

IMPLEMENTATION OF CORPORATE GOVERNANCE IN FRAUD PREVENTION IN ISLAMIC BANKING

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Abstract

The purpose of this article is to analyze the implementation of Bank Indonesia regulations on corporate governance for Islamic banking so as to avoid fraud. The research method in this article is a qualitative research method. The data sources of this article are primary data and secondary data. Primary data was obtained from field research on several Islamic banks, the Financial Services Authority (OJK), and the Corruption Eradication Commission of the Republic of Indonesia (KPK) who were respondents. The secondary data in the form of legislation regarding corporate governance and those related to sharia banking corporate governance, also data on research results from international journals, as well as other relevant literature. The results of the study show that the regulations issued by Bank Indonesia regarding corporate governance for Islamic banking are not in accordance with the provisions of positive law and Islamic law, and there are provisions that allow fraud. Because there is no philosophical basis, there are weaknesses in some juridical aspects, and contain sociological weaknesses.

Keywords: *Fraud; Good Corporate Governance; Bank Indonesia; Islamic Banking*

INTRODUCTION

The research results of Lasghari¹, states that company executives have deviated from the sole purpose of maximizing the welfare of shareholders. As for Klapper and Love², consider good corporate governance significant influence on performance and market value. Likewise, Masulis, Wang and Xie³ support the opinion of Mitchell and Lehn⁴ that it is important to provide the right incentives to managers to maximize shareholder value. Some of these researchers, agreed to conclude the purpose of corporate governance is to maximize shareholder value, or in other words: the better the score of the results of a corporate governance assessment the more the maximum shareholder value.

Against the studies, researchers disagree. The researcher is of the opinion that as a preliminary conclusion that will subsequently become the framework in the study

¹ Malek Lashgari, Corporate Governance: Theory and Practice. The Journal of American Academy of Bussines Cambridge, vol.5 no.1&2 edition 2004, pg. 44-58.

² Leora F Klapper and InessaLove, Corporate Governance, Investor Protection, and Performance in Emerging Markets. Journal of Corporate Finance, vol.10 no.5 edition 2004, pg. 699-715.

³ Ronald W Masulis., Cong Wang and Fei Xie. Corporate Governance and Acquirer Returns. The Journal of Finance, vol.62 no.4 edition 2007, pg. 1847-1863.

⁴ Hatice Uzun., Samuel H Szewczyk and Raj Varma. Board Composition and Corporate Fraud. Financial Analysts Journal, vol.60 no 3 edition 2004, pg. 31-46.

that in the regulations issued by Bank Indonesia on corporate governance for Islamic banking are not in accordance with the provisions of positive law and Islamic law, and there are provisions containing fraud. As a consequence of the research, it is necessary to improve these regulations by the regulator, so that they become better and more suitable sharia corporate governance for sharia banking. In other words, the better the corporate governance regulations for Islamic banking the more narrow the opportunities for illicit acts and fraud in Islamic banking.

Corporate governance researchers, including Sundaram and Inkpen⁵, revealed the stock market was in an uproar with the company scandals of 2001 and 2002, which has caused debate about the company's goal of maximizing shareholder value. Liu⁶ suggests his theory that many problems are typical of the failure of the system to protect the interests of shareholders. Subsequent research by Liu and Yang⁷ on Corporate Governance Reform in Taiwan suggests that the independent director system is not necessarily effective in reforming corporate governance in Taiwan. Another study conducted by Enriques and Volpin⁸, regarding corporate governance reform in Europe revealed that reform efforts in Europe need to be continued to effectively address the problems posed by dominant shareholders.

Corporate governance in Indonesia was only known after the global monetary crisis that also hit Indonesia. Even though actually corporate governance has strong roots in the Indonesian governance system, which is sourced from the constitution of the Indonesian State. The State of Indonesia, according to the 1945 Constitution Article 1 paragraph (3): The State of Indonesia is a state of law. As for Chapter III Article 4 paragraph (1) states: The President of the Republic of Indonesia holds governmental authority according to the Basic Law. Paragraph (2): In carrying out its obligations the President is assisted by one Vice President. What is outlined by the 1945 Constitution hereinafter abbreviated as the 1945 Constitution shows that the state of Indonesia is a state of law, that is, the implementation of the state is based on legal rules, covering various aspects of state management in the sense of overall governance with control of governmental power held by the President and assisted by the Vice President.

The government mandated by the 1945 Constitution above, is a government with the President as the holder of government power, as the highest state organizer governing or managing state institutions and society in general, known as governance, and the conception of good governance is later known as Good Public Governance.

⁵ Anant K Sundaram., and Andrew C Inkpen., Stakeholder Theory and "The Corporate Objective Revisited": A Reply. *Organization Science*, vol. 15 no. 3 edition 2004, pg. 368-385.

⁶ Sean Liu. *Corporate Governance and Development: The Case of China*. Managerial and Decision Economics, vol.26 no.7 edition 2005, pg. 440-455.

⁷ John S Liu., and Chyan Yang. *Corporate Governance Reform in Taiwan: Could the Independent Director System be an Effective Remedy?*. *Asian Survey*, vol.48 no 5 edition 2008, pg. 810-826.

⁸ Luca Enriques., and Paolo Volpin. *Corporate Governance Reforms in Continental Europe*. *The Journal of Economic Perspectives*, vol.21 no.1 edition 2007, pg. 112-127.

