Sharia Supervisory Board in the Limited Company Based Shari'a Banking

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Abstract

The Law Number 21 of 2008 concerning Sharia Banking has required every Sharia Bank and Sharia Business Unit in the Banks to form a Sharia Supervisory Board. In addition, the appointment and duties of the Sharia Supervisory Board has been also explained in addition to the appointment and duties of controlling shareholders, the board of commissioners and directors. However, the Law Number 40 of 2007 concerning Limited Liability Companies such as the legal basis for a Sharia Bank which is a limited liability company, has not regulate the Sharia Supervisory Board as a corporate organ. The inconsistency in two laws raises questions; first, how did the Sharia Supervisory Board carry out its functions and duties when viewed from the aspect of its position in the organizational structure of a sharia bank? Second, Could the Sharia Supervisory Board carry out its functions and duties optimally? To answer these questions, I uses a normative juridical method to describe the rules governing the Sharia Supervisory Board. A qualitative approach is used to describe the phenomena of the Sharia Supervisory Board in carrying out its roles and functions. The data consist of the documents, surveys and adequate references. To see the position of the Sharia Supervisory Board in Islamic banking, I uses an organizational structure theory approach and fiduciary duty. The conclution is that the Sharia Supervisory Board does not have a position that has an integral coordination relationship with other parts of the Islamic bank organizational structure. This situation has made the Sharia Supervisory Board unable to carry out its functions and roles to the fullest. The author recommends that the Sharia Supervisory Board is one of the company organs that must be included in the Limited Liability Company rules.

Keywords: Limited Company, Company Organs, Sharia Supervisory Board, Organization structure, fiduciary of duty, and Sharia Principles

I. Introduction

When one of the contents of the petition of the applicant from candidate 02 in the judge of the presidential dispute in the Constitutional Court contains the invalidity of the nomination of Ma'ruf Amin as Vice President in pair 01 Jokowi Ma'ruf, then allegations arise that Ma'ruf Amin has violated Article 227 letter p jo 229 verse (1) letter g of Law No. No. 7 of 2017 concerning Elections. The allegation was delivered because when Ma'ruf Amin was nominating as Vice President, he was serving as Sharia Supervisory Board in the both Bank Syariah Mandiri and BNI Syariah.

The next problem develops in the status of BSM and BNI Syaiah whether they are BUMN or not. Because the two Shari'a Banking companies are subsidiaries, based on the Supreme Court Decree No. 21 of 2017 concerning BUMN be stipulated that the subsidiaries are not included as BUMN. It can be understood that Ma'ruf Amin is not a BUMN official or employee.

Judge's legal considerations in Decision No. 01 / PHPU-PRES / XVII / 2019 related to the request explains that although the position of Sharia Supervisory Board is equal to the Directors and commissioners as a corporate organ in addition to the General Meeting of Shareholders, however, the Sharia Supervisory Board is included as a party not affiliated with Shari'a Banking. it contributes to providing supervisory services such as consultants and other auditors. Therefore, it is not included in the company's organs.

Although Article 32 paragraph (1) of Law No. 21 of 2008 concerning Shari'a Banking explains that Sharia Supervisory Board must be formed in Sharia Banks and Conventional Commercial Banks that have the Sharia Business Unit, paragraph (2) jo Article 109 paragraph (2) of Law No. 40 of 2007 confirmed that it was appointed by the General Meeting of Shareholders on the recommendation of the Indonesian Ulama Council, even Article 109 paragraph (1) of Law No. 40 of 2007 concerning limited liability companies explains that companies that carry out business lawivities based on sharia principles in addition to having a Board of Commissioners are required to have a Sharia Supervisory Board , however, it is not included in the Company's organs. Article 1 paragraph (2) of Law No. 40 of 2007 explains that the company's organs are only the General Meeting of Shareholders, the Board of Directors and the Board of Commissioners.

This legal phenomenon does not provide the legal certainty for the Sharia Supervisory Board in carrying out its roles, functions and duties. Gustav Radbruch explained that legal certainty (Rechtssicherheit) is one of the principles included in the basic values of law besides justice (Gerechtigkeit) and legal benefit (Zweckmassigkeit).[1] Therefore, this principle requires that the law be made definitively in writing so that the legal components regulated in a rule can carry out their rights and obligations as well as their roles and functions properly and appropriately. In addition, the legal certainty also provides protection to justice seekers (yustisiabel) against arbitrary actions.

