

# **SHARIA GOVERNANCE ON ISLAMIC BANKING: SPIRITUAL RIGHTS PERSPECTIVE ON CONSUMER PROTECTION IN INDONESIA**

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## **Abstract**

*Governance is a trait that should be attached to the institutions that perform public services. In Islamic banking, known as sharia governance, so that the principles of sharia could be optimized. But in reality, the Islamic banking practices do not meet the basic principles of the sharia governance. Based on these problems, this paper aims to examine in depth about the urgency of sharia governance; further it also explore the intersection between the sharia governance with the concept of spiritual rights for consumers. This paper using a philosophical approach, juridical, and practical. The result of this study, as a right, that right of spiritual need to get the guaranteed protection of the implementation of sharia governance. Attention to these spiritual rights protections needed to build the Islamic banking industry has high credibility, in order to gain public confidence. Credibility is meant is that if customers have confidence that Islamic banking upholds Islamic principles in operation.*

**Keywords:** *sharia, governance, islamic-banking, spiritual-rights, consumer-protection*

## **1. Introduction**

The main objective of business activity is soon to benefit as much as possible. It thus tends to affect businesses that pay less attention to the importance of social responsibility and business ethics and neglect in the form of good governance<sup>1</sup>. In 1997, the financial crisis in Asian countries is caused by weak

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<sup>1</sup> Muhammad Saifullah, *Islamic Business Ethics In Business Practices Prophet, Research and Community Service (LP2M) State Islamic University (UIN) Amanah Semarang*, Volume 19, Number 1, May 2011.

regulation and corporate governance<sup>2</sup>. Governance (governance) is a mechanism to ensure that an organization or company is organized efficiently and effectively.

The study of corporate governance (corporate governance) based on Islamic perspective has been done by several experts in economics, finance, law, politics, etc., among others: Umer Caphra (2002)<sup>3</sup>, Wafik Grais (2006)<sup>4</sup>, Abu-Tapanjeh (2008)<sup>5</sup>, Rodney Wilson (2009)<sup>6</sup>, and Hafeez Malik (2013)<sup>7</sup>. Various studies that have been done, try to give a detailed description of the corporate governance framework in the perspective of Islam. However, there were no studies linking the concept of governance with consumer protection. The concept of governance should give more attention to the bank, while the protection of consumers puts more emphasis on the interests of consumers. Governance and consumer protection is a very important issue in maintaining the trust of customers.

Good governance is an important element in the context of Islamic banking. Banking as a business entity and part of the financial services sector have an important role in driving the economy of Indonesia, as agents of development, services, and of agent of trust.<sup>8</sup> In carrying out the functions of financial intermediary, other than the Bank can exercise faith (trust), shall carry out its activities with regard to prudential banking principle. Implementation of good governance, consistent and sustainable addition to aiming to protect the interests of

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<sup>2</sup> Ince Nopicaa, Sanep Ahmadb, Abdul Ghafar Ismailc & Mohamat Sabri Hassand, The Basic Theory of Corporate Governance in Islamic Perspective, *The First International Conference On Shari'ah Oriented Public Policy In Islamic Economic System (ICOSOPP 2015)*, "Formulating Effective Public Policy in the Islamic Economic System under the Framework of Shari'ah" 30-31 March 2015, Ar-Raniry State Islamic University, Banda Aceh, Indonesia, p.152-153.

<sup>3</sup> Chapra, M. Umer and Ahmed, Habib (2002) 'Corporate Governance in Islamic Financial Institutions', Occasional Paper, Islamic Development Bank: King Fahad National Cataloging-in-Publication Data, [Online].

<sup>4</sup> Wafik Grais and Matteo Pellegrini, Corporate Governance and Stakeholders' Financial Interests in Institutions Offering Islamic Financial Services, *World Bank Policy Research Working Paper 4053*, November 2006, p. 27.

<sup>5</sup> Abu-Tapanjeh, Abdussalam Mahmoud (2008) 'Corporate Governance from the Islamic Perspective: A Comparative Analysis with OECD Principles', *Critical Perspectives on Accounting*, vol. 20, no. 5, July, pp. 556-567.

<sup>6</sup> Rodney Wilson, Syariah Governance For Islamic Financial Institutions, *ISRA International Journal of Islamic Finance*, Vol. 1, Issue 1, 2009, p. 59-60.

<sup>7</sup> Hafeez, Malik M. (2013) 'An Analysis of Corporate Governance in Islamic and Western Perspectives', *International Journal of Business, Economics and Law*, Vol. 2, no. 3, June, pp. 98-103.

<sup>8</sup> FSA, Banking, Financial Literacy in Higher Education Series, Series 2, Jakarta, 2016, p.6

stakeholders, and improve compliance with the legislation in force, in particular the principles of sharia.

