

## **The Internalisation of Hisbah Principles in OJK Regulations on Islamic Banking Compliance Supervision**

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**Abstract:** *One of OJK duties and authorities is to supervise sharia compliance of Islamic banking operations in Indonesia. However, this role is still not optimal to conduct because the existence of DPS is considered sufficient to perform it. This study aimed to examine OJK arrangement on Islamic banking compliance supervision, adjustment on Islamic compliance supervision after switching from BI to OJK, and internalisation of hisbah principles in these regulations. This research used the normative juridical method, compiled positive law related to Islamic Banking supervision and compared it with hisbah principles implemented in the Islamic governance history as a basis for supervision internalised in OJK regulations and legislation. The result showed that (1) OJK regulates Islamic Banking compliance supervision through the rules of DPS establishment in Islamic Banking as the responsible party, received the DPS and SKAI reports periodically, and conducted audits by sampling on the application of sharia aspects; (2) several Islamic Banking supervision regulations still require harmonisation, especially those issued by BI; (3) five hisbah principles exist in the OJK regulations: transparency, accountability, responsibility, professionalism, and fairness.*

**Keywords:** *Hisbah; Principles; Regulations; Islamic Banking; Supervision*

**Paper type:** Conceptual paper

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**Abstrak:** Salah satu tugas dan kewenangan OJK adalah mengawasi operasional perbankan syariah di Indonesia agar patuh terhadap prinsip-prinsip syariah, namun peran ini masih belum optimal karena keberadaan DPS yang dianggap cukup bertugas untuk hal itu. Penelitian ini bertujuan untuk menelaah bagaimana pengaturan pengawasan kepatuhan perbankan syaria'ah oleh OJK, harmonisasi pengaturan pengawasan kepatuhan syariah setelah beralih dari BI ke OJK, dan internalisasi prinsip-prinsip hisbah dalam pengaturan tersebut. Jenis penelitian adalah yuridis normatif berupa inventarisasi hukum positif yang terkait dengan pengawasan perbankansyariah, dan membandingkannya dengan prinsip-prinsip hisbah yang diimplementasikan dalam sejarah ketatanegaraan dan pemerintahan umat Islam sebagai landasan pengawasan yang diinternalisasikan dalam peraturan dan perundang-undangan OJK. Hasil penelitian menunjukkan bahwa pengaturan pengawasan kepatuhan perbankan syariah oleh OJK dilakukan melalui aturan pembentukan DPS di Perbankan Syariah sebagai penanggungjawab kepatuhan bank syariah terhadap prinsip syariah, yang hasilnya dilaporkan kepada OJK, dengan mekanisme OJK menerima hasil laporan DPS dan SKAI secara berkala, kemudian melakukan audit secara sampling tentang penerapan aspek syariah. (2) Masih ada pengaturan pengawasan perbankan syariah yang memerlukan harmonisasi, khususnya dengan pengaturan yang dikeluarkan oleh BI. (3) Prinsip-prinsip Hisbah yang sudah ada dalam pengaturan pengawasan kepatuhan syariah perbankan syariah oleh OJK ada 5 yaitu prinsip transparansi, akuntabilitas, pertanggungjawaban, profesionalisme, dan kewajaran.

**Kata kunci:** hisbah; prinsip; peraturan; perbankan syariah; pengawasan

## INTRODUCTION

Hisbah is a supervisory system in Islam in charge of maintaining and supervising various community activities such as political, economic, and other social activities. It keeps the public benefit, protects the community environment from damage, and ensures public welfare following God's law (Ibrahim, 2019). Books related to hisbah show the role of this institution in maintaining and developing the economy in Islamic countries so that it develops by sticking to the foundation of sharia. The role of hisbah is not only to eradicate external evil things but also to reach individual spiritual, character, and moral issues related to the Islamic economic system (Bahri, 2017).

As the main principle of this institution, the principle of amar ma'ruf and nahi munkar is a universal principle and suitable to be implemented in all places, times, and levels of life. Hisbah is included in the *siyasah syar'iyah* category that keeps up with the changing time and places. However, the concept has decreased since the Islamic value influences declined (Halim, 2011). In most countries, Islamic financial institutions' laws are still created under the illustration of conventional banking. Some countries do not have relevant laws though several significant problems arise (Majid & Ghazal, 2012). In contrast, hisbah should not be removed from the Islamic government because it represents the personification of Islamic ethics. Hisbah is attached to the state's function in maintaining market balance when market distortions occur in special institutions, wherein technical operations will be carried out by the relevant ministries, departments, agencies, or institutions (Kusumawati, 2015).

