Behind The Deviation Of Islamic Bank From Sharia Principles

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Behind The Deviation Of Islamic Bank From Sharia Principles

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Abstract

This paper examines the causes of Islamic bank deviated from sharia principles. I want to explore why Islamic bank deviates from sharia principles. This study used a qualitative method with in-depth interviews with one of the Islamic banks in Sumenep Indonesia. I divided this study into two steps. First, examine whether Islamic bank deviates from sharia principles. Second, examine what causes Islamic banks to deviate from sharia principles. The results of this study found that the causes of Islamic banks deviated from sharia principles are the existence of competition between Islamic banks and the existence of profit targets that must be achieved. The findings of this study contribute to providing information to the public who criticize Islamic bank so that they understand the difficult conditions of Islamic bank to adhere perfectly to sharia principles so that the public do not always blame Islamic bank for deviations committed and do not condemn it. In turn, this problem can be found the right solution.

Keywords - Cause, deviation, Islamic bank, sharia principles.

1. Introduction

Sharia Financial Institutions are showing significant developments. This event can be seen from the growing number of Sharia Banks or Sharia Business Units, Islamic insurance, Islamic cooperatives, and sharia contracts. Nowadays, Islamic financial institutions operate worldwide (Imam & Kpodar, 2013). The spectacular growth of Islamic banks has been accompanied by the establishment of Islamic practices in the conventional banks of many countries (Boukhatem & Moussa, 2018).

The most distinguishing aspect of conventional systems with sharia systems is compliance with sharia principles (Grassa & Gazdar, 2014; Hamza & Kachtouli, 2014; Khoutem, 2014; Mokni, Echchabi, Azouzi, & Rachdi, 2014; Shawtari, Saiti, Razak, & Ariff, 2015). This aspect also makes sharia financial institutions more potent than conventional financial institutions. It is pertinent to mention that Islamic finance inherits financial stability and overall human well-being (Zaman, Hassan, Akhter, & Brodmann, 2018). Theoretical literature about Islamic bank is supporting the notion that the adoption of profit–loss sharing (PLS) contracts would increase the value of Islamic banks and make them resilient to the crisis (Abdul-Rahman, Latif, Muda, & Abdullah, 2014).

However, various irregularities were discovered when interactions between banking practitioners, banking users (customers), and experts (Fiqh experts) and in-depth studies are done. Today Islamic industry is under severe criticism, Islamic bank can be deemed in the course of conventional banks as they have some practices, which would convert Islamic banks to conventional (Gundogdu, 2016). Many criticisms have been conveyed about Islamic banks being disobedient to sharia principles correctly (Echchabi & Aziz, 2014).

Many previous studies have provided evidence about Islamic banks are deviated from sharia principles and are not different from conventional banks in practice (Ahroum & Achchab, 2017; Chong & Liu, 2009; Farooq, 2014; Hummel & Goud, 2017; Khan, 2011; Mansor, Bhatti, & Ariff, 2015); Shawtari et al. (2015). The ideals of Islamic banks to create greater economic justice are different from the practices implemented (Khan, 2010). This event will lead to negative perceptions of the Islamic bank's customers. Customers are important stakeholders of a company because the company's ability to generate cash flow depends mostly on the value made for its customers (Huang, 2018). Consumer's opinion is influential on the value of the company. Sloping opinions in the media have a negative impact on the company (Baloria & Heese, 2018).

From previous studies, only Ullah (2014) (at Islamic banks in Bangladesh) who stated that the weak adherence of Islamic banks to sharia principles was influenced by the lack of knowledge, lack of sincerity in complying sharia, poor attention in sharia audit and sharia research and lack of strong sharia supervisory board comprising full-time skillful members.

This research is qualitative research using data collection techniques is the interview. Interviews were conducted such as sharing information so that the informants did not feel intimidated and hid important information from the researcher. However, researchers remain guided by research questions implicitly.

