Jurisdiction of Sharia Supervisory Board in Indonesian Takaful Industry

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Abstract. The first takaful company in Indonesia is PT. Takaful Indonesia Company which started in 1994. Based on data from the Indonesian Financial Services Authority, there are currently 55 takaful companies in Indonesia. The act that governing takaful is contained in the Act of the Republic of Indonesia Number 40 Year 2014 about insurance. Takaful is also regulated in other regulations such as in the Capital Market Supervisory Regulation, Regulation of the Minister of Finance and Fatwa of the Indonesian Ulama Council. Although the takaful industry started in 1994, there are still many problems with takaful operations in Indonesia. Among the obvious is that there is no specific takaful law, the jurisdiction of the Shari'a Supervisory Board which needs to be improved in terms of its jurisdiction and the independence of Sharia Supervisory Board as the party overseeing the compliance of sharia principles in the takaful industry. The objective of the study is generally to study the regulation of the implementation of syariah compliance requirements in takaful companies. Qualitative research methods are used to analyze library data relating to syariah compliance at takaful companies and to conduct interviews with related parties. Based on that, the study found that takaful regulation in Indonesia has not been detailed in regulating the jurisdiction of the Sharia Supervisory Board as a supervisor of shariah principles in takaful companies. Therefore, this study proposes regulatory improvements that can support compliance with syariah requirements.

Keywords: Takaful, Law, Sharia Supervisory Board, Sharia Compliance.

1. Introduction

The takaful industry is a rapidly growing industry in the domestic and global markets. Thus, the function is increasing and encompassing various services in the financial system. Based on data from the Financial Services Authority of Indonesia, the number of insurance companies in Indonesia in 2011 amounted to 43 while in 2015 amounted to 55. The development of takaful in Indonesia in line with the conventional insurance industry. Conventional insurance has long existed before the takaful industry. Due to the awareness of Muslims in Indonesia in seeking financial institutions that do not conflict with Islamic law, PT Perusahaan Takaful Indonesia was established in 1994. The establishment of the takaful company was first supported by the Indonesian Muslim Scholars Association, Yayasan Abdi Bangsa, Bank Muamalat Indonesia and PT Tugu Mandiri Insurance and the government especially the Finance Department.

The positive development shows that Muslim communities in Indonesia have had a great desire to avoid economic activities that are contrary to Islamic law. As you know, conventional insurance activities contain affairs that conflict with Islamic law. Therefore, Muslims in Indonesia need a compliance takaful institution for sharia compliance. Sharia compliance is an absolute requirement that must be strengthened by financial institutions that carry out their operations based on the legal principle of syarak. It is stated that sharia compliance is a deterrent ruling for the Islamic financial institution. Without the existence of shariah compliance with shariah principles will have an effect on the public's decision to elect or abandon Islamic financial institutions.

The law governing takaful is the Law of the Republic of Indonesia Number 40 Year 2014 on insurance. The law regulates conventional and takaful insurance. Thus, there are many important parts of takaful operations that have not been regulated by the law. Among the unexplained affairs is the
task and jurisdiction of the Sharia Supervisory Board. However, the law requires all takaful companies to have a Sharia Supervisory Board. Based on Fatwa DSN-MUI No. 21 / DSN-MUI / X / 2001 and by the Regulation of the Minister of Finance Number 18 / PMK.010 / 2010 section 16, it is understandable that the Sharia Supervisory Board is a party that can control the implementation of sharia principles in takaful companies. Therefore, the Sharia Supervisory Board requires strong jurisdiction and authority.

2. Methodology

The research will be conducted as a legal research using traditional or conventional research types as Sakina said. The author explains that this type of research can be labeled pure legalistic analysis where relevant laws, cases and statutory are primary sources. In other terms, such methods may be referred to as doctrinal or theoretical studies, as basically a library study where the materials needed by researchers are available in libraries, archives and other databases. In relation to legal research, Jacob Stein and Mersky recognize that legal research is a process of identifying and obtaining the necessary information to support the decisions made. Therefore it is probable that legal research would use the doctrinal method. In this investigation law, case and statutory are the primary sources for reviewing the regulation of sharia compliance in the takaful industry in Indonesia.

3. Findings

3.1. Overview of Takaful

The definition of Islamic insurance in general is actually not much different from conventional insurance. Between the two, both conventional and takaful insurance have similarities that insurance companies only serve as facilitators of structural relations between premium payers and users of claims payers. In general, takaful can be described as an insurance whose operational principle is based on Islamic law with reference to the Qur'an and As-Sunah.

