

Implementation of Anti-Fraud Strategy in Islamic Banks and Dispute Resolution Alternative in the Perspective of Islamic Economic Law in Indonesia

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Abstract

The potential for disputes increases with the growth of Islamic banks due to the possible occurrence of fraud in various forms. Therefore, immediate and appropriate steps are needed to detect and resolve fraud early. When fraud is not immediately addressed, it causes enormous losses, thereby decreasing public trust in Islamic banks. The Financial Services Authority Regulation Number 39/POJK.03/2019 concerning the Implementation of the Anti-Fraud Strategy is sufficient to regulate the strengthening of the internal control system. However, the introduction and preparation of follow-up actions in resolving fraud-related disputes are still required through litigation in the Religious Courts or non-litigation using the mediation and arbitration processes. This research is conducted to resolve disputes through mediation or arbitration as indicated in the Qur'an with the term *Al Shulhu*. The mediation model offered is to mediate internally within the banking institution through an independent mediator appointed by the BPS (Sharia Supervisory Agency). When internal mediation is not resolved, the next stage is mediation or arbitration at a special institution, such as Basyarnas (National Sharia Arbitration Board) or LAPSPI (Indonesian Banking Dispute Resolution Alternative Institute), without ruling out selecting a litigation institution of the Religious Courts.

Keywords: *fraud, Islamic banking, anti-fraud strategy, mediation*



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INTRODUCTION

The rapid growth of the economic and business sectors without limits makes it possible for the easy penetration of various life dimensions, thereby making human economic behavior banking-oriented (Rahmat & Ngatino, 2002:1). Presently, people are starting to fuss over the metaverse economy even though only 19.6% of adults are reported to own bank accounts (Global Financial Inclusion Index, 2011). At that time, Bank Indonesia had targeted to extend its banking services (bankable) to 50% of the population by 2019 (Yuliaty & Lubis, 2018). Based on the World Bank's Global Findex Database, Indonesia's financial inclusion index in 2017 was 48.9% (Shahrir Ika, 2021), indicating that most Indonesians are still experiencing certain obstacles in terms of accessing banking products and services. This can be quickly altered because it is driven by digital transformation in the banking sector. OJK (Financial Services Authority), in charge of regulating the Indonesia Banking Development Roadmap, which is intended to serve in the 2020 to 2025 period, has made one pillar of its policy direction to accelerate digital banking transformation (OJK, 2020). Several years ago, Chapra (2008) stated that the financial subsystem is the most important part of

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DOI: 10.31098/ijeis.v2i2.1048

Research Synergy Foundation

an economic structure in a civilized world. In this subsystem, all business transaction models are generally applicable and operational. Chapra (2008) further stated that a just monetary system needs to be enforced based on Islamic economic principles (better known as Sharia Economics in Indonesia). This is because the world-dominating doctrines of capitalism, socialism, communism and the welfare state are too weak to guide humans to uphold a just economic system referred to as the new architecture (Veithzal & Antoni, 2012: 4).

In Indonesia, Sharia economic growth is supported by a large Muslim population, including solid fiscal fundamentals, and abundant natural resources, all of which serve as an underlying transaction for the Islamic finance industry (Alamsyah, 2012). Meanwhile, Islamic banking is considered an entity with special characteristics that continues to develop rapidly. In 2022, its assets, financing, and third-party funds continued to experience positive growth. The initial number of assets, namely 694, was predicted to reach 734 trillion rupiahs, while financing recorded an increase from 452 to 470 trillion rupiahs, and that of third-party funds was from 549 to 575 trillion rupiahs (Widodo et al., 2022). Although several problems followed this growth, one important issue that deserves attention is the occurrence of fraud. It is of critical relevance to consider the anti-fraud strategy and the dispute resolution system. This is because the anti-fraud strategy reflects. An entity's commitment to controlling any possible occurrence of fraud. It is not only anticipation but also a form or model used to tackle fraud-related cases.

Financial statements are a structured presentation of an entity's fiscal position and performance. Its purpose is to provide information about an entity's financial position, performance, and cash flows that are useful to most consumers in terms of making economic decisions (PSAK, 2020). Financial statements also prove the management's accountability for the resources entrusted to their care (Skousen et al., 2008). However, any fraud incident causes the information to be invalid and inconsistent with financial reporting mechanisms.

