

Accusing the Existence of Sharia Supervisory Board

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ABSTRACT--The optimalization of the sharia principles application to Islamic Financial Institutions (IFI) is largely determined by the role of the Sharia Supervisory Board (SSB). The Independence, concurrent positions and qualifications of SSB members can affect the optimal performance of its members. In fact, the independence of SSB is influenced by incentives originating from supervised institutions, which can have an impact on less objective supervision. The role of SSB is also not optimal due to the concurred positions and qualifications of SSB members. This study aims to analyze SSB in financial organizations, the regulations that regulate irrelevance in supervisory practices, and apperceive the qualifications of SSB to be in accordance with their duties and functions. This study used the primary and secondary legal materials of normative legal research method. The results of this study found that SSB did not obtain clarity of its existence in carrying out the supervisory function. Analysis of the existence is obtained by 3 indicators: independence, concurrent positions, and qualifications. Thus, this study recommends a review of the regulations related to SSB and establishes an independent institutions that can create optimization of SSB supervision in order to conceive Good Corporate Governance.

Keywords: Sharia Supervisory Board, independence, concurrent position, qualification

I. INTRODUCTION

Islamic bank is financial institutions that carry out business activities and transactions which conform with Islamic law and rely on sharia principles. The application of Islamic law in accordance with sharia certainly requires to be monitored so as not to deviate from the main foundation of the Islamic banks establishment. The Sharia Supervisory Board (SSB) is the supervisor institution formed by the National Sharia Council of the Indonesian Ulema Council (DSN-MUI). Therefore the supervision of sharia principles implementation is needed through the role of the Sharia Supervisory Board (SSB). In addition, banks that run businesses based on sharia principles are required to have a SSB [1].

However, by far SSB has questioned its effectiveness in providing oversight of Islamic financial institutions [2]. Least of all, there are three factors that cause SSB to be ineffective in carrying out its functions and authorities.

These three factors are: independence, dual positions [3], and qualifications of SSB members [4] [5].

This study aims to analyze the three factors that lead into ineffectiveness of SSB by connected this issue with the regulation in Indonesia.

II. LITERATURE REVIEW

A. Sharia Monitoring System

Sharia supervision is the process of preventing, repairing, controlling, and analyzing all activities, products, contracts and transactions on IFI to ensure compliance with sharia principles. The importance of the supervisory process encourages the emergence of Sharia Supervisorys [7] to assist IFI in conducting business in accordance with sharia [8], increasing stakeholder trust, guaranteeing halal benefits generated, as well as IFI commitments in doing business with sharia principles [9].

The Islamic Financial Institutions is supervised by SSB. SSB is the prolongation institution of Sharia National Council that was fromed by the National Sharia Council of the Indonesian Ulema Council in 1999. SSB existence in Islamic Financial Institution was under the provision of the Law Number 40 of 2007 concerning Limited Liability Companies, Law Number 21 of 2008 concerning Sharia Banking and various Bank Indonesia Regulations.

SSB's duties and responsibilities [10] are 1) providing advice and suggestions for directors and company activities, 2) answers and confirm of compliance with Sharia Principles for operational decisions and products issued by the company, 3) inviting new product development processes, 4) presenting fatwas to DSN for new products with no fatwa, 5) conduct periodic reviews on the fulfillment of sharia principles on company activities, 6) data requests and information related to sharia aspects of the company's work units in the framework of carrying out their duties. By carrying out the duties and responsibilities that have been regulated, it will make SSB work optimally [11] [12].

III. RESEARCH METHOD

The type of this study is a normative legal research, which conducted in the principles of law, normative legal principles, concrete legal regulations and the legal system related to the material's study.

This research data uses secondary data, while data collection techniques use the literature study. The analysis of the data in this study uses legal interpretation.

IV. FINDINGS AND DISCUSSION

The SSB is an independent body, entrusted by the National Sharia Council of the Indonesian Ulama Council (DSN-MUI) to supervise IFI. In accordance with the applicable provisions, members of the SSB consist of experts who master the muamalah field and must also have knowledge in banking. In addition, the presence of concurrent positions held by SSB members is expected not to affect their duties and functions in supervising IFI.

