



CONCEPTUALISING SHARIAH GOVERNANCE FOR HALAL HOTEL

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Abstract

This paper conceptualises a model of Shariah governance for *halal* hotels using Indonesia as a case study. Besides, it examines the roles and functions of the local Sharia standard-setting body within the national regulatory regime. One of the most important developments for the nascent *halal* hotel has been the efforts to establish *Shariah* governance, i.e., an overall process that governs the activities of *halal* hotels to comply with Shariah or Islamic law. This process may create clarity and consistency of Sharia rules for the *halal* hotel industry. The data analysis of this paper mainly comes from secondary sources of information either through existing rules or regulations of halal hotel, *fatwas* (Islamic legal verdicts), annual reports of the *halal* hotel, and other secondary materials. The originality of this research shows a model of *Shariah* governance for the halal hotel industry.

Keywords: Shariah Governance, Halal Hotel, Shariah Standard-Setting Body.

Abstrak

Penelitian ini memuat konsep model tata kelola Syariah untuk hotel halal dengan menggunakan studi kasus Indonesia. Selain itu, penelitian ini mencoba untuk menggali peran dan fungsi dari badan penetapan standar Syariah lokal dalam rezim peraturan nasional. Salah satu perkembangan paling penting untuk hotel halal yang baru lahir adalah upaya untuk mendirikan tata kelola (*governance*) Syariah, yaitu, proses keseluruhan yang mengatur aktivitas hotel halal untuk mematuhi Syariah atau hukum Islam. Proses ini dapat menciptakan kejelasan dan konsistensi aturan Syariah untuk industri hotel halal. Analisis data dari penelitian ini terutama berasal dari sumber informasi sekunder baik melalui regulasi atau peraturan yang ada tentang hotel halal, fatwa, laporan tahunan hotel halal, dan sumber sekunder lainnya. Orisinalitas penelitian ini berupa model tata kelola Syariah untuk industri hotel halal.

Kata Kunci: Tata Kelola Syariah, Hotel Halal, Badan Penetapan Standar Syariah.



Introduction

Halal hotel is a type of hotel following the requirements of Islamic law or Shariah. *Halal* itself is defined as permissible, as opposed to *haram* (forbidden) in Islamic commercial law (*fiqh muamalah*). In Islamic law, the characters of *halal* are derived from the primary sources of Islamic law namely Al-Quran and the Prophetic traditions of Muhammad (peace be upon him) as well as from the secondary sources such as consensus among Muslim scholars (*ijma*), analogical reasoning (*qiyas*), public interests (*masalah mursalah*), and other products of *ijtihad* (an independent reasonings) conducted by qualified Muslim scholars in doing such an intellectual exercise. In Indonesia, according to the Indonesian Ulama Council (MUI), there are only four hotels that have been certified as the *halal* hotel. These hotels are shown in Table 1 as follows.

Table 1. *Halal* Certified Hotel in Indonesia per 2019

| Hotel | Product | Expire |
|-------------------------------|-----------------------|--------------------------------|
| PT. Hotel Anomsolo Saranatama | Sharia Hotel Services | 6 th September 2019 |
| PT Sopyan Hotels Tbk | Sharia Hotel Services | 21 st March 2021 |
| CV Permata Hati | Sharia Hotel Services | 19 th December 2021 |
| CV Hotel Grand Permata Hati | Sharia Hotel Services | 19 th December 2021 |

Source: MUI (2019)

The studies on *halal* hotel have been attempted by several researchers in both Muslim and non-Muslim countries, such as Thailand (Jeaheng et al., 2019) and Japan (Salleh & Nor, 2015). Besides, Samoria & Sabtu (2014) conducted an explanatory study for developing the standard of *halal* hotel in Malaysia. They asserted that *halal* hotel is promising and it will not only give benefits to Muslims, but also to non-Muslims. Putit et al (2016), Amri & Gultom (2022) asserted that in order the customers of *halal* hotel to be satisfied, a *halal* hotel must provide sufficient prayer facilities because these are essential for most of the customers.

The objectives of *halal* hotel are to provide *halal* services to its guests and to conduct their hospitality services following the principles of Islamic law. Although *halal* hotels have been existing in Indonesia, a Shariah governance of this hotel is difficult to define. Thus, the



conceptualization of Sharia governance in the halal hotel industry is vital for the development of this sector. This present study is aimed at proposing this conceptualization by using secondary data.