A survey carried out in 2018 by the ACFE (Association of Certified Fraud Examiners) concerning the Global Study on Occupational Fraud and Abuses proved that banks were ranked the highest in terms of their occurrences. This financial institution is vulnerable to this heinous act based on the frequency of occurrence. Banks usually experience fraud committed by external and internal parties such as employees. Unfortunately, fraudulent activities, especially on financial statements, occur due to various parties' motivation and encouragement, both from within and outside the company. Several internal and external modes of the scam are based on the collusion between both parties.

Fraud, as earlier mentioned, is certainly a serious problem if not rapidly resolved. Therefore, a quick and transparent settlement while still upholding the values of justice and legal certainty is important and needs to be prioritized. In Islamic banking, fraud certainly needs a model in accordance with its legal values and applicable positive provisions. Based on the background described earlier, this research intends to describe the forms of fraud that occur in Islamic banks. It also aims to determine how the enacted laws and regulations regulate anti-fraud strategies and finally offers the concept of related dispute resolution patterns.

RESEARCH METHOD

This conceptual research adopted a legal approach, and the first step involves searching for laws and regulations related to anti-fraud and dispute resolution within and outside the court. Therefore, this is also regarded as a normative legal study because it evaluates secondary data through laws and regulations. A search is further conducted on related journals, data on Islamic banks' growth, and fraud cases. After linking the theory with existing laws and regulations, it was followed by interpreting the building patterns or models of dispute resolution and drawing conclusions. A conceptual framework is shown in Figure 1.

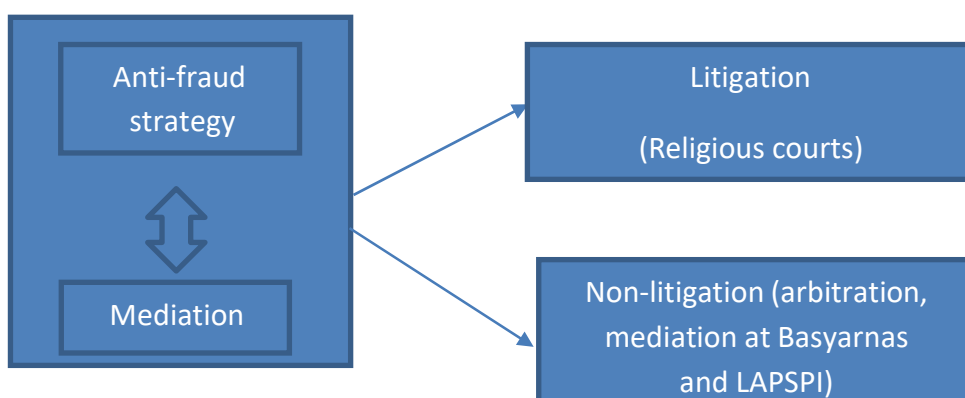


Figure 1: Conceptual framework

RESULT AND DISCUSSION

Justice and dispute resolution in the building of the sharia economic law system

Justice is a condition for achieving happiness and is the ideal of every society and state. However, this is in accordance with the adage, "even though the sky falls; justice must be upheld". The ideals of the state to achieve justice are similar to the ones affirmed in the National Principles (Pancasila). The preamble of the 1945 Constitution clearly emphasizes that the state aims to achieve a just and equitable society. This noble goal can only be realized in a sovereign and peaceful state with divine values or basis. In other words, it cannot be achieved in a nation that is atheist or does not recognize the existence and power of the Almighty God.

Ibn Khaldun and Fariana (2014) stated that a monocratic State recognizes and underlies relationships with a transcendental nature while implementing guidelines based on the values of God's law combined with human thought. According to A. Hasjmy religion and the state have a symbiotic and reciprocal relationship, beneficial to each other (Sirajuddin, 2007). Furthermore, Islam and the State are perceived as a package that does not need to be confronted as two opposite poles because of their mutual reinforcement. Religion provides legitimacy to the state, while this,

in turn, enacts an ethical and moral paradigm in running the government, ensuring each unit to form an institutionalized power. Meanwhile, adhering to the principles of Pancasila means that the community has adopted religious ideologies (Sirajuddin, 2007). A Hasjmy stated that one could accept the concept of a nation-state without mentioning an Islamic state (Sirajuddin, 2007).

