The Relationship Model of Sharia and Financial Authorities

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Abstrak: Politik ekonomi dan kebijakan agama memengaruhi hubungan antara otoritas syariah dan otoritas keuangan. Negara yang menjadikan Islam sebagai agama resmi menempatkan otoritas syariah dalam ruang lingkup negara. Malaysia adalah salah satu negara yang menempatkan otoritas Syariah dalam struktur otoritas negara, meskipun tetap independen. Sementara itu, Indonesia menggabungkan dua model hubungan: 1) memberikan independensi yang lebih luas kepada otoritas syariah (Majelis Ulama Indonesia) dan 2) membentuk dewan syariah untuk menangani hal yang berkaitan dengan keuangan syariah. Perbandingan sistem Indonesia, Malaysia, dan negara-negara Timur Tengah menunjukkan bahwa independensi dan efektivitas penerapan fatwa ekonomi syariah terbukti saling berhubungan satu sama lain. Ini, pada gilirannya, memengaruhi pengawasan lembaga keuangan Islam.

Kata kunci: dewan syariah, dewan pengawas syariah, otoritas keuangan, fatwa, prinsip Syariah

Abstract: Political economy and religious policies affect the relationship between sharia and financial authorities. Countries that make Islam the official religion put Sharia authorities within the scope of the state. Malaysia is one of the countries that put Sharia authorities in the structure of state authority, although it is subject to independency. In the meantime, Indonesia combines the two models of relationship: 1) granting broader independence to sharia authority (the Indonesian Ulema Council) and 2) forming sharia board to deal with sharia finance, among others. The comparison of Indonesian, Malaysian, and the Middle Eastern countries' system shows that the independence and the effectiveness of sharia economic fatwa application are found to attract each other. This, in turn, influences the supervision of Islamic financial institutions.

Keywords: sharia council, sharia supervisory board, financial authority, fatwa, sharia principles

Introduction

The discussion of state-religion relationship is always interesting considering its dynamics. More specifically, linking Islam and state may lead to a new form of development as Islam has its own basic principles. Meanwhile, the state has to maintain the dialectics of the nation-state as the product of modernization. This leads to a variety of relationship forms, as shown by Muslim countries. Muslim countries in Southeast Asia, for example, have taken the different form of relationship even though they have similar socio-cultural characteristics. State-religion relations in Indonesia, Brunei, and Malaysia, as Muslim majority countries, also varies (Mahmood, 2010).

The dynamics of religion-state relations also occur in the Middle East. Qatar, for instance, becomes one of the countries that have proceeded towards secularization, marked by the diminishing role of indigenous *ulamā'* (scholars) in influencing politics or government. This is certainly different from Saudi Arabia, which places religion as part of the state. Islamic scholars become part of the state in the social structure or Al-Saud clans (Baskan, 2011). Saudi Arabia is one of the most stringent countries in implementing Islam and Islamic law compared to other Muslim countries, including the ones in the Middle East (Cuniberti, 2011). In the meantime, in countries such as Egypt and Syria (before the revolution and civil war), Jordan, and Iran (before the revolution) secularism was trending. The power of government in Egypt, Syria, and Iran is getting stronger in applying the ideology of secular nationalism. Here, religious institutions and religious power are weakened by the ruling regime. Although it is not as strong as Egypt in fighting for the ideology of secular nationalism, Jordan also uses power in maintaining religion-state relation. The Jordan regime also does not marginalize the power of traditional religions (Moaddel, 2003).

In western countries or Muslim minorities, according to Jonathan (2009: 301), religion-state relation shows a tendency towards secularization. However, in Europe, the Islamic Council has an essential role in representing the existence of Islam while adjusting to the struggles made by the Labor Party and the Jewish community. They have the same goal in strengthening the religion and ideology of society and adjusting state policies as in terms of religious moderation.

The differences of religion-state relations in many Muslim countries are influenced by various factors, including the history of the relations, internal and external influences, colonization, political interests, and community movements. The western colonialism and its influence give colour to the religion-state relation and attitudes towards Islamic law. Islamic law becomes important, considering it regulates the principles of the relations. Besides adopting western models, Muslim countries also continue to adopt Islamic law (Botiveau, 1993).

