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Risk management in Islamic financial institutions (literature review)

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ABSTRACT

In carrying out its duties and functions as a financial services entity, Islamic financial institutions must implement risk management properly, also including legal risk management. This research was conducted with the aim of knowing the legal risk management that must be applied to Islamic financial institutions. The research method used in this study is a literature study of data collection techniques with literature studies obtained from various sources. The findings of this study are that in carrying out their functions, Islamic financial institutions must understand inherent risks, in this risk there are three main factors that must be considered, namely, litigation factors, engagement weakness factors and non-statutory factors. In addition to having to pay attention to these inherent risks, Islamic financial institutions are also required to carry out sharia compliance which is directly supervised by DPS which is under DSN's supervision. This literature study research is expected to provide knowledge and an overview for Islamic financial institutions, especially staff or employees who handle legal risks in Islamic financial institutions.

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INTRODUCTION

The financial industry in Indonesia is divided into bank and non-bank financial institutions. which is engaged in the field of financial institutions is an institution that can improve people's lives (Hatta, 2022). In this case the financial institution functions as a community intermediary institution. With a significant development in the income of Islamic financial institutions, it cannot be separated from the risks that will be faced by these financial service entities (Mulyati, 2018).

Islamic banking business in Indonesia always carries risks associated with its activities (Muhammad Farid, 2021). The risks inherent in Islamic banks are potential events and have a negative impact on the capital and income of Islamic financial institutions. The financial crisis that occurred in 2008 emphasized that Islamic financial institutions need to carry out risk management continuously (Purnama, 2019).

After the global financial crisis, some experts argue that Islamic financial institutions are more stable than conventional banks because they are relatively unaffected. Others, however,

oppose this claim, arguing that Islamic financial institutions are an integral part of the international financial system and therefore cannot be exempt from the crisis. It is said that Islamic financial institutions are involved in the assumption of market risk that existed from the beginning. Affected are Islamic banks, which have proven to be more stable than traditional banks as they operate under Sharia law (Nelly et al., 2022).

The mechanism contained in Islamic financial institutions cannot be separated from the risks in the implementation of all activities therein. In legal management, the juridical aspect behind it, one of the strategic steps in controlling it is to carry out internal control. This is done in order to anticipate the occurrence of cases caused by legal risks (Purnama, 2019).

The relationship between law and sharia financial institutions is based on the principle of trust, the relationship is not limited to trust based on good faith alone. But also a belief based on monotheism that what is done is always supervised by Allah SWT. With this principle, sharia financial institutions and customers have confidence that everything done is worth worship. This can reflect that sharia financial institutions are not only looking for profit but also seek happiness in the hereafter. Risks arise due to problematic financing, engagement weaknesses or the absence of cloudy relations, credit risk therefore legal risk and credit risk must be identified, monitored, measured and controlled by Islamic financial institutions (Usanti, 2014).

If legal risks are not managed, it can lead to massive third-party withdrawals, liquidity issues, closure of regulatory banks, and even bankruptcy. Therefore, the main purpose or effort of legal risk management is to ensure that the risk management process can minimize the negative effects caused by weaknesses in legal aspects, absences and changes in laws and regulations, and litigation. Many errors in legal risk management can lead to liquidity. The internal control process is one of the steps to implement effective legal risk management. The presence of inherent risk is an important indicator of legal risk (Suharto, 2022)

In knowing the efforts of good compliance risk management of Islamic banks, Islamic banks must develop work units and clear compliance policies and procedures followed by the process of identification, mitigation and control of compliance risks as well as evaluation of achievements that have been made (Fadillah et al., 2021).

Several studies on risk management have been conducted by Rahmani Timorita Yulianti focusing on issues related to risk management in Islamic banking in the form of risk profiles and the role of DPS in the contribution of emerging risk management, found in this study is that the role of DPS must be improved, especially towards sharia compliance to gain public trust in this growing industry (Yulianti, 2009).

Agus Waluyo conducted research to determine the commitment of Sharia Bank compliance to the implementation of DSN fatwas which have been transformed into positive law, The commitment to the implementation of Sharia bank compliance with DSN fatwas has not been effective and efficient. The sharia compliance function by the compliance director to all levels of Islamic banks has been normatively carried out in accordance with compliance principles, compliance culture, risk management, and compliance code of ethics. The role of DPS in the sharia compliance supervision system has been implemented but has not been optimal (Waluyo, 2016).

According to Diana Novita, risk management has been regulated by Bank Indonesia in maintaining and improving the quality of Islamic banks, this can be done in several ways, including the SWOT strategy which can be taken by strengthening internal regulations between banks, recruiting competent employees, building a reliable risk management system, optimal revitalization, improving RFM capabilities, implementing office channeling and strengthening agreement clauses (Novita, 2019).

