

LEGAL SYNCHRONIZATION OF SHARIA BANKING SUPERVISION

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LEGAL SYNCHRONIZATION OF SHARIA BANKING SUPERVISION ARRANGEMENTS IN INDONESIA

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Abstract-- The development of banking supervision arrangements undergoes frequent changes due to various factors such as political conditions and socio-economic situations. Initially, bank supervision was under the purview of Bank Indonesia (BI), but it later shifted to the Financial Services Authority (OJK). However, this change in the regulatory framework has resulted in legal uncertainties in the regulation of Sharia banking, which contradicts legal principles, legal theory, and the rule of law. Consequently, it has led to legal issues in the supervision of Sharia banking within the Indonesian legal system. This research employs a normative legal research method utilizing primary, secondary, and tertiary legal sources. Legal materials were collected through document and literature studies, and they were subsequently analyzed descriptively. Additionally, legal interpretation methods were used to construct prescriptions and draw deductive conclusions. The findings of this study indicate that the synchronization of Islamic banking supervision arrangements within the Indonesian legal system entails external supervision of Sharia banking being carried out by the OJK. However, internal supervision is overseen by the Board of Commissioners, with the specific supervision of Sharia banking falling under the purview of the Sharia Supervisory Board (DPS). Moreover, legal solutions related to Sharia banking supervision in Indonesia involve institutional supervision conducted by the OJK, which is specifically authorized by law to regulate and supervise Sharia banking. At the national level, supervision of Sharia aspects is carried out by the National Sharia Banking DPS.

Keywords— Legal Synchronization, Supervisory Arrangements, Islamic Banking

INTRODUCTION

The existence of banks is closely tied to the rapid developments in the fields of economy, trade, globalization, and information systems and technology. Banking activities and services have become essential in today's modern world, including in Indonesia, where economic and trade developments heavily rely on banking performance. Consequently, the Indonesian government has implemented policies to monitor bank performance. Article 34 of Law of the Republic of Indonesia Number 23 of 1999 concerning Bank Indonesia, amended by Law Number 3 of 2004 and further amended by Law Number 6 of 2009, mandates the establishment of a supervisory institution for the financial services sector, encompassing banking, insurance, pension funds, securities, venture capital, finance companies, and agencies administering public funds (Pikahulan, 2020).

As the central bank, Bank Indonesia (BI) has the primary objective of achieving and maintaining stability in the value of the Indonesian currency, the rupiah. To fulfill its objectives, BI has specific duties as outlined in Article 8 of Law Number 23 of 1999. These duties include establishing and implementing monetary policy, managing and ensuring the smooth operation of the payment system, and regulating and supervising banks.

However, with the enactment of the OJK Law, the regulatory and supervisory responsibilities for

the banking sector have shifted from BI to the Financial Services Authority (OJK). The OJK is an independent institution with the functions, duties, and authority to regulate and supervise financial services in Indonesia (Aziz & Nur'aisyah, 2021). Consequently, the OJK now holds authority over all financial service activities in the banking sector, capital market, insurance, pension funds, financial institutions, and other financial service institutions.

The transition of banking supervision in Indonesia from BI to the OJK is mandated by Article 34 of Law Number 3 of 2004, which amends Law Number 23 of 1999 concerning Bank Indonesia. This legal provision necessitates the establishment of an independent financial services sector supervisory agency responsible for overseeing the banking industry, insurance, pension funds, capital markets, venture capital, finance companies, and other bodies managing public funds.

The Financial Services Authority possesses broad powers, including the ability to make regulations in the field of financial services, grant and revoke approvals, facilitate business transfers to protect customer interests, prevent financial sector crimes, and regulate the control of financial institutions (Very, 2022).

The remarkable growth and contribution of Sharia banking over the past 30 years exemplify its alignment with the needs of the Indonesian people. The expansion of Islamic banking requires not only the support of the government, BI, and the OJK as regulators but also internal support from Islamic banks themselves. This includes the establishment of Islamic Economics and Islamic Banking Study Programs at universities, Islamic economic institutions and associations, centers for Islamic economic studies and Islamic banking, and the acceptance of Islamic banking by the Indonesian people. Consequently, conventional banks have shown increasing interest in converting their banking operations to comply with Sharia principles.