This research examined the causes of Islamic bank deviated from sharia principles by using non-compliant Islamic banks as data sources. This method makes the data obtained is under the actual situation based on the experience of the Islamic bank itself. To find out about the causes of someone committing fraud, we must ask him directly, not to others. Likewise, to find out the causes of Islamic banks deviating from sharia principles, we must ask the Islamic bank directly, not ask the other party. So this study consists of two steps. First, the researcher investigates whether Islamic banks have violated sharia principles. If the result is an Islamic bank is not obedient, followed by the next step. But if the result is an Islamic bank is obedient, researchers will look for other Islamic banks that are not compliant. Second, the researcher traces what causes Islamic banks to deviate from sharia principles.

The results of this study find that fierce competition is the cause of Islamic banks being disobedient to sharia principles. Islamic bank must compete with other Islamic banks and conventional banks. In order to compete, especially with conventional banks, an Islamic bank is forced to make policies that violate sharia principles. The Islamic bank wants to show to the public that it can provide profit to its customers. In addition, another factor causing Islamic bank deviated from sharia principles is the existence of profit targets. Islamic banks are profit-oriented companies, profit target has been set, make it do various ways even though it is violating sharia principles. Management will be considered underperforming if he can't meet the profit target.

The findings of this study contribute to explaining that Islamic bank is in a difficult position. On the one hand, the Islamic bank must adhere to sharia principles purely, but on the other hand, Islamic bank must also meet its needs (profits). The findings of this study also provide information to the public who criticize Islamic bank so that they understand the difficult conditions of Islamic bank to adhere perfectly to sharia principles so that the public do not always blame Islamic bank for deviations committed and do not condemn it. In turn, this problem can be found the right solution through regulation or other, such as transferring status from profit-oriented to nonprofit-oriented (entirely only for the welfare of the people). Information about these findings is important for stakeholders, customers, policymakers, and regulators who care about the development of Islamic banks.

The remainder of this paper is organized as follows. The next section is a literature review of Islamic banks in section 2, followed by the method in section 3. Section 4 presents the results of the research and discussion. While section 5 is a conclusion.

2. Literature Review

The Islamic Financial Institutions (IFIs) in Indonesia include Bank Umum Syari'ah, Bank Pembiayaan Rakyat Syari'ah, and Unit Usaha Syari'ah Bank Konvensional, Baitulmal wat Tamwil, Asuransi Syari'ah, Pasar Modal Syari'ah, Reksa Dana Syari'ah, Pegadaian Syari'ah, and Lembaga Amil Zakat (LAZ) and Badan Amil Zakat (BAZ) (Yaya, Martawireja, & Abdurahim, 2014).

Islamic financial institutions according to the National Sharia Council (*Dewan Syariah Nasional*) are financial institutions that issue sharia financial products and obtain operational licenses as sharia financial institutions (DSN-MUI, 2003). This definition confirms that IFIs must include two elements, namely, elements of conformity with Islamic sharia and legality of operation as a financial institution. The conformity element of the IFIs with the Islamic Sharia is centrally regulated by the DSN, which is manifested in various fatwas issued by him.

In its development, Islamic finance and Islamic financial activities in practice must be based on sharia law, so that it is different from conventional finance (Grassa & Gazdar, 2014). Islamic banks are based on sharia principles, which constitute the linchpin of practices of Islamic banks (Shawtari et al., 2015). The Islamic banking industry is considered a new shape of financial intermediation. Different from the conventional system, the relationship between the Islamic banks and its customers is based on mutual trust, strengthened by shared religious beliefs (Hamza & Kachtouli, 2014). Islamic finance does not finance dangerous goods such as alcoholic beverages or services that are morally unacceptable (e.g., casinos and pornography) (Khoutem, 2014). Islamic financial institutions provide investment, financing, and transactions compatible with Sharia (Mokni et al., 2014).