Research Method

This study conceptualises *Shariah* governance for the *halal* hotel. The results of this study are not only relevant to Indonesia *halal* hotel industry but also other jurisdictions offering *Halal* hotel services. Thus, this paper shows an original contribution that comprehensively proposes and examines the overall process of *Shariah* governance for the *halal* hotel by employing secondary data analysis. The data employed in this present study consists of fatwa (Islamic legal verdicts), annual reports of halal hotels, and other secondary materials. This paper is limited its case of analysis to *Shariah* governance and requirements of the *halal* hotel in Indonesia. The conceptual approach by studying literature is expected to assist in the development of alternative model (Thaker et al., 2020).

Results and Discussion

Shariah Governance

Shariah can be defined as the overall system that manages the conformity of the activities of Islamic business institutions to the provisions of *Shariah* or Islamic law. However, the studies of *Shariah* governance mostly refer to Islamic financial institutions (IFIs). Grais and Pellegrini (2006), for instance, defined a specific governance system for financial institutions offering Islamic financial services. Meanwhile, Hasan (2012) and Ginena and Hamid (2015) wrote an excellent book that defines the overall system of *Shariah* governance for Islamic banks. In Islamic financial industry, *Shariah* governance was defined by a financial authority, such as the Islamic Financial Services Board (IFSB) based in Malaysia refers *Shariah* governance as “the set of institutional and organizational arrangements through which an Institutions offering Islamic financial services ensures that there is effective independent oversight of *Shariah* compliance” (Haqqi, 2014). One particular body that oversight such governance is *Shariah* Supervisory Board (Alman, 2012). This body monitors and controls the implementation and compliance of Islamic banks’ activities to ensure that these activities are following Islamic rules.

In the Islamic financial industry, *Shariah* governance often includes structural arrangements that are both internal and external to the institution. In the case of IFIs, those internal arrangements include a robust internal *Shariah* control system, internal *Shariah* audit function, Board of



Directors, and related committees such as the governance committees, senior management, legal, compliance, and internal audit functions. External structural arrangements include the Sharia supervisory board, external audit firms, Shariah audit, and advisory firms, standard-setting organizations such as AAOIFI, Islamic banking association, rating agencies, and indices (Ginena & Hamid, 2015).

At the heart of institutional arrangements are legal, regulatory, judicial, and legislative systems, which play a vital role in setting the foundation for prudent Shariah governance and monitoring its function. These systems are crucial for passing halal hotel provisions that will take into consideration Shariah aspects, establishing and maintaining stakeholders' confidence concerning Shariah compliance, maintaining market discipline, promoting standardization, establishing the rule of law, and delivering justice (Ginena & Hamid, 2015).

Contextualising Shariah Governance in Indonesia

The National Shariah Standard Setting Body

The National Shariah Council (*Dewan Syariah Nasional*, DSN) of the Council of Indonesian Ulama (*Majelis Ulama Indonesia*, MUI) established in 1999 (Ichwan, 2005), serves as the national Sharia standard-setting body for business institutions offering Sharia-compliance services. In the context of Islamic banks, for instance, the Islamic Banking Act No.21 Year 2008 mentions that the Shariah rules for Islamic banks operating under Indonesian jurisdiction are derived from the *fatwas* (Islamic legal verdicts) of the DSN-MUI. This body claims that its mission is to develop sharia economy and sharia financial/business institutions for the welfare of the people and the nation (DSN-MUI, 2022b).

The DSN-MUI claims that the state agencies should adopt its roles and functions for the ascertainment of Islamic law in contemporary local business practices. They suggest that the scope of their activities with the overall mechanism of Sharia governance is as follow: (i) giving warnings to LKS (Islamic financial institution), LBS (Islamic business institution), and other LPS (economic entities) to stop deviations from the fatwa issued by DSN-MUI; (ii) recommending to the competent authorities to take action if warnings are not heeded; (iii) freezing and/or canceling Sharia certificates for LKS, LBS, and other LPS that commit violations; (iv) approving or rejecting applications for LKS, LBS, and other LPS regarding the proposal for replacement and/or dismissal of DPS at the institution concerned; (v) recommending to related parties to develop business in the field of finance, business, and sharia economy; and (vi) establishing partnerships



and cooperation with various parties, both domestic and foreign to develop businesses in the financial, business, and sharia economic fields (DSN-MUI, 2022b).

