



Sharia Compliance in the Islamic Banking Perception in Indonesia

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Sharia compliance is the special feature in the Islamic banking industry. Therefore, the right understanding about sharia compliance has strong urgency in sharia banking operational matters. The purpose of this research is to find the perception of the banking industry based through consideration of this perception in the development of sharia banking. This research employed a socio-legal approach and used open and closed questionnaires to find data. The research finding is that there is a diverse understanding about sharia compliance in the Islamic banking industry. Hence, this understanding becomes an important foundation for the Islamic bank industry and Indonesian Financial Services Authority in the development of Indonesian Islamic banking.

Key words: *Banking Perception, Sharia Compliance, Islamic Banking.*



Introduction

Sharia compliance is a term that has begun to be recognised in line with the development of Islamic economic concept, especially in sharia banking. Sharia compliance is intended as anything related to action to comply with the principles of sharia. The term is emerging with the development of Islamic economic law which is one of the applied sciences in the branch of Islamic law.

If the phenomenon of sharia compliance is associated with the awareness of Islamic society globally, then it follows that an understanding of the relationship between the concept of sharia compliance and Islamic law is necessary. In this context, Islam is seen as an integral guide in all aspects of human life which is termed *rahmatan lil 'alamin*. Therefore, in order to implement Islam *rahmatan lil 'alamin*, the concept of sharia compliance is a requirement that must be realized for individuals and entities that declare themselves as following the religion of Islam (Setyowati, 2017).

Sharia-compliance study on sharia banking is important because the development of sharia banking in Indonesia continues to increase. The growth of national sharia banking held 4.81% market share as of June 2016 (OJK, 2016). As of September 2016, it had grown to 5.13% of total assets of Commercial Banks (Hendrarsyah, 2016). The achievement has exceeded the set target of 5%. Along with Qatar, Saudi Arabia, Malaysia, the United Arab Emirates and Turkey, Indonesia is considered as the driving force of Islamic finance into the future. Islamic finance industry including Indonesia's sharia banking still has the potential to be developed and become influential globally (Islamic Finance Country Index, 2016). Despite rapid growth rate, the Islamic finance industry in Indonesia has only occupied a small niche in the financial sector of Muslim countries and consequently in the international financial sector. Despite its difficulties, the Islamization of the banking movement went well. The progress achieved over the last quarter century has shown encouraging results (Setiawan, 2016; Hussain et al., 2019).

The phenomenon of this small niche in the sharia banking industry in Indonesia reflects that the contribution and participation of the Muslim community is still low in this industry. This is due to the obstacles that still accompany its development. From a legal perspective, the low attention and involvement of the community towards a new entity is due to low trust. Public trust can be influenced by the functioning of the law in providing justice, legal certainty and



expediency. The legal problem of the presence of sharia banking institutions is due to the low trust of the community. Therefore, serious efforts should be made to increase the community's trust.

In relation to the issue of public trust, Derigs & Marzban (2009) have introduced shariah compliance as a new paradigm in optimizing portfolio. This thus reinforces the view that the existence and concept of sharia compliance for the banking industry is a necessity of society. For sharia banking industry, sharia compliance is one of the keys to gaining the confidence of the huge Islamic financial market in Indonesia (Setyowati, 2017). Ahmad Rofiq (2016) also explained that if there is no sharia compliant assurance of Shariah banking operations and non-bank sharia financial services industry, there can be implications that strengthen the assumption that there is no significant difference between conventional banking and sharia banking. If such a view is more dominant in society, then the purpose of developing Islamic banking industry to explore the economic potential in the prosperity of society has failed. In addition, the results of research conducted by Agus (2016) shows that the commitment to implement the compliance of Sharia banks against the fatwa of National Sharia Board has not been effectively and efficiently managed.

Based on some of the above thoughts then, the study of the perception of the sharia banking system related to the concept and application of sharia compliance from the legal perspective is an important next step. It is expected that this research can encourage various policies for the acceleration of sharia banking which in the future will be more prosperous to the people of Indonesia (Adıgüzel, Bayat & Kayhan 2017).

Method

This study uses a combined approach between doctrinal and non-doctrinal rules or normatively and empirically / sociology. That combination is known as socio-legal research. Therefore, in addition to analysing whether the data is normative in the form of literature review, this is also accomplished by extracting field data that is empirical by using the questionnaire instrument. The use of both types of data follows Soerjono Soekanto's view (Soekanto, 2010).

