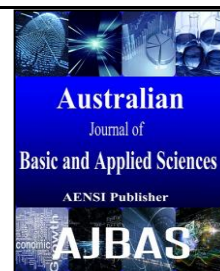




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The Professionalism of Sharia Supervisory Boards: Issues and Challenges

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ABSTRACT

Background: A special attraction of Islamic banks (IB) is growing and getting more attention from global stakeholders across the industry. Despite the uniqueness of IB, there is a role of Sharia Supervisory Board (SSB) as a gatekeeper to ensure the Sharia implementation and compliance in their institutions. The SSB professionalism has been carried out to explain the insights of adopting such practice from the Islamic perspective. **Objective:** This article aims to discuss issues and challenges of SSB professionalism in IB. **Results:** The issues and challenges of SSB professionalism are related to professional ethics, judgment and consistency in ensuring Sharia compliance. In doing their responsibilities, SSB members are guided by their moral belief and obligations to religious nobles and the community. The SSB professionalism needs to base on the mutual help, accountability, transparency and honesty, protection of minorities, disclosure and equitable distribution of wealth, brotherhood and responsibility. **Conclusion:** This article concludes that the professionalism of SSB need to go beyond basic competence and rhetorical appeals in order to ensure that all activities and operations within the IB do not contravene the Sharia law. It reveals issues and challenges of SSB professionalism in IB, which is expected to fulfill the objective of addressing some of the shortcomings in Islamic literature of SSB professionalism.

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INTRODUCTION

The existence of Islamic banks (IB) gives a special attraction for the banking industry. A global attention is growing and stakeholders across the industry become critically analyzing and scrutinizing. IB requires their own uniqueness that complies with the Sharia principles of their products, instruments, operations and management. The role of Sharia expert/scholar plays a significant contribution for the development of IB. The strong fundamental for the IB cannot be separated from the active role of the Sharia Supervisory Board (SSB). IB has to establish their own credible SSB to achieve their goals.

Instead, there are some criticisms on the passive role of the SSB in the Sharia governance framework. Onagun & Mikall (2013) stated that there is a perception that SSB generally do not experience any tests for their credibility and integrity as that of other financial professionals such as lawyers, accountants and bankers who are regulated by their professional bodies and compelled by certain professional ethics. Hamza (2013) pointed the role of SSB is influenced

by their integrity and credibility in the Sharia governance scheme. The active role (Ahmed, 2010) (Ahmed, 2010) of SSB rise the credibility and the reputation of the IB industry. The professionalism on Sharia action, decision and interpretation is linked to the influence of SSB in Sharia governance process.

This situation certainly is not the fault of the SSB. The member of SSB is appointed and remunerated as only the role of advisory bodies, hence there are no legal or professional requirements like other financial professional. They do not have obligation to accomplish the implementation and the policy of their decisions. The diversity of background, school of jurisprudence of SSB members and the difference of regional context as well as national regulatory environment can create inconsistency in their professionalism in Sharia process and thus can influence the harmonization of product and financial operations.

The professionalism of SSB is crucial to maintain the Sharia principles in IB. The quality, credibility and consistency of Sharia decision is expected to develop a structured process for professionalism of SSB in the Sharia governance

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process, which must be documented, adopted and maintain at all time in Sharia decision-making. The article aims to discuss the issue and challenges of SSB professionalism in IB. It also puts forward the concept of professionalism of SSB in the process of Sharia governance for example in the ex-ante process as well as in the ex-post process by addressing the relevant issues and challenges.

Sharia Supervisory Boards as an Internal Sharia Bodies:

The AAOIFI Governance Standard No. 1 (2010) defined Sharia board as an independent bodies which has the duty to direct, review and supervise the Islamic Financial Institutions (IFIs) operations to comply the Sharia rules. Sharia board also have an obligation to issue legal rulings to pertaining to IFIs. IFSB Sharia Governance Guiding Principles No. 10 (2009) illustrated a similar definition where it refers to an independent bodies comprised of a panel of Sharia scholar who has Sharia expertise and representing as a special to the IFIs.

