

# The Issue on the Sharia Supervisory Board Authority on Indonesia Sharia Insurance

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**Abstract.** PT. Takaful Indonesia, as the first sharia insurance company in Indonesia, was established in 1994. Based on the data of the Financial Services Authority of Indonesia, there are currently 55 takaful companies in Indonesia. The law governing takaful is The Law of the Republic of Indonesia Number 40 the year 2014 about Insurance. Sharia insurance is also regulated in other regulations, such as in The Regulation of Capital Market Supervisory, The Regulation of Minister of Finance and Fatwa of the Indonesian Ulema Council. Although the takaful industry was established in 1994, there are still many problems with Indonesia's takaful operations. Among them, there are no specific laws on takaful, limited jurisdiction of the Shariah Supervisory Board and lack of explanation of the Shariah Supervisory Board's mechanism. This research aims to analyze the problems inherent in the jurisdiction of the Sharia Supervisory Board of the takaful industry in Indonesia. Qualitative research methods are used to analyze library data relating to sharia compliance at takaful companies and conduct interviews with related parties. This research found two issues in the jurisdiction of the Sharia Supervisory Board of the takaful industry in Indonesia. The problems are legal issues and institutional issues. Therefore, this study proposes regulatory improvements that can support sharia compliance.

**Keywords:** Insurance; Takaful; Sharia Supervisory Board; Sharia Compliance

## 1 Introduction

An essential point of difference between sharia insurance and conventional insurance is the relationship between insurance companies and policyholders. In conventional insurance, there is a transfer of risk from policyholders to insurance companies. Meanwhile, in sharia insurance, risk sharing occurs among policyholders. The sharia insurance (takaful) company is only tasked with managing the business between policyholders [1]. The takaful industry is a fast-growing industry in both domestic and global markets. Therefore, the takaful industry's function is increasing and includes various services in the financial system. Based on data from the Indonesian Financial Services Authority, the number of insurance companies in Indonesia in 2017 was 12, while in 2020 it was 13. The number of sharia insurance assets in 2017 was Rp. 35 Trillion, while in 2020 it was Rp. 41 Trillion. This shows that the development of takaful companies in Indonesia is continuously increasing.

The development of the takaful industry in Indonesia has been very rapid, along with the increasing understanding of the community that there are activities in conventional insurance prohibited by Islamic sharia. Based on this understanding, since the 1990s the community began to become aware of the importance of takaful, which was in line with Islamic Sharia principles in Indonesia. However, this was a little slower than the Malaysian state, which had already implemented the takaful company in 1985 [2].

The development of takaful in Indonesia is in line with the conventional insurance industry. Conventional insurance has existed for a long time before the takaful industry. Due to the awareness of Muslims in Indonesia seeking financial institutions that are not challenged by Islamic law, PT Syarikat Takaful Indonesia was founded in 1994. The takaful company's establishment was first supported by the Indonesian Muslim Intellectuals Association, Abdi Bangsa Foundation, Bank Muamalat Indonesia, PT Asuransi Tugu Mandiri and The Ministry of Finance [3]. The development of Islamic financial institutions, especially takaful in Indonesia, is bottom-up. This is because the form of Islamic financial institutions originated from the community's will and then supported by the kingdom. Syarikat takaful started in 1994. However, the law that oversaw takaful was made in 2014. What's more, the law does not explicitly guard against takaful.

This positive development shows that Indonesia's Muslim community has a strong desire to avoid economic activities that are conflicting with Islamic law. As is well known, conventional insurance activities contain incompatible things with Islamic law [4]. Therefore, Muslims in Indonesia need takaful institutions that adhere to sharia compliance. As of 2018 in Indonesia, takaful's market share was only 4% of the existing insurance industry's total market share. However, from 2009-2018, Indonesia's takaful market share has doubled. This shows that the takaful industry in Indonesia is growing and still has enormous potential [5]. Islamic insurance, both globally and in Indonesia, has proven to be more assertive in facing the financial crisis than conventional insurance, relying on its financial policies on interest [6].

The Sharia Supervisory Board is a body that exists within the Islamic financial institution. It is tasked with overseeing the implementation of the National Sharia Council in the Islamic financial institution. The Sharia Supervisory Board distinguishes between takaful and conventional types of insurance. Research conducted by Elamer shows a positive relationship between the existence of the Sharia Supervisory Board and increased risk management disclosure. This indicates that the Sharia Supervisory Board can improve the quality of corporate governance [7].