The scope, duties and functions of SSB, years of service, composition of expertise, maximum concurrent positions, SSB reporting, SSB requirements and the determination, are regulated under Law No. 40 of 2007 concerning Limited Liability Companies, Law No. 21 of 2008 concerning Sharia Banking and in a Bank Indonesia Regulation.

Peculiarly, SSB duties and functions, according to Article 32 paragraph 3 of Law Number 21 of 2008 concerning Sharia Banking, are explained that SSB is tasked with providing advice and recommendation to the directors and supervising the activities of the Bank in accordance with Sharia Principles. Thus, the SSB must be guided by the fatwa stipulated by the National Sharia Council (DSN), which has the highest authority in issuing fatwas related to banking products and services and LKS by referring to the Al-Quran and Al-Hadist.

In fact, the independence of SSB is questioned many institution. It is influenced by incentives from supervised institutions, which can have an impact on less objective supervision. The role of SSB is also not optimal due to the concurred positions and qualifications of SSB members. Garas & Pierce (2010) found that several variables that affect the independence of SSB include: incentives, salaries, punishment policies of ethic code, the relationship between SSB and the Board of Directors; and the executive management in recruiting SSB members role [2].

In addition to the issue of independence, the role of DPS is also not optimal due to concurrent positions of DPS members. Basically, concurrent positions is not a violation of law. It has been regulated in Bank Indonesia Regulation that allows concurred positions up to 4 institutions [3]. However, with the permissibility of concurrent positions, it will raise issues regarding the optimal performance of DPS as the spirit of upholding Islamic law in supervising IFI.

Another problem that arises regarding the role of DPS is the qualification itself. In practice, some members of the DPS are appointed based on the qualifications of religious understanding in (Islam) only. In fact, in terms of supervision of LKS, DPS should also have mastered banking, finance and the economy entirely [4] [5]. This ability in banking, finance, and the economy is indispensable in carrying out the duties and functions of SSB. SSB has the duty to ensure that the products issued by the IFI are in accordance with the provisions of sharia.

DPS must also ensure that IFI operations are running well in its principle.

The development of Islamic finance in Indonesia has increased since 2013 to 2017. This shows that the prospects for the sustainability of IFI will continue to grow. The government is expected to immediately respond this development by establishing rules that can provide legal certainty in the operation of IFI. This legal certainty can be in the form of a central arrangement regarding the existence and operation of financial institutions, as well as forming an independent institution that specifically covers all IFI.

With the existence of this independent institution, the application of sharia principles to financial institutions can be increasingly considered its sustainability. This institution can centrally manage the operations of various IFI. One of these rules can be in the form of provisions regarding the appointment of SSB in a financial institution that is no longer bound by shareholder decisions. Likewise, the remuneration mechanism, which originally came from a supervised institution, shifted to providing remuneration from independent institutions that overshadow the SSB. This is expected to be a solution to the polemic of independence of SSB members which has become a scourge on the dishonesty of a financial institution with sharia principles [6].

A. DPS Independence In Conducting Supervision

The Sharia Supervisory Board selected through the National Sharia Council of the Indonesian Ulama Council (DSN-MUI), is determined through a General Meeting of Shareholders, and is placed in a limited legal entity [1]. SSB receives compensation from its work in the form of remuneration and other facilities as determined by the General Meeting of Shareholders [6]. The two rules implies that SSB is formed by a shareholder agreement and the compensation for SSB work also comes from supervised financial institutions. It will lead to doubts regarding the independence possessed by DPS in the supervision process and can act not objectively [2] [17].

In some countries that have centrally regulated the existence and operation of Islamic banks, such as Malaysia [15], shows the mechanism of their appointment has been regulated in the Law or National regulations. It aims to maintain the independence of the SSB. SSB independence is highly demanded because it is a major component of the IFI structure. This independence will also optimize the responsibility of SSB in ensuring the existence of sharia compliance in order to prevent and control financial crime [19]. When these basic things are guaranteed by SSB members, the doubts about SSB freedom need not be disturbed [17].

