COMPARISON OF GOOD CORPORATE GOVERNANCE PRINCIPLES IN CONVENTIONAL BANKS AND ISLAMIC BANKS IN INDONESIA

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Abstract

In terms of how to determine prices, banks are divided into two types, namely conventional banks and Islamic banks. Conventional banks and Islamic banks must apply the principles of Good Corporate Governance in their business activities because conventional banks and Islamic banks are intermediary institutions that function to collect funds from the public and channel these funds back to the public on the basis of trust. This research aims to explain the comparison of the principles of Good Corporate Governance in conventional banks and Islamic banks in Indonesia. The method used in this research is normative legal research, using a statutory approach. The principles of Good Corporate Governance, namely the principles of transparancy, accountability, responsibility, independence and fairness. Basically, the application of the principles of Good Corporate Governance in conventional banks and Islamic banks is the same, because it refers to the 'Guidelines for Good Corporate Governance of the Indonesian Banking' issued by the National Committee on Governance Policy. The difference is the principle of Good Corporate Governance in Islamic banks is strictly regulated in Article 34 Paragraph (1) of Law No. 21/2008. Another difference lies in the Islamic principles used by Islamic banks because besides being fostered and supervised by the Financial Services Authority, Islamic banks also supervised by the National Sharia Council of the Council of Indonesian Ulama in general and the Sharia Supervisory Board in particular.

Keywords: *Good Corporate Governance Principles; Islamic Banking; Comparison*

INTRODUCTION

In Indonesia, as mandated by the Pancasila and the 1945 Constitution of the Republic of Indonesia, the goal of national development is the creation of a just and prosperous society based on economic democracy by developing a just economic system. To ensure the continuation of economic democracy, all potentials, initiatives, and creations of the people must be fully mobilized and developed within the limits that do not harm the public interest, so that all potential economic forces can be mobilized into tangible economic forces for the benefit of increasing prosperity people.

To achieve this goal, the implementation of economic development must pay more attention to the harmony and balance of the elements of equitable development, economic growth and national stability. One means that has a strategic role in harmonizing and balancing each element of the development trilogy is banking.

Put simply, a bank is defined as a financial institution whose business activities raise funds from the community and channel these funds back to the public and provide other financial services (Kasmir, 2012: 3).

In terms of how to determine prices, banks are divided into two types, namely conventional banks and Islamic banks. Conventional banks are banks that carry out their business activities conventionally and apply interest, while Islamic banks are banks that carry out their business activities based on sharia principles using profit sharing system and are free from usury (Muhammad, 2005: 28).

According to Article 3 of Law No. 7/1992 it is stated that the main function of a bank is to collect and channel public funds. First, banks function to raise funds from the public. Banks collect funds from the public in the form of deposits. People trust banks as a safe place to make investments. People who have excess funds really need a bank to store their funds safely. By depositing money in the bank, the customer will also benefit in the form of interest given by the bank in return. Second, the bank functions to channel funds to the public. Channeling funds is a very important activity for banks because banks will earn income in the form of interest on the funds channeled. Income obtained from the activities of channeling funds to customers is the largest income for a bank, so the activity of channeling funds is very important (Ismail, 2011: 4-6).

Therefore, banks are required to maintain their soundness in accordance with the provisions of capital adequacy, asset quality, management quality, liquidity, profitability, solvency, and other aspects related to bank business, and are required to conduct business activities in accordance with the precautionary principle. An unhealthy bank not only endangers itself, but also endangers the public interest. This is because the bank manages public funds entrusted to him in the form of savings, deposits, and current accounts. The community as the owner of the funds can withdraw their deposits at any time if they know the bank where they are storing funds is not healthy. Keep in mind, the main purpose of the community to save money in the bank is because the security of money is guaranteed, while the other goal is to invest in the hope that the interest will be earned from these deposits. In principle, the relationship between the bank and the customers who keep their money in the bank is based on a relationship of trust, so that each bank is required to continue to maintain the level of health (Andrew Shandy Utama, 2018: 5-6).