The Sharia Supervisory Board consists of someone who is an expert in Islamic law as well as in finance. The Sharia Supervisory Board is in charge of overseeing all activities within the Islamic bank. It aims to prevent disobedience to Islamic principles. The Sharia Supervisory Board is also tasked with providing advice to the Board of Directors to always comply with Islamic regulations [8]. The Sharia Supervisory Board has several structures. The first structure is that the Sharia Supervisory Board is the same as the commissioner as the supervisory supervisor. Second, the Sharia Supervisory Board supervises the takaful industry's management to keep it in line with Islamic law. Third, it is responsible for building the morals and morals of all workers in the takaful company following the program that has been passed. Fourth, supervising violations of Islamic values in the takaful company. Fifth, to be responsible for selecting workers carried out by the takaful company [9].

## **2 Issue on the Sharia Supervisory Board Authority on Indonesia Sharia Insurance**

## 2.1 Legal Issues

The legislation that forms the basis of jurisdiction for the Shariah Supervisory Board of the takaful industry in Indonesia is not sufficient because it has not been compiled into specific and comprehensive legislation. This is because, at the moment, the Shariah Supervisory Board is provided for in some legislation. Law Number 40 of 2007 on Limited Liability Companies Section 109 states that a person who carries on business activities based on Islamic principles rather than having commissioners shall have the Sharia Supervisory Board.

The legislation directly related to takaful, namely the Law of the Republic of Indonesia Number 40 of 2014, does not mention the functions and mechanisms of supervision from the Shariah Supervisory Board. It is provided in the Regulation of the Minister of Finance Number 11/PMK.010/2011 on Health Insurance of Insurance and Reinsurance with Shariah Principles, as well as Regulation of Financial Services Authority Number 69/POJK.05/2016 on Business Administration of Insurance Companies, Takaful Companies, Reinsurance Companies, and Retakaful Company does not have any specific rules regarding the Shariah Supervisory Board. Although the rules in the Financial Services Authority Regulation Number 69/POJK.05/2016 Chapter IV on the Application of Shariah Principles in the Maintenance of Takaful and Retakaful, no provision touches on the Shariah Supervisory Board. However, these clauses do not mention the jurisdiction of the Shariah Supervisory Council.

Based on the existing legal statements, the Shariah Supervisory Board's jurisdiction and various problems related to the takaful industry have no specific legislation. Moreover, in Law Number 40 of 2014 on Insurance, Chapter 13 on Regulation and Supervision, which starts from Section 57 to 67, does not even touch on the supervision of sharia aspects at all, especially the existence of the Shariah Supervisory Board as a supervisory board takaful industry in Indonesia.

Based on the explanation, then there are two fatwas of the Indonesian Ulema Council, which is a reference for the Shariah Supervisory Board's practice in the takaful industry until now. The first fatwa is the Decision of the National Shariah Board-Indonesian Ulema Council Number 2 of 2002 on the Basic Guidelines and Household Guidelines of the Decision of the National Shariah Board of the Indonesian Ulema Council. The second fatwa is the Decision of the National Syariah Council-Indonesian Ulema Council Number 3 of 2002 on the Implementation Guidelines for the Establishment of Shariah Supervisory Board Members in the Shariah Financial Board. In Law Number 40 of 2014 on Insurance and the Financial Services Authority Regulation Number 69/POJK.05/2016 concerning the Implementation of Insurance Company and Takaful companies, not mentioned it specifically about the existence of Shariah Supervisory Board in takaful companies and takaful business units in conventional insurance companies.

Shariah economic practitioners, the public, and the government need shariah fatwas from the institutions of the group of scholars related to Islamic financial institutions' practices and products. The rapid development of Islamic financial institutions must be followed by a valid and accurate fatwa of shariah law so that all its products have a solid foundation in shariah principles. Therefore, the National Syariah Board was established in 1999 as part of the Indonesian Ulema Council.

Based on all the laws in Indonesia that regulate takaful, no law was found stating that the Shariah Supervisory Council or the National Shariah Board can punish takaful companies. The power of the Shariah Supervisory Board is limited to making reports on shariah compliance. The arrangements are set out in section 45 of the Indonesian Financial Services Authority Regulation Number 72/POJK.05/2016, section 17 of the Regulation of the Indonesian Minister

of Finance number 18/PMK.010/2010, and Section 2 of the Regulation of the Capital Market Supervisory Board and the Financial Board number: PER- 08/BL/2011.

