

The Implementation of Sharia Principle in Bank Products as Corporate Identity of Sharia Bank

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Abstract—This research aimed at describing the effect of implementing sharia principle in substance and structure of sharia banking legal system on sharia bank products in Indonesia and formulating the implementation model of sharia principles on sharia bank products associated with the corporate identity of sharia banks in Indonesia. This research used descriptive analytical with a normative juridical approach with documentation study, interviews, and FGD as data collection techniques, and normative qualitative methods as data analysis technique. The result showed that the influence of implementing sharia principle on legal system including sharia banks' substance and structure towards sharia banks products in Indonesia was very large. Regarding substance, the implementation of sharia principle on products could result in invalid transactions. Regarding structure, the effect of implementing sharia principles on products could weaken the authority of DSN-MUI and DPS as a reference institution in the implementation of sharia principles in banking. The implementation model of sharia principles on sharia bank products currently maintains a good corporate identity of sharia banks, but in practice it still does not reflect the expected corporate identity.

Keywords—*corporate identity; sharia bank; sharia principle*

I. INTRODUCTION

The results of research conducted by Imaniyati and Nurhasanah regarding the implementation of sharia principle in sharia banking law system (substance, structure, and culture) showed that the implementation of sharia principles in sharia banking legal system in Indonesia based on Legal Theory approach, according to Laurence Firedman, is not optimal yet [1]. Based on Legal Theory, legal consists of substance, structure, and culture. The legal substance includes legislation, structure is an institution that will enforce legislation, and culture is a culture of society, in the form of society's understanding and acceptance to the law.

Related to substance, sharia principles have been regulated in legislation, namely Law Number 10 Year 1998 concerning Banking and Law Number 21 Year 2008 concerning Sharia Banking [2]. The regulation of sharia principles in Law Number 21 Year 2008 is more complete and more detailed, and provides limits on the prohibition of Sharia Bank Business (UBS, Usaha Bank Syariah) activities that fulfill the elements of usury, maysir, gharar, haram and zalim. In addition, Law

Number 21 Year 2008 gives authority to National Sharia Council-Indonesia Ulama Councils (DSN-MUI, Dewan Syariah Nasional-Majelis Ulama Indonesia) to implement sharia principles in the form of fatwas, which will become an operational guideline for sharia banks in implementing sharia principles and sanctions for banks that violate sharia principles. To conduct the mandate of law, the DSN-MUI has made a fatwa relating to the contracts that will be used in sharia bank products. However, to support sharia principles in terms of regulations, there are still many arrangements regarding sharia banks referring to commercial bank regulations, such as rules on taxes, mortgages, fiduciary, and auctions.

Regarding the structure, law enforcement of sharia principles starts with regulators, namely Financial Services Authority (*OJK, Otoritas Jasa Keuangan*), which makes regulations for financial institutions including sharia banking consisted of three types, namely the Sharia Commercial Bank (BUS, Bank Umum Syariah), Sharia Business Unit (UUS, Unit Usaha Syariah), and rural banks (BPRS, Bank Perkreditan Rakyat Syariah). Supervision in the implementation of sharia compliance is conducted by Supervisory Board (DP, Dewan Pengawas) as an institution that must exist in every type of sharia bank and OJK. In connection with the legal relationship of a sharia bank with a customer is bound by a contract. Contracts creation can be carried out by bank and customer, or through a notary contract, which is made by and in front of the notary. The settlement of sharia bank disputes with customers can be conducted through two alternatives, namely Arbitration and Alternative Dispute Resolution (AAPS, Arbitrase dan Alternatif Penyelesaian Sengketa) that is National Sharia Arbitration Agency (BASYARNAS, Badan Arbitrase Syariah Nasional) or through a court institution. The court that examines sharia economic disputes, including sharia banks, is Religious Court. This is regulated in Law Number 6 Year 2009 concerning Religious Court. Therefore, it is important to conduct further research on the effect of implementation of sharia principles in sharia bank legal system on sharia bank products in Indonesia [3].

This research aimed at describing the effect of implementing sharia principles in substance and structure of sharia bank legal system on sharia bank products in Indonesia and formulating the implementation model of sharia principles

on sharia bank products associated with the corporate identity of sharia banks in Indonesia.