The literature on Islamic banks states that Islamic banks must adopt profit-loss sharing (PLS) (Abdul-Rahman et al., 2014). With PLS, it is expected that there will be justice between the bank and the customer. As Ahmad, Muhammad, and Banking (2009) stated, Islamic economics aims to provide services and protection to the public.

The previous study has found evidence of Islamic banks deviated from sharia principles in practice. Khan (2011) has found certain features of 'Murābahah' are in direct conflict with Islamic law and need to be revised to make it purely an Islamic product. Chong and Liu (2009) using studies in Malaysia has found Islamic deposits are not free and are based on conventional deposits. Emilia (2011) in his study on BMTs in Indonesia has found nominal installment payments on musyarakah and mudharabah financing are fixed and not based on fluctuations in the profit (loss) of customers. In addition, determining the profit sharing ratio is not discussed by both parties (customers and BMT), but it is determined by BMT unilaterally. While Ersico (2012) has examined the mudharabah financing contract has found the determination of profit sharing ratio does not practice bargaining between BMT and financing members about the amount of profit sharing ratio, but the profit sharing ratio already exists from BMT. In addition, the amount of profit sharing divided between the two parties is not based on the obtained profit by the financing member per month, but it is based on BMT provisions per month.

3. Methodology

This study uses qualitative with an interpretive paradigm and specifically uses the phenomenology approach. This study is conducted to find out about the causes of Islamic bank deviating from sharia principles so that the type of qualitative research is suitable for use. Qualitative research is used when some problems or issues need to be explored and requires a deep understanding of the issue by listening directly to the respondent to minimize the distance between the researcher and the respondent (Creswell, 2007). To obtain data about the causes of Islamic banks deviating with sharia principles, it is necessary to explore Islamic banks which have experience in doing deviations directly, so that the interpretive paradigm and phenomenological approach are used.

This study consists of two steps. First, investigate whether Islamic banks have violated sharia principles. If the result is an Islamic bank is not obedient, followed by the next step. But if the result is an Islamic bank is obedient, researchers will look for other Islamic banks that are not compliant. Second, the researcher traces the causes of Islamic bank is not adhering to sharia principles.

The data collection technique of this research is the interview. Interviews were conducted by minimizing intimidation with a unique strategy. Interviews were conducted such as sharing information with respondents so that respondents did not hide the truth of the information. But researchers are still guided by research questions in sharing information with respondents implicitly. This strategy is done as an effort to minimize the distance between researchers and respondents.

3.1. Respondent and data collection

Respondents in this study were employees of an Islamic bank and its customers. The number of respondents in this study was five respondents. The data used are primary data that obtained by direct interviews with respondents using a tape recorder, and direct observation on objects to find out the practice of implementing sharia principles and collecting documents related to this research such as contract agreements that are usually provided by the bank.

3.2. Data Analysis

The data analysis techniques used are data analysis techniques developed by Millers and Huberman with stages of data reduction, data presentation, and verification. Then, the validity of the data was tested by triangulation between the results of interviews with one respondent with another respondent, as well as the results of interviews with documentation.

4. Results

Following the research steps described in the method section, the first step is to find an Islamic bank that is not compliant with sharia principles. Then, the second step is to examine the causes of Islamic bank not complying with sharia principles.

4.1. Step 1

In the first step of this research, the author has found one of the Islamic banks in Sumenep Indonesia which is not compliant with sharia principles (after this referred to as Islamic bank X). In the practice of savings under the Wadiah principle, Islamic bank X is violated sharia principles. It tells its customers that it will give a bonus of 1.5%. Bonuses may not be mentioned at the beginning of a contract with a certain amount (see SAK Sharia No. 59 paragraph 136 (b) and DSN MUI Fatwa NO.: 02/DSN-MUI/IV/2000 about Savings, third decision, point 3). This finding is based on interviews with employees, as follows:

> “Yes, that (1.5% bonus) is per year, notified to customers through the monitor screen.” interview with R.
>
> “Determination of savings bonuses can be seen on the monitor screen in the customer's waiting room." Interview with J.