Given the vital position as an internal Sharia bodies in their institutions, SSB are directly involved in Sharia governance process with board of directors (BoD) and managers. Ahmed (2010) stated that the main role of SSB is as the gate-keeper to ensure the Sharia implementation and compliance in their institutions. Each member of SSB has to review and assist the product and IB operations that comply to the Sharia rules and principles.

The internal Sharia governance process involve SSB in order to ensure the Sharia compliance. In the ex-ante process, SSB have to issuance of Fatwa/Sharia pronouncement for New product and services before they launch. Fatwa refers to Sharia opinion on any matter related to Sharia issues in IFIs. In this jurisdiction, SSB usually focus on ensuring that IFIs comply with the Fatwa (IFSB-10, 2009; Onagun & Mikall, 2013). IFIs must implement Fatwa become Sharia ruling (hukm al-Shar'i) with legal principles in this process. The disclosure process in Sharia pronouncement and related information needed become an issue of Sharia governance process. The impact of ethic in this process could cause the deviation between SSB, executive management and BOD.

When issuance Fatwa, the disclosure of process and related information becomes the basis of Sharia governance. Therefore, the policies that is resulted actually comply to Sharia rules (Graiss & Pellegrini, 2006c). In performing their tasks, IB designs the ISRU (Internal Sharia Review Unit/Departement) or Sharia officer who become part of IB to team up for monitoring the daily compliance with Fatwa in respect of every level of operation and transaction in IB. This process will help a standarization of product and healthy financial system because it can promote innovation in IB.

IB are required to operate in the Sharia compliant manner, such as internal Sharia audit and external Sharia audit. This process put an SSB members as a supervisor of the IB through a report that the IB have operated under the Sharia rules. In this ex-post process, ISRU will be recorded and reported to ensure that all the activities and transactions in IB comply to Fatwa issued by SSB. IB also build the Internal Sharia Audit (ISAU) to support this process. ISAU has a similar function to ISRU while ISRU gives a recommendation to the management and report to SSB of IB to address and rectify any issues related to Sharia compliance. On the other hand, ISAU usually make a report to the Audit Committee in IB (IFSB-10, 2009; Onagun & Mikall, 2013).

An annual Sharia compliance review has been carried out for verifying the internal Sharia compliance review and its finding has been rightly recorded and noted by SSB. SSB take charge for this process and receive feedback and reports from ISRU. This tasks also assign to a competent external auditor to ensure that all business transactions and operation are measured, recorded and reported in accordance with Sharia rules. Both SSB and external auditors are appointed to strengthen the shareholders interest for any information at the end of the financial year in IB (Karim, 1990).

The Nature of Professionalism:

Most of the earlier researchers tend to define professionalism in accordance the scope of their chosen profession to be learned. However, the ideals that serve for focusing on professionalism because the viewpoint can represent a variety of different issues, ranging from proven competence of work for a set of conditions that allow market dominance (Mat & Zabidi, 2010). The classic functional theories described that professionalism as the abstract knowledge and complex skills owned by professionals to give a judgment for the quality of their services (Shafer, Park, & Liao, 2008). Professionalism also is defined as the conceptualization of responsibility, commitment, assurance, interactions, and role behavior required of professionals in their relationship to individual patients or clients and to society (Shafer, Park, & Liao, 2008).

The debate about attributes must exist before an occupation can be a profession has failed to produce a definitive set of characteristics. Most people would agree that centerpiece of practitioners are attitudes and behaviors (Kalbers & Fogarty, 1995). Hall (1968) emphasized that concept in professionalism at the individual level identified five factors: (1) use of the profession and fellow professionals as a main referent, (2) a belief in public services, (3) a belief in self-regulation, (4) a sense of calling to the field, and (5) a desire for professional autonomy. Then, Connelly and Rosenberg (2009) in their work stated

six features to distinguish professionalism: (1) careers, including the degree of complexity, (2) a lengthy internship, (3) ongoing professional development, (4) professionals who specialize and grow in practice, (5) substantial authority among individuals in the profession, and (6) relatively high salaries alongside other compensation.

