

The Internal *Shari'a* Supervision Activities in Islamic Bank : A Case Study at BPRS Bakti Makmur Indah Sidoarjo, Indonesia

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ABSTRACT

The shari'a compliance is the major and basic aspect that differentiates Islamic bank from the conventional one. The Islamic bank must have an independent institution that is assigned to supervise the conformity of bank operational with Islamic shari'a rules and principles. The main role and function of shari'a supervisory board in Indonesia to conduct internal shari'a supervision is not optimum yet caused by organization and human resource factors. The research question of this research was "How does the internal shari'a supervision activities by shari'a supervisory board with internal audit function to create shari'a compliance in Islamic bank?". The purposes of this research were to find efforts to maximize roles and functions of shari'a supervisory board and to find the formulation of integrated and effective mechanism of shari'a compliance supervision. This research was a qualitative study using single case study approach. The object of the study was PT BPRS Bakti Makmur Indah Sidoarjo, and the respondents of the study were chairman and members of shari'a supervisory board, internal auditor, and operational management director. This research was more focused on shari'a supervisory board and internal audit activities in conducting direction and supervision of shari'a compliance in Islamic bank. This research was conducted through four steps study, i.e. the holistic exploration, focused exploration, confirmation, and data interpretation. The result of this research showed three general phenomena i.e. 1) the control of Shari'a compliance was based on trustworthy between shari'a supervisory board and management, 2) there were two level of shari'a compliance that must be applied by the bank operational i.e. compliance toward fatwas of national shari'a board and compliance toward Islamic shari'a rules and principles, and 3) shari'a supervisory board merely held passive review, and played as shari'a consultation media toward the management instead of the reviewer or shari'a compliance controller. One alternative to maximize the role and function of shari'a supervisory board is by creating an integrated internal shari'a supervision mechanism between shari'a supervisory board and internal audit function to develop an effective shari'a compliance control mechanism in Islamic banks.

Keywords: shari'a compliance, shari'a supervision, shari'a supervisory board, internal audit.

INTRODUCTION

The shari'a compliance is the major and basic aspect that differentiate Islamic bank from conventional bank. In order to ensure that its operational has conformed shari'a principles, Islamic bank must have an independent internal institution specially concern in monitoring shari'a compliance that is shari'a supervisory board. Shari'a supervisory board in Indonesia is one of an independent body placed by National Shari'a Board as the holder of fatwa authority in Indonesia that associated by experts in Islamic laws of so trading who have general knowledge in banking. The shari'a supervisory board has duty to supervise the Islamic bank activities so that they are not delinquent from shari'a principles that defined by National Shari'a Board (Arifin, 2005: 106). The regulation of Bank Indonesia No. 6/24/PBI/2004 about Bank that Conducting Business Activities based on Shari'a Principle section 27 noted that shari'a supervisory board's duty, authority and responsibility are ensuring the whole bank operational aspects conformed to shari'a rules and principles defined by National Shari'a Board and valuing shari'a aspects toward manual and product of Islamic bank.

The practical condition of shari'a supervisory board main role in Indonesia nowadays is not optimum yet. Islamic Banking Biro data of Bank Indonesia shows the unconformity cases of shari'a often found by Bank Indonesia instead of shari'a supervisory board. They are aware about the problems after being questioned by Bank Indonesia. The two major obstacles of this condition are organization and human resource aspects (Yaya, 2004). The organizational obstacles i.e. the shari'a supervisory board only use the routine discussion with operational and financial decision maker concerning shari'a problems so that shari'a supervising is dysfunctional. The human resource obstacle is the limited skill of shari'a supervising board members in skill of auditing bank compliance toward shari'a principles.

One of the alternatives to maximize the role of shari'a supervisory board (SSB) is by developing the supporting function in the form of qualified staffs to help in supervising duties (Yaya, 2004). Accounting and Auditing Organization for Islamic Financial Institution (AAOIFI) in Governance Standard for Islamic Institution (GSIFI) No. 1 about Shari'a Supervisory Board: Appointment, Composition and Report paragraph 7 said that it could seek the service of consultant that expert in business, economy, law, accounting, and others. SSB in supervising and conducting shari'a review toward Islamic bank based GSIFI no 1 could employ the service of internal auditor in the system of Islamic bank supervision by enlarging the scope and the duty of internal auditor by entering shari'a aspects. Internal auditor will conduct internal shari'a review based SSB manual and report the findings during the internal shari'a review to the SSB.