Indonesia takes a unique religion-state relation. It is neither a religious state nor a secular state. However, there is a relationship between the state and religious groups (civil society). (Gusman, 2011) It recognizes the existence of religion in the state and society, but it does not put a particular religion as its official religion. Unlike Indonesia, Malaysia admits that Islam is its state religion. Religions are decided as a way of life and practiced by the people in Malaysia. The King of Malaysia is the leader of Islam. More interestingly, Brunei admits Islam, with the Shafi'iyya School, as the state religion (Mahmood: 12-13). Middle Eastern countries put religion as a reference of the state. The state appoints mufti who has authority in setting certain policies related to Islam. Similarly, scholars *(ulamā')* in Malaysia, who are appointed by the state, have an essential role in directing the face of Islam among Malaysian society (Currently, 2012: 135).

The diversity of the religion-state relation models can also be viewed from the relationship between the sharia authority and sharia economic authority. Muslim countries have different provisions on who has the authority to determine the Sharia economic. Some of the authority is given to the government and non-government scholars *(ulamā')*or is handed over to Islamic financial institutions.

Relation Models

In religion-state relation in Indonesia, the relationship between Islam and state has experienced an era of glory. Aziz Thaba (1996: 153-154) designs the patterns of the relationship between Islam and state in the New Order into three periods: 1) an antagonistic relationship in 1966 - 1981; 2) reciprocal-critical relationship in 1982 - 1985; 3) accommodative relationship since 1985. Islam, politics and economy are inseparable. As K.H. Abdul Wahab Hasbullah once said, Islam and politics are like sugar and its sweetness, they are inseparable (Ahmad, 2001). The awareness towards the presence of Islam in politics has always been present in Indonesia, even since the birth of this nation. Some Muslim groups have even attempted to make Islam as the national philosophy of Indonesia. However, as Munawir Syadzali (1990) said, Islam does not have an established political system preference. This was seen shortly after the death of the Messenger of Allah. His companions were divided in determining the system of power transition and successor to him.

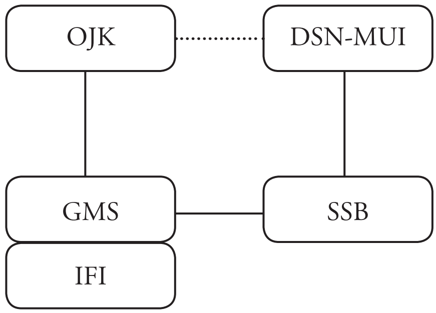
Indonesia places the sharia authority for sharia economics in a private institution known as the Indonesian *Ulamā'* Council (*Majelis Ulama Indonesia*/ MUI). Indonesia is considered the only country which adopts socio-religious institutions in its legislation. The MUI is regarded as having a role in the development of Islamic banking by preparing the idea of establishing a religion-based bank. According to Nejatullah Shiddiqie (1954), the conceptual formation of the Islamic economic system, including the Islamic banking system, is the result of the Ulama's hard work. The recognition of the MUI is found in four laws: Law No. 40/2007 on Limited Liability Companies; Law No. 21/2008 on Sharia Banking; Law No. 18/2008 on State Sharia Securities; and Basic Law of Justice. The laws regulate the authority of the MUI, especially in terms of sharia economic fatwa, sharia supervisory board recommendations, and sharia guidance. Wahiduddin Adams argues the mention of a certain entity in a statutory regulation is uncommon. This is to anticipate the change or loss of the entity. The mention of MUI aims at providing certainty as there is more than one religious institution. In addition, the MUI, through the National Sharia Council (*Dewan Syariah Nasional*/DSN), has also issued Islamic economic fatwas. Here, the recognition of MUI in the Laws is a Muslim achievement in fighting for Islam in the economic field (Rahmat, 2002).

MUI is an organization that accommodates *ulamā'* or scholars from various circles. It is considered to be able to represent Muslims. Referring to its Constitution and Bylaws, MUI seeks to bridge the government and scholars (*umāra* and *ulamā'*). The *Ulama*'s duty is to make and direct economic policies in the right direction and in accordance with the sharia. They must stand with the truth and be firm against the policies of corrupt rulers. Besides, they must also have clear principles of truth (Chapra, 2000).