Supervision of Islamic Banking compliance toward sharia principles is necessary because violations of sharia compliance will damage the illustration and credibility of Islamic Banking in the public's eyes (Prabowo & Jamal, 2017) and reduce public trust in banking. Therefore, strengthening the supervision of Islamic Banking compliance toward sharia principles by related parties, such as Bank Indonesia (BI), Financial Services Authority (OJK/*Otoritas Jasa Keuangan*), or Sharia Supervisory Board (DPS/*Dewan Pengawas Syariah*), is an effort in encouraging Islamic Banking development asides from increasing the effectiveness of bank supervision, primarily through improving the supervision infrastructure. In agreement, the policy direction of strengthening governance and risk management of Islamic banking is to maintain the Islamic banking reputation.

BI, as the Central bank, carried out Islamic banking general supervision. Meanwhile, the sharia compliance supervision was under National Sharia Board (DSN/*Dewan Syariah Nasional*) and DPS (Mulazid, 2016). However, since the enactment of Act 21/2011 regarding the OJK, the Islamic banking supervision, both general and specific, was handed over to OJK.

In Islamic Banking, even though OJK exists, the role of DSN is still more dominant in many ways (Heradhyaksa, 2018). The Islamic Banks' supervisory role transfer from BI to OJK is expected to optimise the supervisory role, including monitoring the shariah compliance. However, the functions are not optimised yet. Subeni, Corporate Communications at PT Bank Panin Syariah, stated that many Islamic Banking practitioners did not affect by OJK's function yet. He claimed that it would be dangerous for OJK as financial institutions, particularly banks, supervisors, including the Islamic one, when the stakeholders do not understand its presence.

Subeni also said that OJK needs to conduct socialisation related to regulations, especially in the Islamic sector. OJK also needs to create a group discussion forum with Islamic banks, improve the service and mechanism system, and add responsible personnel on Islamic Financial Institutions matters, mainly resolves any complaints shortly.

According to the Head of DSN-MUI Governing Committee, KH. Ma'ruf Amin, the OJK Act, does not outspoke on Islamic financial services yet since the word sharia is only mentioned once, in Article 1 of General Provisions point number 5 (Kalsum, 2016). Furthermore, the performance of OJK's supervision was also being discussed, leading to the proposal to re-transfer its supervisory authority to BI. The Legislative Body of DPR has proposed returning the banking supervision authority from OJK to BI in the Bill (RUU) regarding the Second Amendment to Act 23/1999 concerning BI (Adam, 2020).

Based on the problems above, the objectives of this study are (1) to obtain a complete picture of the OJK regulation on Islamic Banking compliance supervision; (2) to obtain in-depth information on the harmonisation of Islamic Banking compliance supervision arrangements after switching from BI to OJK; and (3) to formulate hisbah principles having been internalised in OJK's supervisory arrangements regarding sharia compliance (Baehaqi & Suyanto, 2018).

This research has three urgencies. First, Islamic bank compliance toward legal provisions and sharia principles is determined by an independent supervisory

agency. Implementation in Sharia Compliance supervision of Islamic Banks is not solely the Islamic Banking DPS responsibility. It is also OJK duty to provide moral and spiritual legitimacy to Islamic Banking practices. Thus, it maintains public, market, and stakeholders' trust. Stakeholders trust will retain the risk reputation of Islamic Banking. Hence, the growth and development of the Islamic Banking industry can encourage the national economy (Ibrahim, 2019).

Second, besides OJK, this research can also be helpful for the DPS, DSN-MUI, and BI in maintaining Islamic Banking compliance and credibility to accelerate Islamic Banking development in Indonesia and encourage national economic growth. Third, for researchers, the analysis results of the internalisation and implementation of hisbah in the regulation and practice of Islamic Banking supervision today are expected to develop an effective Islamic Banking supervision model that becomes a reference for relevant parties in carrying out their supervisory roles. Hence, this condition can encourage Islamic Banking development amidst the national and global banking industry (Ismail & Chik, 2020).

## RESEARCH METHODS

This research used a normative juridical approach. Data collection techniques were library research by reviewing books related to supervision in Islam (hisbah) and critical studies of laws and regulations BI and OJK documents, journals, and related articles. Furthermore, it also involved field research in strengthening secondary data through interviews with the parties involved, including the leaders of OJK, DPS and Chairman of Islamic Bank. The interview used open-ended questions, leading to a depth of information and an informal-structured way regarding the regulation and mechanism of sharia supervision compliance in Islamic Banking. The research subjects were OJK Region II in Bandung and Bank Panin Dubai Syariah.

## RESULTS AND DISCUSSION

### OJK Supervision Arrangements in Islamic Banking

The existence of legal protection that guarantees legal certainty for the community will make law enforcers confident to conduct their duties to protect communities' interests. The spirit of the hisbah institution in Islam substantially has the same goal as the national legislation: to protect the community's interests from people's greed in economic activity.

The role of sharia supervision becomes essential in the context of Islamic financial institution industry development (Hassan & Lewis, 2007). The functions and responsibilities of supervisors are related to the liability and the management of Islamic financial institutions, liable to the community and Allah SWT (Hidayati, 2008).