The purpose of this research is to gain deeper knowledge and understanding about the realization of shari'a compliance auditing by SSB supported by internal audit function. This research also try to find efforts to optimize role of SSB and find formulation of integrated and effective supervision mechanism of shari'a compliance toward Islamic banking in Indonesia.

LITERATURE REVIEW

SSB is an independent institution in Islamic bank which its major function is supervising the shari'a compliance in Islamic bank operational. The meaning of SSB in Indonesia according to Arifin (2005: 106) is one of an independent body placed by National Shari'a Board as the holder of fatwa authority in Indonesia that associated by experts in Islamic laws of so trading who have general knowledge in banking. Meanwhile according to The Regulation of Bank Indonesia No. 6/24/PBI/2004 about Bank that Conducting Business Activities based on Shari'a Principle section 1 verse 10 noted that SSB is a board that conduct supervising toward shari'a principles in bank's business activities.

In Indonesia, members of SSB are proposed by management of Islamic bank to the Bank Indonesia to get an appraisal and then will be authorized by National Shari'a Board. The number of SSB members according to Regulation of Bank Indonesia No. 6/24/PBI/2004 are minimally 2 persons and as many as 5 persons, meanwhile according to AAOIFI and GSIFI No 1 membership of SSB minimally 3 persons.

Accounting and Auditing Organization for Islamic Financial Institution explained in GSIFI No 1 that members of SSB are appointed in general annual meeting of shareholder of Islamic bank based on recommendation by board of director. The general meeting also has the authority to renounce the members of SSB based on recommendation by board of director. General Meeting of Shareholder also authorized to define the wages of SSB members.

The Regulation of Bank Indonesia No 6/2004 section 27 noted that shari'a supervisory board's duty, authority and responsibility are:

- a. Ensuring the whole bank operational aspects conformed to shari'a rules and principles defined by National Shari'a Board.
- b. Valuing the shari'a aspects toward manual and product of Islamic bank.
- c. Giving opinion from the perspective of shari'a aspect toward realization of bank operational wholly in the bank publication report.
- d. Analyzing the new services and products and asking the fatwa toward National Shari'a Board.
- e. Delivering report of shari'a supervising result at least every 6 months to the board of director, commissioners, National Shari'a Board and Bank Indonesia.

Meanwhile according Arifin (2005:107) there are three functions that must be conducted by SBB i.e.:

1. As counselor and advisor to the board of director, chief of shari'a business unit, and shari'a branch office concerning things related to shari'a.
2. As a mediator between bank and National Shari'a Board in communicating ideas and suggestions of product and service development from the bank that need analyzing and fatwa from National Shari'a Board.
3. As the representation of National Shari'a Board that placed in Islamic bank. SSB must report the business activities and Islamic bank development they liable with to the National Shari'a Board at least once a year.

Accounting and Auditing Organization for Islamic Financial Institution in GSIFI No 1 paragraph 2 explained that the duty of SSB are directing, valuing and supervising the whole activities of Islamic Financial Institution to make sure the conformity toward shari'a principles and rules.

Prof. Rifaat Karim, General Secretary of IFSB whose opinion quoted by Yaya (2004) mentioned three models of shari'a supervision by SSB implemented in the form of SSB organization that are:

- a. Advisor model, i.e.: making the shari'a experts merely as the advisor and the position in the organization are as part time workers who come to the office if they are needed.
- b. Supervisor model, i.e.: using the routine discussion with operational and financial decision maker concerning shari'a problems.
- c. Shari'a department model, i.e.: the supervision conducted by shari'a department. The shari'a experts work full time supported by technical staffs that help to conduct shari'a supervision duties outlined by the experts.

Beside the previous three models, there is a variation of shari'a department model (Yaya, 2004) by widening the duty and scope of internal audit department by entering shari'a aspects. The internal audit department of Islamic bank will be the supporting function for SSB in conducting shari'a supervision duties. The internal department will work based on manual of SSB concerning things related to shari'a aspects and report the findings in the shari'a aspect to the SSB.

There are three activities of SSB according to Briston and Ashker whose opinion quoted by Yaya (2004), they are *ex ante* auditing, *ex post* auditing, and *zakat* counting and payment.