The role of the MUI in enforcing and guarding the Sharia is realized by establishing the National Sharia Council (*Dewan Syariah Nasional*/ DSN). The establishment of this council is initiated due to the need for sharia legitimacy in economic activities and acceleration on sharia economic growth (Mudzhar, 1993). There are three objectives of the establishment of DSN, which are: 1) to give advice and fatwas to the government and financial authorities; 2) to produce fatwas and recommendations to Islamic financial institutions; and 3) to maintain socialization and acceleration of sharia economic development to the public (Adams, 2002). In addition, its existence is also to anticipate differences in Sharia opinions among the Sharia Supervisory Board/SSB (*Dewan Pengawas Syariah*) in the Islamic Financial Institutions (Firdaus, 2005). the broad aspects of sharia require coordination among *ulamā*' to avoid different views in responding to financial developments. To that end, to have the same sharia views, a forum that brings together scholars, who specifically deal with sharia economic issues, is created (DSN and BI, 2006). There is a concern about sharia economics, which is dominated by sharia aspects. As the nature of sharia is open to possible different interpretations, then different opinions (*khilafiyah)* on sharia issues may occur (Maksum, 2006).

There are several institutions involved in the implementation of Islamic finance such as the Financial Services Authority (*Otoritas Jasa Keuangan*/OJK), Islamic Financial Institutions (IFI), the National Sharia Council (*Dewan Syariah Nasional*/DSN), and the Sharia Supervisory Board (SSB). In Malaysia, the Sharia economic structure involves financial authorities (Central Bank of Malaysia/ *Bank Negara Malaysia*), Sharia financial institutions, Sharia Advisory Council, and Sharia committees. It is even simpler in Kuwait as this country centers the authority of fatwa and Sharia supervision in one institution, which is under the Islamic Financial Institutions structure. The model of the institutional relationship is illustrated in the following figure:

Figure 1
Model of DSN-Authority Relations in Indonesia



The figure illustrates the position of the National Sharia Council of Indonesian Ulama Council as an independent institution, which has a coordination line with the Financial Services Authority. The products issued by the National Sharia Council in terms of fatwas and recommendations to the Sharia Supervisory Board are independent and not directly bound to the Islamic Financial Institutions as they do not have an instruction line to them. The fatwas become binding after being adopted as regulations (An elucidation on the Law 21/2008 article 26 paragraph (4)).

In the meantime, the Sharia Supervisory Board is an affiliated party in an Islamic bank. The board is appointed by the general meeting of shareholders upon the recommendation of Indonesian Ulama Council and the approval of the Financial Services Authority. Its role is an extension to the role of the National Sharia Council in implementing and overseeing the Sharia principles (fatwas) in Islamic Financial Institutions. In addition, it makes Sharia supervision reports to three parties; General Meeting of Shareholders/GMS (*Rapat Umum Pemegang Saham*), Bank Indonesia, and National Sharia Council-Indonesian Ulama Council. The Financial Services Authority has the authority to supervise and regulate Islamic Financial Institutions and the Sharia Supervisory Board. However, it does not have supervisory authority over the National Sharia Council.

Unlike Indonesia, Malaysia hands over the authority of Islamic economic fatwa to the central bank structure (*Bank Negara Malaysia*/

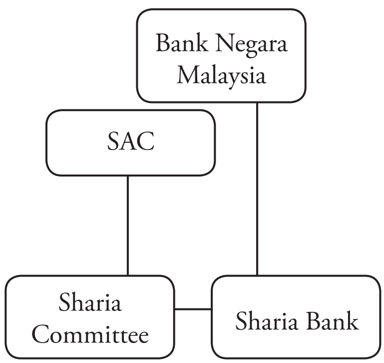
BNM). Here, the Sharia Advisory Council is an institution authorized to issue Islamic economic fatwa. Its role is similar to the authority assigned to the National Sharia Council. The Sharia Advisory Council structure is within the *Bank Negara Malaysia* organization. This council was ratified under the Law of Central Bank of Malaysia Article 16B (1) in 1958. Although it is under the Central Bank, its position is considered as an independent institution (Bank Negara Malaysia, 2002). Its placement in the BNM structure is expected to be an effective Sharia framework in aligning Sharia opinions, strengthening policies and supervising on Islamic Financial Institutions and maintaining qualified Sharia advisors. If, for example, the fatwa issued by the National Sharia Council requires legislation from the authorities to bind the Islamic Financial Institutions, the fatwa issued by the Sharia Advisory Council automatically becomes the product of the regulation that binds the institutions.

Additionally, the Sharia Advisory Council is also authorized to explain aspects of Sharia for banking, insurance, financing and other business institutions based on the Sharia principles (Bank Negara Malaysia, 2010). Its authority is getting stronger after the issuance of the Malaysian Central Bank Law No. 701/2009. The Law mentions the fatwa issued by the council is the final judgment for any different opinions among the members of the Sharia Supervisory Board (Sharia Committee) in Islamic financial institutions and is a reference for settling any Islamic economic disputes. According to Miskan, there is a strengthening role for the fatwa issued by the Sharia Advisory Council to bind the general court, in which Law of Central Bank of Malaysia No. 509/1958 Article 16B (1) (amended in 2003) stipulates that the Sharia Advisory Council decision is only binding the arbitrator, not the general court (Miskam, 2010).