The DSN-MUI is pivotal in the process of developing standards for *Shariah* implementation in the halal industry. First, they develop *Shariah* standards and operational parameters in the form of *fatwas* on Islamic products and transactions. Second, they suggest a governance arrangement, which makes the industry consistently maintains its consultations with the DSN-MUI surrounding the practicality of the standards. It is apparent when the DSN-MUI plays a vital role in recommending names to become the members of *Shariah* Supervisory Boards (SSB) in Islamic financial institutions, including banks, capital markets industry, insurance, and other non-bank financial institutions. At third, they conduct the *Shariah* compliance audit by overseeing the implementation of issued *fatwas* in the industry, as well as proposing the financial authorities such as the Financial Services Authority and the Central Bank of Indonesia to take legal actions towards an institution which violates their *fatwas*. The regulatory arrangement for this role is still silent because their roles seem overlapping with the other state agency roles, such as the Central Bank and the Financial Services Authority (*Otoritas Jasa Keuangan*, OJK).

As a prime mover in *Shariah* standards in Indonesia, the DSN-MUI seems concerned with systems and procedures within Islamic business institutions designed to avoid breaches of *Shariah* by these institutions. Such a system enables the DSN-MUI coordinates consistently on the issues of *Shariah* with the inner circle (*Shariah* Supervisory Boards, SSB) in each business organisation. The SSB carries out ongoing internal scrutiny of transactions as part of the institution's compliance functions. However, there seems a loophole in this process since the SSB is not obliged to report to the DSN-MUI directly. SSB needs to report to the Board of Directors instead. This practice is also against their wishes to legally recognize the DPS as their representatives in each organisation (DSN-MUI, 2000).

To better facilitate the operationalization aspects of the *Shariah* standards in the industry as well as to encourage the product innovations and developments, the DSN-MUI employs 24 members, including the Organising Committee (*Badan Pelaksana Harian*, BPH-DSN) which responsible for the day-to-day workings of the council. This committee's roles are researching product proposals and preparing a *fatwa* draft for the members of the DSN-MUI. The committee members are appointed by the



MUI every four years which represent Shariah scholars (*ulama*), business practitioners, regulators, and economic and financial experts, and members of Shariah Supervisory Boards (SSBs) of each financial and non-financial institution, as well as academicians (Umam, 2011). The BPH has several divisions, including Industry, Business and Sharia Economics division, which accommodates Islamic tourism and halal hotel; each of these has five to six members (DSN-MUI, 2022a).

The role of the BPH-DSN is vital, especially on processing requests on Shariah certification and drafting a *fatwa* before the DSN-MUI's approval. The *fatwa* issuance process entails preliminary steps, which mostly include the BPH-DSN. As a result, one may argue that nonetheless, each decision is made by consensus, including formulating *fatwa* drafts. However, there may prompt doubts, especially on the broader interests are involving in this process. One cannot deny that the DSN-MUI's Shariah standards are drafted with expertise and a sense of public responsibility. However, one must not overlook the fact the DSN standards are agreements between interested parties that have various aims in the process of *fatwa* issuance. Therefore, the issue which regards to neutrality and objectivity becomes apparent. The issuance of *fatwa* by DSN-MUI is shown in Figure 1 as follows.