Islamic banks supervision, including their compliance with sharia principles, is quite evident when under BI. The reference for regulation of Islamic Banking supervision is Act 21/2008 concerning Islamic Banking. In addition, BI issues BI Regulations (PBI/*Peraturan Bank Indonesia*) as technical regulations to implement the law, particularly on Islamic banks. Moreover, BI also issues specific Bank Indonesia Circular Letters (SEBI/*Surat Edaran Bank Indonesia*) to provide detailed provisions on Islamic banks. BI also collaborated with the Indonesian Ulama

Council (MUI/Majelis Ulama Indonesia) to establish a remarkable fatwa institution, DSN-MUI. Furthermore, the DPS exists to supervise the Islamic bank, to ensure the implementation of sharia principles and DSN-MUI fatwa in the operational activities. Thus, reputational, compliance and legal risks are minimum.

The legal basis for DSN is BI Regulation Number 6/24/PBI/2004 regarding Commercial Banks conducting sharia principles-based business activities. However, this regulation only explains the definition of DSN but not regulates other matters (Mardani, 2012). In another way, the existence of DPS has not been held explicitly in law, unlike DSN-MUI. It still requires a thorough study of DPS responsibilities in the management of Islamic banks, primarily related to the position of DPS as the sharia compliance supervisory authority, to create a strong synergy between DPS and other Islamic Banks organs. It is also found in other countries that there is still a lack of standardisation in Islamic financial institutions regarding the position of DPS in the corporate hierarchy. In addition, it is also found that DPS controlled IFI activities more than other sharia supervision activities (Garas & Pierce, 2010). In the current practice, DPS check sharia compliance of Islamic bank operation and submit a report to the authorities similar to the function of the supervisory department that conducts supervisory duty.

On January 1, 2014, general banking supervision, including Islamic Banking, was handed over by BI to OJK. BI's control of Islamic Banking ended after the handover with the OJK as a new independent supervisory agency. Article 1 of Act 21 / 2011 concerning OJK states that OJK is an independent institution and interference-free from other parties with the functions, duties, and authorities of regulation, supervision, examination, and investigation (Utama, 2020).

OJK must continue the BI work related to banking regulation and supervision. The OJK has the authority to regulate licensing and supervising banking and non-banking institutions. Based on the provisions of law, BI continues to oversee macroprudential policies, supervision of all commercial banks in the context of monetary policy. BI has to achieve and maintain the rupiah exchange rate stability, which affects monetary stability. Thus, BI focuses on controlling inflation and monetary stability (Ismail & Chik, 2020).

OJK has three priority steps in banking supervision: (1) cross-sectoral consolidation, such as the non-bank financial industry, consumer protection, banking, and insurance; (2) financial supervision system improvement by combining the roles of BI and Capital Market and Financial Institution Supervisory Agency, and (3) information improvement system. OJK is an independent institution outside the government, performing its duties. It has to provide reports to the Supreme Audit Agency (BPK/*Badan Pemeriksa Keuangan*) and the House of Representatives (DPR/*Dewan Perwakilan Rakyat*) (Basri, Musyrifin, Anwar, & Rahmat, 2019).

Article 4 of the OJK Act states that the establishment of OJK aims that all activities in the financial services sector a) are organised regularly, adequately, transparently, and accountably; b) can embody the financial system sustainable and stable growth and c) can protect consumers and public's interest. In addition, according to Articles 5 and 6, OJK has the function to organise an integrated regulatory and supervisory system implemented for all activities in the financial

services sector. In carrying out its duties and authorities, OJK refers to the principles of independence, public interest, openness, professionalism, integrity, and accountability.

OJK independently makes decisions and implements the functions, duties, and authorities while following the applied laws and regulations (independence). It also defends and protects consumers' and society's interests and promotes the general welfare (public interest). OJK is open to the public right to acquire correct, honest, and non-discriminatory information regarding the operation of OJK while still concerning the protection of individual and group human rights and state secrets, including secrets as stipulated in laws and regulations (openness). Furthermore, expertise is a priority in carrying out the duties and authorities of OJK while still following the code of ethics, rules, and regulatory provisions (professionalism). The administration of OJK adheres to moral values in every action and decision taken (integrity). Last, every activity and its final result in the implementation of OJK must be accountable to the public (accountability).

Based on the provisions of Article 7, OJK has several authorities on the banking sector regulatory and supervisory duties. First, OJK regulates and supervises banks. It includes licensing of bank establishment, the opening of bank offices, articles of association, work plans, ownership, management and human resources, mergers, consolidations and acquisitions of banks, and revocation of bank business licenses, and bank's business activities, such as fund sources, fund provisions, hybridisation products, and some activities in the service sector.