The third amendment of Article 1, paragraph (3) of the 1945 Constitution states that Indonesia is a lawful state. This simply implies that it is principled and has a good state administration. Hasbi Ash Shiddieqy (1970) stated that only a lawful state could be perfectly upright and victorious. The Pancasila enacts active laws and principles that regulate human relations in society and institutional relationships and processes (Kusumaatmadja, 1976). This is in line with the development law theories of Mochtar Kusumaatmadja and Lawrence M. Friedman (2001) that an authorized system consists of Structure, Substance, and Legal Culture elements. These theories imply that the law grows and develops in society. It varies based on the changing times, and its growth is felt in all dimensions, substance, culture, and structure. Another ignorable aspect is the fulfillment of justice in accordance with religious values that characterizes the state of life. Regarding the goal of the state, namely a just and prosperous society, economic issues need to be in synergy with the developed legal system, which is necessary.

The monocratic theory proposed by Ibn Khaldun implies that divine values are implemented in state life. According to Friedman's theory, supported by that of Mochtar Kusumantmadja, the law continues to develop and grow in an integrated manner, thereby. Becoming a solid basis for the creation of justice, especially if there is a legal dispute because it does not only exist in courtrooms. Rather it also exists in social lives.

Law and the economy are certainly inseparable, and in the last few decades, the Islamic economy has experienced rapid growth. One relevant aspect is Islamic banking, which occasionally triggers the development of the national economy. Incidentally, towards the end of 2020, Indonesian Islamic financial assets experienced a positive increase of 22.71%. IDR 1,801.40 trillion was recorded against the IDR 1,468.07 trillion obtained in the previous year (OJK, 2020). Overall, the performance of the national Islamic finance during the pandemic continues to strengthen to maintain economic stability amid the revival of the economy (BI, 2020). One of the important factors that support the existence and development of Islamic banking is the actualization of an integrated dispute resolution system based on justice. It should be encompassed with Positive Law as a reception of Islamic Law that grows and develops in society. Dispute resolution in Islamic banks is part of the sharia economic law system, which is the outcome of legal politics as a positive catalyst (Fariana, 2021). This is not only created because of the superior positive legal raw materials derived from Islamic Law; rather, it is also supported by politics.

Fraud in the perspective of anti-fraud strategy and dispute resolution

According to the Association of Certified Fraud Examiners (ACFE), fraud is an error intentionally made by an individual or entity that results in some unfavorable benefits to other persons or parties (Ernst & Young, 2009). Fraudulent financial statements or reporting often start with quarterly misstatements or earnings management that are considered immaterial but eventually develop into massive fraud, resulting in misleading annual fiscal information (Rezaee,

2002). It is a deliberate misrepresentation of a company's financial condition that is executed through misstatements and omissions of amounts or disclosures in financial statements to deceive users. Fraudulent financial reporting activities include manipulation, falsification, and alteration of accounting records or supporting documents that are prepared not to present the truth or intentionally omit important events, transactions, and information from the financial statements, as well as the application of incorrect accounting principles.

Statement on Auditing Standards Number 99 defines fraud as "an intentional act that results in a material misstatement in financial statements that are perceived as the subject of an audit." Prasetyo et al. (Peak Indonesia, 2003) further stated that according to the Black's Law Dictionary, fraud includes all kinds of heinous acts attempted by an individual to take advantage of others. This includes wrong advice or coercion of the truth, unexpected means, cunning or hidden tactics, and any unreasonable way that causes others to be deceived. Meanwhile, the Association of Certified Fraud Examiners (ACFE) (2014) stated that fraud is an unlawful act carried out intentionally for certain purposes by either the employees of an organization or external parties for personal or group gain that directly or indirectly harms the customers.

There is usually no solution for detecting fraudulent financial reporting due to the various underlying motivations and the diverse methods employed (Brennan & McGrath, 2007). Corporate governance is often associated with fraudulent financial reporting. This is in line with the research conducted by Dechow et al. (1996) and Dechow & Skinner (2000). They stated that the highest incidence of fraud occurs in companies with weak corporate governance, such as those that tend not to have an audit committee. The finding was further reinforced by Dunn (2004), who concluded that this heinous act is likely to occur when power is concentrated on the insider.

Some other related research, such as Cressy (1950), proposed the Fraud Triangle theory. It states that fraud is caused by three factors, namely pressure, opportunity, and rationalization. This concept was later adopted by the American Institute of Certified Public Accountants (AICPA, 2002), which issued a Statement of Auditing Standards Number 99 (SAS No. 99) regarding the Consideration of Fraud in a Financial Statement Audit in October 2002 (Skousen et al., 2008). Cressey (1953) interviewed 200 embezzlers currently serving time in prison and concluded that every fraudulent activity was triggered by three important factors, such as pressure, opportunity, and rationalization.