Thus, the government regulation on the appointment and remuneration mechanism for SSB needs to be reviewed. The government can arrange for SSB members who are assigned to an IFI is the result of absolute determination from the government towards financial institutions that carry out their activities with sharia principles. This provision will shape the authority of SSB

members in carrying out their duties objectively and professionally. In addition, the provision of employee benefits that do not come from the object of supervision can manifest an independent attitude for SSB.

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B. Relevant Rules Regarding Dual Positions Of SSB

The concurrent positions of the SSB is due to the rules that allow SSB to concurrently hold more than 1 LKS. Most of the rules that obtaining dual positions for SSB are 2 to 4 IFI positions. Rules that allow concurred positions for SSB include: 1) Bank Indonesia Regulation No. 15/13 / PBI / 2013 concerning Amendments to PBI No. 11/3/2009 concerning Islamic Commercial Banks, 2) Bank Indonesia Regulation No. 15/14 / PBI / 2013 concerning Amendments to PBI No.11 / 10/2009 concerning Sharia Business Units, 3) Bank Indonesia Regulation No. 11/23 / PBI / 2009 concerning Sharia Rural Banks, 4) PBI No. 8/25 / PBI / 2006 concerning Amendments to Bank Indonesia Regulation No. 6/17 / PBI / 2004 concerning Rural Banks based on Sharia Principles, 5) PBI No. 7/35 / PBI / 2005 concerning Amendments to Bank Indonesia Regulation No. 6/24 / PBI / 2004 concerning Commercial Banks Implementing Business Activities based on Sharia Principles, 6) Minister of Finance Regulation No.152 / PMK.010 / 2012 concerning Good Corporate Governance for Insurance Companies, 7) Regulation of the Chair of the Capital Market Supervisory Agency and Financial Institutions No. PER.06 / BL / 2012 concerning Amendments to the Regulation of the Chairman of the Capital Market and Financial Institution Supervisory Agency No. PER-03 / BL / 2007 concerning Financing Company Activities based on Sharia Principles.

The contents of the rules regarding SSB concurrent positions can be seen in table 1. [21], [22], [23], [24], [3], [25].

No.	Article	Point	Regulation	Concurrent position
1	36	3	Bank Indonesia Regulation No. 15/14 / PBI / 2013 concerning Amendments to PBI No.11 / 10/2009 concerning Sharia Business Units	SSB members may only have concurrent positions as members of SSB at the maximum of 4 (four) IFI.
2	11	3	Bank Indonesia Regulation No. 15/14 / PBI / 2013 concerning Amendments to PBI No.11 / 10/2009 concerning Sharia Business Units	SSB members may only have concurrent positions as members of SSB at the maximum of 4 (four) for different IFI.
3	30	3	PBI No.11 / 10/2009 concerning Sharia Business Units	SSB members may only have concurrent positions as members of SSB at the maximum of 4 (four) for different IFI.
4	30	2-3	PBI No. 8/25 / PBI / 2006 concerning Amendments to Bank Indonesia Regulation No. 6/17 / PBI / 2004 concerning Rural Banks based on Sharia Principles	<ul style="list-style-type: none"> - Sharia Supervisory Council member of BPRS may only have concurrent positions as members of SSB at the maximum of 2 (two) of non-bank institution. - A member of Sharia Supervisory Council member of BPRS may have concurrent position as a National Sharia Council
5	26	2-3	PBI No. 7/35 / PBI / 2005 concerning Amendments to Bank Indonesia Regulation No. 6/24 / PBI / 2004 concerning Commercial Banks Implementing Business Activities based on Sharia Principles	<ul style="list-style-type: none"> - SSB members may only have a maximum concurrent position as member of SSB at 2 (two) banks and 2 (two) LKS non-bank. - 2 (two) SSB members may have a member of National Sharia Council.
6	40	2	Minister of Finance Regulation No.152 /	Members of SSB Insurance Company

			PMK.010 / 2012 concerning Good Corporate Governance for Insurance Companies	or Reinsurance Company are prohibited from holding concurrent positions as a member of the board of directors, member of the board of commissioners, or member of the SSB in more than 1 (one) other company.
7	10A	2	Regulation of the Chair of the Capital Market Supervisory Agency and Financial Institutions No. PER.06 / BL / 2012 concerning Amendments to the Regulation of the Chairman of the Capital Market and Financial Institution Supervisor Agency No. PER-03 / BL / 2007 concerning Financing Company Activities based on Sharia Principles	Members of the SSB Financing are prohibited from holding concurrent positions as members of the SSB for more than 2 (two) other Financing Companies.