In the context of the constitutional state mandated by the 1945 Constitution, in the implementation of government to regulate and manage state institutions and social life, many laws and regulations have been arranged in stages, known later as the hierarchy of legislation, which sequentially consist of: a. 1945 Constitution; b. MPR Decree; c. Law/ Government Regulations in Lieu of Laws (Perppu); d. Government regulations; e. Presidential decree; f. Provincial Regional Regulations; and g. Regency/City Regulations.

Good Public Governance (GPG) is a system or rules of behavior related to the management of authority by state administrators in carrying out their duties responsibly and accountably. The GPG basically regulates the pattern of relations between state administrators and the public and between state administrators and state institutions as well as between state institutions. Implementation of GPG has a very big influence on the realization of Good Corporate Governance by the business world and state administrators. With the construction of this national understanding, it is clear that good corporate governance is an inseparable part of good public governance.

As is well known, that in the world there was a monetary crisis in 1997-1998 including in Indonesia. The monetary crisis in Indonesia worsened the condition of the national economy, so that the international financial institution namely the IMF was asked for help by the Government at that time. IMF assistance to Indonesia requires improvements in governance, both public governance and corporate governance, because poor governance is considered a cause of the monetary crisis in Indonesia. Syakhroza⁹ agrees with Lukviarman who revealed that the conception of governance began to strengthen in Indonesia after the economic crisis in the latter half of 1997 marked by the signing of a Letter of Intent (LOI) between the Government of Indonesia and the donor, namely the International Monetary Fund (IMF). This IMF requires improvements in governance (public and corporate) as a condition of assistance provided in line with the conditions of the IMF. Zarkasyi¹⁰, believes that since the 1997 economic crisis the implementation of good corporate governance, or better known as Good Corporate Governance (GCG) has become a prominent issue in Indonesia. As a result of poor governance and companies in Indonesia at that time, causing the Indonesian economy to plummet.

Still in the context of the implementation of the mandate of the 1945 Constitution, as is known, the pioneers of Islamic banks in Indonesia are Bank Muamalat Indonesia which was established on November 1, 1991, followed by the presence of other Islamic Banks in 1999 and the era of the 2000s. The development of the Indonesian banking world in recent years has been enlivened by the rise of sharia banks. This Islamic bank

⁹ Akhmad Syakhroza, 2005, *Pidato Pengukuhan Guru Besar Tetap Bidang Akuntansi FEUI*, Lembaga Penerbit Fakultas Ekonomi Universitas Indonesia, Depok, pg. 4.

¹⁰ Moh. Wahyudin Zarkasyi, 2008, *Good Corporate Governance pada Badan Usaha Manufaktur, Perbankan, dan Jasa Keuangan Lainnya*, Alfabeta, Bandung, pg. 1.

generally relies on the name of the existing national bank as its founder. For example, Bank Syariah Mandiri were established by Bank Mandiri; Bank BNI Syariah was established by Bank BNI and others.

The development of Islamic banks in Indonesia has attracted the attention of the government, including the issuance of banking regulations that include general and Islamic banking, namely Banking Law No. 7 of 1992 amended by Law No. 10 of 1998; then special regulations governing Islamic banking, namely Law No. 21 of 2008 concerning Islamic Banking. As the main consideration, the need for this Islamic Banking Law in consideration of the letter b. and c. mentioned the needs of the Indonesian people for Islamic banking services are increasing; and Islamic banking has specificity compared to conventional banking.

In order to encourage the implementation of Good Corporate Governance of Islamic banking, Bank Indonesia issued Bank Indonesia Regulation number 11/33/PBI/ 2009 concerning Implementation of Good Corporate Governance for Sharia Commercial Banks and Sharia Business Units. In the considerations to consider the letter a. The Bank Indonesia Regulation states: that in order to develop a healthy and resilient sharia banking industry, it is necessary to implement Good Corporate Governance for effective sharia banks and sharia business units.

Regulations on Good Corporate Governance in the banking environment, only in 2006 Bank Indonesia issued Bank Indonesia Regulation No.8/4/PBI/2006 concerning the Implementation of Good Corporate Governance for Commercial Banks on January 30, 2006 and was amended by PBI No.8/14/PBI/2006 dated October 5, 2006, followed by BI Circular Letter No.9/12/DPNP dated May 30, 2007 concerning the implementation of Good Corporate Governance for Commercial Banks. Then only 3 (three) years later Bank Indonesia issued Bank Indonesia Regulation No.11/33/PBI/2009 concerning Implementation of Good Corporate Governance for Sharia Commercial Banks and Sharia Business Units.

On November 22, 2011 the government issued Law of the Republic of Indonesia Number 21 of 2011 concerning the Financial Services Authority. Regarding the Financial Services Authority as prescribed by Considering letter b. and Article 1 paragraph 1 of the Law: The Financial Services Authority is an institution that is independent and free from interference from other parties, which has the functions, duties and authority to regulate, supervise, examine and investigate the activities of the financial services sector.

In addition to the above corporate governance regulations, it is important to look at the development of corporate governance into a national issue that does not stand alone, but is as a result of the economic crisis that hit the world including Indonesia, as revealed

by Hamid¹¹, the Indonesian economic crisis has demanded government participation to overcome it by channeling funds to save the national economy. The government's action at that time was to provide banks with Bank Indonesia Liquidity Assistance which ended up as the biggest financial scandal in Indonesia, and were not yet fully revealed.