[1] Gustav Radbruch, *einführung in die rechtswissenschaften*, quoted from the book Satjipto Rahardjo, Law Science, Citra Aditya Bakti: Bandung, 2012, p. 19

This issue raises several questions. First, how does the Sharia Supervisory Board carry out its functions and duties when viewed from the aspect of its position in the organizational structure of a sharia bank? Second, is the Sharia Supervisory Board able to carry out its functions and duties optimally? These questions led the author to review and study the position of the Sharia Supervisory Board in Islamic banking in relation to corporate law.

Hidayatullah described the roles and responsibilities of the Sharia Supervisory Board in Islamic financial institutions, namely Sharia Banks and Sharia Capital Markets based on several laws and regulations. In addition, this article also describes that it is not included in the company's organs while the Board of Commissioners is one of the company's organs even though they both have the same duties in terms of supervision. The final conclusion recommends that the supervisory duties of Islamic financial institutions should be unified so that SHARIA SUPERVISORY BOARD and the Board of Commissioners have the same position as company organs.[2] In this article, apart from describing the rules governing the Sharia Supervisory Board, the author also analyzes the it's position in the organizational structure of Sharia Banks using the organizational structure approach and Fiduciary Duty theory so that it is deemed worthy of being equalized with the Board of Commissioners as a corporate organ in terms of supervise the performance of the Board of Directors in the area of Sharia compliance

B. Methodology

This article is written using a juridical normative method to describe the rules governing the Sharia Supervisory Board and how it is implemented. The qualitative approach is used to describe the its phenomena carrying out roles and functions. The data used are in the form of documents, surveys and interviews with the National Sharia Board and several people who work as the Sharia Supervisory Board.

C. Sharia supervision Board in the Legislation

Article 109 paragraph (1 and 2) of Law No. 40 of 2007 concerning Limited Liability Companies had explained that companies that carry out business lawivities based on sharia principles in addition to having a Board of Commissioners must have a Sharia Supervisory Board consisting of one or more shariah experts who are appointed by the General Meeting of Shareholders on the recommendation of the Indonesian Ulema Council. In addition, It has an important role in Islamic Banking. C.P Chaplin explained that role is an individual function or role in a group and institution. The Role is also a function or behavior that is expected from him by the individual.[3] Paragraph 3) article 109 of the Law had explained the duties and authority of to provide advice and advice to the Directors and supervise the lawivities of the Company to be in accordance with sharia principles. The same provisions as paragraph (3) are also

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[2] Hidayatullah, *The Position and Responsibility of Sharia Seupervisory Board in The Company Organs*, 2017

[3] C. P. Chaplin, *Dictionary of Phsychology*, Kartini Kartono et al. (terj), Complete Psychology Dictionary (Jakarta: 1981, PT RajaGrafindo Persada), p. 439

found in article 32 paragraph (3) of Law No. 21 of 2008 concerning Shari'a Banking.

In fact, the role and authority mandated by the Sharia Supervisory Board is one indicators of the implementation of Good Corporate Covernant in Islamic banking institutions because it can conduct self-assessment in sharia compliance. This Good Corporate Governance has been regulated through Bank Indonesia Regulation Number 11/33 / PBI / 2009 which is further complemented by a Bank Indonesia Circular concerning the Implementation of Good Corporate Governance in Sharia Commercial Banks and Sharia Business Units. Its Duties and authorities as in Article 109 paragraph (3) of Law no. 40 of 2007 and article 32 paragraph (3) of Law no. 21 of 2008 was also given to the Board of Commissioners. Article 108 paragraph (1 and 2) Law no. 40 of 2007 had explained that the Board of Commissioners supervises management policies, the course of management in general, both regarding the Company and the Company's business, and provides advice to the Board of Directors in order to safeguard the interests of the Company so that it is in line with the Company's aims and objectives. The difference between the two is that it focuses on the supervision of sharia principles while the Board of Commissioners focuses on individual aims and objectives as stated in the company's Articles of Association / Bylaws.