Second, OJK regulates and supervises bank soundness. It includes liquidity, profitability, solvency, asset quality, minimum capital adequacy ratio, maximum credit limit, loan to deposit ratio, bank reserves, bank reports related to bank health and performance, debtor information system, and credit testing (credit testing) and bank accounting standards. Third, OJK regulates and supervises the prudential aspects of banks, including risk management, bank governance, the principle of know-your-customer and anti-money laundering, and the prevention of terrorism financing and banking crimes. Forth, OJK conducts the bank check

In the explanation section of the article, the regulation and supervision of institutions, health, prudential aspects, and bank inspections are the scopes of *macroprudential* regulation and supervision, which are the OJK duties and authorities. The other *macroprudential* regulation and supervision, undefined in this article, is the duty and authority of BI. In the context of *macroprudential* regulation and supervision, OJK assists BI in making moral appeals to banks (Utama, 2020).

### **Harmonisation of Islamic Banking Law after Shifting to OJK**

In ensuring legal certainty for stakeholders and providing confidence to the public in using Islamic bank products and services, Act 21 / 2008 concerning Islamic Banking regulates the type of business, provisions for sharia implementation, eligibility business activities, fund distribution, and prohibitions for Islamic Banks and Islamic business units as part of Conventional Commercial Banks. Meanwhile, to give confidence to the public who still doubt sharia operations of Islamic Banking so far, business activities that do not conflict with sharia principles include business activities that do not contain elements of usury, *maisir*, *gharar*, haram, and

tyrannical (Azhar, Badarulzaman, Muhammad, & Zaib, 2020). In addition, as a law that regulates Islamic Banking explicitly, it governs the issue of sharia compliance. The authority lies with MUI, and DPS represents it. Thus, DPS must exist in each Islamic bank and Islamic business unit.

Islamic Banking Committee (KPS/*Komite Perbankan Syariah*) is formed within BI to follow up any issued MUI fatwa into BI Regulation. The committee consists of representatives from BI, the Ministry of Religious Affairs, and elements of society with a balanced composition (Zada, Lahsasna, & Salim, 2016). However, after the authority transfer to OJK, it was changed and expanded into Islamic Financial Services Development Committee (KPJKS/*Komite Pengembangan Jasa Keuangan Syariah*). Its authority not only regulates and supervises Islamic Banking but also extends to other Islamic financial services sectors. KPJKS is structurally chaired by the Chairman of the OJK Board of Commissioners with internal and external OJK, including the Ministry of Religious Affairs, MUI, and other elements of society. This committee aims to assist OJK in implementing the DSN-MUI fatwa into OJK regulations and developing Islamic financial services. The implementation results of KPJKS duties are submitted to the OJK Board of Commissioners in KPJKS recommendations. In carrying out their duties, KPJKS is responsible to the OJK Board of Commissioners. The coordination between BI and OJK is manifested in several ways, including in the formulation of supervisory regulations in the banking sector, which then BI and OJK will cooperate in exchanging banking information, and, under special conditions, BI can conduct examinations with banks after coordinating with OJK (Kalsum, 2016).

Based on the OJK Act, institutionally, OJK exists outside the government, meaning that OJK is not part of the government's. However, it does not prohibit government representatives because the financial service sector, fiscal and monetary, authorities have solid relations and linkages. Therefore, this institution entails an ex-officio representation of elements from both. The existence of ex-officio is intended to coordinate, cooperate, and harmonise policies in fiscal, monetary, and financial service sectors. The presence of ex-officio is also necessary to guarantee national interests in the context of global rivalry and international contracts, the need for coordination, and the exchange of information to keep and maintain financial system stability.

Ex-officio members of the Commissioners Board consist of an ex-officio member from BI who is a member of BI's Governors Board and an ex-officio member from the Ministry of Finance, an echelon I level officers at the Ministry of Finance. According to Article 1 Number 20, an ex-officio is an individual position in a certain institution because of his duties and authority in another institution. Institutionally, regulated in Article 10 of OJK Act, this ex-officio is one of the Commissioners Board members.

Several articles forming the basis for the transition from OJK are Article 64 of OJK Act. The article regulating BI's transfer of functions, duties, and authorities to OJK is Article 69 of OJK Act. It affirms that as the shifting of roles, responsibilities, and controls as referred to in Article 55 paragraph 2, BI officials or employees who conduct regulation and supervision in the banking sector are transferred to be OJK employees. The official or employee must determine their

status' choice as an official or employee of OJK or BI, no later than two years after functions, duties, and authorities shifting as referred to in Article 55. "Officers and employees", according to the explanation of Article 63, are officials and employees of BI experiencing banking regulation and supervision. They have adequate qualifications and experience in the regulation and supervision of the financial services sector field.

Furthermore, Article 65 paragraph (1) a of OJK Act asserts that assets and documents owned or used by BI in the context of implementing those shifts can be utilised by OJK. A joint decision determines the use of individual and state assets and documents among the Minister of Finance, the Governor of BI, and the Chairman of Commissioners Board determined at least a month before those shifts as referred to in Article 55.