Then also noted the causes of the crisis carried out both by local companies in Indonesia and world-class companies. Ramli¹², argues that the Government and Bank Indonesia use the excuse that the Century Bank bail out must be done because it has systemic risk. The reason is just an alibi to smooth the "robbery" of Century Bank. As for Edy Suandi Hamid¹³, revealed the financial disaster struck after bad credit occurred and paralyzed a number of financial giants who backed it up. Starting from the bankruptcy of the giant bank Lehman Brothers and the giant financial company Bear Stearns. Moments earlier, the US government was also forced to take over the largest mortgage companies in America: Freddie Mac and Fannie Mae. While Merrill Lynch experienced conditions that were not much different that had to be acquired by Bank of America. Finally the largest insurance company AIG (American International Group) shows the same critical symptoms.

The cause of the crisis is in accordance with the facts above by the big companies in the world that have implemented corporate governance, but in fact there was even a financial scandal that shook the world economy. Whereas in Indonesia, the IMF said among the reasons was the absence of good governance, so that since the IMF lent funds to Indonesia with conditions for improving governance since then the issue of implementing good governance including corporate governance received special attention by the government¹⁴.

In recent years we have seen the phenomenon of the rapid growth and development of Islamic banking not only in the country but in Asia, the Middle East, even in Europe and America; Along with the presence of Islamic banks or Islamic banks has also developed various research results around Islamic banking, and there are also other phenomena in the country that is the occurrence of acts of fraud committed in various Islamic banks, and the facts show that the Islamic banks are banks who have also implemented corporate governance. This makes a compelling reason to conduct a legal review of sharia banking corporate governance regulations and fraud, and explore ideally corporate governance in sharia banking, in the context of absorbing Islamic teachings and at the same time as an effort to prevent the recurrence of fraud in Islamic banking.

¹¹ Edy Suandi Hamid. *Akar Krisis Ekonomi Global dan Dampaknya Terhadap Indonesia*. La Riba: Jurnal Ekonomi Islam, vol.3 no.1 edition 2009, pg. 5.

¹² Rizal Ramli, 2005, *Skandal Bank Century versi Rizal Ramli*, "ECONIT's, Suara Rakyat, Jakarta, pg. 21.

¹³ Edy Suandi Hamid. *Akar Krisis Ekonomi Global dan Dampaknya Terhadap Indonesia*. La Riba: Jurnal Ekonomi Islam, vol.3 no.1 edition 2009, pg. 5.

¹⁴ Sean Liu. *Corporate Governance and Development: The Case of China*. Managerial and Decision Economics, vol.26 no.7 edition 2005, pg. 440-455..

The study was conducted using qualitative methods, starting with library legal research followed by descriptive qualitative field legal research, obtaining data through interviews and document studies of research objects on several Islamic banks, the Financial Services Authority, and the Corruption Eradication Commission. Qualitative research practice according to Sugiyono¹⁵ because it is more descriptive and has a general character, flexible, developing, and appears in the research process. Data collection techniques are carried out by examining library materials and corporate governance regulations. The data source, obtained from primary data sources and secondary data. Primary data from field research in the form of interviews and supporting official documents, while secondary data obtained through library materials. Primary legal library materials in the form of laws and regulations; secondary legal library materials in the form of legal literature, journals resulting from legal research, the work of legal scholars, and company documents; tertiary legal materials in the form of legal dictionaries, language dictionaries, and non-legal materials from other disciplines related to the study of this research¹⁶. In this study researchers conducted a multi-disciplinary approach. The data analysis is done qualitatively and content analysis. Using qualitative analysis in the form of interpretation that is prevalent in legal research such as grammar, systematic, authentic, and teleological as well as comparative analysis of the results of interviews, legal documents and company documents. Presentation of the results of the study was carried out with a systematic narrative descriptive¹⁷.

RESULTS AND DISCUSSIONS

Understanding the Concept of Sharia Corporate Governance

The results of research and author's writings show that there are directives on sharia corporate governance outlined by the Islamic Finance Services Board or IFSB of which Bank Indonesia is a member, in May 2006 having a draft presented at the IDB Lectures Series delivered by Hussain¹⁸ has formulated the definition of corporate governance, which is a set of relationships between company management, the board of directors, shareholders and other stakeholders that provides a structure in which: (i) company goals are set; and (ii) how to achieve these objectives and monitoring performance is determined. In the context of Islamic financial services, good corporate governance must also include: (i) a set of organizational arrangements in which the actions of managing Islamic financial institutions are aligned as far as possible, with the interests of the stakeholders; (ii) providing appropriate incentives for corporate organs such as

¹⁵ Sugiyono, 2012, *Memahami Penelitian Kualitatif*, Alfabeta, Bandung, pg. 9-11.

¹⁶ Soerjono Soekanto, 2006, *Pengantar Penelitian Hukum*, UI Press, Jakarta, pg. 51.

¹⁷ Zainuddin Ali, 2011, *Metode Penelitian Hukum*, Sinar Grafika, Jakarta, pg. 21-24.