In this study, the questionnaire instruments used are arranged in both a closed and open manner. With this type of combined methodology, the closed questionnaire sections encourage ease and clarity of response while, with the open questions give respondents flexibility to express more completely their views and issues. For researchers, both types of questionnaire have complementary meaning as well as facilitating analysis of research

results. Respondents in this study were drawn from the sharia banking industry, and particularly from The Sharia Rural Bank. From the 162 Sharia Rural Banks expected to respond there were only 47 institutions that responded. 4 questionnaires were eliminated because they were assessed to demonstrate data error. The minimal response of the Sharia Rural Bank (less than 50%) in this study is partly attributed the length of bureaucracy, and the extent of Sharia Rural Bank location distribution under the coordination of OJK offices in tiered areas under time constraints.

In summary, both qualitative and quantitative data processing consisted of editing and coding (Amirudin & Zainal, 2013). Deep data analysis was then conducted to find the relationships between the data appropriately in accordance with the purpose of the study. The purpose of the study is to find the perceptions of the industry related to shariah compliance. The results of this study have a strong data accuracy and can be accepted and accounted for academically and socially so that they can be used as a basis or reference for action and policy related to the development of sharia banking.

Results

At this point, a brief description of the results and discussion related to this research is presented. In the context of this paper, the results and discussion are not separately described. Thus, the discussion in the form of analysis is performed accompanying the presentation of research results. In order to provide an understanding of the focus of the study, the description is made systematically: 1) Sharia Compliance in Theoretical Perspective; 2) Sharia Compliance in Practical Perspective.

A. Sharia Compliance in Theoretical Perspective

The literature review determined that studies on sharia compliance have been conducted by researchers from various countries. Some results of the Sharia compliance study related to sharia banking industry among others include: Shamshad Akhtar (2006) which highlights the sharia compliance in the context of corporate governance and Matteo Pellegrini (2006) who raised corporate governance and Sharia compliance at Islamic financial services offering institutions. In Indonesia, the study of Sharia Compliance has grown in recent years. This is apparent in several published research results such as: Luqman (2016) who examines the broad concept of Sharia Compliance in the Sharia Finance Industry and Agus (2016) highlighted directly on the aspect of Bank Sharia compliance against the fatwa of the National Sharia Board post transformation into positive law. In addition, Haniah (2006) focused his study on the accountability of the Sharia Supervisory Board as Sharia



Compliance Supervisory Authority for Sharia Banks and Ahmad Rofiq (2016) expressed his views on the mechanism of responsibility of the National Sharia Board and Sharia Supervisory Board in ensuring sharia compliance in sharia banking. The amount of attention related to the above compliance sharia indicates that the issue is quite serious.

From the legal perspective, sharia banking is an institution that is considered a person in that in the legal domain a person may be a person or institution legally accepted by law, or called a legal entity. Therefore, every legal entity, as a person, has rights and obligations established by law. In relation to the foregoing, sharia banks are defined in point 7 section 1 of Law number 21 Year 2008 about Sharia Banking. A sharia bank is a bank which conducts its business activities based on the Sharia Principles (Abdel, 2017). The Sharia Banks consists of the Sharia Commercial Bank and the Sharia People's Financing Bank. Furthermore, in point 11 of section 1 of Law number 21, 2008 it is stated: "The principle of Sharia is the principle of Islamic law in banking activities based on fatwas issued by institutions that have authority in the establishment of fatwa in the field of sharia". The two contents of the article are attributed to point 37 of section 1 of Law number 21, 2008 and elucidation of section 49 of Law number 3, 2006 on the Amendment of Law Number 7 Year 1989 on Religious Courts, which state that:

"Referred to as between persons of Islam includes any person or legal entity who voluntarily submits to Islamic law on matters under the jurisdiction of the Religious Courts in accordance with the provisions of this section."

It is clear that sharia banks are legal entities that submit themselves voluntarily to Islamic law. Therefore, the status of sharia banks in law is the same as that of Muslims.

Since sharia banking has declared its Islamic institution in a legal document, it is obligatory for the practice the principles of Islam to be core to operation. Such an understanding reinforces the theory of legal compliance as well as the theory of Islamic legal authority. Both theories discuss the enactment of Islamic law for Muslims. As a Muslim institution, a sharia bank must demonstrate the principles of sharia. Compliance with such sharia principles is known as the concept of sharia compliance. Further to this, Luqman (Offering Islamic Financial Services, n.d) states that sharia compliance is an automatic thing for any sharia finance industry, whether bank or non-bank, with the obligation to have a sharia supervisory board because the institution is bound by the rules sharia.