There are two sides of Islamic bank supervision that are supervision from financial side, the obedience toward banking policy generally and bank carefulness principle, and supervision from the aspect of shari'a compliance aspect in the bank operational activities (Harisman, 2002). Hence, the structure of Islamic banking supervision in Indonesia is more characterized multilayer that consist of:

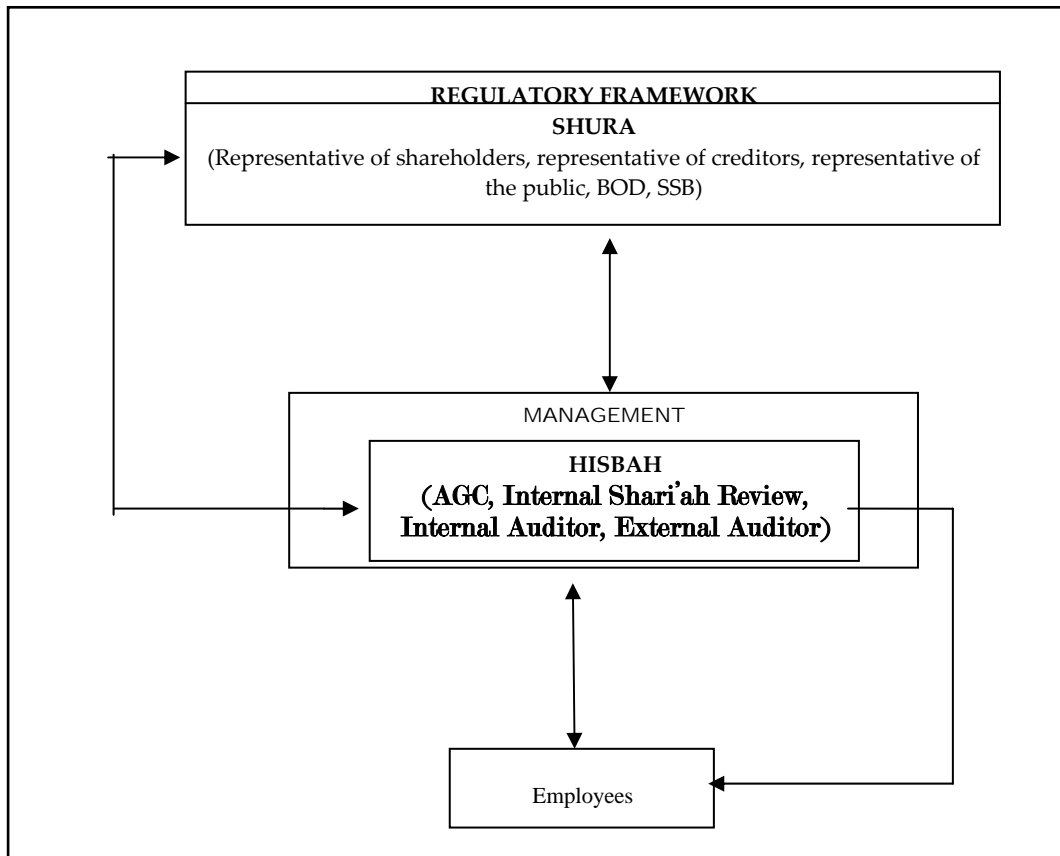
- a. **Internal Supervision System**, that composes; shareholder general meeting, Commissioner Board, Audit Board, Shari'a Supervisory Board, Director of Compliance, Internal Audit-Internal Shari'a Reviewer.
- b. **External Supervision System** consists of Bank Indonesia, Public Accountant (including external shari'a auditor), National Shari'a Board and Stakeholder/Service User Society.

The internal supervision system tends to be characterized internally and conducted in purpose there will be mechanism and control system for management necessity. While the external supervision system fulfill the necessity of customers and public interest that conducted by Bank Indonesia and National Shari'a Board. Generally, the role and responsibility of Bank Indonesia focused on financial aspect while guarantee on shari'a compliance is the responsibility and authority of National Shari'a Board with SSB as the representative.