Professionalism also can be recognized from understanding what an individual does within the context of work, knowledge, attitudes, behavior, function from completed work, the purpose behind specific functions, the quality of service, the level of consistency within the tasks (Evans, 2011). Professionalism also can be translated as a cultural, organizational, communal, and individual phenomenon that is multi-faceted and includes socio-cultural issues, national regulations, institutes policies, work environments, communities, and individuals in various ways (Karila, 2008). Eade (2011) also emphasized that a mastery of knowledge, proper training, value to well-being of society, improvement of welfare for others with whom one is working, a high level autonomy, and ethical practice as features of professionalism.

Each of components form professionalism above can easily translated to the jurisdiction of the SSB. SSB members may believe their vital role in IB plays within the modern corporation and society. Kalbers & Fogarty (1995) stated that the critical evaluation of controls and operations are dedication or personal passion where what is necessary explored cannot always be determined in advance. Each professional must comprise the concept of autonomy or independence. The self-regulation dimension of professionalism includes the degree to which the individual believes from standard of their tasks.

Issues and Challenges of Sharia Supervisory Boards Professionalism:

To talk about the issues and challenges of SSB professionalism are related to professional ethics, judgment and consistency in ensuring Sharia compliance. The quality, consistency and credibility of Sharia decisions is expected to develop a structured process, which has to documented, adopted and maintained at all time by IB. Arman (2013) concerned with the ex-ante process of monitoring, due to SSB do not monitor or evaluate the performance of IB as a whole in achieving the goal such as macroeconomic and microeconomic.

The concern about the genuine morality of IB and criticize the non compliance of some product and operations. Hamza (2013) stated that the credibility of IB is linked to the SSB in the decision-making and the Sharia interpretation. The SSB members have a double pressure in their tasks, such as the pressure for commercial reasons and to vindicate their reputation in order to Sharia decision-making. In doing their responsibilities, SSB members are guided by their moral belief and obligations to religious

nobles and the community. Moreover, IB engages SSB members to fulfill the requirement of Sharia rules, but despite the employee relationship, SSB must give their professionalism when executing their obligations. On the other hand, Karim (1990) stated that if SSB cannot perform their duties in the future because of an increase in the number of transactions and operations, SSB will perform the possibility of sample checks supplemented by using the necessary system audits and procedures to analyze whether the IB operations comply with Sharia rules. However, the absence of adequate control from SSB can present the difficulties to carry out their duties. Under this condition, SSB might depend on the ISRU and ISAU. SSB needs to focus on an institution's adherence to Sharia percepts to assure its Islamic constituents that their reports reflect a genuine commitment to Sharia principles. This situation is expected to take place regardless of any pressures from management. Since desire and professional autonomy become part of SSB professionalism, they do their best to keep themselves away from doubtful situation to maintain their integrity and credibility.

Furthermore, the commitment of SSB to religious value and religious obligations must be appreciated with strong incentives for their professionalism. Connelly & Rosenberg (2009) concluded that one important feature from professionalism is salaries together with compensations. Given an obligation as the gate-keeper to maintain all the transactions and operations in IB complies to Sharia rules, some contrary assumptions from public about the SSB professionalism where there is plenty of opposition to the Sharia governance process or where the relationship between SSB and the management becomes suspect. AAOIFI (2010) recommended that SSB remuneration based on the BoD recommendation. Al Qari (2002) proposed that the SSB should enough resource of income since the SSB is one of precious inputs in the IB.