The Supervision of a bank consists of internal and external supervision. Terry explained that internal supervision is the process of determining standards for supervision, comparing work results with standards, and ensuring differences if any exist, as well as correcting unwanted deviations by making improvements.[4] Meanwhile, external supervision includes the productivity of service quality, responsiveness, responsibility and accountability.[5] The other hand, there is also direct supervision and indirect supervision. Article 27 of Law no. 23 of 1992 which has been amended by Law no. 3 of 2004 concerning Bank Indonesia had explained that direct supervision is a form of supervision accompanied by corrective actions while indirect supervision is carried out in the form of early supervision through research, analysis, evaluation of reports. Meanwhile, the supervision carried out in a bank consist of four of powers namely: power to license, power of regulate, authority to control or supervise or power of control, authority to impose sanctions or power of impose sanction.[6]

If you pay attention to supervision from the internal and experimental aspects as well as direct and indirect supervision, the form of supervision under its authority includes internal supervision as well as supervision and inspection by internal auditors as well as direct supervision. This imperative is due to the fact that supervision on sharia principles carried out by the Sharia Supervisory Board and audits of financial performance by internal auditors are directly attached to

[4] Terry, George. *Principles of Management Illinois*: 1960, Richard D. Irwin Inc. Homewood.

[5] Agus Dwiyanto., *Reform of Public Bureaucratic in Indonesia.* Yogyakarta: 2006, Gadjah Mada University Press

[6] Hermansyah, *Indonesian National Banking Law,* (Jakarta; Kencana Prenadamedia Group, 2014), 8th edition, p. 175

the products, operations and activities of sharia banking. Meanwhile, external supervision of Islamic banking is the authority of the Financial Services Authority as regulated in Article 7-9 of Law no. 21 of 2011 concerning the Financial Services Authority.

The points related to the its duties and authorities have been regulated in Bank Indonesia Regulation Number 6/17 / PBI / 2004 dated 1 July 2004 concerning People's Credit based on Sharia Principles, Bank Indonesia Regulation No.6 / 24 / PBI / 2004 dated 14 October 2004 concerning Commercial Banks carrying out business activities based on Sharia Principles as amended by Bank Indonesia Regulations No.7 / 35 / PBI / 2005 dated 29 September 2005 concerning Commercial Banks conducting business activities based on Sharia Principles, and Bank Indonesia Regulation No.8 / 3 / PBI / 2006 dated 30 January 2006 concerning changes in the business activities of Commercial Banks Conventional becomes a Commercial Bank carrying out business activities based on Sharia Principles and Opening of Bank Offices carrying out business activities based on Sharia Principles by Conventional Commercial Banks. Article 27 paragraph 1 Bank Indonesia Regulation No. 6/24 / PBI / 2004 affirms some of the its duties, powers and responsibilities namely first, ensuring and supervising the suitability of the Bank's operational activities against the fatwas issued by the National Sharia Council. Second, to assess the sharia aspects of operational guidelines, and products issued by the Bank. Third, provide an opinion from the sharia aspect of the Bank's overall operational implementation in the Bank's published reports. Fourth, reviewing new products and services for which there is no fatwa to request a fatwa from the National Sharia Council. Fifth, submit reports on the results of sharia supervision at least every 6 (six) months to the Board of Directors, Commissioners, National Sharia Board and Bank Indonesia. In addition, Article 29 paragraph (1) point f of Bank Indonesia Regulation No. 6/17 / PBI / 2004 added the duties and powers of DPS to request documents and direct explanations from the work unit of the Sharia Rural Bank and participate in internal discussions including the discussion of the financing committee.

D. Sharia Principles in Banking

The most basic Islamic teaching in regulating all aspects of life is Tauhid (the doctrine oh the unity of Allah). In the Islamic economic system, the teachings of monotheism are revealed to be sharia principles that come from the Al-Quran, Sunnah, Ijma 'and Qiyas. These principles contain the values of balance (tawazun), benefit (maslahah), justice (al-adl), togetherness (syirkah), honesty (siddiq), mandate, professional (fathonah), and transparency (tabligh).