Similar to the Indonesian National Sharia Council, the establishment of the Malaysian Sharia Advisory Council is also based on the legal certainty requirements for Sharia aspects in Sharia economic activities. The difference is that the establishment of the National Sharia Council is more bottom-up while the Sharia Advisory Council is more top-down. According to Ishamm Amal (2009: 34), the role of fatwa carried out by mufti in Malaysian history is always coincided with power (the sultan). In the history of the Malaysian kingdom, the mufti has been under the sultan. His role is to give advice and recommendations on all religious issues. The mufti has a fatwa committee in charge of issuing fatwas and resolving controversies. Officially, the state mufti office was on talk only after 1927. Besides the mufti office, this is also applied to the Sharia court, the Council of Islamic Religion, and state institutions (Amal: 33).

The Sharia Supervisory Board is known as the Sharia Committee in Malaysia. This committee is placed under the Islamic Financial Institutions and is recommended by the board of directors to approve by the *Bank Negara Malaysia* (BNM). Here, BNM may approve or reject the proposal. The Sharia Committee has the same function with the Sharia Supervisory Board, ensuring the Islamic Financial Institutions operations and product suitability with the fatwa issued by the Sharia Advisory Council/SAC (*Majelis Penasehat Syariah*). The committee then reports its duties to the General Meeting of Shareholders Shareholders (GMS) and the Sharia Advisory Council.

Figure 2
MPS-BNM Relation Model



The two models of fatwa institution-financial authority relation in Indonesia and Malaysia illustrate different trends. The tendency to formalize fatwas occurs in Malaysia. Here, the financial authority is more dominant than the fatwa institution, although the Sharia Advisory Council is an independent institution. In the meantime, the Indonesian model shows the independence of the fatwa institution.

Nevertheless, back when Bank Indonesia held the financial authority, the MUI-BI relation was a compromise that adopted the interests of the financial authority and the independence of the fatwa institution. The result of such compromise was the Sharia Banking Committee institution which plays a role in legalizing the National Sharia Council-Indonesian Ulema Council products.

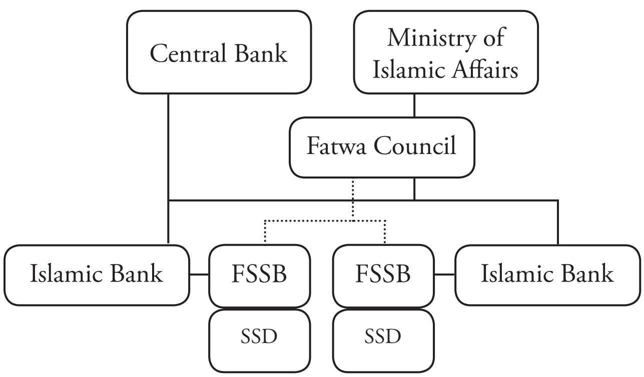
Pakistan and Bahrain place their fatwa authority in the state financial authority structure as practiced in Malaysia (Aznan Hassan, nd.). The Sharia Board is at the central bank in both countries. A Sharia Supervisory Board was formed to ensure the implementation of fatwas in Islamic Financial Institutions activities. The report on the Sharia Supervisory Board performance is submitted to the Sharia Board.

In Middle Eastern countries, the position of fatwa authority is placed under the state structure, both in the ministry structure and a separate structure recognized by the state. Here, a fatwa board is not specifically formed at the central bank or other financial authority to handle Islamic economic fatwas. The Fatwa Council in Kuwait, for instance, is under the Ministry of Waqf and Islamic Affairs structure. The same condition is found in the United Arab Emirates and Qatar. The difference is that a Higher Sharia Authority is formed in the United Arab Emirates to handle all aspects of Islamic economics. In Qatar, a Supreme Sharia Council is established under the Ministry of Waqf. The fatwa issued by the Supreme Sharia Council is used as a guideline by the Qatar Central Bank. Saudi Arabia and Oman appoint the official mufti of the countries authorized to issue fatwas in all fields related to Islamic affairs.