Wolfe and Hermanson (2004) reported that Fraud Diamond is a refinement of the Fraud Triangle theory proposed by Cressey (1953). In addition to pressure, opportunity, and rationalization, Wolfe and Hermanson (2004), included one qualitative element, namely capability, thereby making them four, known as Fraud Diamond. These factors have been proven to promote fraud in financial statements by using the Fraud Diamond theory analysis. The most recent fraud theory, namely Fraud Pentagon, was developed by Horwath (2011). It involves two additional elements, competence, and arrogance, to the three used in the Fraud Triangle theory. This resulted in five elements, pressure, opportunity, rationalization, competence, and arrogance, known as the Fraud Pentagon.

Related studies on fraud in the banking sector carried out by Ashari & Nugrahanti (2021) and Said et al. (2017) stated that one major cause of this heinous act in Rural Banks (BPR) and BPR

Syariah is ethical violations. Furthermore, fraud occurs due to poor employment practices, ineffective employee training, work overload, weak internal control system, and low compliance among bank managers and employees (Bhasin, 2015). The diverse types include (1) Embezzlement or Misappropriation, (2) Loan Fraud, (3) Real Estate Fraud, (4) New Account Fraud schemes, (5) Money Transfer Fraud, (6) Electric Data Capture Fraud (cheating on ATMs), (7) Letter Off Credit Fraud, as well as (8) Blank Check (non-sufficient fund) and Check Forgery. The management is often pressurized to prove that the company can manage its assets properly to maximize profits to produce high returns for investors. They are forced to use financial statements as a tool to cover the poor stability of fiscal conditions caused by fraud.

Relating to the issue of fraud, it is necessary to consider its potential occurrence in Islamic banks. These institutions are generally managed based on the principle of prudence. The growth of Islamic commercial banks and sharia business units is reflected in the number of operational head offices, sub-branches, and cash offices which are 868, 1,535, and 557, respectively. This also includes its total assets, which increased from IDR 593,948 billion to IDR 646,012 billion from December 2020 to November 2021. In November 2021, 3317 sharia service offices and business units, including commercial banks, were distributed throughout Java and Papua. besides, there was even one operational head office outside Indonesia (OJK, 2021). This kind of growth is certainly bound to trigger fraud because it is not only an act of deviation but also an omission that causes losses.

It was emphasized that relatively 17.8% of fraudulent activities occur in the banking and financial service sector (the highest compared to the fraud that occurs in government or other industries). This research focused more on cases investigated by CFEs (Certified Fraud Examiners). It was further discovered that the banking industry, financial services, and Islamic banks have the highest risk of fraudulent activities and are also the most proactive in dealing with anti-fraud issues. Therefore, implementing good corporate governance in Islamic banks was the solution proffered (Astuti, 2018). However, the results show that it does not significantly affect such heinous acts (Herdianto et al., 2016). The diverse forms of fraud involve some sort of collaboration between employees and customers, manipulation of financial statements by *mudharib*, embezzlement and burglary of customers' savings, abuse of authority, *murabahah bil wakalah*, fictitious financing, notifying or exchanging user IDs, late or not paying off the funding, and manipulating the cost of goods in *murabahah* contract, transferring objects, pledging objects that do not belong to them, restructuring the *mudharabah* contract to become a *qardh*, late provision of financing to customers, and the performance of non-sharia transactions (Nunianinsi, 2021).

The earlier acquired data implies that Islamic economic growth is generally accompanied by Islamic banking and the increased potential for fraud. Therefore, an anti-fraud strategy is essential, and in circumstances where fraud has occurred, the adopted pattern of dispute resolution also needs to be observed. As a financial institution that bears the sharia (Islam) flag, Islamic values must be a strong color in the dispute resolution process or procedure. Islamic law grows and lives in society (the living law) and is perceived as a raw material for the national legal system through some political catalyst. This regulation needs to be enforced because it has been transformed into various policies. Related to Banking, the regulations referred to include Law Number 10 of 1998

concerning Banking, Law Number 21 of 2008 concerning Sharia Banking, Law Number 21 of 2011 concerning the Financial Services Authority (OJK), and OJK Regulation Number 39/POJK.03/2019 on the Implementation of Anti-Fraud Strategy for Commercial Banks.