Sharia banking is one of the elements in the Islamic economic system. Islamic principles that are widely used in Islamic banks based on expert opinion are Mudharabah, Musyarakah, murbahah, Bai'u Mu'ajjal, ijara wa-iktina, qard hasan, wadiah and rahn. These principles are classified into four, namely 1. The principle of profit and loss sharing consists of mudharabah and musyarkah 2. The principle based on fees or charges consists of murabahah, bai'u muajjal, ijara and ijarah wa-iktina 3. The principle of free service is qard hasan and 4. Ancillary supporting principles, namely wadiah and rahn.[7]

In technical matters, Islamic banking operations are prohibited from containing elements of usury, gharar, maysir, Zhulm, and riswah. Riba in the context of the financial industry is profit without effort or profit that increases the principal amount without any effort.[8] Technically, Riba is defined as a banking system that does not apply interest.

Mustafa Zarqa explained that gharar is a sale without knowing its exact existence and characteristics and its risk nature leads to gamling. Al-Darir explained that there are four conditions for gharar to cancel the contract: 1. Gharar must overdo it to cancel the contract. Thus, a minor uncertainty regarding an object has no effect on the contract. 2. The potentially affected contract must be a commutative financial contract. Giving gifts (gift) randomly is valid 3. For gharar who cancels the contract must affect the principal components. So the sale of pregnant cows is allowed. 4. If the commutative contract contains excessive gharar then the contract is considered invalid.[9]

Gharar in business means carrying out business blindly without adequate knowledge or carrying out very risky transactions. The presence of the gharar element in the contract makes the object of the contract unknown or hidden. Examples of transactions that contain gharar elements: 1. Selling a broken machine without informing the buyer 2. Selling goods that cannot be delivered 3. Selling items that are not clearly described, for example shop owners selling clothes of unknown size 4. Selling without specifying mass selling price of goods at the prevailing price 5. Making a conditional contract which is not known in time. 6. Selling goods with the wrong description 7. Selling goods without allowing the buyer to check it properly.[10]

Article 1 Paragraph (12) of Law No. 21/2008 explains that Sharia principles are Islamic legal principles in banking activities based on fatwas issued by institutions that have the authority to determine fatwas in the field of sharia. It can be understood that the sharia principles referred to in this article are contracts that meet standards based on the fatwas of the Sharia Supervisory Board and transactions that do not contain usury, gharar, maysir, zhulm and riswah.

E. Position of Sharia Supervision Board in Company Organizational Structure

Article 108 paragraph (1) da (2) and article 109 paragraph (3) of Law No. 40 of 2007 stipulates that the Sharia Supervisory Board and Commissioners have the same duties in terms of overseeing the objectives, objectives and principles of sharia and giving advice to the Directors for the benefit of the Company. In flaw, Article 29 paragraph (1) point f Bank Indonesia Regulation No. 6/17 / PBI / 2004 added its duty and authority to request documents and explanations directly

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[7] Mei Pheng Lee dan Ivan Jeron Detta, *Islamic Banking and Finance Law,* (Selangor Darul Ihsan: PEARSON MALAYSIA SDN, BHD, 2007), 1st edition, 1, p. 39 and 47