II. METHODS

This research used a normative juridical approach that examined, described, analyzed, and evaluated legislation relating to the legal aspects of sharia bank products in accordance with the provisions of Law Number 21 Year 2008 concerning Sharia Banking [4]. This research used descriptive analytical to systematically describe the facts and problems that arose related to the influence of implementing sharia principles on banking products. The data collection technique was conducted by documentation study techniques to retrieve secondary data, interviews for primary data, and FGD by inviting sharia banks practitioners (Commercial Banks and BPRS), OJK Leaders, DSN-MUI Leaders, Academicians and Administrators of Notary Associations (INI), and PPAT Association Management (IPAT). Besides that, data analysis technique used normative qualitative method.

III. RESULTS AND DISCUSSION

The implementation of sharia principles in sharia banks legal system will affect sharia bank products because the principle is al-mabda that is the starting point for fundamental law based on Islamic sharia. The more implementable formulation of sharia principles in sharia banking laws has become a positive law in Indonesia that binds sharia banks and their customers. According to the explanation of Article 2 of Sharia Banking Law, sharia principles in bank business activities are business activities that do not contain elements:

- Usury (riba) is the addition of illegal income (vanity), among others, in the exchange of similar goods that are not same quality, quantity, and delivery time (fadhl), or in lending transactions that require recipient customers to return funds in excess of loan principal because of the passage of time (nasi'ah);
- Maysir is a transaction depended on an uncertain and chancy situation;
- Gharar is a transaction who's the object is unclear, not owned, not known to exist, or cannot be delivered when the transaction is conducted unless otherwise stipulated in sharia;
- Haram is a transaction whose object is prohibited in sharia;
- Zalim is a transaction that causes injustice to other parties.

Sharia principles are included in Sharia Banking Act. Therefore, sharia principles have become a positive law. Furthermore, Law of Article 24 paragraph (1) letter a, Article 24 paragraph (2) letter a, and Article 25 letter a stipulates that sharia banks are prohibited from conducting business activities that are contrary to sharia principles [2,3,5]. Thus, sharia contracts made between sharia banks (BUS, UUS, and BPRS) and customers may not contain contrary terms and conditions to sharia principles.

Sharia contract is a focus that is a concern to differentiate the operations of sharia banks and conventional banks. Therefore, the implementation of contracts in the operations of sharia banks strongly determines whether sharia banks have implemented sharia principles or not. Helmi from Association of Indonesian Sharia Banks (ASBISINDO, Asosiasi Bank Syariah Indonesia) acknowledged that the influence of sharia principles on sharia bank products was not 100% in line with expectations, because many sharia bank products were still questioned their conformity with sharia principles. For example, profit sharing products are difficult to implement, while the choice to use revenue sharing is also prone to deviations from the principles of justice and inter-government. This was acknowledged by representatives of Sharia Victoria Bank (BVS, Bank Victoria Syariah) that is forcefully no longer issue micro products because, in its operations, it was difficult to implement profit based on sharing principles for several reasons. Another example is murabahah contract meaning that the element of goods being traded is already there (object aspect fulfilled), but it did not yet 100% use sharia principles in the projected installment of financing same as the profit-sharing contract. Whereas until now murabahah bil wakalah is a mainstay product of sharia banks. The largest portion of financing at BVS used murabahah and musyarakah contracts. The contract is very important in BVS, but it is not easy to implement it. For example, the micro-sector financing used under deed and notary deed of financing, but its use is more based on under deed of financing that left unresolved 'affairs'.

Recognized by Hidayat as DPS of BPRS Harum Hikmah, who experienced a false attitude as a supervisor, he certainly wanted to supervise bank practices strictly, whether or not they met sharia principles. However, if it was too strict, the institution could be off [6]. For example, if they used truly pure sharia in murabahah, it must have stock of goods to be traded. Murabahah is almost neat in its implementation, but to be able to comply with sharia principles, they required effort from various sides. Some shortcomings were frequently still tolerated by DPS because competitiveness was also a consideration. In implementing sharia complaints, DPS wanted to secure two sides: worship and economy. The middle way conducted by DPS if the things were still not in accordance with sharia principles to hold in order not to deviate from sharia principles is by asking for opinions to DSN [7]. Some efforts had been conducted by DSN in dealing with vulnerable matters to violations of sharia principles, for example, Top Up financing products had no fatwa yet, but there had been already ijtim'a sanawi in 2017. The result was if it is really needed, it must be added by another contract or its contract is changed based on the problem that occurred. It was conducted because the potential of Top Up products deviated from sharia principles if it is not immediately fenced in with DSN fatwas [8].