Lisa Kartika Sari stated that risk management can be done by identifying, measuring, monitoring, controlling risks. The benefits of risk management are to create a banking infrastructure that is to increase competitive spirit but has constraints on a low supervision system (Kartika Sari, 2018).

While Roos Nelly at al conducted a study to review the risks faced by Islamic banking, the findings of this study explained that Islamic banking has several risks including credit risk, liquidity risk, operational risk, withdrawal risk, legal risk, banchmark risk and fiduciary risk (Nelly et al., 2022). Research that discusses risk management results that risk management in general includes identifying, measuring, controlling and monitoring risks from activities in financial institutions (Syafii and Siregar, 2020). From the description of the literature that has been presented, the author wants to describe legal risk management in Islamic financial institutions. So that the results of this literature study are expected to provide additional knowledge and insight for stakeholders of Islamic financial institutions, especially in fields dealing with legality or law.

RESEARCH METHOD

This research includes literature research (literature study) which is a data collection technique with literature studies obtained from various sources such as websites, journals, books, the internet in accordance with the object studied (Creswell W. John, 2019). The analysis technique used is descriptive analysis with literature studies that describe phenomena that exist both now and in the past (Surani, 2019). The data presented obtained in the research is through library sources, namely through library research closely related to theoretical studies and other reference sources related to other legal risk management such as, using fatwas of the National Sharia Council, using the approach of laws, sweets, local regulations, and government decisions and all related regulations. This study uses descriptive analysis with the aim of describing and explaining the description of the main research study on concepts related to legal risk from a literature review based on the analysis of the opinions of experts, scientists and scholars who are competent in their fields. So that the findings presented are easy to understand, then conclusions are made by explaining how risk management is faced and management carried out by Islamic financial institutions.

RESULTS AND DISCUSSIONS

Legal risk is the risk arising from weaknesses in legal aspects, such as lawsuits, the absence of supporting laws and regulations, or weaknesses in contracts and non-compliance with contract validity provisions or incomplete collateral commitments (Fasa, 2016).

Legal risk is the risk caused by lawsuits or legal weaknesses caused, among others, by weak obligations of Islamic financial institutions, defaults or changes in law. in laws and regulations that result in a transaction by a sharia financial institution not in accordance with applicable regulations, as well as legal proceedings arising from a third-party request to a sharia financial institution (Marjupansah, 2020).

Legal risks also arise because banks cannot process insurance contracts, incur legal losses and cannot meet the demands of other parties. While on the other hand legal risk is the risk arising from litigation or legal weakness (Rastuti & Yustisia, 2016). These risks include lack of statutory support or mandate weaknesses, such as lack of support for existing theories, concepts, phenomena that require further scientific development. Incomplete fulfillment of contractual validity requirements or binding of guarantees. The above factors include breach of contract, laws and regulations, and lack of understanding of legal risk management of the incident in all aspects of transactions contained in the bank, as well as in contracts or agreements with third parties or other parties with various factors and legal aspects caused by litigation. For evidence documents should be minimized so that it does not happen, It is better to carry out the procedure in accordance with the established conditions, since the level of risk achieved is also lower (Suharto, 2022).

The risk criteria in Islamic financial institutions are as follows:

Table 1. Risk criteria of Islamic financial institutions

Criteria	predicate	Predcate
Below or equal to 2.5% of gross income	*Low*	really low
Among them, 2.5% of gross income	*Low to Moderate*	low
Between 5% - 7.5% of gross income	*Moderate*	high enough
Among 7.5% of gross income	*Moderate to High*	high

In accordance with the requirements contained in Bank Indonesia Regulation Number 13/23/PBI/2011 concerning the implementation of risk management for Sharia Commercial Banks and Sharia Business Units in article 10 paragraph d which states that BUS and UUS must determine risk ratings because the assessment determination carried out is the basis for banks to categorize bank risk ratings, for the limit of determining legal risk can be set a maximum of 10 times the amount of capital allocated for legal risk. The amount of 10 times can be used for conformity with the risk profile formula which stipulates that the high risk profile is a representation of legal risk conditions >10% of the maximum value of losses that may arise from forms of risk occur (PERATURAN BANK INDONESIA NOMOR: 13/ 1 /PBI/2011 TENTANG PENILAIAN TINGKAT KESEHATAN BANK UMUM, 2011).