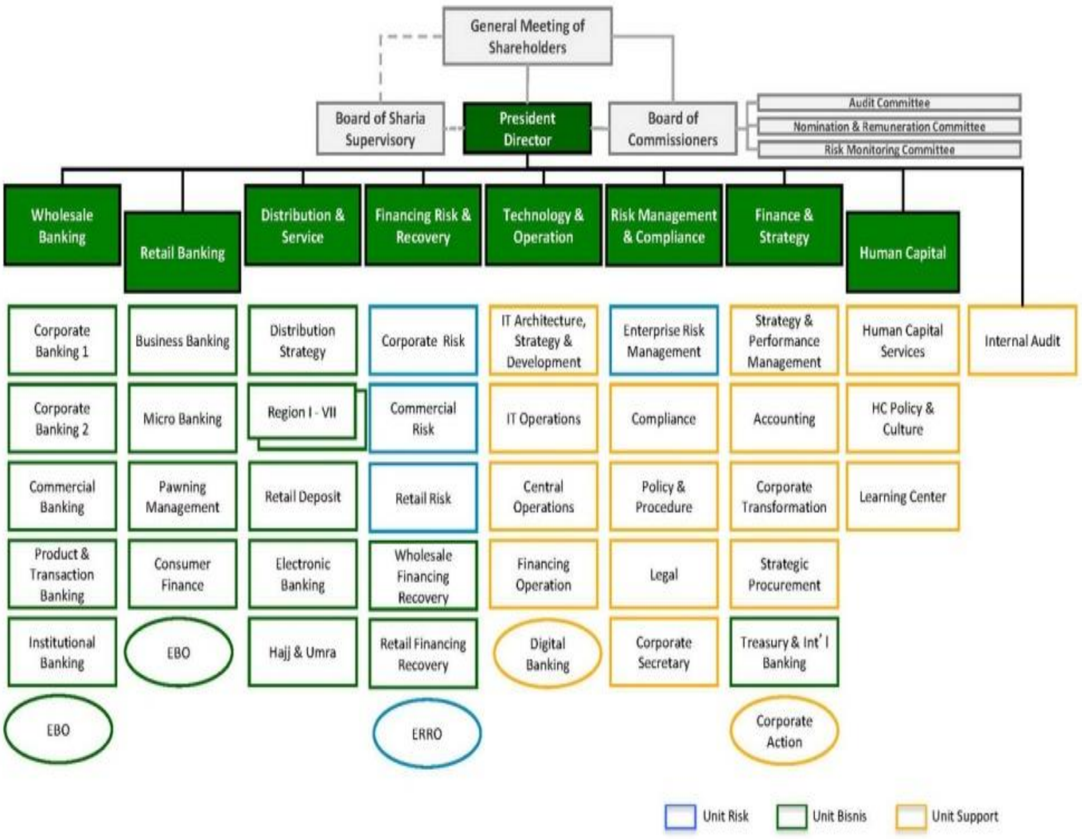
[8] Kamal Khir, Lokesh Guptam Bala Shanmugam, *Islamic Banking : A Practical Perspective,* (Selangor darel Ihsan; PEARSON MALAYSIA. SDN. BHD, 2008), 1st Edition , p. 28

[9] Mahmoud A. El-Gamal, *Islamic Finance : Law, Economics , and Parctice,* (New York: Cambridge University Press, 2009), p. 58-59

[10] Kamal Khir, ...h. 39

from the from the work unit of Sharia Rural Bank and participate in internal discussions including those in the financing committee discussions. This task strengthens the position of as an internal part of Shari'a B the Sharia Supervisory Board anks. However, if observed from the aspect of the organizational structure of an Shari'a Banki company, there is an imbalance in the position in carrying out the roles, functions and authorities of each. This inequality is even more clear when Article 27 paragraph 1 PBI No. 6/24 / PBI / 2004 describes one of the its duties and authority is to submit a report on the results of sharia supervision at least every six months to the Directors, Commissioners, National Sharia Board and Bank Indonesia. This article can inconsistently weaken the its position of which is in line with the commissioners as supervisors of the work of the Directors.

The following is an example chart or organizational structure of an Shari'a Banki with a limited liability company:



If the organizational structure of Shari'a Banks is analyzed by using the theory of James AF Stoner and Wankel (Stoner: 1993), the Sharia Supervisory Board position can be analyzed based on four elements, namely: first, Specialization of lawivities for individual tasks and working groups in organizations. departmental tasks such as this are an absolute necessity so that overlapping tasks do not occur.This structure, does not yet reflect the specialization of lawivities or division of work directly related to sharia principles such as in the aspects of sharia contrlaws, there are only legal units below the direct by risk management Contrlaws in Shari'a Bank are designed directly by legal officers in the legal department, itdoes not have a coordinating line connecting it with the legal unit.