Table 1 shows that the Bank Indonesia Regulation allows concurrent positions for SSB in carrying out their duties. However, concurrent positions can make SSB tasks and responsibilities increase in quantity. This increase in workload also has implications for the quality of its supervision. When each member of the SSB concurrently holds more than one position or according to the maximum amount regulated, the SSB member does not have much time in conducting supervision.

SSB is responsible for ensuring and monitoring the suitability of IFI operational activities, submitting supervisory results reports, assessing sharia aspects of IFI operations and products, giving opinions from the sharia aspects and reviewing new products and services issued [3] [24]. The effectiveness of SSB supervision that is in accordance with the duties and responsibilities must be implemented, therefore it is able to answer the antinomy of the IFI policies that have been accused of merely changing clothes from conventional financial institutions to IFI.

The burden of tasks and responsibilities are large enough to reduce the effectiveness of SSB performance. Especially when a SSB has more than 1 (one) IFI position. Then it can be ascertained that the burden of SSB responsibility is greater which inhibits the quality of optimal supervision. For example, in attending regular meetings (meetings) at supervised institutions. With the concurrent positions held, the SSB attends the number of meetings with the IFI managers. The number of SSB meetings with minimal company managers will inhibit SSB in carrying out its supervisory function and vice versa [14].

The SSB supervision function is the spearhead of the realization of the sharia financial system to be in accordance with Islamic law which based on the Qur'an and Hadith. As is well known, that the existence of SSB is the main differentiator between IFI and conventional financial institutions, as well as being a source of public trust in a financial institution.

From the study above, the Government should review the Regulations concerning concurred positions by evaluating the performance of SSB. When SSB with concurrent positions perform poorly, it can be expected that this is influenced by many workloads. Garas (2010) found that the number of meetings and evaluations of

each SSB member affected the performance of SSB. These findings support the notion that concurred positions have an impact on SSB performance.

Another issue that arises is the difference between the rules of Bank Indonesia Regulations (PBI) on IFI in regulating the number and terms of concurrent positions. For example, PBI No. 15/13 / PBI / 2013 states that SSB members can only hold concurrent positions as members of SSB at most 4 (four) IFI, while in the Minister of Finance Regulation (PMK) No.152 / PMK.010 / 2012 states that members of the SSB Insurance companies or reinsurance companies are prohibited from holding concurrent positions as members of the board of directors, members of the board of commissioners, or members of the SSB in more than 1 (one) other company. Both of these rules indicate differences in provisions regarding concurrent positions. This will make it difficult for the government to monitor the number of concurrent positions of SSB members and which rules they must follow when a SSB is a member of SSB from a sharia commercial bank and also a member of SSB from an insurance institution. In addition to difficulties in monitoring, SSB members will also have difficulty interpreting the rules that bind a SSB. Reviewing the complexity of concurred positions polemic among IFI, the government should have uniformed the number of concurrent positions between IFI. And even, it should remove the rules regarding the permissibility of concurrent positions.