Meanwhile, Article 70 affirms several laws relating to the banking sector. Act 7/1992, amended by Act 10/1998 concerning Banking and its implementing regulations, Act 23/1999 concerning BI as amended many times and its implementing regulations, and Act 21/2008 concerning Islamic Banking and its regulations. Other laws and regulations in the financial services sector are declared valid as long as they are not contradicted and have not been replaced under this law.

In Act 21/ 2008 concerning Islamic Banking, 35 articles have been transferred from BI to OJK. Therefore, it is necessary to harmonise the regulation and supervision of Islamic Banks after shifting to the OJK. According to Act 10/2004, regarding the Establishment of Legislations, there are several laws adjustment regulation in particular articles. Article 5 regulates the principles. Article 6 regulates material. Article 7 regulates the types and hierarchy of laws and regulations, and Chapter V regulates the formation.

Specifically, "harmonisation" in Act 10/2004 concerning the Establishment of Legislation is only mentioned once, namely in Article 18 paragraph (2). It states, *"harmonisation, consensus, and consolidation of the concept of the draft law, which originates from the President coordinated by the Minister (Minister of Law and Human Rights) whose duties and responsibilities are in the field of legislation"*. With Article 18 paragraph (2), the harmonisation of law is strictly imposed on a ministry, namely the Minister of Law and Human Rights. Hence, the norms in the bill do not conflict with the 1945 Constitution vertically and with other laws horizontally.

The regulation and supervision of all financial service activities have to be carried out in an integrated manner. It requires rearrangement of the financial service institution's organisational structure, including the banking sector, in conducting regulatory and supervisory tasks. This arrangement aims to achieve an effective coordination mechanism in managing problems in the financial system and financial system stability at last. OJK must administer a government affairs system that interacts well with other state and government institutions to realise good coordination, cooperation, and harmonisation of policies (Jaafar, Ibrahim, Ismail, & Mohmud, 2021).

### The Hisbah Principle in OJK Supervision Arrangements

One of the characteristics of Islamic Banking that distinguishes it from conventional banking is sharia as the basis for its operations. The formation of DPS is to ensure this. The presence of DPS is mandatory with the legal basis in At-Taubah [9] verse 105:

قُلْ اَعْمَلُوا فَاَسِيْرِي اللّٰهُ عَمَلَكُمْ وَرَسُوْلُهُ وَالْمُؤْمِنُوْنَ وَسَتْرَدُوْنَ اِلَىٰ عَالِمٍ....:

*And say, "Do [as you will], for Allah will see your deeds, and [so, will] His Messenger and the believers. And you will be returned to the Knower of the unseen and the witnessed, and He will inform you of what you used to do."*

Based on the verse above, humans can carry out any activity, including economic activities. Still, they will always be under the direct and inherent control of Allah and the Prophet, embodied in the supervision of the authorities and other Muslims. Community supervision can be translated either directly or through rules and regulations. This verse is the basis of supervision in Islam, known as hisbah (Nurhasanah, 2020).

Additionally, the interpretation of the verse above is that supervision involved three parties: (1) direct and inherent supervision by Allah, (2) supervision carried out by the Prophet, embodied in supervision by the authority as *ulil amri*, and (3) general supervision carried out by Muslims (Mauliza, Yusuf, & Ilhamsyah, 2017).

Words in Arabic that means supervision other than Hisbah are "*muraaqabah*", "*qiyaadah*", "*qabidhah*", "*tauji*", and "*siitharah*". Each word implies supervision, but some contain additional meanings of control, command, direction, research, and monitoring. The word that is closer to "supervision" in the sense of supervision is "*muraaqabah*".

*Al-Hisbah* etymologically means to count, think, give opinions, view, and others. According to Ibn Manzur in the Lisanul Arabic dictionary, *al-hisbah* is a derived word (*masdar*) from "*ihisab*", a reply from Allah or asking for rewards. He also explained that *al-hisbah* taken from the word name (*isim*) means the compensation from the goodness of hisbah in every business, i.e. excellent and capable government (Doktoralina & Bahari, 2019).

On a terms basis, Hisbah is to carry out religious duties, i.e. calling for *ma'ruf* (good deeds) and preventing evil deeds. Ibn Taimiyah also has a similar understanding, which defines *Al-Hisbah* as an institution aiming at commanding what is called goodness (*al-ma'ruf*) and preventing what is generally referred to as evil (*al-Munkar*) in areas under the government's authority to set it up (Gustina, 2019). According to Ibn Taymiyyah, cited in Jusri, all religious affairs and positions of Islamic government principally instruct to do good and prevent evil, including in the task of hisbah, which is considered a shara' claim. Hence, the organisers must be elected from among people who are fair (Jusri & Maulidha, 2020).