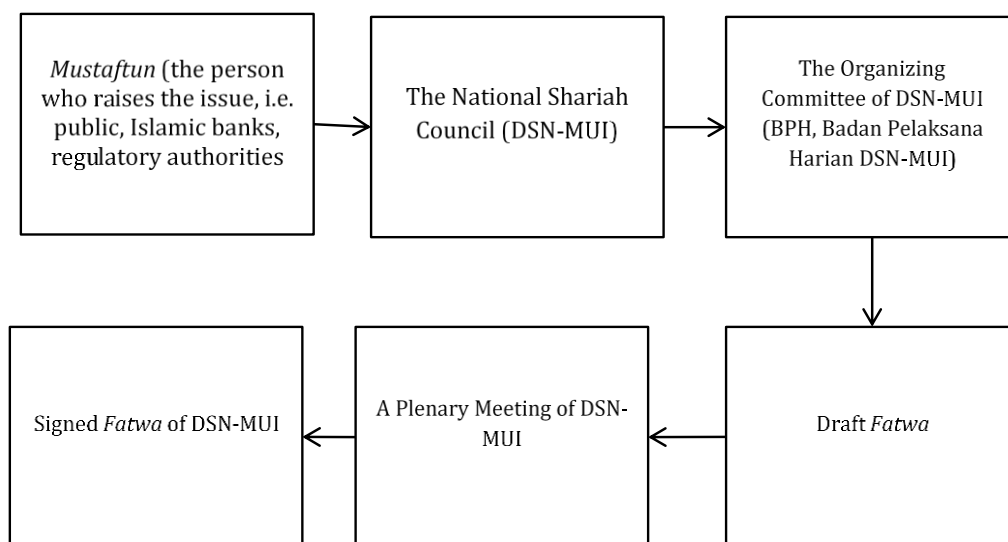


Figure 1. The Process of *Fatwa* Issuance in the DSN-MUI

The signed *fatwa* shall be circulated by the DSN-MUI to the regulators and public. Considering the few stages of the process that needs to be undertaken, it is understandable that the issuance of a *fatwa*



or resolution may be delayed. The time duration needed for the issuance of a *fatwa* mostly depends on the level of complication.

Layers in Designing Shariah Standards

In designing harmonisation of Shariah in halal industry in Indonesia, there are some methods and procedures of the process which the National Shariah Council (DSN-MUI), the regulators, and the Shariah Supervisory Boards (DPS) of Islamic business organisations undertake harmonisation efforts to ascertain that the products offered are not inconsistent.

1. The DSN formulates *fatwas* based on the sources of Islamic law such as Al-Qur'an, Hadits (the prophetic tradition), *Ijma* (consensus), *Qiyas* (analogical reasoning), and other sources. The *fatwas* of the DSN-MUI range from those which are according to the application or request from the industry, and also other relevant contemporary *fatwas* relating to Islamic business organisations which are independently initiated by the DSN-MUI
2. The regulators adopt or interpret the DSN's *fatwas* and convert those *fatwas* into a specific regulation. For instance, in the case of Islamic banks, Bank Indonesia issued Shariah codification in the form of Bank Indonesia Regulation (PBI) derived from the DSN's *fatwas*. In this process, legal materials in developing a codification of Islamic products are not only considered the *fatwas* of the DSN, but also considered various risks, prudential principles, and legal considerations.
3. Shariah Supervisory Boards (DPS) adopt existing guidelines and provisions on Islamic products and services issued by the DSN-MUI as well as a particular regulator that adopts those *fatwas* in ascertaining the structure of Islamic products in the respective organisations.
4. Shariah Supervisory Boards (DPS) seeks Shariah certification from the DSN-MUI and approval from a particular regulator once the institution wants to launch a new product that has no previous guidelines and provisions.

In order to ensure that the processes are effective, the government provides a set of rules related to the relationship between the DSN-MUI, and the Shariah Supervisory Boards (DPS) of Islamic business institutions. These rules are not solely limited to giving Shariah opinions or issuing *fatwas* or advice before certain products are launched by the organisations (ex-ante); instead, reviewing and auditing exercises after the products or schemes are launched (ex-post). Furthermore, these rules also regulate



governance arrangements such as the appointment of Shariah Supervisory Boards (DPS) after the recommendation of the DSN-MUI, the composition of the DSN-MUI shall comprise the industry representations, regulators, and the Shariah scholars, the relationship between the DSN-MUI and Shariah Supervisory Boards (DPS).

Fatwa of Halal Hotel in Indonesia

DSN-MUI has issued a *fatwa* on Islamic tourism in which one of its provisions related to the *halal* hotel. *Fatwa* number 108/DSN-MUI/X/2016 on Guidelines for Organizing Tourism based on Shariah Principles. The *fatwa* has 11 articles as follows: (1) General Provisions; (2) Legal Provisions; (3) General Principles of Islamic Tourism; (4) Provisions for Contracting Parties and Contract (*Aqd*); (5) Provisions of Shariah Hotel; (6) Provisions for Tourists; (7) Provisions of Tourist Destination; (8) Provisions on Spa, Sauna, and Massage; (9) Provisions related to Shariah Travel Agents; (10) Provisions related to Shariah Tour Guides; and (11) Closing. The *fatwa* states in Article 1 that Sharia tourism is a tourism based on Sharia principles. This *fatwa* defines tourism as various tourism activities supported by various facilities and services provided for society, business people, government [central government], and local governments (DSN-MUI, 2016).