Second, the standardization of lawivitie is a procedure used by an organization to guarantee the predictability of its lawivities. Making a standard means making the lawivities and work uniform and abiding by the principle. In the structure, the Sharia Supervisory Board is connected to the General Meeting of Shareholders and the Board of Directors only by dotted and indecisive lines. The relationship between the Sharia Supervisory Board and the General Meeting of Shareholders and the Board of Directors is not like the relationship between the Board of Commissioners and the General Meeting of Shareholders and the Board of Directors which is connected by a clear line. As a result, it work standards are not well formatted so that it does not allow it to carry out their duties as an institution that guarantees and ensures sharia compliance for Shari'a Bank. The results of Mustafa Khamal's research on the Sharia Supervisory Board in one of the sharia banks explained that a). it has adequate but weak Islamic legal competence in the economic and banking fields. b). The implementation of supervision by it has not been comprehensive as stipulated in several Laws and regulations although the supervision has been conducted periodically but is sporadic in random methods. So supervision has not been done comprehensively. c). it is not focused and does not have much time to conduct oversight because of dual positions. Whereas Shari'a Bank as companies that meet the standards of good corporate governant adhere to a culture of discipline including time discipline. The intensity of the its presence is needed to carry out monitoring to run well, measured and effective. Loose supervision allows violations, manipulations, and business prlawices that are not in accordance with sharia principles. d). It is in Shari'a Bank do not have Standard Operation Prosedure as work guidelines.

Third, the coordination of lawivities is needed in order to integrate all lawivities and functions of sub-organizations from various departments and sections within the organization, to create harmony in the steps of existing units in achieving organizational goals effectively and efficiently. The its position in a different structure from the Board of Commissioners in terms of supervising the work of directors does not show a balanced pattern of coordination. In addition, there is also no structural line in the structure connecting Sharia Supervisory Board with the legal unit. Shari'a Banking business contrlaws formatted by legal officers cannot be monitored and their willingness is guaranteed by Sharia Supervisory Board, as one of the its duties and authority is to assess and ensure that Shari'a Banking lawivities meet sharia principles.

Fourth Centralization and Decentralization of decision making refers to the location of the decision making authority. This model of syraiah bank organizational structure, decision making is not centralistic but decentralized. The style of decision making is distributed to each member under the board of directors. If each manager makes business decisions in accordance with his field of work, does not meet or contravene Islamic principles, based on this organizational structure, it cannot conduct direct supervision because there is no line of coordination that connects the Sharia Supervisory Board with all these work units. Fourth Centralization and Decentralization of decision making refers to the location of the decision making authority. This model of syraiah bank organizational structure, decision making is not centralistic but decentralized. The style of decision making is distributed to each member under the board of directors. If each manager makes business decisions in accordance with his field of work, does not meet or contravene Islamic principles, based on this organizational structure, it cannot conduct direct supervision because there is no line of coordination that connects it with all these work units. direct supervision because there is no line of coordination that connects it with all these work units.

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F. Position of Sharia Supervisory Board in Perspective of Fiduciary Duty Theory

Fiduciary Duty is the responsibility of directors as full responsibility in achieving the goals and objectives of the company. The duties and obligations of the Board of Directors as stipulated in the legislation and the Company's Articles of Association / by Laws as known as statutory duties are carried out based on good faith and the principle of prudence (Manuel G Velasquez: 2002). The Ultra Vires doctrine in company Law provides guidance that directors in carrying out their duties and obligations must not exceed the rules outlined. If there are violations and deviations from the duties and obligations that cause harm to the company's stakeholders, then the Piercing the Corporate Veil doctrine applies.

Fiduciary Duti which is adhered to by Law No. 40 of 2007 concerning Limited Liability Companies has expanded its meaning as the duties and responsibilities of the Board of Commissioners whose task is to oversee the duties of the Board of Directors in achieving the goals and objectives of the Company as outlined Articles of Association / by Laws. If the Ultra Vires Doctrine is violated by the Directors or there is a loss that is considered due to the negligence or conflict of interest of the Directors, then the losses incurred are borne jointly by all the management of the company namely the Directors and the Board of Commissioners (Zainal Asikin: 2016)

Specifically for sharia companies such as Shari'a Bank, the supervisory function by the Board of Commissioners is also distributed to the Sharia Supervisory Board. It is understood that the Board of Commissioners and the