Abu Yusuf describes the function of hisbah in trade, commercial and industrial nature matters as follows: Hisbah checks the scales and measurements, the quality of goods offered for sale, honesty in dealing and observing kindness and courtesy in sales matters and supervise the behaviour of society in general. Ibn

Taimiyyah views that hisbah (*muhtasib*) is an obligation of the government, which has the same position as judges. *Al-Muhtasib* is responsible for carrying out *amar ma'ruf nahi munkar*, involving duties outside the fields assigned to judges and governors (Nazaruddin, Yani, Aisyah, & Annisa, 2021).

Hisbah ensures *ma'ruf* and preventing *munkar*. Likewise, it is said that hisbah is a religious mandate handed over to *ulil amri* or judges with the duty of showing virtue and prohibiting evil deeds. It aims to protect society from deviations and protect religion from misguidance. Humans are social creatures who need each other both to gain benefits and prevent damage. Following the explanations above, it is concluded that the hisbah is an attempt to know and observe an activity, order an action to be done, prevent an act that should be abandoned, and provide corrections and warnings or sanctions (Imaniyati, 2017).

Islamic scholars put forward more detail of hisbah definition, based on the specific terms, by emphasising the institution of hisbah officers and their fields of authority in Islamic countries.

According to them, hisbah is a supervisory position formed by the government by appointing a special officer responsible for overseeing individual activities in the moral, religious, and economic fields. In addition, hisbah is also accountable in the social area to ensure justice and moral purity under the will of *shara'* in every situation and era. The employee who carries out hisbah duties is called *al-Muhtasib* (Zakiyah, Prananingtyas, Disemadi, & Gubanov, 2019).

Hisbah is also described as the name of a ministry in the Islamic empire. Its officers oversee commerce, gaming, and entertainment that can lead to malicious acts and deter people from committing fraud in their jobs and companies. It also implements measures and scales systems appropriately and correctly and determines the fair price for the goods. Therefore, the *muhtasib* acts more as market supervisor (*wali al-Suq*). Hisbah is often associated with the Islamic government as an institution that oversees the judiciary's work, ensures the smooth implementation of the legal system, prevents evil deeds and injustice, and guides it towards goodness (Dogarawa, 2013).

The practice of hisbah in the above sense has been carried out since the time of the Prophet Muhammad, then was followed during the *Khulafaur Rashidin* and subsequent Islamic governments. The Prophet carried out function as a market supervisor (*al-Hisbah*), which is used as a reference, by the successor, for the role of the state in regulating the market (Furqani, 2017). The Prophet often inspected prices and market mechanisms. During his inspections, he frequently found dishonest business practices and reprimanded them. The Prophet said: "*We are not among those who cheat*". It indicates that hisbah has existed since the time of the Prophet, though the Center for the Study and Development of Islamic Economics mentioned that *al-Hisbah* only came in the following era (Hidayat, 2008)

Hisbah, in the history of Muslim civilisation, is an institution having a massive role in ensuring Islamic teachings implementation in society and fostering a harmonious and prosperous society. This institution is quite good because it has created a committed community, holding to religious education and living a successful life. Implementing hisbah in the government and society can increase efficiency in the government system and describe the government's transparency

against abuse of power that occurs, in addition to successfully eliminating fraud and any form of abuse in society (Ibrahim, 2019).

The role of hisbah has experienced rapid development in almost all Islamic areas. Its prominence emerged in Egypt, especially during the reign of the Fatimiyyah (361H-567H/969M-1171M), when the position of *Muhtasib* became a critical religious position in the government hierarchy, after the chief judge and chief priest. The function and role of *Muhtasib* were also expanded and assisted by several assistants. The steps taken by the Fatimiyyah kingdom were followed by the Ayyubiyyah kingdom (567H-650H/1169M-1252M) by streamlining the level of business management in the cities. At this time, Muslims faced Christians through the military threat of the Cross. The effectiveness of the hisbah institution in overseeing the lives of the people in the cities has attracted the interest of Christian governments to emulate this system in their administration (Iskandar & Aqbar, 2021).

From the above understanding, *Al-Hisbah* oversees the market (economics) and the legal field. Based on the study (Anwar, Fahrullah, Ridlwan, & Muzaki, 2020), some of the functions of *Al-Hisbah* are: (1) supervising scales, sizes, and prices, (2) overseeing forbidden trading, usury practices, *maisir*, *gharar* and fraud, (3) supervising halal, health, and hygiene of a commodity, (4) arranging market (layout), (5) overcoming disputes and injustices, (6) conducting the market intervention, and (7) providing punishment for violations.

The terms supervision and control in Bahasa Indonesia are very different. Those two meanings are not distinguished in English literature and are included in the word "controlling", which is translated as supervision and control. Hence, the term controlling has a broader meaning than supervision, meaning that supervision includes control. In Bahasa Indonesia, control as a noun comes from control as a verb. Control as a noun means directing, correcting activities that are misdirected, and straightening them in the right direction (Mujahidin, 2017). In the Netherlands, supervision is ".....as being informed about, checking, judging and possibly redressing how a competence has been or will be made use of". Based on the description of hisbah and supervision, both have the same meaning, so it is safely said that hisbah is supervision in Islam.