The development of Islamic banking in Indonesia showed an upward trend despite slowing growth. The growth of Islamic banking mastered the 4.81% market share by asset growth reached 11.97% as of June 2016. Globally, along with Qatar, Saudi Arabia, Malaysia, the United Arab Emirates and Turkey, Indonesia is considered as the driving force of Islamic finance in the future. Accounted for 3% of total global assets, Islamic finance, including Islamic banking Indonesia still has the potential to be developed.<sup>9</sup> Based on the above reasoning is associated with considerable potential, the study of sharia governance from the perspective of consumer protection is necessary.

This paper aims to show the relationship between governance with consumer protection in Islamic banking, in particular related to the spiritual rights. Therefore, the description therein is structured as follows: 1) The relevance of 'Islamic', 'Sharia', and Governance; 2) Governance and Application On Islamic Banking Industry; and 3) Sharia Governance and Rights Consumer Banking Spiritual Islam.

## **2. Research Methods**

The study was conducted using the method of doctrinal research, in particular to the concept of banking, corporate governance, as well as the concept of consumer protection. The approach that used is philosophical and juridical. As for the practical review to complement the analysis of materials. Studies carried out against a variety of laws, both primary, secondary and tertiary.

## **3. Discussion**

### **3.1 The relevance of 'Islam', 'Sharia', and Governance in Banking**

For centuries, Islamic law has developed to become a 'very sophisticated'

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<sup>9</sup> See FSA, 2015-2019 Roadmap Indonesian Islamic Banking, Islamic Banking Department, 2016, p.10-11.

legal system, covering all areas of human life, known in contemporary law.<sup>10</sup> In Islamic law, human activity can be broadly divided into two, namely worship and muamalat.<sup>11</sup> There are some differences interrelated to the provisions of these two categories. First, in terms of worship apply the principle that anything that is not validated by the Sharia prohibited. That is, all that is allowed to worship are clearly specified in Sharia, and additions or variations on it is not allowed. Thus the principle is contrary to muamalat. In Muamalat, everything is allowed, other than those explicitly prohibited by Sharia. This is called the principle of permissibility (*ibahah*)<sup>12</sup>. In particular, usury and forbidden *gharar* in commercial transactions. Thus, Islamic commercial law allows all contracts without usury and *gharar*.

The other difference is that there is no room to change the rules and rituals of worship, while in terms of the provisions contained Muamalat, new and growing must be through the process of *ijtihad*.<sup>13</sup> In the case of Muamalat, Sharia only gives basic principles, which still needs to be developed through a variety of methods, in accordance with the needs of the changing times. Some of these methods to understand the causes of an effective (goods) and the reason (wisdom), as well as the urgency or *maslahah* (benefit) of an activity forming muamalah, new and unknown in the sharia.<sup>14</sup> Related to the above, Alwani<sup>15</sup> shows that *ijtihad* is a region or to the public interest as Umar Bin Al Khattab. As stated by Imam Malik that *ijtihad* emphasis on the problem of *al-mursalah* (the interests of the greater good) similarly, *maqasid al-Sharia* and *mashlahah* is a key element Shatibi work during

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<sup>10</sup> Mallat, Chibli (1993), *The Renewal of Islamic Law: Muhammad Baqer as-Sadr, Najaf and Shi'I International*, Cambridge: Cambridge University Press, p. 3.

<sup>11</sup> Kamali, Mohammad Hashim (2000), *Islamic Commercial Law: An Analysis of Futures and Options*, Cambridge, UK: The Islamic Texts Society, Chapter 7

<sup>12</sup> Fatwa No. 1 of the First Albaraka Seminar 1981 (Dallah Albaraka 1994, pp.75-76).

<sup>13</sup> Kamali, Mohammad Hashim (2000), *Islamic Commercial Law: An Analysis of Futures and Options*, Cambridge, UK: The Islamic Texts Society, bab 7

<sup>14</sup> Kamali, Mohammad Hashim (2000), *Islamic Commercial Law: An Analysis of Futures and Options*, Cambridge, UK: The Islamic Texts Society, bab 7, p. 78.

<sup>15</sup> Al Alwani, Taha Jabir (1990), *Usul Al Fiqh Al Islam, Source Methodology in Islamic Jurisprudence*, Research Monographs No. 1, Herndon: The International Institute of Islamic Thought. P 16, 35.

the 13th century.<sup>16</sup>

In the relationship between 'Islam' with sharia (Islamic law), Abdullah Ishak<sup>17</sup> describes the responsibilities of Muslims against Islamic law covers three cases: (i) studying and living the Islamic science, (ii) forming a community of superior (based on Islamic law), (iii) strive toward implementing Islamic law. While Yusdani<sup>18</sup> states that the obligation of a Muslim of Islam is practiced values. Based on these two views, it can be said that for every person who is Muslim, has must observe and practice the values of Islam. In this case, the term 'person' can be either individuals or institutions who claim to operate on the principle of Islamic law. The statement referred to, for the individual, in the form of pledges Confession of faith (Syahadatain) readings. As for institutions, the pledge bank declared in the deed.