Sharia Supervisory Board are an important part of the Board of Directors in responsible for corporate performance. If there is a loss experienced by Shari'a Banki company stakeholders such as due to legal risk as in some cases of Lawsuits over the cancellation of the contrlaw because it is contrary to Islamic principles, in theory Piercing the Corporate Veil, the Board of Commissioners and the Sharia Supervisory Board are also responsible for the risk of loss. Because it is not included in the company's organs as in Law No. 40 of 2007 and the its position in the company's organizational structure reflects the reduction of its duties and authority that has been regulated in legislation, it cannot carry out their duties and responsibilities in a good work coordination relationship. Under these conditions, it does not include parts of companies or company organs that have Fiduciary Duty responsibilities such as Directors and Board of Commissioners. That is, if there are Stakehorlders losses caused by violations of the Ultra Vires doctrine such as the risk in the case of a contrlaw cancellation because it is not in accordance with the fatwa of the National Sharia Board - Indonesia Council 0f Ulema, the Sharia Supervisory Board does not participate in bearing the joint loss of the Board of Directors and the Board of Commissioners.

G. Sharia Compliance of Sharia Bank in Indonesia

The contradiction of some of these rules has implications for weakening the position of the Sharia Supervisory Board in monitoring sharia compliance. It is not uncommon to find several contracts in Islamic banks that do not comply with what has been stipulated in the fatwa of the National Sharia Council, such as the plaintiff's lawsuit at the Religious Court which sued the cancellation of the agreed contract. Although at first it was a case of default but in the end it was converted to a case against the law.[11] There are several examples of cases of default that were converted to cases of illegal actions, namely decision No. No.284 / Pdt.G / 2006 / PA.Bkt. The Bukit Tinggi Religious Court judge decided case No. 284 / Pdt.G / 2006 / PA.Bkt regarding the murābaḥah contract agreement made by the customer with the Islamic bank is null and void because the implementation and application of the murābaḥah contract at Islamic banks deviates from the fatwa of the National Sharia Council No. 4 of 2000 regarding murabahah.[12]

Supreme Court decision Number 88 K / Ag / 2016 which decided the case between Kiki Damayanti Yahya and Hamidah and PT. Bank Syariah Mega Indonesia Branch Mega Mitra Unit Medan Kampung Lalang and the Government of the Republic of Indonesia cq. Ministry of Finance of the Republic of Indonesia cq. Director General of Accounts Receivable and auctions Medan Regional Office cq. State Receivables and Auction Service Office Medan. One of the plaintiffs'

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[11] Acts against the law are regulated in Article 1365 of the Book of Law that states that every act against the law and brings harm to others, obliges the person who caused the loss due to his mistake to compensate for the loss. Munir Fuady, Actions against the Law: A Contemporary Approach, (Bandung; PT. Citra Aditya Bakti, 2002

[12]Alfin Fitriana, Analysis of Sharia Economic Law of the Murabahah Akad Case in the Bukit Tinggi Religious Court Decision No. 284 / Pdt.G / 2006 / Pa.Bkt, Thesis of Muamalah Department, Sharia Faculty IAIN Ponorogo, ,http://etheses.iainponorogo.ac.id/3359/1/pdf%20alfin.pdf

demands is to cancel the Deed 10 dated 5 February 2010 and the wakalah contract Number 012/30175 / PW02 / 10 dated 5 February 2010. The Supreme Court decision Number 48 PK / AG / 2009 which decided the case between Efendi Bin Rajab and Fitri Effendi with PT. Bukopin Bank Syariah Bukit Tinggi Branch and the Government of the Republic of Indonesia, Cq. Ministry of Finance cq. Director General of Accounts Receivable and Auction Regional Office 1 Medan cq. The Bukit Tinggi State Accounts Receivable and Auction Service Office also canceled Murabahah's contract

In addition, there are several decisions which one of the demands is the same as the previous decision, namely the cancellation of the contract, namely Decision Number oo4 / Pdt.G / 2017 / PTA.Pdg which decided the case between Azwar and PT. Ampek Angkek Canduang Sharia People's Financing Bank, Decision Number 63 / Pdt.G / 2011 / PTA, Yk which decided the case between Yuli Trisniati and KSU Syariah Baitul Mal Watamwil, Decision of the Supreme Court Number 557 / K / Ag / 2019 which decided the Case Between Deana Yoga and the others with PT. Amanah Satria Sharia People's Financing Bank.