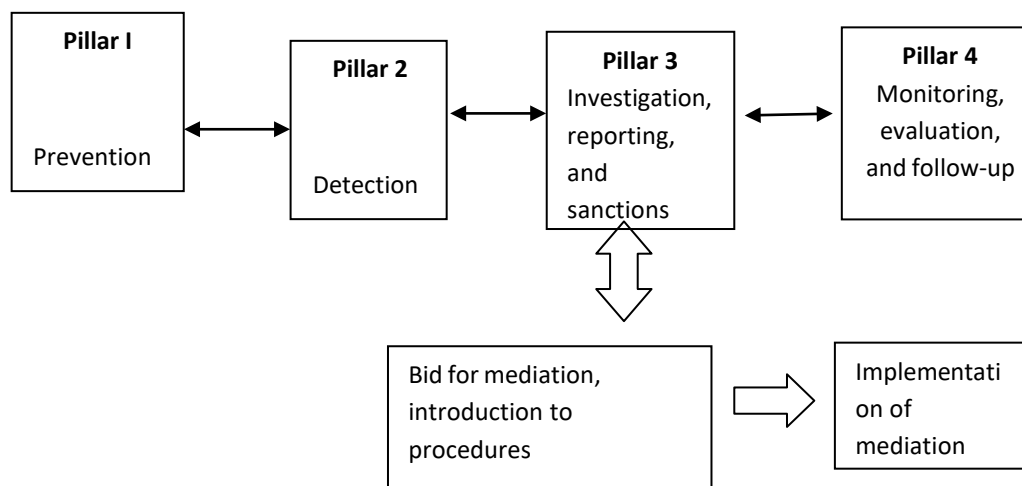
The legal basis for enacting an anti-fraud strategy is detailed in Bank Indonesia Circular Number 13/28/DPNP dated 9 December 2011 concerning the implementation of an anti-fraud strategy for Commercial Banks and Bank Indonesia Circular Number 13/23/DPNP dated 25 October 2011 concerning Amendments to Circular Number 5

/21/DPNP on the Implementation of Risk Management for Commercial Banks. Bank Indonesia Circular Number 13/28/DPNP states that banks are expected to implement an anti-fraud strategy adapted to the internal and external environments, the complexity of business activities, potentials, types, and risks of fraud as supported by adequate resources. This is applicable to commercial banks that perform conventional and sharia activities. OJK is completely aware that every business activity always has the potential for fraud. Therefore, banks are required to implement an anti-fraud strategy that includes prevention, detection, investigation, sanctions, and monitoring, as well as subsequently becoming the object of OJK supervision (OJK, 2020).

Currently, the anti-fraud strategy for commercial banks is regulated by the Financial Services Authority Regulation (POJK) Number 39/POJK.03/2019, which came into effect on 1 January 2020, thereby causing the Bank Indonesia Circular Number 13/28/DPNP to become invalid. This regulation implies that the banks' business activities are exposed to operational risks associated with the fraud. To minimize its occurrence, there is a need to strengthen the internal control system by enacting an anti-fraud strategy. Article 4, paragraph (2) states that there are four pillars in preparing and implementing an anti-fraud strategy. These include the pillar of prevention, detection, investigation, reporting, and sanctions, as well as monitoring, evaluation, and follow-up. To implement the anti-fraud strategy, banks are required to establish a work unit that reports to the President Director and has direct communication and relationships with the Board of Commissioners, as referred to in Article 7. Banks are obligated to report the enactment of this policy every tenure and submit reports of fraud that have a significant impact not later than three days after this financial institution becomes aware of the occurrence of fraud.

This reporting procedure is stated in Article 12. OJK regulates the obligation for Banks to report the implementation of anti-fraud strategy regularly, including the occurrence of fraud, as soon as possible. The problem is determining if banks take quick and immediate actions to minimize losses or provide security for the perpetrators when fraud causes a significant impact. Therefore, a supervisory mechanism created as a form of handling model and carried out simultaneously with the reporting activities to the OJK is needed.

Figure 2. Anti-Fraud strategy scheme



Generally, dispute resolution in sharia banking is carried out through two channels, namely litigation in the Religious Courts and non-litigation in Arbitration at Basyarnas (National Sharia Arbitration Board) or LAPSPI (Indonesian Banking Dispute Resolution Alternative Institute). In 2020, the number of sharia economic cases, including those handled by the Religious Courts, the Religious High Court, the Supreme Court (cassation), and Supreme Court Review, was 463, 62, 34, and 3 (Agustianto Minka, 2021). This data shows that the rapid growth of this economy creates the potential for disputes to increase. However, the large potential for disputes compared to the number of cases resolved by the Religious Courts indicates that the Religious Courts do not handle some related issues. If this assumption is correct, the handling of cases should be resolved through litigation in court and non-litigation in arbitration or mediation institutions.