In the perspective of Islamic law, any transaction, whether committed by individuals or institutions in any field, including economics, are bound to the values of Islam. In common terms, such actions are bound by the provisions of the law of halal-haram. Therefore, it does show the close relationship between the legal, economic and sharia. The use of the word sharia as the 'fiqh' looks specifically at the inclusion of Islamic law as a source of legislation in several Muslim countries, Islamic banking, Islamic insurance, and Islamic economic. Islamic principles based on the values of fairness, expediency, balance and universality (*rahmatan lil'alamin*). Those values applied in the regulation of banking, so-called Islamic Banking.<sup>19</sup> In the international literature, shariah banking is called by Islamic banking.

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<sup>16</sup> Masud, Muhammad Khalid (1995), *Shatibi's Philosophy of Islamic Law*, Islamic Research Institute, Islamabad: International Islamic University Islamabad, p. 120. See Siddiqi (2004b) for a discussion of mashlahah role in developing Islamic law. Siddiqi, M. Nejatullah (2004b), 'Keynote Address' at the Roundtable on Islamic Economics: Current State of Knowledge and Development of the Discipline, held at Jeddah, May 26-27, 2004, organized by the Islamic Research and Training Institute, Islamic Development Bank, Jeddah and Arab Planning Institute, Kuwait.

<sup>17</sup> Abdullah Ishak, *Sources of Islamic Legislation and the Responsibility of Muslims*, (Part of the Half of Islam Position of Prime Minister, Kuala Lumpur, 1997), p. 213-272.

<sup>18</sup> Yusdani, In *Re-actualizing the role of the Public Interest Law: The concept of Islamic law* Najamudin At Tufi, (UII-Press, Yogyakarta, 2000), p 137.

<sup>19</sup> Paragraph 2 of Law No. Explanation 21 of 2008 concerning Islamic Banking.

Islamic law is a part of Islam as a religion. The general objective of the overall Islamic law is to promote the well-being (*masalih*) mankind. The purpose is specifically known as *maqasid al-Shariah*, which is intended to ensure purity, justice and protection of religion, life, intellectuality, lineage and property. Based on this explanation, it can be understood that in the context of Islamic banking is an Islamic law that aims to maintain the sanctity of property and justice for all parties in the business activities associated with the property.<sup>20</sup> One example is the prohibition of usury is to ensure fairness and equality of the parties. Therefore, in the context of governance, the overall set forth in the Qur'an, the Hadith, and the various forms of the results of *ijtihad*, it basically have the same goal, namely in order to maintain the sanctity of property and justice for all parties. Furthermore, it can be stated that in Islam has provisions related to governance for each activity, the life of a Muslim, including in activities related to the banking industry.

On the other hand, in its development, governance has realized the importance of business in every institution, in order to maintain the sustainability of the business itself. The concept is known as Good Corporate Governance (GCG). GCG is a procedure for the management of the institution with a predetermined standard internationally and has been adopted by many countries and implemented nationally. In the banking industry, basically GCG is part of efforts to realize a healthy banking system. With the GCG in banking, will give a great sense of security to consumers, so it does not need to hesitate to take advantage of financial services in banking. This is necessary for the economic development of each country. Indonesia is developing banks to participate shore up the country's economy, including Islamic banking therein. Therefore, viewed from the aspect of function, and then the development of the concept of corporate governance in the banking industry is the embodiment function of 'law' as a tool to

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<sup>20</sup> Habib Ahmed, Islamic Law, Adaptability And Financial Development, *Islamic Economic Studies* Vol. 13, No. 2, February 2006, p. 5.

manipulate the social or 'social engineering' in order to achieve economic development goals as expected.

From the above, the relationship between 'Islam', 'sharia' and 'governance' very closely, particularly in the context of banking. Thus, the Islamic banking institutions That are philosophically aimed at implementing the principles of sharia, have juridical consequences also have to implement sharia-based governance. The requirement is in line with the duty of every banking institution That has been set forth in the legislation to implement the concept of corporate governance, so that every banking operation running in a healthy and stable. Briefly, the determination of the concept of corporate governance in legislation basically shows the function of the law as a tool for social engineering, in order to be better than the aspect of justice for the parties. In this context, it can be

understood also that Islamic banking has GCG broader concept than with conventional banking.