According to PBI No. 11/23 / PBI / 2009, SSB members can hold concurrent positions as members of SSB at most of the other 4 (four) IFI. While in PBI No. 8/25 / PBI / 2006 states that 1) Members of the SSB of BPRS can only hold concurrent positions as many members of the SSB as possible in 2 (two) banking institutions and 2 (two) non-bank IFI, 2) One member of the Supervisory Board Sharia BPRS can hold concurrent positions as a member of the DSN. Both of these rules are not different in terms of the number of concurrent positions that are allowed for SSB members, i.e. each rule allows 4 (four) concurrent positions on the IFI. Although both rules are rules for IFI that are almost similar, the first rule is PBI on an BPRS and the second rule is PBI on BPR with sharia principles. But the provisions of the two rules differ from one another. The BPRS allows up to four

IFI positions, while BPRS with sharia principles divide these dual positions by emphasizing the types of supervised financial institutions. Similarly, in the previous presentation, this will make it even more difficult for the government to bind SSB to carry out its duties and responsibilities. For example, a SSB is a member of SSB in a BPR with sharia principles, this means that SSB members still have the opportunity to supervise 1(one) Islamic bank institution and the rest are IFI non-bank. Then, for example this SSB member also holds a position on the BPRS (does not regulate other types of financial institutions that are allowed to concurrently), then such rules bind the SSB members. It is again shows that the rules regarding concurrent positions must be uniformed so that the working ties for SSB members can be monitored and not cause concurred interpretations in the meaning of the rules. In addition, the affirmation of concurrent position rules can provide legal certainty in the practice of supervision by SSB. Thus, it will facilitate the government in ensuring the realization of financial institutions based on sharia principles.

From the analysis above, this study recommends that the rules regarding concurrent positions be uniformed in the number and type of supervised institutions in order to obtain legal certainty. However, if such a thing is difficult to be actualized, then concurrent positions for SSB members should be eliminated in order to realize the implementation of *Good Corporate Governance*. Each IFI has the same operational principle in its business based on Islamic law which is enforced through the supervisory role of SSB. Therefore as supposed, SSB focuses on its work without having to divide the time, energy and mind on other IFI. This will contribute to actualize the role of SSB as a major milestone of financial institutions.

C. SSB Qualification That Matches Its Role And Function

SSB is responsible and has the duty of providing information to borrowers, seeking and ensuring sharia principles, developing new processes, only providing basic information on the application of sharia principles and requesting reports on supervised IFI [11]. However, if examined more deeply, the influence of SSB supervision will have a positive impact on the risks that will be experienced by IFI [16] [26].

The SSB qualification was affecting the performance of the SSB [14, [16] which became the legal basis of Islamic law enforcement. According to Bank Indonesia regulations, SSB members must meet the qualifications including: integrity, ability in the field of muamalah and financial accounts. In addition, SSB is a person who is expert in the field of Sharia [1]. However, fulfillment the needs of SSB members is only more in the field of sharia itself [17] [18]. This is a discrepancy between the duty burden carried out by a SSB member and the qualifications required.

In carrying out supervision, SSB not only understands sharia values, but is also capable in finance, banking and economic. It will be more convenience of SSB member to understand the operations of the

institution in supporting its supervision of sharia principles [17]. When a SSB member is only a sharia expert, it will certainly be difficult for them to examine the IFI [14] [18] performance report. The final result of this discrepancy has an impact on the lack of supervision of IFI.

Errors in the implementation of qualification fulfillment begin with the rigidity of understanding the SSB term. The general term of sharia which is attached by the Supervisory Board to the right to put in mind the site, which becomes the supervisor of the Islamic bank is the ulama, due to the requirement to understand Islam better. However, as along with the development of supervision in IFI is not enough just to capitalize on the understanding of the book of fiqhi but also must understand the effective information system [17].

From the explanation regarding SSB qualifications, the provision to become a member of the SSB well regulated in several Bank Indonesia Regulations. However, this provision is still not done due to the lack of human resources. Thus, the role of the government through the DSN-MUI which is an extension of the government must be maximized in selecting SSB members.

The DSN MUI is part of the MUI that discusses the optimization of the Sharia Principles application on IFI. The DSN MUI workspace is to develop Islamic values, issue of fatwa on sharia economics, writing, and supervise sharia aspects. Thus, in order to carry out various tasks and responsibilities of the DSN, then SSB procured. The quality of SSB is largely determined by the good qualifications of the DSN. During the selection process, the task of DSN in ensuring the growth of sharia values will disappear.