¹⁸ Madzlan Mohamad Hussain, 2006, *Guiding Principles on Corporate Governance of Institutions Offering Islamic Financial Services (IIFS): An Insight of the Exposure Draft*. The Islamic Financial Services Board (IFSB), IDB Lecture Series.

directors, sharia supervisory boards and management to achieve objectives that are in the interests of stakeholders and facilitate effective monitoring, thereby encouraging Islamic financial institutions to use resources more efficiently; and (iii) in accordance with Islamic sharia rules and principles.

In addition, Hussain had previously delivered in 2005 on the occasion of a presentation at the MENA-OECD Initiative on Governance and Investigation Working Group 5 forum in Amman Jordan, including stating the reasons for the importance of corporate governance namely (i) the concept of accountability to God and others and the ethics of Islamic financial services are stipulated in the contract but in the end is accountability to God, (ii) among the ethical guidelines in the Koran are: Honesty fulfilling each contract; prohibition of betraying whatever is entrusted; prohibition of income from fraud, dishonesty or fraud; prohibition of bribery for an unfair advantage; prohibition of hiding evidence for example in order to manipulate prices, (iii) Islamic financial services must fulfill obligations to stakeholders within sharia-justified limits.

Then in December 2006 the IFSB delivered the guiding principles of corporate governance by dividing it into 4 (four) parts, namely: first, the approach to governance of Islamic financial institutions in general; second, the rights of investment account holders; third, adherence to sharia rules and Islamic principles; and fourth, transparency of financial reporting. The IFSB definition of corporate governance is the same as that presented in the IDB Lectures Series by Hussain as mentioned above. The latest development in December 2009 IFSB published the Guiding Principles on Sharia Governance Systems for Institutions offering Islamic Financial Services. Here is given the definition of Sharia Governance Systems namely: refers to a series of institutional and organizational arrangements through which an Islamic financial institution that there is an effective independent oversight of sharia compliance over each structure and process includes: first, the issuance of relevant sharia statements/resolutions; second, the dissemination of information on the statement/resolution of the sharia to operating personnel of financial institutions that monitor day-to-day compliance at all operational and transaction levels; third, review or internal audit of sharia compliance to verify that sharia compliance is satisfactory; fourth, annual compliance audit of sharia to verify that the internal audit is appropriate and findings have been recorded by the sharia supervisory board¹⁹.

Please note that this Sharia Governance System includes Islamic financial service institutions, Islamic collective investment scheme institutions, and takaful insurance institutions. It can be seen from the performance of IFSB that corporate governance in an Islamic perspective is intensely receiving serious attention, evidenced by the

¹⁹ The Islamic Financial Services Board (IFSB), *Guiding Principles on Shari'ah Governance Systems for Institutions offering Islamic Financial Services*. The Islamic Financial Services Board (IFSB): ISBN: 978-983-44579-5-2 (December 2009). www.ifsb.org (Akses 27 July 2020).

concepts that continue to improve and develop from year to year, and it seems to be still rolling so that it will reach a standard that is applied to all Islamic financial institutions in world. After seeing the understanding of corporate governance by IFSB above, it is clearly different from what was formulated by Hasan²⁰ saying, the understanding of corporate governance is understood by Islam combining elements of Tawhid, Shura (deliberation), Shariah rules and maintaining personal goals without ignoring the task of social welfare responsibility.

The difference between these two definitions can be explained, that the IFSB places more emphasis on: first the relationship between company organs, shareholders, management; the second emphasizes the existence of company goals and the mechanism of achieving goals; third alignment of various internal and external interests of the company must be in accordance with sharia rules and principles. Whereas Hasan formula simply emphasizes: first the foundation of company management is a combination of tawhid, shura (deliberation), and sharia rules (hablu min Allah); secondly achieving personal goals without forgetting social responsibility (hablu min al-nas). So it appears that the definition by the IFSB is general in nature, whereas what Hasan has stated is special as is Dato Shahrhan, but all of it when combined will make a better formula between shareholders and stakeholders.

In the various definitions of corporate governance above, there are always sentences of relationship between various parties that are possible including: between shareholders, especially majority and minority, shareholders with directors, shareholders with commissioners, shareholders with stakeholders, directors with commissioners, between directors, directors with management, directors or commissioners with companies, directors and commissioners with general meeting of shareholders, and stakeholders with companies in the context of procedures and mechanism structures. The relationship between these various parties shows the company's organs with the company's stakeholders in a state of movement, this is what is characteristic of a corporate governance.

Looking at some of the definitions and developments of sharia corporate governance presented above, it can be stated that the need for sharia corporate governance is because: first, the Koran and Hadith as a foundation of governance, as well as Islamic teachings are very relevant and significant as the basic foothold of sharia business; second, sharia business is based on observing the spiritual principles and operational ethics as a form of upholding the faith and piety in maintaining the goal of benefit in totality; third, the goal of maximizing shareholder value must be balanced by safeguarding the interests of affiliated parties and stakeholders; fourth, sharia corporate governance is a controlled

²⁰ Zulkifli Hasan. Corporate Governance: Western and Islamic Perspectives. International Review of Business Research Papers, vol.5 no.1 edition2009, pg. 277-293.

mechanism between the organ and organizational structure of the company and interaction with stakeholders; fifth, zero tolerance violates sharia and zero tolerance fraud must be seen as a way to achieve the objectives of sharia corporate governance to support the achievement of company goals, but the teachings of Islam recognize human nature of the tendency to do wrong besides doing the right thing so that strict guidelines are needed.²¹