According to the fuqaha, hisbah has two functions, upholding the religion of Islam and implementing its laws, and carrying out state politics within the boundaries outlined by Islam which is related to the role of *imamah* and the caliphate. The caliphate or *imamah* is the general leader of Muslims in mundane and religious matters to succeed the Prophet Muhammad roles, to uphold religion and safeguard everything that all Muslims should do. It is said that *imamah* is needed to follow the prophethood to keep the faith and regulate the world's life (Abbas, 2016).

Hisbah is one of the concepts of justice in Islam that does not recognise favouritism or selective choice. In a hadith, it described the noblewoman, Fatimah al-Makhzumiyah, who stole. Her family tried to lobby the Prophet to make her free from punishment, but the Prophet refused and said:

*"Indeed, Muslims have perished (due to discriminatory practices), when big people (having positions) steal they are allowed to, but if small people steal, they*

*are sentenced to had (hudud). By Allah, if Fatima, the daughter of Muhammad, stole, I would cut off her hand".*

The form of the hisbah institution in the Islamic tradition is clear evidence of how Islam pays attention to the implementation of law and justice. The failure of hisbah principle implementation will affect the government's authority. A political elite will emerge who does not hesitate to abuse power for their interests and ultimately destroy the nation and state concerned. Whereas the leader's actions must be beneficial to his people following the rule: "*The actions of the imam (head of state) on his people must be following the benefit*" (Iskandar & Aqbar, 2021).

Supervision in Islamic teachings is at least divided into two things. First, control comes from oneself coming from monotheism and faith in Allah SWT. as described in QS. Al-Mujadalah: 7, a person, who believes that Allah is watching over His servant, will act with caution. Second, supervision will be more effective if the supervision system is also carried out from outside. It can come from the leadership concerning the delegated duties, the suitability of the completion and planning, and others (Haqqi, 2017).

Implementing hisbah principles will lead to good governance to avoid damage, injustice, treason (untrustworthy) and so on. It also maintains the values of justice, virtue, and economic activity. Likewise, in Islamic Banking institutions, hisbah principles will affect the governance of Islamic Banking, especially concerning sharia compliance (Amrie, 2020). For this reason, "*wilayatul hisbah*", an institution known in Islamic government with its duties and functions as a supervisory agency for the implementation of sharia and the state. In this case, *ulil amri* is the party that is obliged to oversee sharia implementation in society.

Three supervisory parties according to Islam who oversee the implementation of Islamic values in the life of the Muslim community are Allah, the party authorised by the state, and the Muslim community itself. For the implementation of this supervision, following hisbah theory, it is concluded that the principles of supervision are the basis and starting point in formulating the practice of *amar ma'ruf nahi munkar*, which includes supervision, correction and sanctions as conducted in Malaysia (Drahman, Rahman, 2019) and Aceh (Saiman, 2017).

Hisbah principles are universal truths that are inherent and become the starting point for fostering the supervision process. It observes all individual and organisational activities to ensure that all work/practices run according to the sharia that Allah SWT has set. From the description of the meaning, basis, purpose, and provisions of hisbah, it can be concluded that hisbah principle generally follows the principles of Islamic law as follows (Nurhasanah, 2014): the principle of monotheism, fairness, and *amar ma'ruf nahi munkar*.

The principle of monotheism is about faith in Allah SWT is the starting point for a Muslim in carrying out any activity. Then, fair is that the supervision results are recorded and written, with no additions and subtractions from the facts. After that, the principle of *amar ma'ruf nahi munkar* is that the specific principles related to hisbah follow *amar ma'ruf nahi munkar*. First, the principle of transparency means openness as the basis of supervision in Islam. Second, independent means that it is not influenced and dependent on other parties, objective. Third, the direct and immediate /pro-active-responsive principle means supervisors authorised by

the state (*muhtasib*) who must act proactively in conducting supervision, not waiting for a violation to occur first. Forth, the principle of a firm and consistent is implemented for people. Fifth is standardisation. Sixth is continuous development. Seventh, *ijtimaiyyah*/community participation means supervision that cannot be carried out only by parties authorised to supervise but involve community components, whether directly related to their interests with the organisation (stakeholders and shareholders) or not directly related (the wider community). *Khairu ummah*, mentioned in QS. 3:110 shows that there is community participation in the practice of *amar ma'ruf nahi munkar*. Eighth, *syumuliyah*/holistic, comprehensive means that supervision of the implementation of sharia principles is carried out in an integrated and comprehensive manner; scientific integrity/professionalism supervisor. Ninth, the principle of seriousness means totality, accuracy, thoroughness and optimal performance.