Takaful in the definition of muqalah fiqh is a social security among Muslims, so that one with another is willing to risk each other. The willingness to "bear" the risk is in fact a form of helping to be on the basis of good (tabarru') to relieve the burden of the suffering of his afflicted brother. Therefore, the idea of takaful in relation to the elements of mutual risk between the insurance users, in which one user becomes the other user.

Refer to fatwa No. 211 / DSN-MUI / X / 001 on Takaful General Guidelines, the definition of takaful (ta'min, takaful, tadhamunialah mutual protection and mutual assistance between a number of persons through investment in the form of assets and / or tabarru 'To face certain risks through a sharia-compliant contract.

The Law Number 40 Year 2014 on Insurance provides a definition of takaful, namely:

Takaful is a group of agreements, comprising agreements between takaful companies and policyholders and agreements between policyholders, in the framework of managing contributions based on shariah principles to help and protect each other by:

i. Provide replacement to consumers or policyholders for loss, damage, costs incurred, loss of profits, or liability to third parties that may be incurred by consumers or policyholders due to an uncertain event; Or

ii. Provide payment based on the death of the user or payment based on the user's life with the benefit of which has been established and / or based on the results of the fund management.

Thus, takaful is an operational insurance that is based on Islamic law and includes mutual protection, assistance, and risk. It can therefore be concluded that takaful is not an economic institution whose purpose is to seek profits only, but it also has a noble value that helps each other among fellow takaful users.
3.2. **Sharia Supervisory Board in Indonesian**

The definition of the Sharia Supervisory Board based on the Financial Services Authority Regulation Number 72 / POJK.05 / 2016 is part of the takaful company's organs operating takaful operations based on sharia principles and exercising oversight functions to the implementation of takaful and retakaful operations to conform to the principles of sharia.

Sharia Supervisory Board's duties and authority based on Financial Services Authority Regulation Number 72 / POJK.05 / 2016 is to provide approval for the distribution of underwriting surplus. Such approval must be prepared in the Sharia Supervisory Board supervision report. Furthermore, approval letter from Sharia Supervisory Board is also required to make annual financial reports. The approval letter should contain the statement that the management of assets and liabilities has been carried out in accordance with the principles of sharia. Functions and authority of Sharia Supervisory Board are not described in Financial Services Authority regulation Number 69 / POJK.05 / 2016 regarding the Implementation of Insurance Companies, Takaful Companies, Reinsurance Companies, and Retakaful Companies. This rule only explains that Sharia Supervisory Board is a mandatory part of the organizational structure of the takaful company. It is found in section 48.

In the Financial Services Authority Regulation Number 67 / POJK.05 / 2016 About Business Licensing and Institution Licensing of Insurance Companies, Takaful Companies, Reinsurance Companies, and Retakaful Companies, it is stated that Sharia Supervisory Board is a part of the takaful company's organ which has the duty and function of supervision over the conduct of the company's business activities in accordance with the principles of sharia. Furthermore, it is mentioned that every takaful company must have Sharia Supervisory Board. This is evidenced by a letter of approval from the National Sharia Council-MUI. Every takaful product to be sold must obtain approval from Sharia Supervisory Board. In the Financial Services Authority Circular Letter Number 17 / SEOJK.05 / 2014 on Good Corporate Governance Implementation Report for Insurance Company, Takaful Company, Reinsurance Company, and Retakaful Company, Sharia Supervisory Board's duties and responsibilities are made by a takaful company. The duties and responsibilities of Sharia Supervisory Board consist of:

1) Total, title, criteria, date of appointment by General Meeting of Shareholders, period, nationality, and place of residence
2) Tasks and responsibilities
3) Position
4) Training
5) Implementation of activities and reserves
6) The frequency of meeting, consisting of:
   a. Number of meetings held within 1 (one) year
   b. Number of meetings attended
   c. List of present-day experts

Furthermore, it is the salary and convenience of Sharia Supervisory Board. Salaries and facilities for Sharia Supervisory Board are provided by a takaful company. The salaries and facilities consist of fixed salaries, allowances for housing, transportation allowances, medical takaful and others. Based on Financial Services Authority Circular Letter Number 18 / SEOJK.05 / 2016 About Reporting Insurance Products for Takaful Companies and Insurance Companies Who Carried Some of Their Businesses Based on Shariah Principles, compulsory takaful products are reported by the Takaful Company to Financial Services Authority. Furthermore, the product must obtain approval from Financial Services Authority before being marketed to takaful consumers. To obtain a letter of approval from the Financial Services Authority, the product must obtain a letter from the Sharia Supervisory Board. Sharia Supervisory Board will assess whether the product is appropriate and does not conflict with Islamic principles.
Based on Financial Services Authority regulations No. 23 / POJK.05 / 2015 on Insurance Products and Marketing Products, new takaful products that differ from takaful products generally must be reported to OJK. The requirement to report to the Financial Services Authority is a letter from the Sharia Supervisory Board. Sharia watchdog statement statement is a testimony of the suitability of takaful products reported on shariah principles, specifically for Sharia-compliant Standard Insurance Products.