### **3.2 Governance: Application On Islamic Banking Industry**

In the context of Indonesia, as well as other developing countries, in the beginning of good governance in Indonesia is considered as a burden, especially to change the culture of the company in order to meet the principles of transparency and accountability. In line with its development, it was realized that good governance will only protect the interests of all stakeholders. Effective governance will strengthen and spur the growth of the company.<sup>21</sup> Currently, the implementation of good governance has been perceived as necessary to increase the company's value. Indonesia has had National Committee on Governance, which publishes general guidelines for good corporate governance including business banking and sharia. Through the implementation of all pillars of good corporate governance, the Islamic banking industry is expected to create a healthy and

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<sup>21</sup> Umer Chapra & Habib Ahmed, *Corporate Governance in Islamic Financial Institutions*, Islamic Development Bank-IRTI, 2002, p. 8.

resilient and able to protect the interests of all stakeholders. In addition, the implementation of good governance in Islamic banking has a specific purpose that is a way to boost confidence and provide legal certainty for stakeholders that the bank's operations and business activities of the bank is not contrary to Islamic principles. In the end, the implementation of good governance in Islamic banks will facilitate economic mechanisms in the real sector through the activities of business activities based investment, purchase, lease and contract another, and the success of the world and afterlife very concerned about the cleanliness of sources, the truth about the process and benefits of the results.<sup>22</sup>

In the context of Islamic banking, in addition to running a business activity for profit, the bank also has a social function as a reservoir of zakat, infaq, alms and endowments. The social function, are not known in conventional banking. In terms of goals, prioritizing the welfare of Islamic principles and sustainable growth with a focus on the real sector. Thus, Islamic banking oriented value creation. Based on these characteristics, the system of governance in Islamic banking is more complex than conventional banks. This because, Islamic banking, in addition to paying attention to the regulation in general, must also comply with Islamic principles derived from Islamic law to be able to compete in the market.<sup>23</sup>

Governance of Islamic banking in Indonesia is strongly influenced by the Indonesian legal system is more influenced by the civil law system. Traits important civil law system is the legislation a major source. Therefore, Islamic principles contained in fatwas DSN must be transformed into positive law in writing, in particular by Bank Indonesia (BI) and the Financial Services Authority (FSA). Cooperation to two authorities is necessary to avoid duplication, as well as complementary banking arrangements of Islam in particular.<sup>24</sup>

In carrying out the function of a financial intermediary, the Islamic Bank in

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<sup>22</sup> FSA, Islamic Financial Services Industry-Higher Education Financial Literacy Series, Jakarta, 2016, p.15

<sup>23</sup> Frederick V. Perry, *The Corporate Governance of Islamic Banks: A Better Way of Doing Business*, Michigan State Journal of International Law, Vol. 19:2,2011,p. 266.

<sup>24</sup> FSA, the Indonesian Banking Booklet 2016, Issue 3, March 2016, p.5.



addition to runing the confidence (trust), are also required to run its activities with due regard to the prudential banking principle set out in Article 2, 23, 35 and 36 of Law No. 21 Year 2008 concerning Sharia Banking (OOPS). It is a form of responsibility for third party funds placed in banks. In addition, Islamic banking required to apply governance and risk management, which includes the principle of knowing your customer and customer protection. Implementation of good governance, consistent and sustainable addition to aiming to protect the interests of stakeholders, as well as improve compliance with the legislation in force, in particular the principles of sharia.

Based on the above reasoning, the Bank Indonesia feels the need issued Bank Indonesia Regulation (PBI) No. 11/13 / PBI / 2009 on Implementation of Good Corporate Governance for Islamic Banks and Sharia Business Unit. PBI oversees the implementation of good corporate governance (GCG) should meet Islamic principles. The size or standard of corporate governance is the principle of sharia-based Islamic law in the field of Islamic banking embodied in the form of National Sharia Board Fatwa (DSN) – The Indonesian Ulema Council (MUI). Based on the regulation, corporate governance is defined as the Bank's governance, which apply the principles of transparency, accountability, responsibility, professional and fairness, in accordance with Islamic principles. Adherence to Islamic principles that will be the difference between the scope, urgency, and the application of governance in Islamic banking. In various studies, the concept of so-called sharia governance.

Financial Services Authority Indonesia actively being part of various forums and institutional cooperation that sets the standard of governance in the financial services sector, such as the G-20 in collaboration with the Financial Stability Board (FSB), the Basel Committee on Banking Supervision (BCBS) and the Islamic Financial Services Board (IFSB). Therefore, the regulations governing good governance in Islamic banking regulation in line with the scope of good governance internationally, including the application of the principle of comply or

explain entered in Indonesia Corporate Governance roadmap that can be used as a general guideline for the entire corporation in Indonesia.<sup>25</sup>

In particular, Article 34 of the Islamic Banking Act obliges Islamic banks and Islamic business units to implement good governance, which include the principles of transparency, accountability, responsibility, professional and fairness in conducting its business activities. Therefore, Islamic banks are required to formulate internal procedures regarding the implementation of these principles. In addition, to ensure that the governance of the bank complies with Islamic principles, Islamic banks are required to establish the Sharia Supervisory Board.