Considering the rapid development of Islamic banking and the banking sector as a whole, it is highly likely that challenges may arise in the future pertaining to the synchronization of Islamic banking supervision arrangements. Given this context, the research at hand focuses on the theme of "Legal synchronization of Islamic banking supervision arrangements according to the Indonesian legal system."

Based on the background provided above, the research will address the following problem formulations:

1. How is the legal synchronization of Islamic banking supervision arrangements according to the Indonesian legal system?
2. What legal solutions exist for addressing issues related to the legal synchronization of Sharia banking supervision arrangements according to Indonesian law?

1. THEORETICAL FOUNDATION

A. Legal Synchronization

Legal synchronization involves the alignment and harmonization of various laws and regulations related to existing and currently drafting laws and regulations that govern a specific field. The purpose of synchronization activities is to prevent overlaps and ensure that the substances regulated in statutory products complement each other and become more detailed and operational as the level of regulation decreases. This synchronization aims to establish a regulatory framework that provides adequate legal certainty for the efficient and effective implementation of specific fields (Sayuna, 2016).

According to Peter Mahmud Marzuki (2016), the principle of *lex superiori derogat legi inferiori* explains that if there is a conflict between hierarchically lower laws and regulations, the lower ones must be set aside (Sayuna, 2016).

The objective of synchronization activities is to establish a regulatory basis for a certain field that offers sufficient legal certainty for the efficient and effective implementation of that sector. Synchronization of laws and regulations can be carried out in two ways (Sayuna, 2016), namely:

a. Vertical Synchronization

Vertical synchronization involves aligning laws and regulations with other laws and regulations in

a different hierarchy. This process ensures that laws and regulations in a particular field do not conflict with each other. Article 7 of Law Number 12 of 2011 concerning Formation of Legislation outlines the types and hierarchy of laws and regulations as follows:

- 1) The 1945 Constitution of the Republic of Indonesia
- 2) Decree of the People's Consultative Assembly
- 3) Act/Government Regulations in Substitute of Laws (PERPU)
- 4) Government regulations
- 5) Presidential decree
- 6) Provincial regulations
- 7) District Regional Regulations

In addition to considering the hierarchy of laws and regulations, vertical synchronization also takes into account the chronology of the year and the stipulation number of the relevant laws and regulations. The purpose of vertical synchronization is to ensure that statutory regulations applicable to a specific aspect of life do not conflict with each other when viewed from a vertical or hierarchical perspective of existing laws and regulations.

b. Horizontal Synchronization

Horizontal synchronization involves aligning laws and regulations with other laws and regulations within the same hierarchy. This process examines various laws and regulations that are equal and regulate the same or related fields. Horizontal synchronization also follows the chronological order in which the relevant laws and regulations are stipulated. The aim of horizontal synchronization is to determine the extent to which certain laws are horizontally compatible, meaning they have compatibility between equal laws regarding the same field.

B. Supervision

Literally, the term "supervision" means paying close attention and thoroughly examining something (Sujanto, 1982). It involves observing and reporting based on the actual reality of what is being monitored. The main focus of supervision is to determine whether a pre-planned activity has been implemented according to the plan and whether the intended objectives have been achieved.

Scholars have expressed various opinions regarding the concept of supervision. For instance, one definition states that supervision is "a process of assessing whether work is being carried out, conducted, or held as desired, planned, or observed" (Salindeho, 1998). Harold Koonz, et al., as quoted by Jhon Salindeho (1998), define supervision as follows:

"Measuring and correcting the activities of subordinates to ensure that what is done matches the plan. So supervision measures implementation compared to goals and plans, identifies negative deviations, and takes corrective action to ensure the achievement of plans" (Salindeho, 1998).