In these Middle Eastern countries, the authority and supervision of Islamic economic fatwa are under the Islamic Financial Institutions structure. The Fatwa and Sharia Supervisory Board/FSSB (*Hay'ah al-Fatwa wa al-Riqābah al-Shar'iyah*) is stipulated in the Central Bank of Kuwait law. The law requires every Islamic bank to have FSSB. Although FSSB is mentioned in the Central Bank Law, CBK does not have the authority to regulate it. Saudi Arabia and Oman also put FSSB in the Islamic Financial Institutions structure. The structure of FSSB includes the Sharia Council (*Amānah Al-Hay'ah Al-Shar'iyah*), the Sharia Supervisory Department (*Idārah Al-Riqābah Al-Shar'iyah*), and the Support Department (*Idārah Al-Da'm Wa Al-Tatawwur*) (al-Sabr, 2015). FSSB is appointed by General Meeting of Shareholders (GMS) and reports its activities to the GMS. Its position is similar to the Sharia Supervisory Board in Indonesia. However, the Sharia Supervisory Board has a structural relationship with the National Sharia Council, while FSSB does not have any structural relationship with the Fatwa Council. The FSSB work procedure is considered ideal as it is an independent institution assigned to oversee the principles of Sharia in Islamic Financial Institutions products and operations.

FSSB is also authorized to issue fatwas for the Islamic Financial Institutions it supervises. The supervision on the fatwa implementation is carried out by the Sharia Supervisory Department/ SSD (*Idārah al-Riqābah al-Shar'iyah*). Each FSSB in the Islamic Financial Institutions can issue its own fatwa. If a difference about the fatwa occurs among the FSSB', it refers to the fatwa issued by the Fatwa Council in the Ministry of *Waqf* and Islamic Affairs. Here, the *Fatwa* Council has the highest authority in the field of *Sharia*.

Figure 3
The Model of Sharia-Authority Councils Relation in the Middle East



The position of the Fatwa Council works if a fatwa dispute among FSSB members occurs. The decisions made by the Fatwa Council are final. They become a guideline for FSSB (Aznan Hassan).

______________ instructional and binding relationship
……………….. coordinative relationship
_._._._._._._._ relationship for certain cases

In conclusion, the authority of Islamic economic *fatwa* is divided into three models: fatwa authority in the Religious Social Institutions (Indonesia), *fatwa* authority in the Central Bank (Malaysia, Pakistan, and Bahrain), *fatwa* authority in the Sharia Supervisory Board (Kuwait, Qatar, Saudi Arabia, Oman, and the United Arab Emirates). The following table illustrates the authority details:

Table 1
Sharia Authority Arrangements

Country	**Sharia Authority**			**Final Authority**
	Sharia Authority	**Islamic Bank**	**Mass organizations**	
Indonesia	-	SSB	DSN	DSN
Malaysia	SAC	SC	-	SAC
Pakistan	Sharia Authority	SSB	-	Sharia Authority
Kuwait	-	FSSB	-	Fatwa Council
UAE	-	SSB	-	Higher Sharisa Authority
Bahrain	Sharia Authority	SSB	-	Sharia Authority
Qatar	-	SSB	-	Higher Sharia Authority

The fatwa institution and financial authority relation, as mentioned above, has weaknesses and strengths. The existence of fatwa institutions in the central bank has the advantage of boosting performances as the central bank bears resources. The *fatwas* issued by these institutions automatically becomes a legal product and is binding for all parties. In addition, the supervision conducted by the institutions is also considered more robust as regulations support it. Besides binding *fatwa*, the *fatwa* institutions have more advantages in the structure of Bank Indonesia, which according to Djamil, including effectiveness, efficiency, and independence for no tendency to side with one of the banks. Besides, the members of the *Sharia* Board are not members of the *Sharia* Supervisory Board. The decision-making process will also work faster as the members of the *Sharia* Board work full time and have adequate funding so that they are not paid by the banks concerned. Further, they have adequate mastery of the technical aspects of bank operations and authority to ask directors about any financial statements. However, the weakness of this relationship model involves *fatwa* independence. There is a concern that the *fatwa* produced is influenced by the financial authorities. Such a condition will worsen the image of the fatwa and damage the credibility of the *ulamā'*. Here, the *fatwa* is no longer independent and holds many interests that can override religious interests and benefit of the people for the benefit of the interested party. This can have detrimental effects on the *fatwa* independence. (Maksum, 2006) Al-Misri argues that the *Sharia* Board must be free from any interests of the shareholders in issuing a *fatwa*. It is devoted to religion, not economic interests. (Al-Misri, 2008: 62)