The Indonesian public had once lost confidence in the banking sector during the economic crisis in 1998, which was marked by the massive withdrawal of customer deposits, especially in private banks. Real evidence caused by the 1998 economic crisis for the banking sector is the freezing of 38 banks' businesses, including Ciputra Bank, Ganesha Bank, Pesona Bank, Alfa Bank, Aspac Bank, and so forth. Furthermore, there were 7 banks that were taken over by the government, namely RSI Bank, Putera Sukapura Bank, POS Bank, Artha Pratama Bank, Nusa National Bank, Jaya Bank, and IFI Bank. In addition, there were also 4 state banks, namely Dagang Bank, Exim Bank, Bumi Daya Bank, and Bapindo which were merged into Mandiri Bank. The solution that can be taken by banks in Indonesia to maintain their existence and soundness is by applying the principles of Good Corporate Governance, which is a bank governance that applies the principles of transparency, accountability, responsibility, independence, and fairness (Andrew Shandy Utama, 2016: 40).

The surprising thing is that during the crisis it turned out that Bank Muamalat Indonesia is one of the banks that are categorized as healthy. Bank Muamalat Indonesia, which at the time was the only Islamic commercial bank in Indonesia, was in fact still able to show relatively better performance compared to other conventional banks. At that time, Bank Muamalat Indonesia had a Capital Adequacy Ratio (CAR) in category A (Abdul Ghofur Anshori, 2009: 4-5). Seeing this phenomenon, at this time most conventional banks in Indonesia have established Islamic banks as a form of business development, for example namely the establishment of Bank Syariah Mandiri, BRI Syariah, Bank Mega Syariah, and so forth.

Over time, the existence of Islamic banking in Indonesia was further strengthened by the passing of a law specifically regulating Islamic banks, namely Law No. 21/2008 concerning Sharia Banking. The law in fact often lags behind developments in society. For this reason, the law must be dynamic, that is, able to follow and adapt to the development of society, especially developments in the banking sector that have experienced very rapid progress.

From the introduction that has been described above, the problem to be discussed in this research is how is the comparison of Good Corporate Governance principles in conventional banks and Islamic banks in Indonesia?

METHOD OF RESEARCH

Legal research is a scientific activity that is based on certain methods, systematics, and thoughts that aim to study one or several specific legal phenomena by analyzing it (Soerjono Soekanto, 2007: 43). The method used in this research is normative legal research, using a statutory approach. Normative legal research is a process to find the rule of law, legal principles, and legal doctrines in order to answer the legal issues faced (Peter Mahmud Marzuki, 2011: 35). Data sources used in this research are secondary data, namely data obtained from statutory regulations, scientific journals, and legal literature. The data collection technique used in this research is literature study. The data analysis technique used in this research is qualitative analysis.

RESULTS OF RESEARCH AND DISCUSSIONS

The term Good Corporate Gonernance originally appeared around the 1970s in the United States after several corporate scandals and corrupt practices were carried out internally in the company such as the Enron and Worldcom cases. This principle was born because of public encouragement and demands that companies not engage in public lies in the form of manipulation of financial data that has been detrimental to the public interest and is considered an illegal act, so that a legal rule known as the Sarbanes Oxley Act, which is devoted to taking over the oversight function over the auditor (Adrian Sutedi, 2012: 7).

The 1998 economic crisis that hit Indonesia had the effect of increasing attention from the government, business people, and the wider community on the importance of applying the principles of Good Corporate Governance, and this became a central issue in order to support economic recovery and stable and sustainable economic growth in the future. come. The rapid development of economic conditions in line with the era of globalization encourages each company to be able to compensate. Business actors in Indonesia also agreed that the application of the principle of Good Corporate Governance as an important matter. This was evidenced by the signing of the Letter of Intent with the International Monetary Fund in 1998, which then formed the background for the birth of the National Committee on Corporate Governance Policy in 1999. The principles of Good Corporate Governance contain five main principles, namely the principles of transparancy, accountability, responsibility, independence, and fairness.

Bank is an intermediary institution that in carrying out its business activities depends on public funds and trust, both from within and outside the country. In carrying out these business activities, banks face various risks, both credit risk, market risk, operational risk, and reputation risk. The many regulations governing the banking sector in the context of protecting the interests of the public make the banking sector a 'highly regulated' sector.

The banking crisis that occurred in Indonesia was actually not only caused by the economic crisis, but also caused by the not yet applying the principles of Good Corporate Governance and the underlying ethics. Therefore, efforts to restore confidence to the banking sector in Indonesia through restructuring and recapitalization can only have a long-term and fundamental impact if accompanied by three other important actions, namely adherence to the principle of prudence, application of the principles of Good Corporate Governance, and effective supervision of bank supervisory authority.

