure that every economic activity such as transactions must be appropriate through the sharia principle.

Moreover, they also have a duty to keep up such customer wealth which has already been entrusted/ deposited into the IFIs. This condition is aligned with the argument of Lestari (2019) in her previous research which was published by Al-Manāhij regarding the analysis of Islamic banking operational activities as one of representation of IFIs. Based on her deep analysis, generally she argued that Islamic bank or other IFIs activities must be aligned with *maqāṣid asy-syariah* specifically for the *Hifdz al-māl* (protecting wealth) aspect. This is occurred because IFIs have a great responsibility to protect and secure the amount of capital that have been entrusted by the customers because it aligned with with the *qaidah* of *ushul fiqh* (Where there is wellbeing, the law of God is exist).

The Function of SSB in Islamic Financial Institutions

The Sharia Supervisory Board is a governing body that takes a pivotal function within the comprehensive framework of audit and corporate governance in Islamic Financial Institutions (Kasim et al., 2013).. This organization considers a crucial role in the development of policies and guidelines that are binding for the management of Islamic Financial Institutions (IFIs) in all aspects of their operations. This authority includes the approval of products issued by IFIs as well as conducting Sharia reviews, which entail an in-depth investigation to ensure that the activities undertaken by IFIs are in full compliance with the principles of Sharia (Mardian, 2019). In carrying out its role as sharia review, SSB is assisted by internal auditors as a daily executor of IFIs. Nevertheless, the internal auditors can perform sharia auditor functions if they have adequate sharia knowledge and expertise. The primary aim is to establish a robust and efficient internal control framework that adheres rigorously to the principles of sharia (Yaacob & Donglah, 2012).

In accordance with the National Sharia Council's sequence No. 3 of 2000, the Sharia Supervisory Board is an integral component of an Islamic Financial Institution, with its appointment being sanctioned by the Sharia National Council. The Sharia Supervisory Board is responsible for overseeing the implementation of fatwa in Islamic financial institutions, specifically in relation to their operational activities. The appointment and dismissal of Sharia Supervisory Board (SSB) members of Sharia financial institutions are carried out by the General Meeting of Shareholders (GMS), following the advice put forth by the Sharia National Council.

Furthermore, referring Financial Service Authority Circular No. 26 of 2016, there are three crucial authorities as well as the functions of SSB as follows:

1. The SSB conducts regular supervision of Islamic financial institutions within its purview. The SSB conducts regular supervision of Islamic financial institutions within its purview. In this capacity, it serves as an advisory body to the board of directors, the head of the sharia business unit, and the head of the sharia branch office, providing guidance on topics pertaining to sharia compliance.
2. In the capacity of a mediator between the bank and the Sharia National Council to facilitate communication regarding the objective and guidance pertaining to the enhancement of bank products and services that necessitate evaluation and issuance of a fatwa by the Sharia National Council.
3. As a representative of the Sharia National Council in the field of Sharia banking. The SSB is required to provide an annual report to the Sharia National Council concerning the business operations and progress of sharia-compliant banks.

The SSB performs various functions in overseeing IFIs. These functions include the development and application of Sharia values in financial and economic activities, the issuance of fatwas pertaining to financial activities in terms of products and services, and the supervision of the implementation of previously issued fatwas (Mardiyah & Mardiyah, 2016). Furthermore, SSB has membership in order to supervise the IFIs. The SSB members consist of sharia experts on law trade agreements and familiar with business contracts. SSB Members are independent, which means that they are not subjective when they are assessing the IFIs. regarding to ensuring the independence of SSB, there are some aspects that should be noted such as (a) SSB members are not IFIs' staff; (b) SSB members are selected by the General Shareholders (GMS); (c) SSB honorarium shall be determined by the GMS; and (d) SSB has a system of work and certain tasks as well as other supervisory bodies.

METHOD

This is qualitative research with library approach method in order to analyze the issue regarding Sharia Supervisory Board in Islamic Financial Industries. In addition, to support the result this research uses numerous previous researches to find and create a better analysis such as Baklouti (2022), Can (2021), Dąbrowski (2020), Prayitno & Setyowati (2020), Triasari & de Zwart (2021) who focused on the regulation of sharia supervisory board.