Hisbah principles born from the study of the hisbah theories are a starting point in monitoring the sharia implementation in society, including Islamic Banking. Hisbah principle can contribute to the role of OJK as a guide and supervisor of financial institutions in Indonesia. These principles are also relevant to serve as the basis for the institution authorised to act as the supervisory agency for Islamic Banking. Adequate supervision could overcome the risk management of Islamic financial institutions and increases the possibility of customer loyalty (Herianto, Hafidhuddin, & Beik, 2017).

The existing principles in the laws and regulations, including the Law on OJK related to Islamic Banking supervision, are transparency, accountability, responsibility, professionalism, and fairness in performing their business activities. BI Regulation Number 11/23/PBI/2009 concerning Rural Banks further more detailed explanation regarding the supervision of sharia principles by DPS, including explaining the requirements for DPS members as an explanation of the principles of professionalism, namely integrity, competence, and financial reputation (Gustina, 2019).

Likewise, in OJK Regulation (POJK/Peraturan OJK) Number 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector, Article 2, Protection, stated about the principle of transparency, fair treatment, reliability, confidentiality, and security of customer data/information and managing complaints, and consumer dispute resolution simply, fast, and cheaply. Hence, hisbah principle can also be added to the regulation of Islamic Banking supervision to strengthen the protection of Islamic Banking customers. Thus, the Law on Supervision and the Law on Consumer Protection can synergise with each other. For example, one of hisbah principles can be added to several articles of OJK Regulation Number 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector, which requires business actors to provide education to the public Article 14.

In the hisbah, there is a principle of sustainable development by the supervisor/*muhtasib*. Article 14 does not stipulate the obligation of supervisors to provide education to customers and financial service business actors, including materials for increasing Islamic literacy. For Islamic Banking, the duty of providing education to the public can be specifically addressed to DPS.

Furthermore, Article 17, Article 21, Article 32, Article 33, Article 34, Article 35, Article 36, and Article 40 stated the relationship between business actors and consumers. It can be concluded that the received complaints are only from consumers who are financially harmed with a specified nominal. There are no complaints about consumer dissatisfaction due to violations of sharia principles concerning the customer's spiritual rights, namely regarding the halal and cleanliness of a product. These articles have provided a loophole regarding the existence of public supervision of Islamic Banking activities, but it needs to be clarified again regarding violations of sharia compliance.

Article 47 and Article 48 imply that the supervision system in financial services business activities is mandatory to protect customers. However, this regulation does not explicitly state the obligation to have a Supervision System for Sharia Principles compliance. Hisbah principle encourages the protection of Islamic Banking customers to obtain their spiritual rights.

Article 49 regulates consumer protection. The rules regarding the existence of standard operating procedures as a guide have existed. At the same time, no rules require supervisory standards made to serve as guidelines for banks and other financial institutions in supervision. For this reason, more detailed arrangements are needed regarding supervision ([Heradhyaksa & Markom, 2018](#)).

Article 50 regulates the internal control system related to consumer protection required for financial service business actors, but no rules exist concerning the supervision of sharia principles. About the operations and business of Islamic Banks and other Islamic financial institutions, it is necessary to include compliance explicitly with sharia principles that are the object of OJK supervision. For this reason, it is essential to issue an OJK regulation concerning the supervision of the Islamic financial services sector, in particular. The rules should protect Islamic Banking/other Islamic financial institutions customers rights, particularly the spiritual rights, such as guaranteeing the halalness of a product.

## CONCLUSION

Based on the discussion previous, this paper reaches the following conclusions. First, the regulation of Islamic Banking compliance supervision by the OJK is carried out through the rules of DPS formation in Islamic Banking, as the person in charge of Sharia compliance. DPS will report the shariah compliance result to the OJK periodically. The supervisory mechanism is according to the periodic DPS, and SKAI reports. OJK will conduct an audit by sampling the implementation of sharia aspects. Second, there is a need to harmonise Islamic Banking supervision arrangements by submitting the bill revision to the Ministry of Law and Human Rights. There are thirty-five articles in Act 21/2008 concerning Islamic Banking that need harmonisation about the role transferred from BI to OJK. Third, the hisbah principles in the regulation of Islamic Banking compliance supervision are five principles, transparency, accountability, responsibility, professionalism, and fairness.

This study proposes the following recommendations. First, six principles of hisbah, which have not become the basis for Islamic banks' supervision in Indonesia, can be explicitly included in OJK regulations or the regulation of Good

Corporate Governance for Islamic Banking. Those principles are being careful and severe in carrying out supervision, *ijtimaiyyah*/community, direct and immediate/pro-active-responsive, firm and consistent, standardisation, and sustainability/continuous and sustained guidance. Second, it requires arranging the organisational structure of institutions conducting supervisory duties in Islamic banking to reach a more effective coordination mechanism in coping with various problems.

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