The application of the principle of Good Corporate Governance is very necessary to build public trust and the international world as an absolute requirement for the banking sector to develop properly. Therefore, the Bank for International Sattlement as an institution that studies the principles of prudence that must be adhered to by banks has issued guidelines for implementing Good Corporate Governance for the banking sector internationally.

As an intermediary and trust institution, in carrying out its business activities, banks must adhere to the principle of openness, have performance measures from all levels of the bank based on measures consistent with corporate values, business goals, and bank strategies as reflecting bank accountability, adhering to prudential banking practices and guarantee the implementation of the provisions that apply as a form of bank responsibility, objective, and free from pressure from any party in making decisions, and always pay attention to the interests of all stakeholders based on the principle of equality and fairness.

In the principle of transparancy, banks must first disclose information in a timely, adequate, clear, accurate, comparable and easily accessible manner to stakeholders in accordance with their rights. Second, the information that must be disclosed includes, but is not limited to matters related to the company's vision, mission, business goals and strategy, financial condition, composition and compensation of management, controlling shareholders, cross shareholding, executive officers, risk management, systems internal supervision and control, compliance status, systems and application of the principles of Good Corporate Governance, as well as important events that can affect the condition of the bank.

Third, the principle of transparancy adopted by the bank does not reduce the obligation to fulfill the provisions of bank secrecy in accordance with the applicable laws and regulations, confidentiality of position, and personal rights. Finally, bank policies must be written and communicated to interested parties and those entitled to obtain information about these policies.

In the principle of accountability, the bank must first establish clear responsibilities for each organ of the organization that is aligned with the company's vision, mission, business goals and strategy. Secondly, banks must believe that all organs of the bank's organization are competent in accordance with their responsibilities and understand their role in applying the principles of Good Corporate Governance. Third, banks must ensure there is a check and balance system in bank management. Finally, banks must have performance measures from all levels of the bank based on agreed-upon measures that are consistent with the company's value, business goals and bank strategy, and have a rewards and punishment system.

In the principle of responsibility, firstly to maintain business continuity, banks must adhere to the principle of prudence and ensure the implementation of applicable regulations. Second, banks must act as good corporate citizens, including caring for the environment and carrying out social responsibility. In the principle of independence, the bank must first avoid the occurrence of unfair domination by certain stakeholders and free from conflicts of interest. Second, banks in making decisions must be objective and free from all pressures from any party.

In the principle of fairness, first the bank must always pay attention to the interests of all stakeholders based on the principle of equality and fairness. Second, banks must provide opportunities for all stakeholders to provide input and express opinions for the interests of banks and have access to information in accordance with the principle of transparancy.

Every bank, both conventional and Islamic banks, must apply the principles of Good Corporate Governance in its business activities. This is because conventional banks and Islamic banks are intermediary institutions that function to raise funds from the public and channel these funds back to the public. Basically, the application of the principles of Good Corporate Governance in conventional banks and Islamic banks is the same, because it refers to the 'Guidelines for Good Corporate Governance of the Indonesian Banking' issued by the National Committee on Governance Policy.

Islamic banks are banks that carry out their business activities based on sharia principles, namely Islamic legal principles in banking activities based on fatwas issued by the National Sharia Council of the Council of Indonesian Ulama. Initiatives regarding the establishment of Islamic banks in Indonesia began in 1990 by the Council of Indonesian Ulama, which was realized with the establishment of Bank Muamalat Indonesia on November 1, 1991. The initial development of Islamic banking in the national banking system was quickly responded by the government with the adoption of Law No. 7/1992 concerning Banking, which was later amended by Law No. 10/1998. In addition to being devastating for the national banking system, the economic crisis that occurred in 1998 also became a starting point for the development of Islamic banking in Indonesia. Some conventional banks began to expand their business by establishing Islamic banks. Responding to the significant development of Islamic banking in the national banking system, on July 16, 2008 Law No. 21/2008 concerning Sharia Banking was passed as a separate legal basis for Islamic banks in Indonesia (Andrew Shandy Utama, 2018: 112).

Unlike conventional banks, the principles of Good Corporate Governance in Islamic banks are strictly regulated in Article 34 Paragraph (1) of Law No. 21/2008, which confirms that Islamic banks are required to implement good governance that includes the principles of transparency, accountability, responsibility, professional and reasonable in carrying out their business activities.