Furthermore, Djumardin & Isnaini (2018), Gagarin (2017), Heradhyaksa

Criticism of Sharia Supervisory Board Position at Islamic Financial Institution: Evidence from Indonesia (2020), Hidayah et al. (2020), Nilasakti & Falikhatun (2020), Pura & Nurdin, (2022), Puspitasari & Handayani (2020), Thalib et al. (2019) also did the similar research regarding the function and jurisdiction of sharia supervisory board, as well as Dewindaru & Sari (2022), Fella Rizki et al. (2021), Fitriana et al. (2019), Salman & Kurniasari (2020), Susandya & Ni Nyoman Ayu Suryandari (2021) who focused on the characteristic of shariah supervisory board in Islamic Financial Industries.

RESULT

Thus, those several researches can be on the table bellows:

Table 1. Previous Researches on Sharia Supervisory Board

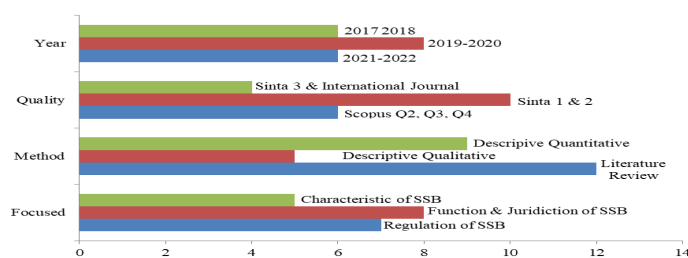
Author	Focus	Method	Quality
Baklouti (2022)	The Regulation of Sharia Supervisory Board	Descriptive Quantitative	Journal of Islamic Marketing (Q2)
Can (2021)	The Regulation of Sharia Supervisory Board	Descriptive Quantitative	International Journal of Islamic and Middle Eastern Finance and Management (Q3)
Dąbrowski (2020)	The Regulation of Sharia Supervisory Board	Descriptive Qualitative	Ochrona Srodowiska i Zasobow Naturalnych (Q4)
Prayitno & Setyowati (2020)	The Regulation of Sharia Supervisory Board	Literature Review	Syariah: Jurnal Hukum dan Pemikiran (Sinta3)
Triasari & de Zwart (2021)	The Regulation of Sharia Supervisory Board	Literature Review	Bestuur (Sinta1)

Author	Focus	Method	Quality
Djumardin & Isnaini (2018)	Function & Jurisdiction of Sharia Supervisory Board	Literature Review	Journal of Legal, Ethical and Regulatory Issues (Int.)
Gagarin (2017)	Function & Jurisdiction of Sharia Supervisory Board	Literature Review	Istinbath: Jurnal Hukum (Sinta2)
Heradhyaksa (2020)	Function & Jurisdiction of Sharia Supervisory Board	Descriptive Qualitative	SALAM: Jurnal Sosial dan Budaya Syar-i
Hidayah et al. (2020)	Function & Jurisdiction of Sharia Supervisory Board	Descriptive Quantitative	Jurnal Neraca
Nilasakti & Falikhatun (2020)	Function & Jurisdiction of Sharia Supervisory Board	Descriptive Quantitative	Muqtasid: Jurnal Ekonomi dan Perbankan Syariah (Sinta2)
Pura & Nurdin, (2022)	Function & Jurisdiction of Sharia Supervisory Board	Literature Review	Al-Adl: Jurnal Hukum (Sinta4)
Puspitasari & Handayani (2020)	Function & Jurisdiction of Sharia Supervisory Board	Descriptive Quantitative	Journal of Indonesian Economy and Business (Q3)
Thalib et al. (2019)	Function & Jurisdiction of Sharia Supervisory Board	Literature Review	Business & Management Studies: An International Journal (Int.)