DPS as a representation of DSN must pay attention to the sharia conformity aspects, but in practice, supervision must remain wise to the director. This is because the current understanding of sharia by shareholders, directors, and commissioners must be the same, synergy, and integration. However, in reality, it has not yet happened. Therefore, the sharia certification program is one way out. Understanding of

sharia principles by shareholders is still lacking so that shareholders only emphasize profit issues. Empowerment of community understanding must be in line with DPS. One of them is cooperation with the government.

The issue of sanctions is also still not firm when violations occur, whether judged by sharia principles or not. OJK has no authority, different from sanctions on the principle of prudence. Thus, if there is a violation of sharia principles, it is only guidance as a sanction.

Additionally, sharia principles in sharia bank products are as explained in Article 2 of Sharia Banking Law. Sharia principles in bank business activities are business activities that do not contain elements of Riba, Maysir, Gharar, Haram, and Zalim.

The explanation of "Sharia Principles" can be seen in Article 1 Number 12 of Law Number 21 Year 2008 concerning Banking is the sharia principle is "Islamic Law principles in banking activities based on the fatwa issued by institutions that have the authority to determine fatwa in sharia banking field". The institution that has authority in stipulation of fatwa in sharia banking field is (DSN-MUI). Thus, sharia principles in the operation of sharia banking are then included in the provisions stated in DSN-MUI fatwas. Obedience of sharia banks to those fatwas becomes one of the characteristics and identities of sharia banks in Indonesia.

Identity for companies, including sharia banking, is essential to be a part of personality in achieving business goals. Corporate identity of the company aims at describing the manifestations and uniqueness to operate well and success in the market and able to provide recognition and differentiation among banks, such as important aspects of sustainable bank's market competitiveness including an understanding of the bank's ethical and social culture and products. Sharia banking as a financial institution differed from conventional banks has a prevailing view of the basic concepts of property rights and contracts that regulate behaviors, ethics, morals, and socio-economics, both individuals, institutions, communities and countries. The fundamental perspective above is a belief in Islam and a proponent of sharia banks to become an integral Islamic economic system that applies at all times and specifically contributes to the national economy, and serve an alternative system for the development of world economy (Sukardi, Wijaya).

Corporate identity as a part of corporation personality jointly builds a corporate philosophy to make people know, recognize, and understand the corporate philosophy (Qfinance dictionary, <http://www.qfinance.com>). The concept of corporate identity is known in 1950s from the 20th century by Walter Margeliza. This concept aims at describing the unique and distinctive manifestations of organization to operate well and success in the market. It was created to provide recognition and differences among banks [9]. Corporate ethical identity is needed by organizations in facing the challenges of different organizational competition and cultural incompatibility, the more similar products or services are, the more strength of technology, regulation and globalization to change the shape of business is [10]. Sharia banks, as Islamic financial institutions differed from other conventional banks, have a fundamental

concept of ownership and contractual rights that regulates behavior, ethics, and economic and social moral, of individual, institutions, societies, or countries [11]. This fundamental perspective is believed that belief in religion and support for sharia banks will make this economic system integrated and Islam becomes applicable in all ages.

The sharia bank's ethical identity, as a comparison between the realized ethics and the disclosure of sharia banks practices is measured by dimensions [12], vision and mission statement, board of commissioners and top management, products and services, zakat, alms and loan virtue, commitment to employees, debtor, community, and DPS. Thus, the product is one of measurement tools to describe the identity of sharia banks that distinguishes it from other banks. In other words, the specificity of sharia bank products is a part of sharia banking corporate identity.

In addition to the fatwa, which is a reference for sharia bank products, other identities can be seen in sharia banks, namely the existence of DPS as a supervisory body for the implementation of sharia principles in sharia banks. However, the implementation of DPS duties as supervisors still has problems. DPS as a supervisor certainly wants to supervise bank practices so that they can fulfil sharia principles, but if the supervision is conducted too firmly, the institution can be off. It means that DPS still maintains the existence of sharia banking in conducting its supervision. Therefore, the effort made by DPS in dealing with vulnerable matters to violations of sharia principles is by asking for opinions to the DSN.

IV. CONCLUSION

The influence of implementing sharia principles in sharia bank legal system on sharia banks products in Indonesia is very large including substance, structure, and culture in sharia banks. Regarding substance, the implementation of sharia principles on products can result in invalid transactions. Regarding structure, the effect of implementing sharia principles on products can weaken the authority of DSN-MUI and DPS as a referenced institution in the implementation of sharia principles in banking.

The implementation model of sharia principles on sharia bank products currently maintains a good corporate identity of sharia banks, but in practice it still does not reflect the expected corporate identity. The model can be described as follows.

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