Corporate governance based on Islamic values appears to be needed and strengthened, when looking at the reality and phenomenon of regulations issued by Bank Indonesia regarding corporate governance for Sharia Commercial Banks and Sharia Business Units (PBI 11/33/PBI/2009 and SE-BI 12/13/DPbS-2010) in no way shows identity as a specific corporate governance for Islamic banking, because the Bank Indonesia regulation is a copy paste of Bank Indonesia regulations on corporate governance for conventional banks with a small revision, namely SE-BI No.9/12/DPNP dated May 30, 2007. As a fundamental reason the need for Islamic values to enter into sharia corporate governance for sharia banking, based on the description and results of the author's research are as follows: a) Islamic banks were born due to the increasing need of Muslims for products & services that do not damage the faith; b) Islamic banks as sharia-based legal business entities in the fields of economy and trade and social life are the application of muamalah as a form of practice of Islamic teachings; c) Islamic banks as a means of protecting and protecting the Islamic ummah so as not to be damaged or fall into usury, maysir, gharar, wrongdoing and haram, or other acts of sin by obeying and implementing sharia principles in their operations; d) Islamic banks in the face of global competition must be able to develop by displaying Islamic identity, culture, and personality with strong confidence for the continuity of sharia business in an effort to broadcast the Islamic economy and trade.

According to Endraswati²², the thing that distinguishes corporate governance in Islamic banking compared to conventional banking is the presence of a Sharia Supervisory Board in its corporate governance structure. The mechanism that determines between traditional and Islamic companies is the decision-making mechanism. Decision making in sharia companies is based on Islamic law. Namely, the Al Qur'an and Sunah Rasullullah saw, while companies with conventional corporate governance emphasize compliance with laws and government regulations. Besides, the four mandatory characteristics of the apostle, namely shiddiq, Amanah, tabligh, and fathonah, are leadership characteristics in Islam²³. Because of that, the four mandatory attributes of the apostle are described

²¹ Roszaini Haniffa., and Mohammad Hudaib. Exploring the Ethical Identity of Islamic Banks via Communication in Annual Reports. *Journal of Business Ethics*, vol.76 no.1 edition 2007, pg. 97-116.

²² Hikmah Endraswati, 2016, *Konsep Awal Islamic Corporate Governance: Peluang Penelitian yang Akan Datang*, Muqtashid, pg. 66.

²³ Loredana, Alexandru., and Roxana, 2016, *Comparative Analysis Between The Traditional Model of Corporate Governance and Islamic Model*, Academica Brancusi Publisher, University of Targu Jiu, pg. 87.

in the Islamic Corporate Governance application, which is based on the law of the Al-Qur'an and Hadith.

Loredana, Alexandru and Roxana²⁴ state that the concept of corporate governance in the Islamic Model explains that managers and auditors work professionally, aiming to fulfil the interests of shareholders and the rules of Allah SWT. Loredana, Alexandru and Roxana argue that the pillars of corporate governance in the Islamic Model include accountability, responsibility, transparency, correctness, integrity and competencies. Besides, the three dimensions of decision making in the Islamic corporate governance model include by whom, for whom, with whom and to whom. By whom is associated with mutual consultation with an advisory board. For whom is associated with the primary purpose of fulfilling the commandments of Allah SWT. With whom and whom to whom it is related to corporate governance must be able to ensure that the procedures and operations that run in the company are following the Qur'an, that Islam teaches teamwork and must obey the orders of the team leader. The Prophet's life becomes a model in doing business.

Fraud on Islamic Banking

Understanding the term criminal acts in Islamic banking has a very broad understanding because indeed the term academic crime refers to the material criminal law that contains various criminal acts both ordinary and specific criminal acts. Crime in banking by many parties calls it fraud in banking, but this is also unsatisfactory because the term fraud or freely translated as fraud itself is actually unknown in the national criminal law system. Bank Indonesia in Circular Letter No.13/28/DPNP dated 9 December 2011 formulated the term fraud by: What is meant by Fraud in this provision is an act of deviation or omission intentionally carried out to trick, cheat, or manipulate Banks, customers, or other parties, which occurs within the Bank and / or uses Bank facilities to cause the Bank, customers, or other parties to suffer losses and / or Fraud actors obtain financial benefits, directly or indirectly. The types of acts that are classified as Fraud are fraud, fraud, embezzlement of assets, information leakage, banking crime (tipibank), and other actions that can be likened to it.

Actually, Indonesian criminal law does not recognize what is called a fraud, and apparently the term fraud that we know from the west has a variety of meanings in the legal world there, the term fraud according to the Black Laws Dictionary, fraud is very broadly translated, starting from its understanding, kinds - kinds of fraud and fraud classification; Among its meanings are stated: A false representation of facts, whether by words or actions, with false or misleading accusations, or with concealment that should be disclosed, which is deceptive and intended to deceive others so that he must

²⁴ Asrori. Implementasi Islamic Corporate Governance dan Implikasinya terhadap Kinerja Bank Syariah. Jurnal Dinamika Akuntansi, vol.6 no.1 2014, pg. 90-102.

act to harm the law. Whatever is counted for deception, whether by a single act or combination, or by suppressing the truth, or suggestions about what is wrong, whether it is by direct falsehood or innuendo, by speech or silence, word or mouth, or looking or gesturing. “Bad faith” and “fraud” are identical, and also other synonyms are dishonesty, infidelity, infidelity, betrayal, injustice, etc.²⁵