In the practice of mudharabah deposits, Islamic bank X also committed violations. Determination of profit sharing ratios for mudharabah deposits is a provision from the bank and is not negotiable. This finding is based on the interview, as follows:

> "... The deposit ratio can also be seen on the monitor screen." Interview with R.
>
> “Ratio is not negotiable anymore. That ratio is the portion of profit sharing." Interview with J.

This practice deviated from sharia principles. The profit sharing ratio must be discussed between the two parties, then agreed upon (see DSN MUI Fatwa, and SAK Sharia).

Besides, in the practice of mudharabah deposits, customers receive profit sharing based on a percentage of the amount of capital invested and also known at the beginning of the contract. This practice also deviated from the DSN MUI Fatwa regarding mudharabah deposits and SAK Sharia No. 105. The profit sharing ratio must be determined by a percentage of profit, not by a percentage of the number of funds invested.

Islamic bank X also violates sharia principles in the practice of working capital financing with mudharabah contracts. The loan ceiling amount, profit sharing ratio, return on capital and collateral are determined by the bank by using predictions after field surveys, such as sales predictions, cost predictions, profit predictions, etc. In turn, the amount of installments from customers per month is fixed and does not matter whether the customer is profit or loss. Below are the results of the interview:

> "...loan ceiling, guarantee, agreement letter, period, margin or profit sharing ratio. All they are decided from analysis..." Said Rt.
>
> "Installments paid by customers every month are also determined by predictions that have been made, and the amount is fixed." Said J.
>
> "Installments are fixed, banks do not care about profit or loss customers, installments from customers are fixed per month." Said Z.

The practice of Islamic bank X in financing working capital financing with mudharabah contracts is not under SAK Sharia no. 105, paragraphs 10 and 20, and the DSN MUI Fatwa No. 07 / DSN-MUI / IV / 2000 concerning Mudharabah Financing (Qiradh), third decision, number 2.

4.2. *Step 2*

In this step, the author investigates the causes of Islamic bank X is not complying with sharia principles. To make the discussion clear, the author divides the findings into two points of discussion, namely, competition between banks, and meet of profit targets.

4.2.1. *Competition Between Banks*

Islamic financial institutions, from time to time, are snowballing, this can be seen from the curve of the number of Islamic financial institutions that continues to increase. On the one hand, the increasing number of Islamic financial institutions is a positive value, but on the other hand, it increases competition to win the market. Islamic financial institutions must compete with other Islamic financial institutions and conventional financial institutions. The conventional financial system is still dominating around the globe. Islamic banks have to compete with conventional counterparts in standardization, innovation, and inter-industry business, and markets to operate in the dual system. Principally, the Islamic banks ought to observe profit and loss sharing system mechanism such as Mudarabah and Musharakah. However, the competition, as indicated above, has forced them to use mostly the fixed return instruments (Rashid & Jabeen, 2016). Competition can also affect the margins of Islamic banks (Trinugroho, Risfandy, & Ariefianto, 2018).

Financial institutions operating in Sumenep Indonesia are numerous, so Islamic banks need strategies to attract consumers. Consumers will select banks has the most profitable prospects for them. This situation is the causes of Islamic bank X is not adhering to sharia principles in the practice of savings (wadiah contract), mudharabah deposits, and the financing of working capital financing with mudharabah contracts. As explained by several informants as follows:

> "... the determination of bonus prices, and profit sharing based on how many banks have to pay to third parties, then what are the bank's operational costs, and whether the bonuses and profit sharing offered to the public can compete or not." Said J
>
> "Consumers can compare how much profit they will get between being our customers and other bank customers. For this reason, we give the equivalent amount of profit they receive if they deposit or save at us. Let them have a consideration." Said Rn
>
> "how many other banks provide rates (savings, deposits, and financing), also considered. Although (the competing bank) is not sharia. ... If you don't pay attention to your competitors, you won't be able to sell to the public ..." Said Rt

All this is done by Islamic bank X to create a good name and convince the public that the Islamic bank X also has good prospects and should be considered as a place to invest and be able to compete with other financial institutions operating in Sumenep Indonesia. This practice is done to inform the public that if they become customers of the Islamic bank X, it is more profitable than being a customer of another bank.