In the Indonesian context, the National Sharia Council has independence in issuing *fatwas*. In some cases, it can adjust with the proposals submitted by the authorities or make a difference; and finds a way out to compromise and meet what is expected by the authorities and to be in line with religious provisions at the same time. The *fatwa* issued by the *Sharia* Council is not justified in following the interests of certain Islamic Financial Institutions by passing the proposal and making a legal excuse (*hīlah*) and supporting the interests it expects. The purpose of a *fatwa* is to produce a valid law, not justify the law requested by the Islamic Financial Institutions and financial authorities. (Al-Miṣrī) To this end, the fatwa should not be used as a Sharia legitimacy to justify financial products and institutions, especially if the practices or activities in the institutions do not comply with the *Sharia*. In addition, the fatwa should not be used as a means of correcting any interests of the Islamic Financial Institutions, both true and false interests.

The independence of the National Sharia Council is an advantage that needs to be maintained. The Council is responsible for Islamic economic, not merely economic in general. The fatwa it issues is generally accepted by other ulema considering it is collective *ijtihād* (independent interpretation) involving various *ulamā'* or scholars from different backgrounds. Theoretically, there are three types of country addressing the issue of bank supervision: (1) the country which continues to place the bank supervision at the central bank, with independent and robust authority, (2) the country which initially separated the monetary authority from the bank supervisory authority and has then integrated it with the monetary authority domain. In the end, it is similar to the country in point 1, and (3) the country which initially placed the bank supervision at the central bank, and has then separated it. In the end, the bank supervision authority is carried out by a separate government body. In Indonesia, Islamic bank supervision is separated from Bank Indonesia and is handled by the MUI. (Gandapradja, 2004)

The issues faced by the National Sharia Council include the possibility of a conflict of interest with the Islamic Financial Institutions, as some members of the National Sharia Council are the members of the Sharia Supervisory Board. Other issues include slow decision making of fatwa due to part-time work, lack of financial support, and the absence of authority for the National Sharia Council to audit the Islamic Financial Institutions. (Djamil) Here, the National Sharia Council relies on the Sharia Supervisory Board it recommends overseeing the implementation of Sharia principles in the Islamic Financial Institutions. If, for example, the Sharia Supervisory Board finds an issue, the National Sharia Council will conduct a review on the institutions and make a recommendation.

The Position of the Sharia Supervisory Board

The Sharia Supervisory Board existence in Islamic Financial Institutions is recognized in all countries that practice Sharia finance. The Board plays a role in ensuring financial management to comply with the Sharia principles. In addition, this becomes the main character and differentiator for the Islamic Financial Institutions from Conventional Financial Institutions. Article 93 of the Kuwait Central Bank Law states that the Fatwa and Sharia Supervisory Board (FSSB) is an independent institution. Its existence must be stated in the Articles of Association and Bylaws of the Islamic Financial

Institutions, regulating its structure, authority and duties. If different opinions concerning Sharia issues among FSSB, the board of directors shall bring the issues to the Fatwa Council of the Ministry of *Waqf* and Islamic Affairs. The decision made by the Fatwa Council is final. Further, FSSB makes an annual report for the General Meeting of Shareholders regarding the suitability of the Islamic Financial Institutions activities with the Sharia principles. The report consists of Sharia opinions and other necessary opinions and becomes part of the annual report of Islamic banks.

The Sharia Committee in Malaysia is proposed by the board of directors and ratified by BNM. In Indonesia and Kuwait, the Sharia Supervisory Boards are appointed by the General Meeting of Shareholders. The Indonesian Ulama Council basically recommends the appointed boards. (Article 32 of Law No. 21/2008) The number of Sharia supervisors in Malaysia and Kuwait is limited to 3 people. In Indonesia, there are at least two members of the Sharia Supervisory Boards in each Islamic Financial Institution, one of whom is the chairman.

Indonesian laws and regulations do not specify the duties, rights and restrictions of the Sharia Supervisory Board. Its primary duty is to provide advice and recommendations to directors and oversee the Bank activities to comply with the Sharia principles. Besides, the Board also becomes a mediator between the Islamic Financial Institutions and the National Sharia Council-MUI. The Indonesian Ulama Council Organizational Regulation No: Kep-407/2016 Article 3 on the Articles of Association and Bylaws of the National Sharia Council mentions the duties of the Sharia Supervisory Board. Its duties include; supervising the products and business activities of Islamic Financial Institutions, Sharia Business Institutions (SBI), and Sharia economic institutions (SEI) in order to comply with the Sharia rules and principles mentioned by the National Sharia Council-MUI. Besides supervising, it also delivers Sharia opinions on requests/queries and/or findings at its supervised institutions, and report the supervision results to the National Sharia Council-MUI twice a year.