In addition, the fundamental difference in the comparison of the principles of Good Corporate Governance in conventional banks and Islamic banks lies in the Islamic principles used by Islamic banks. In conventional economics using the philosophy of positivism is based on human experience and empirical studies and does not believe in God's revelation. Meanwhile, in Islamic economics the main guideline is God's revelation in the Qur'an. Thus, what drives Islamic banks in implementing the principles of Good Corporate Governance is god-interest, namely in the context of worshiping God.

Sharia principles are based on the values of justice, expediency, balance, and universality. These values are applied in Islamic banking settings. Islamic banking principles are part of Islamic teachings relating to economics. One of the principles in Islamic economics is the prohibition of usury in various forms and uses a system including the principle of profit sharing. The application of the principle of Good Corporate Governance also aims for employees of sharia banks to adhere to sharia principles in a comprehensive and consistent manner (Akhmad Mujahidin, 2013: 40).

To ensure that the principles of Good Corporate Governance are implemented properly by conventional banks and Islamic banks, coaching and supervision must be carried out by independent institutions. Article 29 Paragraph (2) of Law No. 10/1998 states that bank development and supervision is carried out by Bank Indonesia. Bank development undertaken by Bank Indonesia includes, among others, institutional, ownership and management aspects (including fit and proper test), business activities, reporting, and other aspects related to bank operational activities, while bank supervision conducted by Bank Indonesia includes indirect supervision of basis for bank statements and direct supervision in the form of inspections at the relevant bank offices.

With the enactment of Law No. 21/2011 concerning the Financial Services Authority, starting from January 1, 2014 the regulation and supervision of conventional banks and Islamic banks were taken over by an independent institution called the Financial Services Authority. Article 7 of Law No. 21/2011 states that the Financial Services Authority has the authority, namely:

1. Arrangements and supervision of bank institutions, which include licensing for bank establishment, opening of bank offices, articles of association, work plans, ownership, management and human resources, mergers, consolidations and bank acquisitions, and revocation of bank business licenses; and bank business activities.
2. Regulations and supervision regarding bank health, which includes liquidity, profitability, solvency, asset quality, minimum capital adequacy ratio, maximum lending limit, loan to deposit ratio, and bank reserves; bank statements related to bank health and performance; debtor information system; credit testing; and bank accounting standards.
3. Regulations and supervision regarding bank prudential aspects, including risk management; bank governance; the principle of getting to know customers and anti money laundering; and prevention of financing terrorism and banking crime.
4. Bank inspection.

Another thing that distinguishes between the principles of Good Corporate Governance in conventional banks and Islamic banks is that there is special supervision on Islamic banks carried out by the National Sharia Board of the Council of Indonesian Ulama in general and the Sharia Supervisory Board in particular.

The National Sharia Council of the Council of Indonesian Ulama is tasked with developing the application of sharia values in economic activities in general and finance in particular, issuing fatwas on types of financial activities, issuing fatwas on sharia financial products and services, and overseeing the implementation of fatwas that have been issued (Abdul Ghofur Anshori, 2009: 46).

The Sharia Supervisory Board is tasked with overseeing the development process of new sharia bank products, requesting fatwas from the National Sharia Board of the Council of Indonesian Ulama for new sharia bank products for which there is no fatwa, conducting periodic reviews of the fund raising mechanisms and channeling of funds and sharia bank services, and requesting data and information related to sharia aspects of sharia bank work units in the context of carrying out their duties (Abdul Ghofur Anshori, 2009: 50).

CONCLUSION

In terms of how to determine prices, banks are divided into two types, namely conventional banks and Islamic banks. Conventional banks and Islamic banks must apply the principles of Good Corporate Governance in their business activities because conventional banks and Islamic banks are intermediary institutions that function to collect funds from the public and channel these funds back to the public on the basis of trust. The principles of Good Corporate Governance, namely the principles of openness, accountability, responsibility, independence and fairness. Basically, the application of the principles of Good Corporate Governance in conventional banks and Islamic banks is the same, because it refers to the 'Guidelines for Good Corporate Governance of the Indonesian Banking' issued by the National Committee on Governance Policy. The difference is the principle of Good Corporate Governance in Islamic banks is strictly regulated in Article 34 Paragraph (1) of Law No. 21/2008. Another difference lies in the Islamic principles used by Islamic banks because besides being fostered and supervised by the Financial Services Authority, Islamic banks also supervised by the National Sharia Council of the Council of Indonesian Ulama in general and the Sharia Supervisory Board in particular.

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