According to Bambang Rianto, in running a financial services entity, Islamic financial institutions must pay attention to inherent risks, this risk is a risk inherent in the activities carried out by each financial institution, up calculated or not, which has the potential to affect the financial position of Islamic banks (Sappeami et al., 2021). It can be known in inherent risk that procedures and policies used in the operations of Islamic financial institutions are needed, in order to provide reliable financial information and can be complied with applicable laws and regulations. Here are some benchmarks of inherent risk factors that are included in important indicators of legal risk: (a). Litigation Factors: Litigation is a dispute resolution process in court, where each disputing party has the opportunity to file claims and counterclaims against banks or lawsuits and extrajudicial claims by third parties. Basically, the lawsuit or claim can incur costs that can negatively affect the state of the bank. (b) Engagement weakness factor: An engagement is a proprietary relationship between two or more persons in which the first party has rights and the other party has an execution obligation. Problems or disputes may arise in the future which may pose potential legal risks for the bank. (c) The absence of laws and regulations, products owned by banks or transactions used by banks will lead to litigation of these products in the future, so there is a legal risk.

In addition to the three factors above, Islamic financial institutions in running financial service entities must carry out compliance. In this case, sharia compliance is a requirement that must be carried out by financial institutions that carry out their roles and functions based on sharia. Sharia compliance is a fulfillment of all sharia principles in all forms carried out as characteristics of the institution. Compliance fusion as a preventive measure to ensure policies, regulations, systems and procedures and business operations of Islamic banks. Sharia compliance is part of the implementation of an internationally standardized risk management framework that has been developed and established by the Islamic Financial Service Board (IFSB), with sharia compliance as part of institutional management (Sukardi, 2012).

One of the risks in Islamic financial institutions is legal risk which is included in operational risk. Where is the risk law, namely the risk caused by weak juridical aspects such as the absence of legal regulations such as supporting regulations (Syafii and Siregar, 2020).

Sharia compliance is the conformity of sharia principles in Islamic banking with characteristics, integrity, and credibility. This compliance culture is in the form of values, behaviors, and actions that support the creation of Islamic banks in accordance with BI regulations (Adi Astiti & Tarantang, 2020). The obligation to apply sharia principles must be implemented thoroughly and consistently. Violation of sharia principles may result in administrative sanctions for parties who do not comply with sharia principles or hinder their implementation, In business management, compliance is understood as clearly regulated specifications, standards or laws issued by authorized institutions or organizations in a particular field. Compliance acts as an implementer and manager of compliance risk in coordination with the risk management work unit (I. B. Indonesia, 2018). Executive functions and controls are preventive in nature and are an important part of the administration and operation of the institution. This is to ensure that established policies, regulations, systems and procedures comply with international standards, rules and regulations of the IFSB and AAOIFI.

The existence of Islamic banks should be able to meet the needs of the Muslim community in implementing Islamic teachings as a whole, including in terms of distributing funds. Public trust in Islamic banks is based more on the implementation of Islamic legal principles contained in the institution's commercial rules, which are required for the fulfillment of sharia principles. Without sharia compliance, this can affect people's decisions to use Islamic bank services. From this perspective, compliance with sharia is at the core of the integrity and credibility of Islamic banks. Sharia compliance is a logical consequence of the implementation of legal guidelines and is a mandatory requirement for Islamic banks in conducting their business. In an effort to uphold sharia values, Islamic banks must adopt DSN and PBI fatwas as measures of sharia compliance in both products and transactions and operations. Functionally, adherence to DSN fatwas by Islamic banks must be followed as a manifestation of sharia principles and rules.

Sharia compliance in Islamic bank operations includes not only products, but also systems, technology, and corporate identity. Therefore, corporate culture is one aspect of sharia compliance in Islamic banks. The aim is to create collective morality and spirituality combined with the production of goods and services, supporting the development and growth of Islamic banks (Sup, 2022). The ratification of laws, PBI and DSN fatwas related to bank executive functions and regulations related to Islamic banking will strengthen institutions and supervision in service delivery, as well as public trust in the existence of Supporting Sharia Banks (Warde, 2010). According to OJK Deputy Commissioner Mulya E. Siregar, DSN's fatwa is the key to encouraging the growth and innovation of Islamic banking products, as well as helping to further socialize the importance of Islamic financial principles to the public.

Innovation in the development of Islamic banking products requires a legal basis from DSN's fatwa. Therefore, it is necessary to conduct a study of the allocation of DSN fatwas and identify the needs of the Islamic banking market in terms of product development. In order to support product innovation that can increase the competitiveness of Islamic banking in the free market era at the national, regional and global levels by anticipating various opportunities and challenges ahead, BI has conducted fatwa mapping studies and needs identification since 2010 (Ulum, 2014).

The purpose of this mapping is to find out the extent to which existing fatwas have been implemented on Islamic banking products, which fatwas limit their application, and which products require Sharia fatwas or affirmations that are not issued by DSN. On the other hand, Islamic banking circles have also expressed the desire for several more fatwas regulating fund distribution/financing products, fund deposits, as well as treasury products and payment systems. The fatwa is considered necessary to be used as a basis for the development of Islamic banking products.