After the authority for regulation and supervision of banking turn to the FSA, the obligation of good governance in Islamic banks, implicitly regulated in FSA rules, among others in POJK No: 8 / POJK.03 / 2014 Assessment of Commercial Banks and Sharia Unit Sharia. Article 6 Paragraph (1) POJK regulates the coverage of health assessment to determine the level of Islamic banks, one of which is good corporate governance. Assessment of the factors of good corporate governance is an assessment of the management of Islamic banks on the implementation of the principles of good corporate governance with regard to principles of sharia.

Given the importance of good governance, in Indonesia has established the National Committee on Governance (NCG). NCG has published two guidelines as a reference to Islamic banking, namely the Code of Good Governance Sharia Business in 2011, and general corporate governance guidelines banking Indonesia in 2013. Under both sets of guidelines, in general, Islamic banking is obliged to apply the principles of good corporate governance in all aspects of business to achieve business continuity by taking into account bank shareholders, customers and stakeholders.

In addition, Islamic banking as part of Islamic finance is based on the basic foundation of spiritual and basic operational footing. Spiritually, Islamic banking

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<sup>25</sup> FSA, Corporate Roadmap Indonesia, Jakarta, January, 2014.

committed to conducting business based on two principles, namely lawful and Tayib. Principles of Islamic banks prohibit lawful conduct business activities that contain elements of usury, maysir, gharar, zhulm, tabdzir, risywah and maksiyat. While the basic principles Tayib covers two aspects, namely Ihsan (providing the best) and tawazun (balanced between the spiritual and the material, exploration and conservation, financial sector and the real sector, risk and profit sharing).<sup>26</sup> The basic principles are followed by banks' commitment to have, among others:

1. Vision and mission statement clear and realistic;
2. The company values describing morals, good bank in conducting business;
3. Guidelines for working procedures of commissioners and directors;
4. Business ethics and Code of Conduct companies which formulation is done by involving the organ of the company;
5. Play an active role in conserving natural resources and the environment;
6. Has the company regulations or collective agreements to guarantee security of rights and obligations of the parties as well as whistle blowing system to allow obtaining reports and complaints as well as suggestions and criticism from employees and stakeholders.

Furthermore, the application of governance in Islamic banking has a specific structure that includes the company's structure and policy organ bank in the implementation of the business and aspects that support the company organs are internal control, risk management, corporate secretary and compliance with applicable regulations.

From the above description, it can be understood that the adjustment related to governance and its application in the Islamic banking industry in Indonesia juridical amplified Islamic banking laws and implementing regulations. Conceptually, sharia governance is intended to ensure compliance with sharia. Therefore, Sharia governance supported by the fatwas of the National Islamic Council MUI transformed into PBI and POJK. As for the implementation, the

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<sup>26</sup> KNKG, Business Code of Good Governance of Shariah, 2011.

monitoring function is to sharia governance run by the Sharia Supervisory Board on any banking institution. While surveillance is indirectly controlled by the FSA and DSN.

### **3.3 Sharia Governance: Spiritual Consumer Rights Islamic Banking**

Sharia governance in substance is a form of sharia compliance. In sharia governance, and implementation point of concern is the banking institution as a business person. In other words, the banks have an obligation prescribed by law to run its business in accordance with Islamic principles. This constitutes the juridical consequences of the statement of the institution, as an Islamic bank, which is set forth in the Articles of Association of the company. Based on the statement anyway, an Islamic bank has a corporate identity (corporate identity) "iB". Thus, governance in Islamic and conventional banking is different, both in terms of scope, urgency, and enforcement mechanisms.

In the interests of consumers in the context of the rights and obligations of the parties, sharia governance is basically a right for consumers. Such statements are based on common sense in the context of the business relationship is bilateral, that basically any obligation of one party is the right of the other party. Additionally, juridical, the statement is supported by several normative foundations as stipulated in Law No. 8 of 1999 in Consumer Protection Law, namely:<sup>27</sup>

1. Based on a letter preamble stated that national development is aimed at establishing a just and prosperous society that is equitable materially and spiritually in an era of economic democracy based on Pancasila and the Law of 1945. Therefore, in terms of governance relating to the spiritual aspect, justified and recognized by Consumer Protection Law
2. Based in particular Chapter II of the Principles and Objectives, Article 2 that the principles of consumer protection benefit, justice, equity, security

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<sup>27</sup> KNKG Basic Principles of Good Corporate Governance Guidelines for Indonesian Banking, 2012, p.5.

and safety of consumers and legal certainty.