By practicing the savings bonus at the beginning of the contract (in savings with a wadiah contract), it is expected that the community can consider the profit to be gained if saving at an Islamic bank X rather than saving at another bank. Likewise, the percentage of profits based on the number of funds invested (in mudharabah deposits), can help the community to consider the profit they will get if they deposit funds at Islamic bank X or another bank.

4.2.2. To Meet The Target Profit

Islamic banks are a profit-oriented business institution. This condition is indicated by the existence of ratios use elements of earnings to assess the performance and productivity of Islamic financial institutions. The interest to attract investors and the welfare of the owner must be prioritized for the continuity of the operation of Islamic financial institutions so that it also has a profit target that must be fulfilled every year.

This finding is as confirmed by J through interviews that Islamic Bank X has a Bank Business Plan (*Rencana Bisnis Bank/RBB*). The following is a description of J.

> "We have a Bank Business Plan every year. In this RBB, everything was planned. How much savings must be entered, how much financing must be thrown into the community. There are targets, what are the costs incurred, how much profit is to be achieved. So everything has been planned, that is the benchmark of the bank's plan when, for example, the 2017 RBB becomes a benchmark. Eventually, it becomes a target. " Explained J.
>
> "We have provided financing to customers, with all risks. We don't want the financing, and we lose, so we do the analysis first. If later we lose (from the funding given to customers), it will affect the RBB. The target will not be reached. Then the amount of installments from customers (principal and profit sharing) is set at the beginning. The amount is fixed per month. Based on this analysis." Explained J at another time.

The existence of a target, how much funding should be obtained by the Islamic bank X contained in the RBB, making it take a strategy that can attract the interest of the community to become its customers. Such as notification of bonus savings with a wadiah contract at the beginning of the contract, or notice of profit sharing of mudharabah deposits by using the equivalent percentage of the funds invested by the customer.

The target of profit makes Islamic bank X take the decision that every financing must be profitable and not be lost, so the Islamic bank X violates sharia principles in the practice of working capital financing under the Mudharabah principle. The main principle of Islamic banks is Profit Loss Sharing, not just profit sharing without loss. Islamic Bank X predicts the profit of the customer, determines the profit sharing ratio unilaterally, and the amount of the principal installments and profit sharing that overrides the profit and loss experienced by the customer. Islamic bank X does not want the funds disbursed to provide loss.

The target is one of the causes of Islamic bank non-compliance with sharia principles. Management's desire to provide a positive signal to investors encourages management to achieve the set targets. Bennett, Bettis, Gopalan, and Milbourn (2017) states that management will receive a penalty if it does not meet the target.

5. Conclusions

The results of this study state that the cause of Islamic bank does not adhere to sharia principles is a tight competition and demands to meet profit targets. Close competition makes Islamic bank X violate sharia principles to attract consumers. Fulfillment of profit targets is also the cause for violations, to ensure that all transactions carried out by Islamic bank X never lose. Even though, the central principle of Islamic banks is profit-loss sharing, not just profit sharing without losses.

The results of the research contribute to information about the difficulties of Islamic banks in purely adhering to sharia principles. This finding is essential to provide information as a consideration to interested parties such as stakeholders, customers, policymakers, and regulators.

This research has limitations. First, this research uses limited informants, so it can not be generalized. Second, this research does not include the Sharia Supervisory Board. The author hopes further research can use more informants and include the Sharia Supervisory Board as one of the informants.

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