The Indonesian Financial Services Authority owns the power to punish takaful companies. The power is stated in section 60 subsection 2 Law Number 40 of 2014 on Insurance: To perform the Indonesian Financial Services Authority's supervisory function has the power to punish Takaful Companies. Moreover, the power to punish by the Indonesian Financial Services Authority is also stated in section 9 letter g of the Law of the Republic of Indonesia Number 21 of 2011 on the Financial Services Authority as follows: To carry out supervisory duties, the Indonesian Financial Services Authority has the power to impose punishment administration against people who break the law in the financial services sector.

The Financial Services Authority has been established to aim that the overall financial services activities in the financial services sector are managed in an orderly, fair, transparent, and responsible manner, and can create a stable financial system and able to protect the interests of consumers. The Financial Services Authority in performing its duties and enforcement is an independent institution as stated in section 2 subsection 2 of Law No. 21 of 2011 on the Financial Services Authority that the Financial Services Authority is an independent institution in carrying out its duties and responsibilities, free from interference hand by the other party, except the matters expressly provided for in Law No. 21 of 2011 on the Financial Services Authority. The law implies that the Financial Services Authority is a non-governmental institution or independent of the legislature or parliament's influence, free to formulate policy purposes or advice without political influence and governing institutions [10]. In performing the duties of the institution automatically should be in cooperation with other government institutions. This also applies to the Financial Services Authority in implementing duties, functions, and authorities where these institutions need to work with other institutions such as the National Shariah Board and the Shariah Supervisory Board.

Fatwa Majelis Ulama Indonesia number 21/DSN-MUI/X/2001 states that the Shariah Supervisory Board is responsible for overseeing shariah compliance in a takaful institution. This is also supported by the Regulation of the Minister of Finance Indonesia number 18/PMK.010 /2010 section 16, which states that the Shariah Supervisory Council is tasked with overseeing the application of policy implementation principles of takaful business. For the Syariah Supervisory Board to monitor well, the National Syariah Council's fatwa must be binding on the takaful company, the court, and the government. That way, it is hoped that the takaful company will strive to always obey the fatwa of the National Syariah Council. As a result, the requirements of shariah compliance can be implemented well.

Based on the Fatwa of the Indonesian Ulama Council Number Kep-98 / MUI / III / 2001, the National Syariah Council can make fatwas on Islamic financial institutions. However, fatwas should not be used as a legal basis because the Indonesian legal system does not mention fatwas as part of the legal basis in Indonesia. It is written in Law Number 12 of 2011 on the Establishment of Legislation. However, for the fatwa to have legal force, the fatwa should be included in the Regulation of the Indonesian Financial Services Authority as an institution under Bank Indonesia. There is no provision in the Law of the Republic of Indonesia Number 40 of 2011 on Insurance, which states that the National Syariah Council's fatwa should be included in the law.

As a comparison material, the National Syariah Board in Malaysia has the Shariah Advisory Council's name. The Shariah Advisory Council can make fatwas regarding problems that exist in Islamic financial institutions in Malaysia. Fatwa of the Shariah Advisory Council is binding on the Islamic financial institutions, courts, and arbitrators [11]. This rule is based on section 58 of the Bank Negara Malaysia Act 2009, which states that if the decision made

by a Shariah body or committee formed in Malaysia by an Islamic financial institution is different from the decision made by the Shariah Advisory Council, the decision of the Shariah Advisory Council shall apply.

## **2.2 Institutional Issues**

Muhammad Syafi'i Antonio and Karnaena revealed that the independence of the Shariah Supervisory Council is essential. The Board of Syariah Supervisors is not an employee of an Islamic financial institution. The board of commissioners elects the Board of Supervisors of Shariah through a meeting of shareholders on the recommendation of the National Syariah Council of the Indonesian Ulema Council. Their income and allowance payments are determined by the shareholders' intersection [12]. The independence and professionalism of the Shariah Supervisory Board are essential to ensure that customers are confident in using takaful services. Community trust is the most crucial thing to determine the success of Islamic financial institutions' development, especially takaful institutions. Today, the general public places more emphasis on takaful products, or products of other Islamic financial institutions, to avoid shariah-compliant financial products. However, the reality is that Islamic financial institutions' achievements are still lagging compared to conventional financial institutions.

The Shariah Supervisory Board is the guardian of public trust, so the Shariah Supervisory Board members are required to be an independent, objective, and honest body. The independence of the Shariah Supervisory Council is basically due to the need to give credibility to takaful operations reports. This requirement aims to increase the trust of takaful operators. The financial statements of takaful operations are required to ensure that there is no shariah non-compliance in takaful operations [13].