The function of SSB in Islamic bank is identical with the function of *hisba* in the Moslem community that supervises the conformity of shari'a principles. Asri and Fahmi (2003) explained that *hisba* is the major institution to prevent the violation of Allah's rules, to protect society's ownership, to ensure the public safety including make sure that the market and industry have conducted shari'a rules and principles in every economic entity inside. While according to Murtuza (2002), *hisba* is an institution in Moslem community that asks to the truth and prevents shari'a violation (*'amr ma'ruuf wa-n-nahi' anil munkar*)

Hisba in the perspective of internal shari'a supervision is a control mechanism in the company to ensure and supervise the management in conforming to shari'a rules and principles and other regulations (Asri and Fahmi, 2003). The purpose of *hisba* existence is to ensure the obedience towards

regulations defined by Islam and the other authority holder. The internal shari'a reviewer, internal auditor, and external auditor are the best parties to take *hisba* role (Asri and Fahmi, 2003). The final result of internal shari'a and internal auditor works and then reported to the management, *shuro*, and the stakeholder along with report from external auditor. The report of internal shari'a reviewer must convince financial report readers that all of the transactions and business activities conducted by the company based on shari'a rules and principles. The position of *hisba* in the internal shari'a supervision in the concept of effective corporate governance built by Fahmi and Asri (2003) can be explained below:



Picture 1

An Effective Corporate Governance Framework by Asri and Fahmi (2003)

METHOD OF THE STUDY

This study is a qualitative study with case study approach using method developed by Yin (2000). The case study approach used in this study is single case study. This approach is chosen because the writer tries to find deeper understanding about internal shari'a review within Islamic bank. The main problem of this study is "How does the implementation of internal shari'a review by shari'a supervisory board along with the function of internal audit to create the shari'a compliance within Islamic bank?"

There are two units of analysis in this study i.e. the activity of shari'a supervisory board in conducting shari'a review and the activity of internal audit department in conducting internal shari'a review.

There are three cycling stages conducted in the study i.e. the holistic exploration stage, the focused exploration stage and confirmation stage. In the

holistic exploration stage, the writer will observe and ask questions to get general views about internal shari'a review conducted within Islamic bank. In the focused exploration stage, the study conducted in details to get deeper views about analysis unit being studied. The confirmation stage is the stage to get the credibility of the study during the research by:

1. Member check, i.e. confirming the study findings toward the subject of the study by asking responses (Moleong, 2000: 181)
2. Triangulation, i.e. checking the validity of the data by utilizing things outside of the data for the purpose of examination or data comparison (Moleong, 2000: 178)

There are two data analysis stages used in this study i.e. the data analysis in the field along with data collection process and the data analysis after the field works. The data analysis conducted during the field works are:

1. Domain analysis, used to get holistic reflection and understanding about internal shari'a review activities. The analysis result is in the form understanding about conceptual domain around internal shari'a review.
2. Taxonomy analysis, the analyzed part is each domain internal structure by organizing or collecting the same elements.
3. Componential analysis, analyzing the opposites of each domain internal structure. The result of this analysis will be compiled in the form of diagram that shows the opposites of studied domain.

The collected data of this study got from interviews and documentation. The analyses conducted along with the collecting data process are domain analysis, taxonomy analysis, and componential analysis. All of the analysis conducted simultaneously based on focus of the study. Data found in each analysis unit will be compared. The result of comparison will show the similarity and differentiation of shari'a review activities in each studied analysis unit. Thus, the reflection of about internal shari'a supervisory system within Islamic bank can be achieved.

OBJECT AND THE SOURCE OF THE STUDY

The Blue Print of Islamic Banking Development in Indonesia compiled by Bank Indonesian explained that what refers to Islamic banking covers Islamic public bank, shari'a business unit, and shari'a crediting bank of people (rural bank). Islamic public bank is the bank that conducts business activities based on shari'a principles in the form of giving services in the payment traffic (UU 10/98, section 1 verse 3). Meanwhile shari'a-crediting bank of people (rural bank) is the bank that conducts its business activities based on shari'a principles that is not giving services in the payment traffic (UU/10/98 section 1 verse 4). Shari'a business unit or working unit in the center office of conventional bank functioned as shari'a branch office. The unit is placed in the center office and headed by one of the member of board of director or an official one stage below the board of director.

PT BPRS Bakti Makmur Indah becomes the object of the study. BPRS Bakti Makmur Indah is chosen as the object of the study because it is one of the healthiest Shari'a Crediting Bank (BPRS) in East Java based on Bank Indonesia research in the year of 2002 up to 2005 as the pilot project of Islamic Banking in East Java and Eastern Indonesia and has branch office and treasury office. As the object of the study it can gives deeper view about internal shari'a review within Islamic bank along with its environment complexity.