In section 1 of the Capital Market Supervisory and Financial Institution Regulation Number Per-08 / BL / 2011 it is stated that the Shariah Supervisory Board is part of the Company's organ which performs surveillance function on the implementation of insurance business and the reinsurance business in accordance with the principles of sharia. Subsequently, in section 2 it was explained that Sharia Supervisory Board's task was to prepare an annual report on the supervision of compliance with the sharia principles in the activities of the takaful company. The report shall be reported by the takaful company to the Capital Market Supervisory Board and the Financial Institution.

In section 16 of the Regulation of the Minister of Finance Number 18 / PMK.010 / 2010 on Takaful Policy Principles. It is mentioned that the Supervision on the implementation of the basic principles of the maintenance of insurance business and the reinsurance business with sharia principles is done by the Sharia Supervisory Board. The results of such surveillance must be reported by the Company to the Insurance Bureau of the Capital Market and Financial Institution Supervisory Bureau at least once (1) year.

3.3. Issues of the Sharia Supervisory Board on the Takaful Industry in Indonesia.

Based on Section 36 of Bank Indonesia Regulation No. 11/3 / PBI / 2009, a member of Sharia Supervisory Board can only concurrently hold Sharia Supervisory Board as a member of the other four other Islamic financial institutions. Agus Triyanto, the regulation is less ideal. The first reason is the secret of the company. Based on that regulation, it allows one in a company to know the secret of another company. In this case it is a member of Sharia Supervisory Board. Although, there are regulations governing the secrecy of the Company, namely the Law of the Republic of Indonesia Number 30 of 2000, but a Sharia Supervisory Board may provide innovative proposals in every company it observes. Therefore, the proposals from Sharia Supervisory Board can be profitable to a company and make losses to other companies.

The next reason is about the conflict of interest Sharia Supervisory Board. Sharia Supervisory Board can offer innovative proposals to the company he observes. Thus, it has the potential to provide innovative proposals that benefit one side and disadvantage others. It could be that Sharia Supervisory Board would benefit a company that would pay more remuneration than any other company giving smaller remuneration. This is because the remuneration for Sharia Supervisory Board from the company is not regulated. In other words, every company is free to give the amount of remuneration to Sharia Supervisory Board.

The next reason is Sharia Supervisory Board's ability to oversee Islamic finance companies. Sharia Supervisory Board would have difficulty observing five companies at a time. To oversee one place alone is very difficult and complicated as Sharia Supervisory Board has to audit the company's paperwork, evaluate its contracts and also make a side visit to the company. Moreover, many Sharia Supervisory Board whose job is not just Sharia Supervisory Board, but also have jobs in other fields.

This is important because Indonesia takes the supervisory method, not the advisory method. For example, Malaysia is the country that named its supervisory board as the Shariah Advisory Council. Although the jurisdiction is more prevalent because it can give punishment. While in Indonesia it is called Syariah Supervisory Board but its role is more limited to the advisor.
Another problem is that Sharia Supervisory Board members are members of National Sharia Board Indonesia Council of Ulama. National Sharia Board is an institution that makes a fatwa or regulator. In the concept of impartiality and independence, this is less ideal because one is tasked as a fatwa maker as well as a supervisor of the fatwa and those who propose fatwa related to new innovations in a takaful company. Problems that arise if a fatwa maker also concludes the potential of the fatwa issued will be adjusted to the ability of the company he observes. This makes fatwa much of a profit that benefits the company alone. Furthermore, the problem arises if the fatwa maker is also an innovator-maker is that the fatwa will be of interest in favor of the new innovation.

In takaful companies, Sharia Supervisory Board and board of directors can request a new fatwa to National Sharia Board. Therefore, it will cause problems because the Sharia Supervisory Board is also a National Sharia Board. Ideally the Sharia Supervisory Board is independent and separate from National Sharia Board. Perhaps, because many National Sharia Board members who are also members of the Sharia Supervisory Board are for the supervisory person to be fully aware of the fatwa, National Sharia Board as its fatwa. In comparison with Malaysia, Sharia Supervisory Board in National Bank of Malaysia cannot be National Sharia Board in any Islamic financial institution. This is because the Sharia Supervisory Board is the party that will provide a resolution. In addition, one MPS can only supervise an Islamic Financial Institution. That ensures the independence of supervisors.