The above definition implies that supervision is an ongoing process that involves assessing the work carried out and making necessary evaluations and corrections to ensure alignment with the intended objectives. In order to achieve the goals of a state or organization, supervision can be classified into the following categories:

- 1) Direct supervision and indirect supervision
- 2) Preventive supervision and repressive supervision
- 3) Internal control and external control.

C. Financial Services Authority (OJK)

According to Article 1, paragraph (1) of Law Number 21 of 2011 concerning the Financial Services Authority (OJK), the Financial Services Authority is defined as "an independent institution that is free from interference by other parties. Its functions, duties, and authority are to regulate, supervise, inspect, and investigate as stated in the law." Additionally, Article 2 states that the OJK is an



independent institution and operates without interference from other parties, except for matters expressly regulated in the law.

The main task of the OJK, as outlined in Article 6, involves regulating and supervising three activities, namely:

- 1) Financial services activities in the banking sector
- 2) Financial services activities in the capital markets sector
- 3) Financial services activities in the insurance sector, pension funds, financing institutions, and other financial services institutions.

7 Under Article 6, letter a, the OJK is responsible for regulatory and supervisory duties concerning financial service activities in the banking sector. The OJK is granted the following authorities, as emphasized in Article 7:

- a. Regulation and supervision of bank institutions, including:
 - 1) Granting licenses for establishing banks, opening bank offices, determining articles of association, work plans, ownership, management and human resources, bank mergers, consolidations, and acquisitions, as well as revoking bank business licenses.
 - 2) Oversight of bank business activities, including sources of funds, fund provision, product hybridization, and activities in the service sector.
- b. **6** Regulation and supervision of the health of banks, which includes:
 - 1) Liquidity, profitability, solvency, asset quality, minimum capital adequacy ratio, maximum lending limit, loan-to-deposit ratio, and bank reserves.
 - 2) Monitoring bank reports related to bank health and performance.
 - 3) Implementing a debtor information system.
 - 4) Conducting credit testing.
 - 5) **13** Forcing bank accounting standards.
- c. Regulation and supervision of bank prudence, including:
 - 1) Risk management.
 - 2) Bank governance. **1**
 - 3) Implementation of know-your-customer and anti-money laundering principles.
 - 4) Preventing the financing of terrorism and banking crimes.
- d. Conducting bank inspections.

Furthermore, in addition to the specific provisions that determine the OJK's authority in regulatory tasks, there are also special provisions regarding its supervisory duties, as stated in Article 9. According to this article, the OJK has the authority to:

- a) Establish operational policies for supervising financial service activities.
- b) Supervise the implementation of supervisory duties carried out by the Chief Executive.
- c) Conduct supervision, examinations, investigations, consumer protection, and other actions against Financial Services Institutions, actors, and/or supporting financial service activities as stipulated in laws and regulations in the financial services sector.
- d) Issue written orders to Financial Services Institutions and/or specific parties.
- e) Appoint a statutory manager.
- f) Determine the scope of the statutory manager's authority.
- g) Impose administrative sanctions against parties that violate laws and regulations in the financial services sector.
- h) Grant and/or revoke: Business licenses, Individual licenses, The effectiveness of registration statements, Certificates of registration, Approval to carry out business activities, Ratifications, Approvals or determinations of dissolution, Other provisions as deemed necessary.

D. Islamic Bank

According to Law Number 21 of 2008 concerning Islamic Banking, Islamic Banks are defined as **24** banks that conduct their business activities based on Sharia principles. They are categorized into Islamic Commercial Banks and Islamic People's Financing Banks based on their types.

Furthermore, Sutan Remy Shahdeini describes Islamic Banks as institutions that serve as intermediaries. Their role involves collecting funds from the public and channeling these funds to individuals or entities in need of financing, following Sharia principles rather than interest-based principles (Sjahdeini, 2007).

2. METHODOLOGY

This research was based on legal research conducted using two approaches: the doctrinal or normative approach (Soekanto & Mamudji, 2006) and the conceptual approach (Majid, 2016). The research utilized secondary data derived from library materials or legal sources, including primary legal materials, secondary legal materials, and tertiary legal materials. The necessary legal materials for this study were gathered through library research and document study. These materials were then analyzed using descriptive analysis methods to establish prescriptions, employing authentic legal interpretation methods. Finally, deductive conclusions were drawn grammatically (Muhaimin, 2020).