There are some basic similarities between the role of the Shariah Supervisory Board and the public accountant. Both have the function of issuing useful financial statement verification reports from the company's operations. The Shariah Supervisory Board confirms the activities of takaful operations, as in the financial statements, following shariah principles. Meanwhile, the public accountant confirmed the financial information on the takaful company's financial position and its activities. The report prepared by the Board of Shariah Supervisors and public accountants is a report whose authenticity cannot be doubted by any party [14].

The independence of the Shariah Supervisory Council shall be allowed to implement business principles that meet Islamic laws without any pressure from the management of the takaful company concerned. The ability to meet religious values and religious obligations stimulates the Sharia Supervisory Council members to maintain their proper direction. However, there is a possibility of tension between the takaful company's financial management and the Shariah Supervisory Board. This may happen if takaful companies' financial management tends to emphasize the financial aspect of the economy rather than the religious aspect.

Factors that affect the independence of the Shariah Supervisory Board are economic factors and religious factors. If one of the two elements is not met as well as possible, it will be detrimental in performing its duties. Economic factors are the determining factors of freedom because being a Shariah Supervisory Council requires a lot of time and workload. Besides, being a Shariah Supervisory Council involves a heavy workload and high skills. It takes good skills to be a Shariah Supervisory Board. On the one hand, religious factors are the determining factor because takaful business is a business based on Islam's values. Therefore, religious aspects exist in all Islamic financial institutions' activities, including the activities of the Shariah Supervisory Board in overseeing takaful business activities.

However, the Shariah Supervisory Board's independence cannot be done in total because the remuneration received by the Shariah Supervisory Board is obtained from the takaful company. In matters relating to the Shariah Supervisory Council's independence, economic factors are the remuneration accepted by the Shariah Supervisory Board from takaful companies. Based on the Circular Letter of the Indonesian Financial Services Authority Number 17/SEOJK.05/2014, which states that takaful companies must provide remuneration, non-remuneration allowances, and other facilities to the Shariah Supervisory Board.

Religious practices in Islam occur when a person performs prayer and when performing other activities every day. Islamic ethics aims to make people of good behavior follow Islam's teachings to achieve the honor of Allah. Religion influences the formation of attitudes because faith lays the foundations of moral concepts in the individual. They are understanding the good and the bad, the dividing line between what is permitted and what is not possible, understanding, and knowledge derived from religion. Therefore, the religious factor dramatically influences the Shariah Supervisory Board in carrying out its duties. Besides, the responsibilities of the Shariah Supervisory Council are closely related to the values inherent in Islam. The Shariah Supervisory Board plays an essential role in maintaining public confidence in Islamic financial institutions, especially takaful.

Based on the Circular Letter of the Indonesian Financial Services Authority Number 17/SEOJK.05/2014, the Shariah Supervisory Board was given a remuneration by the takaful company under its supervision. Therefore, as an independent body that oversees the operation of the Islamic financial institution, the Shariah Supervisory Board receives incentives and allowances from the supervised Shariah financial institution where the institution still has administrative relations with the Shariah Supervisory Board. Therefore, conflicts of interest can occur where the takaful institution under supervision is always looking for Shariah-compliant status. However, the Shariah Supervisory Board does not want to lose its monthly position and incentives until it only reports fines to necessary entities.

This is supported by Dr. Agus Triyanta (2017), who stated that it is complicated for the Shariah Supervisory Board to say that the company does not comply with shariah when there is shariah non-compliance. It is feared that if the Shariah Supervisory Board says that there is a shariah violation in the company, then the takaful company will lose the public's trust so that it can affect the performance of the takaful company.

In the situation of shariah non-compliance, the Shariah Supervisory Board will state in the report, and the report will be submitted and received to the Indonesian Financial Services Authority. Next, the Indonesian Financial Services Authority will process the report. However, this situation has never happened for the reasons stated earlier. Currently, Dr. Agus had never heard of the Shariah Supervisory Board, which had declared that Islamic financial institutions did not comply with shariah principles and stated it in the statement.

Based on section 36 of Bank Indonesia Regulation Number 11/3/PBI/2009, provides that a member can be a member of the Shariah Supervisory Board up to four other takaful companies at the same time. According to Dr. Agus Triyanto, the regulation is less appropriate. The first challenge relates to the confidentiality of one company with another. Based on these regulations, it allows a person in one company to know the secrets of another company. It should also be noted here. There is a provision that maintains the company's confidentiality, which is the Law of the Republic of Indonesia Number 30 of 2000. However, at the same time, a Shariah Supervisory Board can provide innovation proposals in every company under its supervision, and indirectly from the Shariah Supervisory Board can benefit or harm one company and make another company lose at the same time.