Sharia compliance has essentially undergone significant evolution. Sharia compliance was originally an abstract concept of sharia compliance for Islamic financial institutions. Now

Sharia Compliance has evolved into a legal instrument to measure the quality of an Islamic financial institution. In this context, banks are institutions that are role-models for other Islamic financial institutions in consideration of their banking character as the most regulated institution compared to other financial institutions. When the concept of sharia compliance has become a legal instrument, it indicates a new strategy and paradigm in measuring the quality of a financial institution (Nurhisam, 2016).

From a philosophical perspective, sharia compliance cannot be separated from sharia bank and as such this philosophical understanding can be extended to the origin of the spirit of sharia compliance. Basically the spirit of sharia compliance arises from the philosophy of human creation in an Islamic perspective which is that humans are born only to serve or worship. The meaning of worship in the broad sense is submissive obedience to perform the will, follow the nature of , and realize the order of, God almighty. The concept of worship (Setyowati, 2017) is thus complemented by the concept of *kaffaah* (Al-Qur'an, Adz-Dzariyat) which brings the message of the integrality of lifestyle to Muslims and has inspired the growth and development of Islamic economics. Both concepts are equipped with *falah* (Al-Qur'an, Al-Baqarah), which affirms a straight life orientation, in accordance with the purpose of creation. Based on these theoretical concepts, the main challenge in the context of applying sharia compliance to Islamic banking is how to formulate Islamic norms and values in sharia banking operational guidance so it can be easily applied in banking transaction activity. In relation to the latter issue, human intelligence in innovation and modification obtains legality over the use of *ar ro'yu* in the excavation and discovery of the law through the mechanism of *ijtihad* (Al-Qur'an, Al-Qashash). In Indonesia, this function is administered by the Indonesian Council of Ulama, especially the National Sharia Board.

Chapra (Yusoff, 2002) states that the measure of business success in Islam is not only seen in terms of material, but also judged fby the extent to which a person is able to realize the goal of Islam *maqasid al-syariah* (Chapra, 1992). Such an understanding is supported by Islamic philosophy that believes that everything, both the universe and man, has been imitated by Almighty God. Therefore, every form of activity, including business affairs, must be in order to carry out the will, following the nature, and manifesting His order. Understanding of the concept of sharia compliance is very important for sharia banks. Sharia Banking is an institution that has the obligation to run *ekoomi* activities in accordance with sharia compliance. Meanwhile, from the perspective of society the customer,has the right to have protection in the spiritual aspect. These rights are referred to as spiritual rights (Zaki and Cahya, 2015). In this regard, it is important to know and measure the views and or judgments of sharia banking parties on the issue of sharia compliance.

B. Sharia Compliance in Practical Perspective

From the evolutionary results of sharia compliance from its conceptual form through to practical action, it must be explicit that there is some form of sharia compliance concept in written laws. In some regulations and regulations relating to the sharia financial industry specifically, whether in the form of a Bank Indonesia Regulation or a Financial Services Authority Regulation or a Law there is evidence of accommodation of the concept of sharia compliance. Such regulations and regulations are derived from specially made Sharia principles (Setyowati, 2009). In the future, sharia compliance is an important consideration as part of the sharia financial industry in terms of management and operation (Ilhami, 2009). Related to that, Abdullah (Nurhisam, 2016) argues that the existence of regulation for adherence to the principle of sharia reflects one of the fundamental aspects that differentiate sharia and conventional finance industries.

One of the main forms of sharia compliance is the obligation of the existence of a Sharia Supervisory Board in every Sharia Bank Finance Industry and Non-Bank Sharia Finance Industry to comply with sharia provisions that have made sharia supervision an inseparable part of sharia compliance (Noman, 2003). The Sharia Supervisory Board should serve as the first filter on a new product issued by a sharia financial institution before the product is researched and filed by the National Sharia Board (Nurhisam, 2016).

The field research findings, related to the assessment of sharia banking industry regarding the implementation of sharia compliance, are diversity of assessment as detailed in Table 1 below which are categorised as: 1) is very good, it means the concept is integrated in every policy and or program; 2) good, means it exists in many policies and or programs; 3) Enough, it seen to exist in some policies and or programs; and 4) is lacking, meaning that it is not in the policy or program. The results are presented in Table 1 below.

Table 1: Assessment of Sharia Banking Industry Parties Related to Implementation of Sharia Compliance

No	Respondent Category	Rating	Sharia Rural Bank Amount (%)
1	very good, it means the concept is integrated in every		4 (9,3)

	policy and or program	
2	good, means it exists in many policies and or programs	28 (65,1)
3	Enough, it means to exist in some policies and or programs	11 (25,5)
4	Lacking, meaning that it is not in the policy or program. Overall, the results can be seen from the table below.	0
	Total	43 (100)

Based on the data, it is seen that more than 65% considered that the implementation of sharia compliance sharia banking in Indonesia is good. That is, that the concept of sharia compliance has been accommodated in various policies and or programs, but not yet integrated. It is also shown by several response clauses related to sharia compliance spread across various laws, this has not been a design focus.