Fraud is widely popularized by companies, especially SOE companies (State-Owned Enterprises) and banking companies in Indonesia, which eventually became known and popular in the business world in general this country, but still if asked what is meant by fraud not one can answer correctly according to an academic view. The Indonesian state already knows what is said to be an act of corruption, along with the existence of the Anti-Corruption Law which was followed later by the birth of the Corruption Eradication Commission. Even so it is not quite right if corruption also directly touches the banking sector, because banking companies in Indonesia consist of state-owned companies and private companies, private companies are more familiar with fraud. But for State-Owned Enterprises companies corruption is considered still debatable, because in general corruption always connotes that there are state financial losses and what is still not final among academics and law enforcement is the financial legal status of State-Owned Enterprises companies, whether they are state finance or not state finance. Even though according to law a State-Owned Enterprises is a private company subject to the Limited Liability Company Law, for legal experts the State-Owned Enterprises assets come from separated State assets, because they have been separated from their origin, the State’s shares become the assets of a State-Owned Enterprises limited company, no longer a State asset.

From the data that the authors encountered in the media coverage, a lot of fraud has occurred in Islamic banking circles, as an illustration some of them are:

- a. The suspects embezzled BNI Syariah Lubuk Linggau customer funds valued at Rp 8.1 Billion, the suspects have been detained since October 13, 2012;
- b. Bank Danamon has sold its derivative products to Bank Danamon Syariah (UUS) customers;
- c. Bank Danamon Syariah customers feel cheated, gold investment;
- d. Bank Officials Allegedly Carrying Customer Gold Runaway Approved Value of Rp 4.6 Billion;
- e. Alleged Fraud of DKI Sharia Bank Immediately Delegated to Court, related to the granting of Rp100 billion in credit for the purchase of aircraft by DKI Sharia Bank to PT Energy Spectrum (ES);

²⁵ Gillian Rice. Islamic Ethics and the Implications for Business. Journal of Business Ethics, vol.18 no.4 edition 1999, pg. 340-358.

- f. Case of Wrong Type of Bank Mega Syariah Admits Copy-Paste Without Paying Attention to Original Names, as a result, heirs are in doubt getting land collateral, which is pledged to obtain a credit agreement through sharia principles (murabaha contract) at Mega Mitra Sei Sikambing Medan bank office;
- g. BSM Bogor Bribery Case, 3 Officials Bribed Rp9.3 Billion, in the case of embezzlement of funds under the guise of fictitious loans worth Rp102 billion involving Notaries. 106 BSM Fictitious Loans Terendus since 2012, 3 Employees Already Fired;
- h. Bank employees broke 75 billion rupiah to buy houses and luxury cars. Bank Syariah Mandiri (BSM) Jalan Gatot Subroto Branch, Jakarta, conceding funds reached Rp 75 billion. The police have arrested four burglary suspects;
- i. Bukopin Syariah Loss Rp 1.3 Billion, Maradona Hutasoit & Fahri Tried Medan District Court. As from November 2012 to April 2014, Bank Bukopin Syariah Medan Branch suffered a loss of Rp1.3 billion by 2 former employees who manipulated debit transactions;
- j. Former BSM Branch Head Detained by Central Java Regional Police, Suspect initials ABS (43) former head of local auxiliary branch in 2011-2012 Central Java Regional Police revealed the criminal practice of breaking into Bank Syariah Mandiri (BSM) in Brebes. ABS allegedly proposed financing engineering from 260 debtors. That was done with the help of suspect YAN, a former marketing supporter of PT BSM Brebes. PT BSM suffered a loss of around Rp50 billion.

Of the various case phenomena for the period of 2012 to the beginning of 2015 above, it shows that the number of cases at Bank Syariah Mandiri ranks first, followed by Bank Danamon Syariah then other Islamic banks. But that does not mean that Islamic banks which are not published by the media have no cases. Presumably with the above data, it is enough for us to think of the right way to eradicate fraud in Islamic banking. But before reaching that goal, of course the question is why fraud can occur in Islamic banks, is there something wrong?. According to the KPK (Corruption Eradication Commission), in banking a fraud is carried out in stages depending on the level starting from the lower level, which continues to be small up to the top management of a large-scale; the smallest is the crime committed by the employee together with the customer, the middle manager is related to giving credit, but the top management is bigger in scale because it involves policy. Then why fraud can occur? We must distinguish fraud by need or fraud by the system, if by need is usually due to personal needs, if by the system then all of them have been fraud together where the rules are made already fraud, the intention is already fraud.

These cases constitute acts of fraud and embezzlement, which are included in criminal acts regulated in the Criminal Code. Even though they look similar, the two crimes have different elements. In the Criminal Code, the criminal act of fraud is regulated in Article

378 of the Criminal Code, while the crime of embezzlement is regulated in Article 372 of the Criminal Code.

The motives for the two crimes are different from one another. The criminal act of fraud aims to gain profit, by obtaining goods, being given debt, or having the debt written off. A person who commits an illegal act of fraud is subject to a maximum imprisonment of four years. Article 378 of the Criminal Code reads as follows: Anyone who is intending to benefit himself or another person unlawfully, by using a false name or fake dignity, by deception, or a series of lies, moves another person to give something to him, or so that to provide debt or write off a debt, shall be punished for fraud with a maximum imprisonment of four years.