In general, the *fatwa* governs the provisions in relation to the Sharia compliance definitions of various tourism activities and the contractual relations between various parties in those activities. For instance, the *fatwa* says that Sharia compliance tourism activities should avoid profanity (*kemusyrikan*), betrayal to the will of God (*kemaksiatan*), and destruction (*kemafsadatan*), exaggerated (*tabdzir and israf*), and blasphemy (*kemungharan*), and create kindness (*kemaslahatan*) and benefits (*kemanfaatan*) physically and spiritually (DSN-MUI, 2016).

Concerning *halal* hotel, the *fatwa* mentions some characters including (i) Sharia hotels may not provide access to pornography and immoral acts; (ii) Sharia hotels may not provide entertainment facilities that lead to polytheism, immorality, pornography and/or immoral acts; (iii) Food and beverages provided by Sharia hotels must have obtained halal certificates from MUI; (iv) Provide adequate facilities, equipment and facilities for the worship, including cleaning facilities; (v) Managers and employees of the hotel must wear clothes under sharia; (vi) Sharia hotels are required to have guidelines and guidelines regarding hotel service procedures to ensure the implementation of hotel services following sharia



principles; (vii) Sharia hotels are obliged to use the services of Islamic Financial Institutions in conducting services (DSN-MUI, 2016).

Proposed Shariah Governance for Halal Hotel

Shariah governance of *halal* hotel is a way in which the hotel is governed and implemented Sharia rules derived from the fatwa of a particular Shariah standard-setting body. In our case, the Shariah standard body is a non-state agency whereby its *fatwas* adopted by local regulators in creating regulation on the *halal* hotel. To ensure the internal Shariah control system is implemented in the *halal* hotel, this paper introduces a model for that purpose.

In our model, *Shariah* governance for the *halal* hotel has three elements: internal and external arrangements, institutional arrangements, and stakeholders' indirect supervision. These elements reflect how a *halal* hotel is governed, and create internal Shariah control system within a *halal* hotel, a central shape of the following Figure 2.