3. Based particular Article 3 Letter d. that consumer protection aims to create a consumer protection system contains elements of legal certainty and transparency of information and access to information;
4. Based particular Article 3 Letter e. That consumer protection aims to raise awareness of businesses about the importance of consumer protection so that the growing attitude of honest and responsible in the attempt;
5. Based particular Chapter III On the Rights and Obligations Section One of Article 4 Rights and Obligations of Consumers, Letter b. That consumers are entitled to choose the goods and/or services and obtain goods and / or services in accordance with the exchange rate and conditions and guarantees promised;
6. Based in particular Chapter III On the Rights and Obligations Section One of Article 4 Rights and Obligations of Consumers, Letter c. that consumers are entitled to correct information, clear and honest about the condition and guarantee of the goods and / or services;
7. Based particular Chapter III On the Rights and Obligations Section One of Article 4 Rights and Obligations of Consumers, Letter h. that consumers are entitled to compensation, compensation and / or reimbursement, if the goods and / or services received are not in accordance with the agreement or not as it should be;
8. Based particular Chapter III On the Rights and Obligations Section One of Article 4 Rights and Obligations of Consumers, Letter (i). that consumers are entitled to rights with the provisions stipulated in other laws and regulations.

From some of these clauses can be understood that the business relations, recognized the existence of the spiritual aspect. Furthermore, if the spiritual aspect has been declared as the corporate identity, as well as contained in the agreement,

then it becomes spiritual rights for consumers, while the employer is obliged to inform and implemented.

Before understanding 'spiritual rights', need an understanding of the meaning of 'spiritual' itself. 'Spiritual' can be understood as morphological and etymologically. Morphological meaning 'spiritual' adjacent to the terms of the offering; supernatural dimension; different from the physical dimensions; feeling or statement soul; something sacred; intellectual thinking and quality; the development of thinking and feeling; their sense of humor; or there is a change of life and is associated with religious organizations. While based on its etymology, the spiritual means something fundamental; important; and able to mobilize and lead the way a person thinks and behaves. The combination of these two meanings can form a broad characteristic of 'spirituality'. Thus, it can be said that the 'spiritual' is a human need for something bigger and stronger so as to move, better and holy man so worthy of it. 'Spirit' or spirit thus covers the inner life of individuals, such as idealism, attitude, thoughts, feelings and hope in the Essence of the Absolute. Spirituality in this context also includes how humans express its relationship with the Essence of the Absolute in everyday life.

Jalaluddin Rahmat<sup>28</sup> define 'spirituality' in more detail by making the classification of some aspects. However, some aspects of the basically stated the strong links between the 'spiritual' religion. Thus, if it is associated with the customers' needs as a consumer, it is 'spiritual rights' is a right that is based on the teachings of the customer concerned. For a Muslim, 'spirit' more life comes from Islamic religious beliefs. Spiritual problem is very important for high be religious it as a society. 'Spiritual Rights' which is based on religion is important because every religion has shaped the terms of either the command or prohibition. Thus the obligation applies all time without being restricted by region. Therefore, the 'spiritual rights' are universal, inherent in every person who practices the religion.

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<sup>28</sup> Jalaluddin Rahmat, "The Religion", in Taufiq Abdullah and Rusli Karim (ed), *Studies of Religion: An Introduction*, Yogyakarta, Tiara Discourse, 1989.

Basically, the spiritual right not only related to the customers, considering the spiritual right is the right of all people. However, if it is associated with the main focus of this discussion in the field of consumer protection in Islamic banking, the 'spiritual rights' in this paper addressed to the customer as a consumer. The term 'spiritual rights' is relatively new is introduced. At the beginning of this term are born through a review of consumer protection against sharia banking customers, especially in Islamic banking and more specifically with regard to the settlement of the dispute, since 2009-2012.<sup>29</sup>

As the term 'spiritual rights' is a new concept, so in fact, still quite a lot of people who are not aware of the existence and the need to 'spiritual rights'.<sup>30</sup> 'Spiritual Rights' has a specific concept, as well as the rights of other consumers. For the Muslim community, the certainty of the halal product is one concrete example of a 'spiritual rights'. However, the term 'halal' is more widely used in the context of the foods that may be consumed.<sup>31</sup>

Basically, Law No. 8 of 1999 on Consumer Protection has recognized the right of a spiritual nature. This is stated in Article 2 on the principles of Consumer Protection: Consumer Protection principles are: benefits<sup>32</sup>, justice<sup>33</sup>, equity, security and safety of consumers<sup>34</sup>, as well as legal certainty<sup>35</sup>. Explanation Number 3 Article 2 of Consumer Protection Law states that consumer protection was organized as a joint effort by five (5) principles relevant to national development, namely: 1) .....; 2) .....; 3) The principle of balance is intended to

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<sup>29</sup> Ro'fah Setyowati, Thesis (S3), the Dispute Resolution Islamic Banking in Indonesia in Perspective of Consumer Protection, Universiti Kebangsaan Malaysia (UKM), 2012, p. 391-392.