3. RESULTS AND DISCUSSION

Legal Synchronization of Sharia Banking Supervision Arrangements According to the Indonesian Legal System

A. Legal Basis for Sharia Banking Supervision Arrangements

The legal framework for regulating Islamic banking supervision in Indonesia is based on several related laws, including:

- 1) Law Number 7 of 1992 concerning Banking, which was amended by Law Number 10 of 1998.
- 2) Law Number 23 of 1999 concerning Bank Indonesia, which was subsequently amended by Law Number 3 of 2004 and Law Number 6 of 2009.
- 3) Law Number 21 of 2008 concerning Sharia Banking.
- 4) Law Number 21 of 2011 concerning the Financial Services Authority (OJK).
- 5) Law Number 40 of 2007 concerning Limited Liability Companies.
- 6) Law Number 6 of 2023 concerning Stipulation of Government Regulation in lieu of Law Number 2 of 2022 to become Law (concerning Job Creation). (Muhaimin et al., 2021)

In addition to these laws, there are various regulations issued by the OJK and Bank Indonesia that specifically pertain to sharia banking supervision. Some of these regulations include:

- POJK (OJK Regulation) Number 50/POJK.03/2017 regarding the Net Stable Funding Ratio for Commercial Banks.
- POJK Number 49/POJK.03/2017 regarding Legal Lending Limits for Rural Banks.
- POJK Number 48/POJK.03/2017 concerning Transparency of the Financial Conditions of Rural Banks.
- POJK Number 47/POJK.03/2017 concerning the Obligation to Provide Funding for Education and Training for the Development of Human Resources for Rural Credit Banks and Sharia Rural Banks.
- POJK Number 46/POJK.03/2017 concerning the Implementation of Compliance Functions for Commercial Banks.
- And many more.

Furthermore, the OJK has issued regulations specifically related to sharia banking supervision, such as POJK Number 24/POJK.03/2015 regarding Products and Activities of Sharia Banks and Sharia Business Units, and POJK Number 17/POJK.04/2015 concerning Issuance and Requirements for Sharia Securities.

Bank Indonesia has also issued regulations, including Bank Indonesia Regulation Number 15/13/PBI/2013 and Bank Indonesia Regulation Number 15/14/PBI/2013, which pertain to amendments to regulations concerning Sharia Commercial Banks and Sharia Business Units.

These laws and regulations form the legal basis for the supervision and regulation of sharia banking in Indonesia, ensuring compliance with Sharia principles and the overall stability of the banking sector.

B. Bank Regulatory and Supervision Authority

The authority for banking regulation and supervision, including sharia banking, according to the Indonesian legal system, lies with the Financial Services Authority (OJK) (Amir, 2020). The OJK has the following authorities:

1. Authority to stipulate licensing procedures and establish banks: This includes granting licenses, revoking bank business licenses, approving the opening, closing, and relocation of bank offices, and granting approval for ownership and management of banks. The OJK also grants licenses to banks to carry out specific business activities.

2. Authority to regulate banking aspects and activities: The OJK has the authority to establish provisions to ensure the creation of a healthy banking sector that fulfills the desired banking services for the public.

3. Authority to supervise banks: The OJK exercises direct and indirect supervision. Direct bank supervision (on-site supervision) involves general and special inspections to assess the financial condition of banks and monitor their compliance with regulations. It aims to identify unhealthy practices that may jeopardize the continuity of a bank's business. Indirect supervision (off-site supervision) involves monitoring through periodic reports, inspection results reports, and other information submitted by banks.

4. Authority to impose sanctions: The OJK has the power to impose sanctions in accordance with statutory provisions against banks that fail to comply with regulations. These sanctions serve as a means of coaching banks to operate in line with sound banking principles.

5. Authority to conduct investigations: The OJK, along with the Indonesian National Police and civil servant officials within the OJK, has the authority to conduct investigations in the financial services sector, including banking. Investigation results are submitted to the Prosecutor for prosecution.