The rise in the tendency of default cases in sharia economic cases in Islamic banking which is directed at cancellation of contracts that fall into the category of Unlawful Acts, has prompted the Plenary Meeting of the Supreme Court of the Republic of Indonesia to formulate that a lawsuit for the cancellation of sharia economic aqad by a debtor whose aqad is against Islamic law can only be done before the aqad object is used by the debtor. If the aqad is canceled, the debtor is penalized to return the loan principal plus the margin / ratio according to the current loan period. [13]

Of course the legal facts with the tendency of several cases that tend to cancel Islamic bank contracts cannot be resolved just by issuing Circular No. 2 of 2019. Efforts to increase the role and function of supervision on sharia compliance by the Sharia Supervisory Board must be continuously improved.

H. Conclusion

The existence, duties, authority, and responsibilities of Sthe Sharia Supervisory Board are as regulated in Law No. 40 of 2007, Law No. 21 of 2008, PBI No. 6/17 / PBI / 2004, Bank Indonesia Regulation No. 6 / 24 / PBI / 2004 which have been amended by PBI No. 7 / 35 / PBI / 2005 and PBI No. 8 / 3 / PBI / 2006 cannot be maximally implemented it because it is not supported by the form of the Sharia Supervisory Board of coordination with other work units based on four organizational structure assessment points, namely Specialization of lawivities, Standardization of lawivities, Coordination of lawivities, and Centralization and Decentralization of decision making. Based on the Fiduciary Duty theory, if the Ultra Vires doctrine is violated and results in losses for company stakeholders, then the Piercing the corporate veil doctrine does not apply

[13] Circular No. 2 of 2019 concerning the Enforcement of the Formulation of the results of the Plenary Meeting of the Supreme Court of the Religious Chamber of 2019 as a guideline for the Implementation of Duties for the Court, the Legal Formulation of the Religious Chamber point 2 on Sharia Economics letter B, p. 7

to the Sharia Supervisory Board because it is not a corporate organ such as the Directors and Board of Commissioners

The author recommends that the Sharia Supervisory Board should be included as a corporate organ and in terms of organizational structure the lines of coordination must be clarified with all relevant work units. The existence, the its role and responsibility are seen as urgent in Shari’a Banking to supervise, assess and ensure the fulfillment of sharia principles in addition to the supervision conducted by the Board of Commissioners on performance. The Directors. This effort is made to maximize the its function and minimize the risk of contrlawual aspects that do not meet Islamic standards. If it becomes a corporate organ in an Shari’a Banki, Fiduciary Duty theory reaches it in addition to the Directors and Board of Commissioners

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Bank Indonesia Regulations Number 6/24/PBI/2004 Dated 14 October 2004 Concerning Commercial Banks conducting business activities based on Sharia Principles

Bank Indonesia Regulations Number.7/35/PBI/2005 tanggal 29 September 2005 Concerning Sharia Rural Financing Bank conducting business activities based on Sharia Principles

Bank Indonesia Regulations Number.8/3/PBI/2006 dated 30 January 2006 concerning change in business activities of Conventional Commercial Banks to Commercial Banks conducting business activities based on Sharia Principles and Opening of Bank Offices conducting business activities based on Sharia Principles by Conventional Commercial Banks

Alfin Fitriana, *Analisis* Sharia Economic Law on the Murabahah Contract Case in the Bukit Tinggi Religious Court Decision No. 284 / Pdt.G / 2006 / Pa.Bkt, Thesis of Muamalah Department, Sharia Faculty IAIN Ponorogo ,http://etheses.iainponorogo.ac.id/3359/1/pdf%20alfin.pdf

Supreme Court Circular No. 2 of 2019 concerning the Enforcement of the Formulation of the Results of the Plenary Meeting of the Religious Chamber of the Supreme Court in 2019 as guidelines for the Implementation of Duties for the Court, the Legal Formulation of the Religious Chamber point 2 regarding Sharia Economics letter B, P. 7