The problem arises is, DSN has not optimized the selection of SSB qualifications [18]. The performance of the DSN should also be questioned. The large number of DSN members is mostly by sharia experts, it is impossible to be surprised, SSB also dominated by sharia experts. This situation will hamper the development of IFI professionalism of specifically and the development of Islamic economics in general. The solution needed to realize, is the establishment of an institution that not only guarantees the freedom of the SSB and regulates the space for centralized worksheets, but also fosters SSB members. This institution can be used as a place to create another SSB experts and satisfied the qualification requirements set.

V. CONCLUSION

This study found the results of the existence of the SSB analysis in Islamic Financial Institutions from a legal aspect. The existence of SSB is reviewed through 3 aspects; independence, concurrent positions and qualifications. These three indicators are indicated to influence the existence of SSB in carrying out their duties optimally [2], [14]. Optimal SSB supervision is an

absolute matter for the actualization of the application of sharia principles.

Regulations related to the determination of SSB through General Meeting of Shareholders and remuneration derived [1] from IFI [6], encourage doubts about SSB objectivity in conducting supervision [2] [17]. Malaysia is one of the countries that has centrally regulated the existence and operation of Islamic banks in the laws or National Regulation. This aims to maintain the independence of the SSB which is the main component of the IFI structure [15]. In Indonesia, rules regarding the mechanism for appointment and remuneration for SSB need to be reviewed. In this case, the government can follow in the footsteps of Malaysia to form centralized rules related to the appointment of SSB and rules in managing IFI to provide legal certainty [20]. In addition, the government can form independent institutions that specifically focus on IFI in order to support the sustainability of the IFI development in Indonesia. Thus the polemic of independence of SSB members which has become a scourge over the disharmony of a financial institution with sharia principles can be resolved.

Several Bank Indonesia Regulations regulate concurrent positions for SSB, this has an impact on increasing SSB duties and responsibilities. The increasing burden of duty has implications for the quality of SSB supervision. When SSB members concurrently hold positions more than one place, SSB members do not have much time in conducting supervision. The burden of duties and responsibilities are large enough to reduce the effectiveness of SSB performance. With concurred positions, SSB needs a lot of time in doing its work, therefore it is difficult to attend regular meetings. The number of SSB meetings with minimal IFI managers will prevent SSB from carrying out its supervisory function, and vice versa [14]. Thus, the government is expected to review the regulations regarding concurrent positions by evaluating the performance of SSB. SSB that perform poorly is the result of concurrent positions.

Qualifications also affect the performance of SSB [14] [16] which being the basis for the enforcement of Islamic law. SSB members must meet the qualifications including: integrity, having competence in the field of muamalah and financial reputation [11] [12]. In addition, it is stated that SSB is someone who is an expert in the field of Sharia. In practice, meeting the requirements of SSB members is more focused on expertise in the field of sharia [17] [18]. This forms a discrepancy between the task burden carried with the qualifications required. The problem that occurs is, DSN has not optimized the selection of SSB qualifications [18]. DSN members who are dominated by scholars who lack banking and financial knowledge will have an impact on SSB recruitment. The solution is to form an independent institution to provide guidance to SSB members, who are expected to be able to produce quality human resource and fulfill the qualification aspects.

The conclusion of the analysis and exposure in this study is, the issue of independence, concurrent positions and qualifications becomes an indicator of the SSB members existence. The existence of SSB members must be guaranteed for the implementation of Islamic law enforcement on IFI. This study reveals that SSB does not have the freedom to supervise due to the rules regarding the appointment and remuneration given to SSB form independence. In addition, regulations that legalize concurrent positions up to 4 (four) IFI are analyzed as irrelevant in supervision practices. It caused by much workload, which makes SSB not optimal in carrying out its work as accordance with Islamic law enforcement in IFI. According to the analysis in this study, SSB qualifications were also found not in accordance with their roles and functions in IFI. The solution to these three problems, the author recommends that an independent institution be established which focuses on ensuring the continuity of the IFI development and recruiting SSB which is a major milestone of publicity. In addition, the existence of regulations that are centered sharia on one legal basis is also a recommendation in this study.

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