<sup>30</sup> Ro'fah Setyowati, "Spiritual Customer Rights in Perspective of Islamic Banking Consumer Protection Law in Indonesia", Proceedings of the Seminar on Law Enforcement of Sharia-based Islamic banking and Call For Paper Progress and Problems of Enforcement of Islamic Law in Indonesia, Faculty of Law, University of Diponegoro, Semarang, 19 September 2012, p. 267-268.

<sup>31</sup> Qur'an Surah Al Baqarah verse 168.

<sup>32</sup> 'Basic Benefit' intends to mandate that all efforts in the implementation of consumer protection should benefit as much as possible in the interests of producers and consumers as a whole.

<sup>33</sup> 'Fairness' meant that the participation of all people can be realized for the maximum and give the opportunity to users and dealers to obtain their rights and perform his duties impartially.

<sup>34</sup> 'Basic security and safety of consumers' intended to provide a guarantee for the security and safety of consumers in the use, consumption and utilization of goods and / or services are consumed or used.

<sup>35</sup> 'The principle of legal certainty' is so good traders or consumers obey the law and justice in the implementation of consumer protection, as well as state guarantees of legal certainty.

provide a balance between the interests of consumers, businesses and government in the sense of material or spiritual.

In the explanation that Article, the spiritual aspect has been expressed clearly and be the foundation for consumer protection. But the problem is, when formulating consumer rights, the rights have not been accommodated spirituality aspect explicitly, as represented meant the principle of balance. The consumer's rights under Article 4 of Consumer protection law, only outlined in general and are not concerned with rights related to the spiritual aspect (religion).

The use of the term 'spiritual' also serves to introduce the breadth of coverage Consumer Protection law which are targeted not just a question that is material, but also the spiritual aspect. From this new term, it is understood that the 'spiritual rights' is the right of every person, not limited to those Muslims, because spirituality is one aspect of the man himself is universal. Do not eat foods that contain beef (calf) is one example of 'spiritual rights' associated with Hindu religious beliefs. Abandonment of the 'spiritual rights' can cause its own problems.<sup>36</sup> Various phenomena of products not kosher, illustrates that there are still many employers who do not pay attention to the interests of consumers in relation to this spiritual aspect. Therefore, the needs of consumers who thus needs protection and championed.<sup>37</sup>

From a wide range of consumer rights that exist today, are basically the definition of the consumer and the scope of consumer rights has evolved over time based on consumer needs. However, not found explicit recognition of the rights that are spiritual.<sup>38</sup> Although the implicitly Consumer Protection Law have to admit

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<sup>36</sup> In India, there was destruction of a restaurant serving food containing beef to customers who are Hindus. Burning as a form of protest against the violation of the information provided by the restaurant with non-beef dishes states. The restaurant owner was aware of infringing the rights of the Hindu spiritual customer. Therefore, the next restaurants are closed

<sup>37</sup> Ro'fah Setyowati, Thesis (S3), the Dispute Resolution Islamic Banking in Indonesia in Perspective of Consumer Protection, Universiti Kebangsaan Malaysia (UKM), 2012.

<sup>38</sup> Ro'fah Setyowati, Sakina Shaik Ahmad Commander, Consumer Rights Islamic Banking in Indonesia: Approaches Toward Harmonization of Existing Legislation, Paper, National Seminar on Consumer and Family Economics Association of Malaysia (MACFEA) 15th, July 19-20, 2011, p , 5-9.



it. Such views Ali Mansur<sup>39</sup> and Nasution<sup>40</sup> stated that overall consumer rights in principle can be grouped by several aspects of consumer interest consists of four aspects, namely:

- 1) Physical Interests
- 2) Social and environmental interests
- 3) Economic interests
- 4) The interests of legal protection.

In the Consumer Protection Law has declared the possibility of the increase of consumer rights if it is based on the new law. The statement has a meaning that is flexible and willing to accommodate any change in the meaning of the addition of consumer rights legislation if anything will. Legislation will of either generated by the proposed legislative institutions or government institutions, basically a reflection of the people's will. Thus it can be interpreted that the rights of consumers can be expanded if found strong justification is universal, so will add to the long list of consumer rights. The change was made possible as the possibility that occurred in the history of human thought and life is constantly changing. Consumer rights contained in Law No. 8 of 1999 on Consumer Protection in Indonesia is an obvious example of this.

The rationality of the 'spiritual rights' derived from the teachings of religion is due to any religious teachings have shaped both the provisions of command or prohibition. In terms of religious orders, the obligation is to follow the religion, whereas in the case of a ban, the form is to avoid its obligations. This obligation applies anywhere and at anytime, meaning that regardless of place and time. Therefore, such things are attached to the consumers who practice the religion that it be duly protected rights anyway. In connection with the above rationale, the authors suggested the need for the spiritual aspects of being part of consumer

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<sup>39</sup> Ali Mansur, *Law Enforcement Liability About Manufacturer in Embodiment Consumer Protection*, Genta Press, Yogyakarta, 2007, p. 83.