Furthermore, the answers to the open questionnaire section reflect reasons for the sharia banking industry in returning this assessment. Firstly, the answer is very good with regard to the existence of intensive communication in the form of consultations to obtain opinions and or views from the Sharia Supervisory Board that fulfils aspects of sharia compliance, on any new policies and products or views on all things related to operations (Ahmed,et.al 2018).

Secondly, the implementation of sharia compliance is considered good for several reasons, namely: a) The presence of Sharia Supervisory Board that oversees sharia compliance with members of at least 2 people; b). that the covenants are committed in reference to the Fatwa national Sharia Board; c) The existence of the Policy in the form of Operational System Special procedures underlying every activity and banking products, for example in social programs, such as *qordul hasan* financing, and *zakat*, as well as savings and pilgrimage products. In addition, in the financing contract, it is required to explain the selling price and any risks that may arise, etc., so that the customer understands exactly what has been agreed with the Sharia Rural Bank; and D). Many sharia-based regulations.

However, regarding implementation of sharia compliance, this is still not optimal because of some indications: a) The implementation has not been implemented in totality, due to some existing constraints, both in the banking sharia or the community itself; b) It needs to be improved again for the implementation of sharia principles, especially in terms of financing so that it can be completely different to the conventional. One example is in the imposition of a late penalty, not to be considered as income but that will be input into Zakat institution; c) It is difficult to provide understanding to customers regarding the full implementation of sharia practices; d) there are still people who do not understand the character of sharia bank that in the effort of applying sharia compliance means the service is no longer the same as from a conventional bank; e) The practice of compliance with sharia compliance aspects in Indonesia needs innovation, with reference to sharia and international sharia governance standards. These include the fulfilment of mechanisms of integrity and quality of Islamic banking human resources, the suitability of contracts and not tyranny over consumers.

The result of the third assessment is sufficient (25.1%), based on several reasons, namely: a) There are some products or implementation of sharia compliance that is not as accurate and as forced, such as converting conventional bank products into sharia bank products simply; b) In the case of the use of financing contracts including pricing it has not been possible to use the method of calculation in accordance with the characteristics of the contract fully; c) The behavior of customers who are not too concerned with the process of compliance with the provisions of sharia also exacerbate the non optimal quality sharia compliance. An example is in *murabahah* financing. Customers themselves still want to receive cash. Customers are reluctant to provide proof of purchase / use, customers are sometimes reluctant to produce monthly profit level reports for revenue sharing; d) Regulators are still more focused on growth aspects compared to aspects of sharia compliance.

The data collected illustrates that the implementation of sharia compliance has not been optimal and integration is not yet embedded in public awareness. This is in line with the results of Agus' (Triyanta, 2009) research which states that the commitment implementation of Sharia bank compliance in the fatwa National Sharia Board has not run effectively and efficiently. Therefore the recommendation is that it should continue to be optimized, so that sharia compliance can be used as a strategy to increase customer trust. Also the concept of Derigs and Marzban (Waluyo, 2016) in introducing sharia compliance as a new paradigm in the portfolio optimization effort must be realised.

Conclusion



From the description of the results related to the perspective of sharia banking parties related to sharia compliance, several points can be concluded as follows. 1) if Sharia compliance is basically a logical consequence of the sharia banking industry, then the concept and application of sharia compliance must exist for all parties involved in the operation and development of sharia banking. 2) There is still diversity in the assessment related to the implementation of sharia compliance by sharia banking. This diversity is essentially based on the existence of concepts that have been accommodated by the authorities and internal policies and followed by specially controlled application by the Sharia Supervisory Board. However, in practice there are still constraints. These constraints stem from the lack of integrity in the provisions related to sharia compliance, not to the attention of government and / or authority and lack of understanding and awareness of the urgency of sharia compliance and its juridical consequences. Thus, it can be concluded that the application of sharia compliance has not been optimal due to incomplete related legislation and lack of integrity of aspects of related regulations, as well as obstacles in terms of government and customer understanding and awareness.

In relation to the above conclusions, it is recommended that this concept and its provision be integral and comprehensive with the full support of various stakeholders. Such matters can only be carried out by the Government, in particular the related institutions, namely the Financial Services Authority, Bank Indonesia and the Ministry of Finance, as the most authorized parties to mobilize and accommodate and coordinate various needs. In addition, considering the community-related issues concerning understanding and awareness that are still lacking, efforts to increase community literacy needs to be made in a continuous and planned approach.

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