Based on the supervision guidelines in Indonesia, the supervisor is required to submit reports / reports every semester to Financial Services Authority and National Sharia Board and Bapepam-LK. There are problems in making this report, which is difficult to open access to the data of the director. The board should have more opportunities for supervision. In addition, Sharia Supervisory Board should have the authority to enforce and give threats to the board of directors to disclose its data regarding oversight functions.

The next problem is the skill of the Sharia Supervisory Board to supervise. Doing surveillance requires a high skill. To have such a high skill requires a lot of training. Many are found Sharia Supervisory Board are people who are only experts in the field of religion or clerics, but are not competent in the field of detailed finances. Without intensive training it would be difficult to be a good Islamic financial institution supervisor.

The case is that Bank Danamon Shariah case conducts a derivative transaction which is prohibited in sharia. Then burst in the newspaper as Danamon lost to 9 Billion. When Sharia Supervisory Board is asked for information, Sharia Supervisory Board cannot explain it properly. In fact, claiming to be new to the media. Here's an example that Sharia Supervisory Board is not necessarily competent in terms of financial supervision. Derivative transactions are complex transactions. So it requires a high degree of supervisory skill. Danamon's code shows that there is a gap between the supervisor and the transaction he supervises. It may be because it is not granted access to supervision or cannot understand the complicated transactions. This case occurs in banking, whereas transactions occurring within the takaful industry are much more complicated than those in sharia banking.

The next problem is about independence. Sharia Supervisory Board is remunerated by the company he is monitoring. So it is very difficult for Sharia Supervisory Board to say that the company is doing sharia non-compliance. When a Sharia Supervisory Board says that there is a sharia violation in a company then the company will lose confidence from the community. Sharia Supervisory Board will not be possible to destroy its own company while Sharia Supervisory Board remuneration is provided by the company. When a sharia violation occurs, the report must be accepted by Financial Services Authority. The report will definitely be followed up by Financial Services Authority. However, that is almost unavoidable because of the reasons already mentioned.
4. Conclusion

Islamic financial institutions are institutions established based on religious factors, the will of the Muslim community and profitability. Islamic financial institutions are obliged to follow and comply with all Islamic principles in conducting Islamic financial business. Islamic financial institutions also need to practice the ethics and norms of Islamic businesses such as fairness, fulfill the marital agreement, cooperative principles, eliminate hardship, free market principles, reasonable prices and free from harm.

The Independence of the Sharia Supervisory Board is essential to realize compliance with Islamic law, particularly in the takaful industry. It is characterized by the function of the Sharia Supervisory Board as the supervisor of sharia principles. Economic factors become one of the independent considerations of Sharia Supervisory Board. Based on Circular Letter of Financial Services Authority Number 17 / SEOJK.05 / 2014 About Good Corporate Governance Implementation Report For Insurance Company, Sharia Insurance Company, Reinvestment Company and Sharia Reinvestment Company, takaful company is obligated to pay salaries, non-salary allowances and facilities others to the Sharia Supervisory Board. While the pay factor does not guarantee the Sharia Supervisory Board to be unfair, this factor has the potential to make the Syariah Supervisory Board depend on the takaful company.

The ideal thing in giving remuneration is the concept used by Financial Services Authority. The ideal way to pay remuneration for Sharia Supervisory Board is by requiring each Islamic financial institution to pay a fee to a government-owned body and the agency will channel the money to pay Sharia Supervisory Board. That way, independence of Sharia Supervisory Board will be maintained.

The existing regulation regarding Sharia Supervisory Board is more that Sharia Supervisory Board is only an advisor, not a supervisor. Then there are two alternatives that must be taken, modifying the Islamic financial institution surveillance system in Indonesia which was originally the Syariah Supervisory Council to be the Sharia Counsel Council. So the Sharia Supervisory Board jurisdiction is only available to give advice and supervision is done by Financial Services Authority. Or modify the existing regulations to provide more power to Sharia Supervisory Board to provide compulsion or penalties or at least determine the fault of a company.

There is a discourse that National Sharia Board will be included in the Bank of Indonesia, as it happens in Malaysia. But, National Sharia Board rejects the proposal because the National Sharia Board will reduce its authority or even dissolve. Supposedly, the oversight should be on the spot. However, the limited number of supervisors and the number of Islamic Financial Institutions units has made it difficult to conduct surveillance on the spot.

If in Malaysia, Sharia Advisory Council can give punishment. Whereas Sharia Supervisory Board can only provide a report without giving any substance to the Islamic Finance Institution. In the concept of supervision, this is very flawed. The basic nature of an oversight is to give punishment so that it can threaten if there is an Islamic Financial Institution that would violate it.

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