<sup>40</sup> Nasution, AZ., *Consumer and Legal Review of Social, Economic and Consumer Protection Law in Indonesia*, Pustaka Sinar Harapan, Jakarta, 1995, pp 74-82; see also Ali Mansur, *Law Enforcement Liability About Manufacturer in Embodiment Consumer Protection*, Genta Press, Yogyakarta, 2007, p. 81-83.

interests should also get protection. Thus, the spiritual right is also part of the rights of Islamic banking customers.

From the description of the spiritual right above, is associated with the understanding of sharia governance in the previous description, it can be understood that basically Sharia governance is the embodiment of spiritual rights of consumers of Islamic financial institutions. It thus logically consistent with the statement Rodney Wilson<sup>41</sup>, that sharia governance is needed to build the Islamic banking industry has high credibility. Credibility is thus a requirement to gain public confidence. Credibility is meant is that if customers have confidence that Islamic banking upholds Islamic principles in operation. Legal guarantee is, expressly supported by strong legal environment and adequate. Furthermore, Rodney took the example of the application of sharia governance in Iran and Malaysia. Iran through the legislation Interest Free Banking in 1983, obliges all banking operation must comply with sharia. While in Malaysia, the same year to build the dual banking system, where Islamic banks compete with conventional banks. Sharia governance of banks in Malaysia is supported by the Sharia Board called the Sharia Advisory Council of the Guild at the Central Bank of Malaysia. The council has made a fatwa that serves as guidelines for some Islamic banks in operation. Meanwhile, internally, in every institution of Islamic banks, there is a functional unit for monitoring the compliance aspects of sharia.

With a slightly different statement, Wafik Grais and Matteo Pellegrini<sup>42</sup> argued that, overall, their corporate governance structure both internally and externally within the scope together with other reinforcement, can provide security and comfort for consumers. In addition, the provisions of the Corporate Governance externally for Islamic banking, means recognizing their special character of Islamic banking institutions, will also contribute to maintaining

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<sup>41</sup> Rodney Wilson, Syariah Governance For Islamic Financial Institutions, *ISRA International Journal of Islamic Finance*, Vol. 1, Issue 1, 2009, p. 59-60.

<sup>42</sup> Wafik Grais and Matteo Pellegrini, Corporate Governance and Stakeholders' Financial Interests in Institutions Offering Islamic Financial Services, *World Bank Policy Research Working Paper 4053*, November 2006, p. 27.

stability and protection industry stakeholders.

#### **4. Conclusion**

Needs corporate governance practices are essential in all of the banking sector. In Islamic banking institutions, the concept of governance is broader and more complex when compared to conventional banks. It is caused between 'Islam', 'sharia' and 'governance' there is a philosophical relationship very closely. Thus, the Islamic banking institutions that are philosophically aimed at implementing the principles of sharia, have juridical consequences also have to implement sharia-based governance. The requirement is in line with the duty of every banking institution that has been set forth in the legislation to implement the concept of corporate governance, so that every banking operations running in a healthy and stable. Briefly, the determination of the concept of corporate governance in legislation basically shows the function of the law as a tool for social engineer, to make it better than the aspect of justice for the parties.

Related settings governance and its application in the Islamic banking industry in Indonesia legally have strengthened the Banking Act sharia and implementing regulations. Conceptually, sharia governance is intended to ensure compliance with sharia. Therefore, sharia governance supported by the fatwas of the National Islamic Council MUI transformed into PBI and POJK. As for implementation, oversight of the sharia governance run by the Sharia Supervisory Board on any banking institution. While surveillance is indirectly controlled by the FSA and DSN.

Sharia governance, when seen from the banking side is an obligation that must be carried out under the provisions of the legislation. However, from the perspective of consumer protection, can be regarded as the embodiment of spiritual rights of Islamic banking customers. As a right, that right of spiritual need to get the guaranteed protection of the implementation of sharia governance. Attention to these spiritual rights protections needed to build the Islamic banking industry has

high credibility, in order to gain public confidence. Credibility is meant is that if customers have confidence that Islamic banking upholds Islamic principles in operation.

Associated with governance requires a real legal guarantee is supported by a strong legal environment and adequate. Therefore, the Government, through the FSA needs to continue to monitor and evaluate carefully the implementation of sharia governance has been set for each Islamic banking institution. To support the success of these efforts, the FSA as a regulator must be flexible and work with Islamic banking to understand the needs of the industry and thereby develop an appropriate regulatory framework. In improving the quality of sharia governance effectively, need to develop self-regulatory concept for each Islamic banking institution.

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