Then, the confidentiality of information become other issues in SSB professionalism. In the real world, SSB members have a position more than one financial institutions because the limited number of qualified Sharia scholar. The SSB members have an obligation to prevent the confidentiality of each financial institution in term of information, documentation, operations and activities. It could create type of conflict of interest in their position due to the access to a lot of crucial information (Issa, 2009). Garas (2012) stated the conflict of interest in the SSB significantly influenced by the executive position of the SSB members, the fund issuers and the BoD. The quality of service and consistency become part of professionalism (Evans, 2011). The shortage number of trained and skilled Sharia scholar might create an impact on the recruitment of the SSB members. Bakr (2002) confirmed that the involvement of Sharia scholars in one more than one

SSB outside the workplace, which might build conflict, since it is hard to be independent for two different IFIs for the same obligation. Issa (2009) stated that sitting on several position as SSB member will empower the SSB member to get access in a lot of crucial information, for example about new products and services, managerial inside and outside operation, and the performance of the projects. On the other hand, Garas, (2012) emphasized that those power will bring intangible benefits to the SSB members like sharing information of one institutions with its competitors, clients or stakeholders. Lahsana & Saba (2014) identified the issues in the quality and the consistency in the SSB professionalism need professional ethics and the SSB is expected to build a structured process for ensuring the quality and consistency of their Sharia decision. SSB also need to document, adopt, and maintain their Sharia decision at all times to ensure their credibility of the decision-making and protect the SSB members from conflict of interest.

In the case of IB, failure to comply Islamic law should exact an intolerable moral cost, much greater than loss of economic revenue. However, viewing SSB from the professionalism perspective, which may be derived from religious beliefs, might lead to different behaviour in moral values are given more weight than economic factors. The SSB professionalism needs to base on the mutual help, accountability, transparency and honesty, protection of minorities, disclosure and equitable distribution of wealth, brotherhood and responsibility.

Concluding Remarks:

One of the unique features of IB is the existence of SSB members as the gate-keeper to ensure the Sharia implementation and compliance in their institutions. Each member of SSB has to review and assist the product and IB operations that comply to the Sharia rules and principles. This article has an objective to discuss the issue and challenges of SSB professionalism in IB. It also puts forward the concept of professionalism of SSB in the process of Sharia governance by addressing the relevant issues and challenges.

This article concludes that the professionalism of SSB need to go beyond basic competence and rhetorical appeals in order to ensure that all activities and operations within the IB do not contravene the Sharia law. The first scope of SSB professionalism is knowledge. Due to the quality, consistency and credibility of Sharia decisions is expected to develop a structured process in achieving the Sharia objectives in IB. Then, it is also argued about the genuine morality of IB and criticizes the non-compliance products and services. It is due to the credibility of IB is linked to the SSB decision-making and Sharia interpretation.

Next is the linkage between the SSB professionalism and credibility of IB has a tight

correlation and integral. SSB has a commitment to religious value and religious obligations, on the other hand, IB must be appreciated their professionalism with strong incentives. Finally, SSB members have an obligation to prevent the confidentiality of each financial institution in term of information, documentation, operations and activities, because of the limited number of qualified Sharia scholars. Professional ethics and manageable structured process in decision-making and Sharia interpretation might give a guidance for SSB members in order to fulfill their obligations.

Despite the acknowledge limitation of this article, it reveals issues and challenges of SSB professionalism in IB, which is expected to fulfill the objective of addressing some of the shortcomings in Islamic literature of SSB professionalism. Current discussion of SSB professionalism prohibits the possibility of notions of SSB professionalism arising from other different value systems. However, the analysis so far focused on the teaching of Islam, with no specific focus on Islamic countries. This issue highlighted the need to conduct future studies integrating empirical evidence to supplement this conceptual exploration. The impact of Islamic on SSB professionalism should be examined in greater depth by extending the research using surveys or interviews, gathered from large sample size could help in gaining a wider understanding of this issue.

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