The legal regulation that protects the operation of Sharia Banking is Law Number 21 of 2008. Article 55, paragraph (2) of the law is a reference in the sharia banking dispute resolution. This implies a choice of forum for disputing parties in Islamic Banking. However, the issuance of the Constitutional Court Decision Number 93/PUU-X/2012 shows that the Elucidation of Article 55 paragraph (2) was canceled because it is considered contrary to the 1945 Constitution. It creates legal uncertainty and does not have binding legal force. Litigation resolution is the absolute authority of the Religious Courts. Initially, its competence especially relating to the resolved sharia economic disputes creates doubts for the community because there is an assumption that the Religious Courts only resolve disputes in the field of family law. The fact shows its use in resolving disputes in a litigation manner has won the community's trust. This is because it is supported by judges who have Sharia Economics certification as well as various consistent regulatory instruments, such as Supreme Court Regulation Number 14 of 2016 Number 4 of 2019, concerning procedures for sharia economic dispute resolution and simple lawsuit resolution as an amendment to the Supreme Court Regulation Number 2 of 2015. Furthermore, it is also supported by excellent facilities and infrastructures such as a representative building, e-court, and e-litigation, as stated in

Supreme Court Regulation Numbers 3 of 2018 and 1 of 2019. The great public trust in the Religious Courts does not rule out the need for other means to resolve cases in Islamic Banking. This is because the banking sector relies on public trust and such issues need to be quickly resolved. Dispute resolution outside the court is an alternative that needs to be developed.

Law Number 30 of 1999 concerning the dispute resolution alternative does not contain the definition of mediation or arbitration. It is contained in Bank Indonesia Regulation Number 8/5/PBI/2006 concerning banking mediation. Number 5 of the Bank Indonesia Regulation states that mediation is a dispute resolution process that involves a mediator to assist the parties involved. The essence is to resolve the form of a voluntary agreement on part or all of the reasoned issues. This definition implies that the mediator does not have the authority to decide the dispute but only assists and facilitates the parties involved to conclude. Mediation is one form of dispute resolution outside the court. Cases that can be resolved through mediation are usually civil disputes, while criminal ones are resolved by consensus through mediation in the form of a peace agreement to indicate their good faith not to continue with the case or revoke certain criminal reports (Suherman, 2017).

In Islamic law, the muamalah dispute resolution uses the term Al-Shulhu which denotes deciding a quarrel or dispute between two disputing parties. Meanwhile, Hasby Ash-Siddique stated it is a contract agreed upon by two people fighting over the right to execute some particular task. In certain instances, the dispute can disappear based on the contract (Muflikhudin, 2020). Al Shulhu's definition and way to resolve disputes are based on the Al-Quran Surah Al Hujurat verse 10, which states, "The believers are but one brotherhood, there is need to make peace between your brothers, and be mindful of Allah to be shown mercy." This triggers the disputing parties to take mediation internally using an independent mediator and proceed to arbitration through an official institution to make peace. This is an alternative to resolving disputes when fraud occurs in Islamic banking. However, this effort certainly does not invalidate the obligation to continue to provide the Financial Services Authority (OJK) with reports.

CONCLUSION

Generally, Islamic banking needs to employ the principle of prudence in executing its activities, and fraud-related issues need to be quickly handled appropriately. The Financial Services Authority Regulation has regulated the implementation of anti-fraud, but in addition, a handling pattern is needed if fraud is detected to have occurred. The path that can be taken is to carry out internal mediation as well as continuously through existing institutions such as Basyarnas (National Sharia Arbitration Board), LAPSPI (Indonesian Banking Dispute Resolution Alternative Institute), or BANI (Indonesian National Arbitration Board) if an internal mediation resolution is not reached. Mediation is carried out to ensure that the fraudulent activity is not widely exposed but can be resolved quickly because customer trust still needs to be maintained. However, if the fraud has a broad impact and cannot be resolved through mediation, then litigation in court can also be taken. This research is limited because it is only a conceptual descriptive evaluation and uses a normative legal approach. Limitations on the variety of fraud types in Islamic banks are also

an obstacle, thereby leading to the need for more extensive and in-depth research to be carried out to provide more appropriate solutions.

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