

MENGURUS KETIDAKPATUHAN SYARIAH (SNC) DALAM KEWANGAN ISLAM

Burhanuddin Lukman

Muzakarah KLIFF 12 Nov 2024

Apakah Ketidakpatuhan Syariah (SNC)

- Bercanggah dengan bercanggah prinsip Syariah (Shariah Principle), atau
- Bercanggah dengan Keputusan MPS (SAC Ruling), atau
- Bercanggah dengan Keputusan JK Syariah (Shariah Committee)

IFSA 2013

28. (1) An institution shall at all times ensure that its aims and operations, business, affairs and activities are in compliance with Shariah.
- (2) For the purposes of this Act, a compliance with any ruling of the Shariah Advisory Council in respect of any particular aim and operation, business, affair or activity shall be deemed to be a compliance with Shariah in respect of that aims and operations, business, affair or activity.
- (3) Where an institution becomes aware that it is carrying on any of its business, affair or activity in a manner which is **not in compliance with Shariah** or the **advice of its Shariah committee** or the **advice or ruling of the Shariah Advisory Council**, the institution shall.....

Hajah PD: 5.0 interpretation

“**Shariah principle**” refers to any **existing ruling** specified under the recognised sources of Islamic law, or any legal judgment (hukm shar`i) **deduced by a qualified jurist** (a mujtahid) via the ijtihad process;

“**Shariah ruling**” refers to any **ruling made by the SAC** in accordance with its functions under section 52(1)(a) of the Central Bank of Malaysia Act 2009 for the ascertainment of Islamic law for the purposes of Islamic financial business.

Tahap SNC: Serius & Tak Serius

- BNM ada polisi dalaman dalam menilai tahap SNC
- Antara SNC yg dikira serius:
 - Yg membatalkan aqad Syariah
 - Yg melibatkan kesalahan besar dalam Syariah, eg: riba
 - Yg berulang-ulang
 - Yg melanggar resolusi MPS yg bersifat *strict liability*
 - Yg menyebabkan kesan kewangan yg besar

Punca Ketidakpatuhan Syariah (SNC)

➤ Kelemahan:

- Tatakelola
 - Polisi dalaman: tak jelas, tak mencukupi, tidak boleh dilaksanakan, tidak diendahkan
 - Sistem dibuat tanpa panduan & review Syariah, tak selari dgn keputusan Syariah
 - Pengetahuan & Latihan : staf pelaksana tidak faham keperluan Syariah
 - Pemantauan
 - Faktor manusia (cuai, silap)
- ## ➤ Perubahan peraturan, fatwa & standard
- eg: inah, Rahnun, Kad Kredit ujah, aspek 5% PBT yg tak halal dalam penilaian saham

Antara contoh

❖ Jurang (gap) antara SAC/ SC dgn IKI

- apa yg SC/SAC maksudkan tak betul2 difahami oleh bank atau staf yang melaksanakannya
- Mungkin juga kerana sikap tidak ambil berat, tidak acuh staf yg berurusan dgn pelanggan
- Eg: **kemestian aset yang telah wujud** bagi jual beli
 - Produk BBA – S&P utk pembiayaan secara inah (Bolehkah ditafsir sbg bay' al-haq?)
 - Produk ijarah semula kepada pelanggan (Ijarah muntahiah bittamlik) Aset perlu wujud Ketika bank membeli dari dari pelanggan sebelum disewakan semula – (Bolehkah ditafsir sbg ijarah mausufah fi zimmah?)
- Eg: **Kemestian aqad Syariah secara bertulis**, atau metod lain yg diiktiraf
 - Aqad wakalah bertulis bagi pertukaran matawang bagi bayaran kpd pihak luar

❖ Transaksi secara manual di luar sistem

- Pembiayaan yg dibuat secara manual tidak gunakan commodity murabahah / tawaruq

❖ Aliran keluar Takaful kpd re-insuran

- JK Syariah hanya tahu selepas beberapa tahun

SNC Kawasan kelabu (Grey area)

- Kes-kes yang JK Syariah anggap SNC, tp BNM / SAC tak anggap SNC
 - SGF dulu kata SC boleh ambil pandangan *more stringent*, tp SGPD silent, instead BOD n SC should reconcile, or else need to bring to SAC
 - Apakah perlu report?
 - Burst KPI of the bank - banyak SNC
 - Bagi BNM, semua SNC mesti dilaporkan BNM, tapi apakah isu sebegini dikira SNC yg mesti dilapor, atau diurus secara dalaman ?
- Eg: Bank ABC syaratkan pelanggan pembiayaan kenderaan utk mengambil takaful sahaja
 - Tp pelanggan ambil insuran
 - BNM anggap tak mengapa jika pelanggan beli takaful sendiri dan tak guna duit bank
 - Ada SAC ruling kata tak apa kalau bukan pakej
- Eg:
 - SAC benarkan ambil deposit dari customer wlp business SNC
 - Tp SC bank tak nak benarkan CASA, dan benarkan fixed deposit, sbb CASA ada services lain yg customer dapat manfaatkan utk business, berbeza dari fixed deposit
 - SC adopt more stringent
- Eg: tawarruq, waad mulzim dll

Kesan Ketidapatuhan Syariah (SNC) terhadap Institusi Kewangan Islam

- Reputational risk
- Penalty
- Compliance Rating - SNC will bring down bank's rating
 - a serious matter to BNM and the banks
- Financial Loss
 - Loss of income
 - Rectification cost
 - a. Legal liability – judgments, settlements and other legal costs;
 - b. Regulatory and compliance – fines or the direct cost of any other regulatory penalties. For example, the regulatory fines as stipulated in section 28(5) of IFSA and section 33D(5) of DFIA;
 - c. Restitution – Payments to third parties on account of operational losses for which the RE is legally responsible;
 - d. Loss of recourse – Losses experienced when a third party does not meet its obligations to the REs;
 - e. Write-downs – Direct reduction in value of assets due to theft, fraud, unauthorised activity or market and credit losses arising as a result of SNC incidents; and
 - f. Direct purification of income – Amount of income that needs to be purified either by channeling it to charity or any other manners as prescribed by the SC/SA.

Ketidakpatuhan Syariah (SNC) dalam Dokumen Polisi Hajah & Darurah

- HD PD adalah utk mengelakkan dari SNC
- Beza antara keadaan semasa lakukan SNC & keadaan selepas SNC

Pre-conditions in applying *hajah* and *darurah* :

2. **Deviation from Shariah principle or Shariah ruling** – the elimination of hardship requires deviation from existing Shariah principles or Shariah ruling whether temporarily or permanently;

The **scope of prohibited application**:

an IFI is **prohibited** from applying *hajah* and *darurah* to address **hardships arising solely** from the **risk to its profitability** or due to **weakness in the IFI's governance and internal control** environment
financial loss arising from the effort or as measure to rectify **Shariah non compliance events**

Cadangan Strategi Mengelakkan SNC

- **Shariah compliance culture**

- Top down

- Eg: isu Bank XYZ - policy sudah ada, tapi staff tak peduli - aset tak ada

- Training

- Review

- Audit

- Governace

- Policy, guideline

- Hajah & Darurah PD