The data source of the study achieved trough interviews toward chief and the members of shari'a supervisory board, internal auditor and operational

director of BPRS Bakti Makmur Indah Sidoarjo. The other data source of the study gained through documentation of shari'a review report by shari'a supervisory board in the year 2005 and 2006, the fatwa compilation of National Shari'a Board and letters of shari'a supervisory board to the National Shari'a Board about fatwa request of bank products.

EMPIRICAL FINDINGS

The result of domain analysis of the data compiled during the study both from interview and documentation found that internal shari'a review activities conducted by shari'a supervisory board and internal auditor at BPRS Bakti Makmur Indah Sidoarjo were:

Table 1
Shari'a Supervisory Board Activities in Internal Shari'a Review

Ex Ante Auditing	Ex Post Auditing
Determining standard of shari'a compliance	Determining indicator of shari'a compliance
Reviewing policy and management decision	Defining scope of shari'a review
Reviewing system and procedure of operational	Designing judgment mechanism of shari'a compliance
Determining product	Valuing the shari'a compliance of management works
	Follow Upping the shari'a delinquency findings

Table 2
Internal Auditor Activities in Internal Shari'a Review

Ex Ante Auditing	Ex Post Auditing
Determining standard of shari'a compliance	Defining scope of shari'a review by internal auditor
Designing system and procedure	Valuing and supervising the shari'a compliance of management
	Defining shari'a findings
	Reporting the result of review

The outcome of taxonomical and componential analysis from the compiled data during the study resulted three general phenomenon in the realization of shari'a review by shari'a supervisory board and internal auditor in BPRS Bakti Makmur Indah Sidoarjo, that are:

1. The trust of shari'a supervisory board toward the management became the basic of shari'a review.

The shari'a supervisory board of BPRS Bakti Makmur Indah performed shari'a review passively based on the report of the director both written and spoken. It was because the high sense of trust to the management that they would done the bank operational conformed to the directions from shari'a supervisory board. The shari'a supervisory felt that

it was not necessary for them to conduct the supervisory actively and in details to know whether the rules and principles of shari'a were performed or not. Hence, the mechanism of valuing the shari'a compliance was only done by comparing the management report and the fatwa of the National Shari'a Board and shari'a rules and principles in general. The trust of shari'a supervisory board to the management became the main foundation of shari'a review due to several factors that were:

- a. There was a direct involvement of shari'a supervisory board in every decision making and management policy
- b. The board of directors always report to the shari'a supervisory board if there was something had happened and not conformed to the shari'a rules and principles in the bank operational.

Both factors delivered trust between shari'a supervisory board and the board of directors in implementing the shari'a principles showed a *shuro* mechanism in making business decision in Islamic bank (Asri and Fahmi, 2003). The trust of both institutions became the foundation of the shari'a supervisory board to get insurance that management had performed shari'a rules and principles. Thus, the opinion of shari'a supervisory board in shari'a review report was the result of passive supervisory based on the trust to each other.

2. There were two levels of shari'a compliance that must be implemented by the management.

The appearance of the two sides of shari'a compliance levels in bank operational due to the two views i.e. compliance toward the National Shari'a Board and the compliance toward the shari'a rules and principles in general. Both views appeared because of the differentiation that occasionally happened between the fatwa of National Shari'a Board and the shari'a opinion of shari'a supervisory board. Those *fiqh* differentiation appeared due to:

- a. Some of the fatwa of National Shari'a Board that could not be implemented in the field.
- b. The fatwa of National Shari'a Board characterized global so that multi interpretation might happen in the application.
- c. There were transaction and bank products that were not arranged by the fatwa of National Shari'a Board yet.

If differentiation occurred between National Shari'a Board and the shari'a supervisory board, the director of bank operational would make the shari'a supervisory board as the major reference of the shari'a compliance. That action was taken due to several reasons that were:

- a. The shari'a supervisory board was the institution that fully responsible to the implementation of shari'a compliance.
- b. The opinion of shari'a supervisory board was the interpretation of the National Shari'a Board fatwa and shari'a rules and principles in general in the bank operational.
- c. The shari'a supervisory board was more understand the cases in the field.