6. Authority to protect consumers: The OJK has the authority to protect consumers by preventing consumer and public losses, handling consumer complaints, and providing legal defense.

The OJK's authorities related to the supervision and regulation of bank financial services institutions are regulated in the OJK Law. These authorities cover various aspects, including licensing for bank establishment, bank business activities, regulation and supervision of bank health, prudential arrangements, and bank checks. Overall, the OJK plays a crucial role in ensuring the stability, compliance, and protection of consumers within the banking sector, including sharia banking, in accordance with Indonesian laws and regulations.

Legal Solution to the Problem of Synchronizing Sharia Banking Supervision According to Indonesian Law

Sharia banking supervision in Indonesia involves multiple institutions, including Bank Indonesia, the Financial Services Authority, the Sharia Supervisory Board, and the Board of Commissioners (Hanifah, 2023). However, the presence of these institutions can lead to overlapping authorities and disharmony in the supervision of Islamic banking in Indonesia. To address this issue, it is necessary to establish specific regulations that govern the supervision of Islamic banking in Indonesia through a Government Regulation or a special Financial Services Authority Regulation (*lex specialis*). These regulations would ensure that there is no overlap of authority and prevent conflicts in their implementation.

In these future regulations, which are specific in nature and aimed at synchronizing the supervision of Islamic banking, it is crucial to clearly define the authority of each institution or body. This will enable comprehensive and integrated supervision, bringing all aspects of supervision into one regulatory system. As a result, Bank Indonesia's role in supervising banks, particularly sharia banking, would no longer be necessary, as the Financial Services Authority would assume this responsibility. The Sharia Supervisory Board would be attached to the Financial Services Authority to ensure



comprehensive supervision.

Based on the aforementioned discussion, the legal solution for the supervision of banking and sharia banking, according to Indonesian law, involves institutional supervision by the Financial Services Authority, which is specifically empowered by law to regulate and supervise banking, including sharia banking. At the national level, supervision of sharia aspects in sharia banking is conducted by the Sharia Banking National Sharia Supervisory Board.

However, it is important to note that there are still many legal issues related to the regulation of Islamic banking supervision that need to be addressed in the formulation of specific regulations for comprehensive supervision of Islamic banking. This aligns with the view of jurists that a good law reflects philosophical, juridical, and sociological aspects. Similarly, legal sociologists argue that good law in a democratic era should be responsive to the demands and needs of society. ¹⁹

Furthermore, according to Lawrence Friedman's theory, law must consider **three important aspects: legal structure, legal substance, and the legal culture** (society) in which the law is applied (Friedman, 1975). By incorporating these aspects, the law can effectively function and be enforceable in society. Therefore, clear legal rules are essential to minimize potential legal problems in the future concerning the regulation of Islamic banking supervision. These rules will provide justice and legal certainty for sharia banking, including **the Financial Services Authority** as supervisors, **the managers of sharia banking**, and **the public** as banking consumers.

CONCLUSION

Conclusion: The legal synchronization of Sharia banking supervision arrangements within the Indonesian legal system entails external supervision of Sharia banking being carried out by the OJK, while internal banking supervision is conducted by the Board of Commissioners. Specifically, Sharia banking supervision is carried out by the DPS.

Legal solutions concerning the supervision of banking and Sharia banking, according to Indonesian law, involve institutional supervision by the OJK. The OJK is specifically authorized by law to regulate and supervise banking, including Sharia banking. For national supervision of Sharia aspects in Sharia banking, the Sharia Banking National DPS oversees the implementation.

Recommendation: It is recommended that the DPR and the President enact changes to the OJK Law and the Sharia Banking Law by incorporating special provisions governing the supervision of Sharia banking. Additionally, the formation and regulation of the National Sharia Banking Supervisory Board for Sharia Banking should be established. The government should establish a dedicated institution responsible for regulating the supervision of compliance with Sharia aspects in Islamic banking, namely the National Islamic Sharia Banking DPS.

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