Malaysia and Kuwait regulate the duties and authority of the Sharia Supervisory Board in more details. In Malaysia, for example, its members come from individual elements, not institutions, agencies or companies. Its candidates must fulfill some qualifications, including knowledge, expertise, and experience in Islamic Jurisprudence or Islamic contract). The number of its members in each Islamic Financial Institution is at least three people. One member is appointed to support roles and functions of Islamic Financial Institution, preferably the one having knowledge in Sharia to act as a secretariat team. (BNM, 2002)

The Sharia Supervisory Board members are expected to be actively and dynamically involved in discussing and dealing with the Sharia issues. As mentioned above, the Board's primary duty is to provide advice on Sharia aspects for the Islamic Financial Institutions operating activities. This duty is carried out to ensure that all activities are in accordance with the Sharia principles. Another duty is to ratify the Sharia compliance manual/guideline. Each Islamic Financial Institution is expected to have and follow this guideline. The guideline thoroughly illustrates the chapters used as references for advice issued by the Sharia Supervisory Board based on the meeting results with directors. The Sharia Supervisory Board itself ratifies the guideline and approves as well as validates related documents. To ensure that a product has already complied with the Sharia principles, it certifies the followings; first, the terms and conditions for submitting forms, contractual agreements, or other legal documents used to carry out transactions; and second, product guidelines, marketing advertisements, sales illustrations and brochures used to describe products. In some instances, the Sharia Supervisory Board accompanies other parties when asked for advice in the field of Sharia. Other parties related to the board are legal consultants and auditors who may require Sharia advice from the Sharia Committee. Here, the Sharia compliance is expected to be fully implemented in Islamic Financial Institutions.

The Sharia Supervisory Board is also assigned to advise on Sharia aspects to the Sharia Advisory Council. It is also required to advise the Islamic Financial Institutions to consult with the Sharia Advisory Council concerning any Sharia aspects that have not been approved. The Sharia Advisory Board makes Sharia statements and records opinions issued. In some instances, the Board prepares Sharia records on the followings: first, the Islamic Financial Institutions seek advice and recommendations from the Sharia Supervisory Board. Second, the Islamic Financial Institutions proposes a new product approval to Bank Negara Malaysia that needs a guideline for the product.

The Sharia Supervisory Board helps the Sharia Supervisory Council give advice. The Board must explain the related Sharia issues to its recommendations for policymaking. This must be supported by legal arguments from trusted sources. In the end, it is expected to help the Sharia Supervisory Council illustrate various products needed by the Islamic Financial Institutions. It must also guarantee that the Sharia Supervisory Council policies are applicable. (BNM, 2002)

Besides regulating the duties of Sharia Supervisory Board, Bank Negara Malaysia also sets obligations for the Islamic Financial Institutions, one of which is to report the Sharia issues to the Sharia Supervisory Board. These institutions also seek and request for Sharia views to deal with any arising Sharia issues. This request is proposed by entirely mentioning all related issues including existing processes, necessary documents, and other important information to facilitate discussion at the Sharia Supervisory Board level. In addition, the Islamic Financial Institutions are obliged to implement the advice delivered by the Sharia Supervisory Board, set standards to implement the advice, ensure that all product documents have been validated, and have Sharia compliance manual which is also approved by the Sharia Supervisory Board. Here, they need to give access to the documents needed. They fully support the board to get reports, transactions, manuals, and other information needed to implement its duties.

For this reason, the Sharia Supervisory Board members are exempt from the company's confidentiality provisions. The Islamic Financial Institutions must provide adequate resources, budgets, independent expert consultants, materials, and training, introduce them to the company's business and operations, and provide adequate salaries for them. (BNM, 2002) The reports made by the Sharia Supervisory Board are submitted to the Board of Directors in the Islamic Financial Institutions. This is to show the position of the Sharia Committee as an independent institution.