The second challenge is on the conflict of interest of the Syariah Supervisory Board. The Syariah Supervisory Board can provide innovation proposals to the companies it oversees. Therefore, the Syariah Supervisory Board can provide innovation proposals that benefit one party and harm the other. It may be that a Syariah Supervisory Board will help companies that provide more generous remuneration compared to other companies that offer smaller remuneration. This is because the provision of remuneration for the Syariah Supervisory Board from the company is not regulated in number. That is, every company is free to give a remuneration amount to the Syariah Supervisory Board.

The third challenge is the ability of the Syariah Supervisory Board to oversee Islamic finance companies. The Syariah Supervisory Board conducts on-site and off-site supervision [15]. On-site surveillance of takaful operators is carried out to assess financial behavior. The administration on-site is done at the takaful company office. This examination evaluates corporate governance and market practices, internal controls, risk management systems, and money laundering measures taken by takaful operators. Surveillance off-site dil5 doing with how to analyze financial statements [16]. This oversight focuses on the ability to meet the set requirements for takaful fund investments.

According to Dr. Agus, a Syariah Supervisory Board will face difficulties in monitoring five companies at a time. The oversight role is difficult and complicated, as the Syariah Supervisory Board has to audit the company's paperwork, evaluate its contracts, and even conduct side visits at the company. This role becomes increasingly difficult when a person who is appointed as a Syariah Supervisory Council, at the same time, has a job in another field.

The number of Syariah Supervisors in a takaful company is very minimal and is only located at the headquarters. It seems that the function of the Syariah Supervisory Board is only to attend meetings with leadership worksheets, issue fatwas, and supervise products. The Syariah Supervisory Board should also provide guidance and supervision to the branches. This is because the oversight is the responsibility of the Syariah Supervisory Board not only at the planning stage for product activities but also at the implementation stage of compliance with shariah. As a result, the Syariah Supervisory Board needs to be located at the headquarters of a takaful company and for the branch office so that the function of the Syariah Supervisory Board can function optimally.

Based on the description, it can be concluded that section 36 of Bank Indonesia Regulation Number 11/3/PBI/2009, which allows a Syariah Supervisory Board to supervise five Islamic financial institution companies, is necessary to implement the restructuring. Until a member of the Syariah Supervisory Board does not handle more than one takaful company. Moreover, a takaful company has more than one member of the Syariah Supervisory Board to carry out supervision well. In particular, on-site monitoring can be implemented effectively.

### **3 Conclusion**

There are two issues of jurisdiction of the Syariah Supervisory Board in the takaful industry in Indonesia. These problems are the legal issue and the institutional issue. Therefore, it is necessary to solve the problem so that the Syariah Supervisory Board's power and the quality of takaful business in Indonesia become better. The first problem is legal Issue. The problem is divided into two parts: the absence of special legislation regulating the jurisdiction of the field sharia supervisors of the field and the lack of laws regulating the change of fatwa into law.

The jurisdiction of the Shariah Supervisory Council has not been regulated in a specific law. It is still spread in several different laws. As a result, the jurisdiction of the Shariah Supervisory Board becomes incomplete and comprehensive. The fatwa of the National Syariah Council has no legal force in the legal system in Indonesia. As a result, the fatwa of Dewan Syariah Nasional does not bind takaful companies, the government, or the courts. If there is shariah non-compliance, then a company can not be given punishment based on the National Syariah Board's fatwa. As a result, the oversight process could not be adequately implemented.

To solve the problem, the fatwa of the National Syariah Council must be included in the law. That way, the fatwa of the National Syariah Council will have the force of law to be used as a basis by the court or the Financial Services Authority to provide punishment. However, no legislation regulates the change of fatwa of the National Syariah Council into law. The second problem is the institutional problem of the Syariah Supervisory Board. The institutional problems of the Syariah Oversight Board are divided into two parts, namely the problem of the independence of the Syariah Supervisory Board and the problem of the large number that can be supervised by the Syariah Supervisory Board. To control shariah compliance in a takaful company, the Shariah Supervisory Board needs to maintain its independence to avoid conflicts of interest. However, the law in Indonesia states that the takaful company pays the Shariah Supervisory Board. It can damage the freedom of the Shariah Supervisory Council from conflicts of interest.

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