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Author	Focus	Method	Quality
Dewindaru & Sari (2022)	Characteristic of Shariah Supervisory Board	Descriptive Quantitative	Journal of Islamic Accounting and Finance Research (Sinta2)
Fella Rizki et al. (2021)	Characteristic of Shariah Supervisory Board	Descriptive Quantitative	Jurnal Fairness
Fitriana et al. (2019)	Characteristic of Shariah Supervisory Board	Descriptive Quantitative	Journal of Islamic Accounting and Finance Research (Sinta2)
Salman & Kurniasari (2020)	Characteristic of Shariah Supervisory Board	Descriptive Quantitative	International Journal of Islamic Business and Economics (IJIBEC) (Int.)
Susandya & Ni Nyoman Ayu Suryandari (2021)			Jurnal Reviu Akuntansi dan Keuangan (Sinta3)

Based on the information which revealed by the Table 1, the authors summarize the number or previous article which used in this research to support the analysis of this research on Graphic 1 bellows:



Graphic 1. Previous Researches on Sharia Supervisory Board (SSB)

DISCUSSION

Critic of Sharia Supervisory Board Position in Indonesia

The establishment of the National Sharia Council as the controlling organization to control the regulation of IFIs products is quite reasonable. That is happening in order to minimize the occurrence of dissent and precepts on products of IFIs which are offered to the public. In addition, the presence of the

National Sharia Council is also expected to serve and encourage the application of sharia compliance in the terms of economic and financial aspects. Therefore, the National Sharia Council will always and play a proactive role in responding to the dynamic development of Indonesian society in the economic and financial fields (Azzarqa & Mujib, 2017). Thus, one of ways make National Sharia Council to control IFIs is the presence of SSB in every IFIs, this is an effort of National Sharia Council in realizing IFIs in accordance with sharia principles

Sharia Supervisory Board (SSB) becomes a crucial organization for IFIs. This is because the existence of SSB is for maintaining, monitoring, evaluating, as well as ensuring that operational activity of IFIs are appropriate through sharia principles (Rodríguez Domínguez & Noguera Gámez, 2014). However, in practice, there are still many problems which cause un-optimal aspects of supervision as expected. It is caused by many factors both internally and externally. Internal factors such as lack of human resources (HR) who qualified knowledge in their fields, and the scarcity of infrastructure to support the adequate supervision. Meanwhile the external factor is a lack of legal basis for supervision, good organization and supervision management (Ansori, 2013).

Nevertheless, although SSB has an authority to legitimate the IFIs' operational activities, SSB has lack of power condition and credibility regarding to performing its duties and functions regarding to performing its duties and functions to maintains sharia compliance of IFIs, which triggers IFIs to do such an activity which contradict through sharia compliance as Danamon Sharia Bank. This condition seems weird, because the condition is considered strange, because through the existence of SSB it should be made IFIs more compliant in carrying out sharia compliance. This condition happened because SSB somehow lack of power in the presence of directors, board of commissioners, and managers who are actually authorized to take all decisions in order to determine such projects or businesses which considering profitable despite the risk of non-compliance with sharia to satisfying the shareholders, which leads decentralization position and function of SSB in IFIs.

Based on the matter, absolutely his is contradict through the general position and function of SSB in IFIs which contain in *fatwa* of National Sharia Council which reported that SSB as the supervisor of IFIs which supervised periodically of Islamic financial institutions under its supervision, as an advisor to the board of directors, the head of sharia business unit, and the head of sharia branch office on matters related to sharia aspects. Thus, when SSB is lack of power and less credibility to legitimate and supervise IFIs operational activity, it would be triggered such a degradation moral of IFIs in the view of public, where the SSB should be an important body that supervises all IFIs activities as not to contradict with sharia principles. Therefore, it requires a special kind of training to evaluate the performance of the SSB in order to improve its

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credibility and independence in supervising the performance of IFIs.

CONCLUSION

SSB becomes a crucial board in IFIs. Nevertheless, SSB has lack of power condition and credibility regarding to performing its duties and functions regarding to performing its duties and functions to maintains sharia compliance of IFIs, and somehow lack of power in the presence of directors, board of commissioners, and managers who are actually authorized to take all decisions in order to determine such projects or businesses which considering profitable despite the risk of non-compliance with sharia to satisfying the shareholders. This condition is contradicted through a fatwa of National Sharia Council which reported that SSB as the supervisor have to maintain and legitimate all IFIs activities. Therefore, it requires a special kind of training to evaluate the performance of the SSB in order to improve its credibility and independence in supervising the performance of IFIs.

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