That condition often caused conflict between Bank Indonesia officials and the shari'a supervisory board in valuing the implementation of shari'a compliance. Bank Indonesian used the fatwa of National Shari'a Board as the main standard in valuing the shari'a compliance meanwhile shari'a supervisory board beside using the fatwa of National Shari'a Board was also using the *fiqh* principles to value whether the bank operational and

products collided the shari'a compliance or not. The conflict happened due to several factors that were:

- a. The different interpretation of National Shari'a Board occurred between Bank Indonesia and shari'a supervisory board in implementing the fatwa in the bank operational.
 - b. The slow socialization of National Shari'a Board fatwa to the Bank Indonesia officials, shari'a supervisory board and bank management.
 - c. The National Shari'a Board was not quick enough in responding the law problems in Islamic banking and answering the shari'a problems in bank operational and products proposed by shari'a supervisory board
3. **The function of shari'a supervisory board was more to be a consultative for the management.**

The shari'a supervisory board of BPRS Bakti Makmur Indah was more functioned as shari'a consulter and mediator between bank and National Shari'a Board than a supervisor. BPRS Bakti Makmur Indah management positioned shari'a supervisory board as a partner from shari'a side that would give shari'a consultation for the management. That condition might appear because of the supervisory implementation by the board was not optimum yet due to several factors that were:

- a. There were no standard mechanisms and procedures from Bank Indonesia and National Shari'a Board.
- b. The limited expertise of the members of shari'a supervisory board in auditing skills.
- c. The shari'a supervisory system from Indonesian Bank that was not clear enough mainly the authority limit of shari'a compliance judgment between Bank Indonesia and shari'a supervisory board and the law power upon the result of the supervisory.

CONCLUSION

The shari'a review conducted by shari'a supervisory board was still passive and ex ante auditing activities were more dominant compared to ex post auditing. That condition occurred due to the limited expertise of the members of shari'a supervisory board in the field of auditing and accounting, and there were no standard mechanism and procedures in the aspect of shari'a compliance review both from Bank Indonesia and National Shari'a Board. Hence, shari'a supervisory board was more as a consultative institution for the management.

The function of internal auditor to support the function of shari'a review by the shari'a supervisory board had not functioned optimum yet. The function of internal auditor was merely to judge the financial risk of Islamic bank and conformity aspect in general. The condition happened because there was no internal shari'a supervisory system that involved internal auditor function effectively.

The limited knowledge of auditing and accounting of the shari'a supervisory board members and there was no effective work mechanism between the board and the internal auditor endorsed the formation of trust system between shari'a supervisory board and the management in the internal shari'a supervisory system. The trust system in BPRS Bakti Makmur Indah was formed by functioned the shari'a supervisory board as shari'a consultative institution for the management and in the practice the directing process and indirect shari'a review occurred. The trust from the shari'a consultative process delivered insurance for

the shari'a supervisory board to argue that the bank products and operational had conformed with shari'a rules and principles.

The result of the study indicated several problems occurred in the shari'a supervisory system in Indonesian Islamic banking that caused the system had not performed well i.e.:

1. The differentiation of *fiqh* problems between National Shari'a Board as the fatwa producer and shari'a supervisory board as shari'a compliance supervisor in the bank operational made the management difficult to perform shari'a compliance in the products and bank operational.
2. There was conflict about shari'a compliance judgment between Bank Indonesia and shari'a supervisory board because of there was no clear supervisory system of Islamic banking.
3. There was no standard and integrated internal shari'a supervisory system that can be applied in the Islamic bank operational.

The improvement of shari'a supervisory system must be done by Bank Indonesia as the regulator of Islamic banking in Indonesia and by the management of Islamic bank to increase shari'a compliance and good corporate governance by:

1. Simplifying the problem solving of *fiqh* between shari'a supervisory board and National Shari'a Board to minimize *fiqh* differentiation from both sides endorsing the Islamic bank management to apply the shari'a compliance.
2. The arrangement of authority and shari'a judgment scope between shari'a supervisory board, Bank Indonesia officer and external auditor to avoid judgment conflict in shari'a compliance aspect.
3. The arrangement of shari'a supervisory board authority in the term of *fiqh* and law power of shari'a review result.
4. Improving the function of internal auditor in supporting the function of shari'a supervisory board. The shari'a review would be optimized if there were integrated system and work mechanism between internal auditor and shari'a supervisory board. This would overcome the problem of limited skill in auditing and accounting among the members of shari'a supervisory board and the function of shari'a review would be maximized.
5. The concept of corporate governance argued by Asri and Fahmi (2003) might become one of the alternatives to improve the internal shari'a supervisory within Islamic banking in Indonesia.

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