BNM sets a restriction and possibly revokes the Sharia Supervisory Board. This is not found in regulations in Indonesia. Bank Negara

Malaysia can revoke the Sharia Committee members in Malaysia if they commit the following: taking actions that can reduce their eligibility to serve as a Sharia Committee member; being unable to attend the 75% of meeting schedules in a year without any justifying reasons; being declared as bankrupt or sued for bankruptcy; committing serious crimes or other crimes charged with a year-or-more sentence; and being a citizen who is detained, monitored, prohibited from residing, or exiled (BNM, 2002). Indonesia has not explicitly regulated the revocation of the Sharia Supervisory Board members. Inactive members are even met in some Islamic Financial Institutions.

Several restrictions limit the Sharia Supervisory Board. First, members of the Sharia Advisory Council are prohibited from becoming members of the Sharia Committee. On the contrary, members of the National Sharia Council are generally members of the Sharia Supervisory Board in Indonesia. This is to avoid conflicts of interest. (Djamil) Second, members of the Sharia Supervisory Board are not allowed to be members of other Sharia Supervisory Boards in the same Islamic financial institution to avoid conflicts of interest and confidentiality. A member of the Sharia Supervisory Board in Islamic banking cannot be a member of the Sharia Supervisory Board in another Islamic bank. He can only be a member of the Sharia Supervisory Board in Islamic insurance and other Islamic financial institutions. (BNM, 2002) In contrast, there are members of the Sharia Supervisory Board in Indonesia. They also work in two or more Islamic banks and are also members of the Sharia Supervisory Board in other Islamic Financial Institutions.

The duties of the Fatwa and Sharia Supervisory Board (FSSB) in Kuwait includes issuing a fatwa, supervising, and holding a secretariat. This board is in a particular structure in the Islamic Financial Institutions. It is directly responsible to the General Meeting of Shareholders and is in the structure above the Islamic Financial Institution directors. This position is to provide convenience and certainty to implement its duties effectively and efficiently.

The FSSB' primary duty is to make an annual report on the suitability of Sharia in the Islamic Financial Institution activities to the GMS, guiding the Sharia Supervisory Department (SSD) to run its duties and functions; assisting Islamic Financial Institution divisions, and organizing Sharia courses for employees in order to understand Sharia aspects in carrying out their duties. The FSSB can propose to hold seminars and training on Islamic economics and other duties to the Board of Directors. It holds at least 12 meetings a year. The meetings are conducted at the Islamic Financial Institution headquarters in Kuwait. Here, the FSSB' meeting decision is binding for the Islamic Financial Institutions. Its members must have competence and experience in the field of Islamic contract.

The Sharia Supervisory Department (SSD) is an essential part of the Islamic Financial Institution structure. The Department is assigned to oversee the implementation of FSSB fatwas and decisions in the Islamic Financial Institution products and operations. It also has duties to direct the implementation of the fatwas and answer questions about the understanding (interpretation) of the FSSB fatwas and decisions. In general, its duty is to be responsible for the Sharia suitability in the Islamic Financial Institution activities. In addition, it is responsible for the FSSB and Islamic Financial Institution management concerning deficiencies and errors in interpreting the fatwas and provisions issued by the FSSB. Structurally, it consists of two units; Sharia Research and Development and Sharia Secretariat and Audit. These two units have policies and procedures that must be followed. They have published a five-volume *fatwa* book.

The above illustration shows the Sharia Supervisory Board governance in Malaysia and Middle Eastern countries are more detailed than the one in Indonesia. The governance includes system, procedures, rights and responsibilities, and institutional support. The Sharia Supervisory Board is supported by a team of assistants who oversee the implementation of Sharia principles in the Islamic Financial Institutions. In Indonesia, the support team depends on the policy of each Islamic Financial Institution.

Conclusions

In short, each country has its own uniqueness in regulating the relationship between the Sharia council and the financial authority. The relationship between the National Sharia Council-Indonesian Ulama Council and state authority proves the power of civil society before the state. The relationship between these two entities is always dynamic and continues to improve, along with the ongoing socio-political situations. In Indonesia, the National Sharia Council is an independent institution outside the state structure, while the Sharia Council in Malaysia and the Middle Eastern countries are part of the state. Such a relationship has an impact on independence, workability, budget support, and relations with Islamic financial institutions.

The primary duties of the Sharia Council are to establish an Islamic economic fatwa and oversee its implementation in Islamic financial institutions. These two duties are carried out by one institution in some come countries such as Kuwait, and two institutions such as in Malaysia and Indonesia. The Islamic economic fatwa is the authority of the National Sharia Council and the Sharia Advisory Council, while the Sharia supervision is under the authority of the Sharia Supervisory Board. All countries agree on the existence of the Sharia Supervisory Board as an institution that must exist in Islamic financial institutions.

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