Meanwhile, the criminal act of embezzlement aims to own goods or money, which at that time is under his control where the goods/money belong to someone else. Perpetrators of embezzlement are punished by a maximum of four years in prison. In full Article 372 of the Criminal Code reads: Anyone who deliberately and illegally owns something that belongs to another person wholly or partly, but which is in his / her power not because of a crime is threatened with embezzlement, with a maximum imprisonment of four years or a maximum fine of nine hundred rupiah.

Solution to Dealing with Fraud

Based on the description and explanation of the paragraphs above the author assesses the need for early prevention and is carried out in a structured and consistent manner against fraud in Islamic banking, due to the weak regulatory phenomenon and the phenomenon of fraud in several Islamic banks throughout Indonesia, which is the main basis for the acceleration of fraud prevention in the Islamic banking environment. The author strongly supports the presence of Bank Indonesia Circular Letter No.13/28/DPNP dated December 9, 2011 concerning: The Implementation of Anti-Fraud Strategies for Commercial Banks, and by Islamic banking in general has addressed them by creating an anti-fraud task force. Besides that, it is necessary to look at law enforcement itself, for example the Corruption Eradication Commission has upheld its determination to eradicate Fraud by emphasizing the following policy formula: Fraud control itself will be built nationally which includes three aspects, namely preventive, detection and repressive.

In the preventive aspect, it is in the form of encouragement to organizations or institutions implementing a good control system, in the form of an Internal Monitoring System (SPI) or the Government Internal Control System (SPIP), conducting a Fraud Risk Assessment and implementing a Fraud Control Plan or Fraud Control System. As for the detection aspect, a comprehensive early warning system will be made, by integrating LHKPN/LHK and gratuity/gift reports that reach all civil servants, the

Whistle Blower System, and other elements of the integrity system. Thus, the aspect of enforcement against fraud can be done more effectively because it has been integrated and the creation of a good legal order. On the other hand, the KPK will have a more active role in monitoring the effectiveness of integrity enforcement so that a good legal order is maintained. What has been outlined by Bank Indonesia Circular Letter No.13 / 28 / DPNP dated 9 December 2011 concerning: Application of Anti-Fraud Strategy for Commercial banks and also the KPK's policy in handling fraud, even though they are public, they need to be appreciated. But for Islamic banking based on the results of this study, the authors argue that to overcome or prevent fraud, high awareness of both regulators and Islamic banking industry players is needed, in order to systematically take the following actions:

1. Preventive Measures

Regulators should review the regulations that have been made to support corporate governance or operational interests of Islamic banking so that regulations are clean and do not contain things that are not in accordance with sharia principles, especially not containing elements: usury, *maisir*, *gharar*, haram and wrongdoing, as mandated by the Sharia Banking Law²⁶. As a follow up, the regulator must be willing to: a. Strengthening Juridical, namely the improvement and improvement of some weak regulatory provisions, as well as making new rules that are needed in the sense of: 1) Revoke all the provisions that create fraud by the system such as the provisions that justify fraud under 100 million rupiah which is considered insignificant; 2) Improve provisions that have the potential for a conflict of interest, namely to reinforce the provision that all shareholders are prohibited from holding positions as directors or commissioners, to prevent conflicts of interest; 3) Improve all provisions that have the potential for fraud by the system and the potential for conflict of interest, namely to reinforce the provision that all directors and commissioners must be an independent party to shareholders, to prevent shareholder intervention and fraud either by the directors themselves or in collaboration with shareholders; 4) Improve all provisions that have the potential to conflict of interest and potentially harm the company both materially and immaterially, namely to reinforce the dual prohibition of positions for directors, commissioners, and sharia supervisory boards, especially dual positions that can cause conflict of interest and harm the company in matters: internal confidentiality, product confidentiality, internal strategy, financial systems & procedures, accounting systems & procedures, information technology, and other strategic matters of the company; 5) With the awareness that acts of fraud that have the potential to cause large losses to the company are conducted by middle and upper level officials and certain related

²⁶ Muhammad Anwar. Islamicity of Banking and Modes of Islamic banking. Arab Law Quarterly, vol.18 no.1 edition 2003, pg. 58-72.

parties, regulators need to specifically make anti-fraud regulations for shareholders, anti-fraud regulations for directors, anti-fraud regulations for commissioners, regulations anti-fraud for sharia supervisory boards, anti-fraud regulations for internal auditors, anti-fraud regulations for external auditors, anti-fraud regulations for information technology service providers working for companies, and anti-fraud regulations for key persons or other managers. b. Need to require Islamic Banking to carry out anti-fraud education programs and create an anti-fraud culture, which should be included in the anti-fraud program regulations issued by the Financial Services Authority.