According to the PBS Law, the Sharia Supervisory Board (DPS) is an institution authorized to monitor sharia compliance in the Islamic banking regulatory system in Indonesia. The main task of DPS is to control the operational implementation of the bank and its products so as not to deviate from sharia rules. DPS is a board that oversees the implementation of sharia principles in Islamic financial institutions. To be able to carry out its duties, DPS must have solid academic qualifications, especially Islamic law and modern Islamic financial economics (Madjid, 2011).

DPS is a party affiliated with and part of Islamic financial institutions that oversees sharia principles in the business of Islamic financial institutions. Based on the decision of the Board of Directors of BI, DPS is an institution under DSN tasked with overseeing all bank activities in order to always comply with sharia principles. DPS's role as an independent body is to guide, advise, evaluate and supervise the activities of Islamic banks to ensure that the operations of Islamic banks are in accordance with sharia principles in accordance with fatwas.

In implementing sharia control, DPS must implement three (three) main points, namely: First, ex ante auditing, namely sharia control activities by reviewing various moral principles, reviewing management decisions and reviewing all kinds of agreements that have been made by Islamic bank management with all parties. The goal is that Islamic banks do not make contracts that violate sharia principles. Second: ex post auditing of sharia supervision activities by examining operational and financial statements of sharia banks. The aim is to detect Islamic bank activities and finances that are not in accordance with sharia principles. Third, the calculation of zakat payments, namely sharia control activities by checking the correctness of zakat payments to be granted by Islamic banks and checking the correctness of zakat payments in accordance with sharia provisions. The goal is that the management of Islamic banks has calculated and paid zakat correctly from all business activities related to Islamic bank activities (Sup, 2022).

In the development of new products and supervision of Islamic banks, DPS must perform the following tasks: First, assess and ensure compliance with the Bank's operational policies and sharia principle products. Second, controlling the process of developing new banking products in accordance with DSN's fatwa. Third, ask DSN for a fatwa for new banking products for which there is no fatwa. Fourth, periodic review of Sharia compliance in fundraising, disbursement, and service delivery mechanisms. Fifth, in carrying out its duties, it requests information on Sharia issues from the bank's profit and loss section. In this role, DPS is one of the main features that distinguishes conventional banks from Islamic banks. Sharia compliance is the most important and fundamental aspect that distinguishes Islamic banks from traditional banks (Yusmad, 2018).

DPS's task is to monitor the operations and activities of Islamic banks to be in accordance with Islamic values. Sharia compliance in Islamic banks is closely related to the supervisory duties, organizational model and competence of DPS. DPS complements the supervisory responsibilities delegated by the Commissioner, where Shariah compliance becomes increasingly important as clients strive to be innovative and commercial in delivering new products and ensuring Shariah compliance with Islamic law.

But in practice, it turns out that mastery of this aspect of sharia is not optimal. This is due to several aspects including suboptimal roles, organizational leadership and DPS competencies. The low compliance of Islamic banks is partly due to the composition of the sharia supervisory board which is still not optimal because most of them consist of sharia scholars and do not include practitioners in the fields of economics, finance, and accounting. In addition, this is due to the still not strong role of the sharia supervisory board, also because sharia control in sharia banks is mostly carried out by the sharia compliance department itself.

CONCLUSION

Legal risk is the risk posed by weaknesses in legal aspects such as lawsuits, weak laws and regulations, weaknesses in contracts or agreements, non-compliance with a contract validity or incomplete collateral commitment. Legal risks can also be caused by litigation or weak laws and can

also be caused by not being able to meet the demands of other parties. In carrying out its functions, Islamic financial institutions must pay attention to inherent risks, these risks lie in the implementation of the functions of Islamic financial institutions themselves. Benchmarks in the implementation of inherent risks include 3 (three) important factors: *First,* the litigation factor is the process of resolving a dispute in court. *Second,* the weakness factor of engagement is an ownership relationship between two more people, where the first party has rights and the other party has the obligation to carry out a business. *Third*, in the absence of legal regulations, services or products that do not have litigation will be easily disputed. In addition to carrying out inherent risks, Islamic financial institutions must also carry out sharia compliance which is strictly controlled by the National Sharia Board (DSN) through the Sharia Supervisory Board (DPS) in order to carry out their duties and functions. It is hoped that the results of this literature study can provide knowledge and an overview for Islamic financial institutions, especially staff or employees who handle legal risks in Islamic financial institutions and as a reference or referral for further researchers related to legal risk management in Islamic financial institutions. Since this research only covers legal risk management, it is hoped that future researchers can further examine legal risk management in Islamic financial institutions given the increasingly diverse complexity of legal risks.

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