2. Continuous Detection Steps

Regulators need to establish the following sustainable detection steps: a) Require Islamic banking to continue implementing the Whistle Blowing System program, with emphasis on the company's top management steps: first, create a limited special team that is known to be honest, clean and firm; secondly, provide guarantees to the reporter: that the identity of the reporter is kept confidential, the report material is kept confidential, as well as provide protection against the reporter from retaliation in various forms and modes by the reported party against the reporter and if necessary protect his family, and give commensurate appreciation to the reporter if the report is proven as a reward system; b) Require Islamic banking to make high security on the use of information technology to prevent various acts of fraud originating from information technology systems, starting from the determination of the requirements of information technology service providers, selection of service provider selection, design and implementation of hardware and software installations, confidentiality guarantee contracts during and after service rendering, full service provider responsibility for damage and repair after completion of service delivery; c) Requiring Islamic banking to make optimal security in the use of information technology, such as restricted server rooms that have direct or indirect access; as well as certain workspaces or operational controls that use information technology, access must be limited; for computer use in general, it must be periodically required to change the password and must be kept confidential by the operator concerned; d) Sharia banking should also be required to conduct periodic reviews of budget and expenditure items that are vulnerable to fraud, especially those carried out by directors and company organs and other key persons; and a review of transactions that have the potential to contain conflicts of interest and fraud; e) Regulators should also require Islamic banking to collaborate with the Financial Transaction Reports and Analysis Center or PPATK; and requires shareholders, directors, commissioners, sharia supervisors, and other key management to submit the relevant account numbers and families to PPATK; and request PPATK to report periodically to the regulator and the bank concerned regarding the results of its work.

3. Repressive Steps

This step generally consists of two types, namely: a) Handling internally on the basis of the employee and bank relations concerned; or b) Handling is handed over to the authorities, in addition to not reducing the internal handling obligations of the bank concerned. In these two models of handling repressive measures, regulators are still required to play a strict role in determining internal authority limits and limits that a case must be submitted to the authorities without reducing the obligation of banks to act internally. Why are regulators still needed? This is for uniformity in the regulation of repressive actions or actions of banks which clearly stipulates the rules for banks are determined by the regulator in the language stated by the KPK before that is effective and integrated.

Supposedly, the role of the Sharia Supervisory Board (DPS) can reduce fraudulent practices because it has been regulated in circular letter No. 8/19/DPBS. In Circular Letter No. 8/19 / DPBS dated 24 August 2006 Concerning Sharia Supervision Guidelines and Monitoring Results Reporting Procedures for DPS explains that the Sharia Supervisory Board has duties, authorities and responsibilities, among others, to ensure and supervise the suitability of bank operational activities against the fatwas issued. By the National Sharia Board (DSN), assesses sharia aspects of operational guidelines and products issued by banks, provides opinions from the sharia aspect of the overall implementation of bank operations in bank publication reports, reviews new products and services for which there is no fatwa to request a fatwa to DSN, and submit reports on the results of sharia supervision. DPS then reports the results of surveillance on sharia financial entities along with the supervisory working papers that they carry out, submitted to the Board of Directors, Commissioners, DSN, and Bank Indonesia.

The report on the results of sharia supervision contains at least the following items as contained in the Circular Letter No. 8/19 / DPBS dated 24 August 2006: a) the effects of charge on the suitability of the Bank's operational activities against the fatwa issued by DSN - MUI, b) opinion Syariah on operational guidelines and products issued by the Bank, c) results of studies on new products and services for which there is no fatwa to request a fatwa from the DSN - MUI, d) Islamic opinion on the overall implementation of the Bank's operations in the Bank's published report. So important is the existence of the Sharia Supervisory Board as a balancing body that oversees all forms of Islamic bank operational activities. Hence, it needs adequate support and facilities to help maximize its roles, functions and responsibilities. However, the exciting thing is, in Haniah Ilhami's²⁷ research, SSB as the supervisory authority for sharia compliance does not yet have responsibilities that are regulated through strict

²⁷ Haniah Ilhami. 2009. Pertanggungjawaban Dewan Pengurus Syariah Sebagai Otoritas Pengawas Kepatuhan Syariah Bagi Bank Syariah. Jurnal Mimbar Hukum, vol.21 no.3 2009, pg. 409-628.

legal provisions. In the laws and regulations and practices implemented by Islamic banks, SSB is placed in a very strategic position. However, at the same time, this position is not bound by a substantial burden of responsibility as is the case with other supervisory organs, namely the Board of Commissioners. Strategically, the role of SSB will determine the creation of sharia compliance, which is the main element in the existence and continuity of a sharia bank business.

CONCLUSIONS

From the results of research and data analysis, it can be concluded that: first, from a positive legal perspective corporate governance regulations for Islamic banking issued by Bank Indonesia, have not yet met the legal juridical standards for the preparation of laws and regulations, because they do not have a philosophical basis there are weaknesses in the legal basis less appropriate sociological foundation for operational practices in the community. Second, from the standpoint of Islamic teachings and values corporate governance regulations for Islamic banking, have not shown conformity with Islamic teachings and values optimally. Third, research has found that there are provisions that contain fraud and several provisions that have the potential to cause fraud. In other words, it was found that the corporate governance regulations for Islamic banking that were made philosophically by Bank Indonesia were not yet based on juridical norms and Islamic teachings; legally there are some things that are not in accordance with positive law and Islamic law, besides there are rules that are fraud and potential fraud; sociologically there are irrational and inaccurate weaknesses in the operational practices of Islamic banking. The regulation needs to be refined to turn into a Sharia Corporate Governance that is in accordance with positive law, the Koran and Hadith, and fatwas that are indeed required by Islamic banking. In other words, scientific corporate governance regulations for existing Islamic banking. The steps to improve and refine Bank Indonesia's rules to become Sharia corporate governance will show: the better and Islamic the regulations of corporate governance the more narrow the opportunities for illicit acts and fraud in Islamic banking.

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