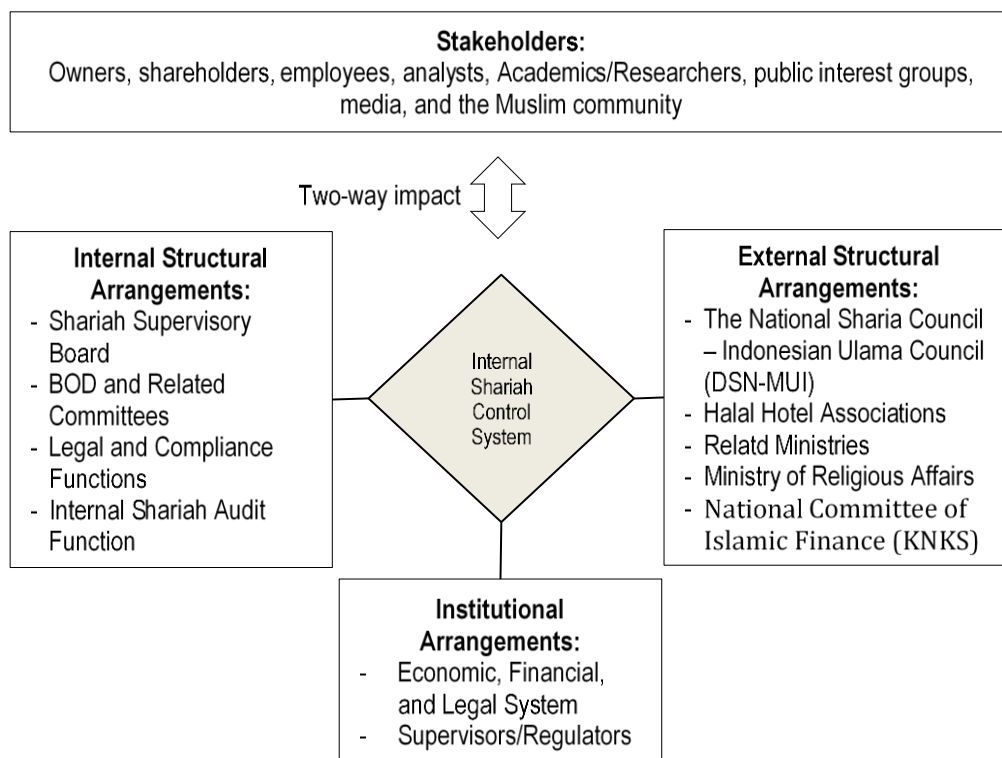


Figure 2. A Proposed Model of Shariah Governance in *Halal* Hotel

Source: Authors' view point

First is the internal arrangement. One of the essential aspects of this is the Sharia Supervisory Board. This board ideally consists of Shariah



scholars who excel in *Shariah* and its related disciplines, such as hospitality management. In Indonesia, the establishment of this board is an option. In existing regulations, this board is only applicable to the *hila-2* type of *halal* hotel. There are only four hotels that have this Sharia Supervisory Board (see Table 1). Internal arrangements ensure that *Shariah* pronouncements (*fatwas*) and regulations are taken in practice (Amri, 2022).

Meanwhile, the *Shariah* audit function verifies that *Shariah* compliance has been satisfied, during which any incident of non-compliance will be recorded and reported, and as far as possible, addressed, and rectified (Amri et al., 2022); (Said et al., 2022). Furthermore, Sharia Supervisory Board, along with its *Shariah* audit functions, provide annual *Shariah* compliance review/audit verifying that the internal *Shariah* compliance review/audit has been appropriately carried out and its findings have been duly noted by the *Shariah* Supervisory Board. This internal arrangement will satisfy the consistency and conformity of a *halal* hotel to the provisions of *Shariah*.

Second is the external arrangement, which has some essential elements. These include the national *Shariah* standard-setting body, namely the National *Shariah* Council – Indonesian Ulema Council (DSN-MUI), National Committee of Islamic Finance (KNKS), related ministries particularly Ministry of Religious Affairs, and *Halal* hotel association. The DSN-MUI is one of the pivotal organisation since its function is to provide *fatwas* (Islamic legal verdicts) concerning the activities of the *halal* hotel. This body also provides certification to those who want to be a member of the *Shariah* Supervisory Board. In the case of Indonesia, the DSN-MUI is a non-state agency. However, their *fatwas* have been adopted by acts and regulators. The National Committee of Islamic Finance (KNKS) is another pivotal organisation in Indonesia. It is a committee under the President to harmonise the efforts to boost Islamic economic development in the country. KNKS has a separate division about Islamic tourism and *halal* hotel. This committee harmonises current rules and regulations concerning the *halal* hotel (Ramdani et al., 2022).

The third is institutional arrangements. These include legal systems and regulators or supervision about tourism and hospitality management. In Indonesia, some regulators are closely related to the activities of the *halal* hotel, including the Ministry of Tourism and Creative Economy. This ministry issues regulation about *Halal* hotel. Currently, the regulation differentiates two types of *halal* hotels, namely *hila-1* and *hila-2*. *Hila* means the moon in Arabic. Presumably, this idea came from the idea of



star category in international hotel management. In Tabel 2, we have introduced some aspects of the *halal* hotel based on the category of *hilar-1* and *hilar-2*. In the case of products and services, there are no differences between these two categories. However, when it comes to management, *hilar-2* is more complete.

Table 2. Management of *Halal* Hotel based on Category of *Hilar-1* and *Hilar-2*.

| Type of Halal Hotel | | Hilar-1 | Hilar-2 |
|-------------------------|---|---------|---------|
| Management Organisation | Having an organizational structure that accommodates the Sharia Supervisory Board | X | √ |
| | Have Sharia hotel Standard Operating Procedures (SOP) | X | √ |
| | Having a written statement stating that the business is managed based on Shariah | X | √ |
| Business Management | Owning and implementing a <i>halal</i> guarantee system | √ | √ |
| Human Resources | All employees and employees in polite uniform | √ | √ |
| | For Muslim women staff wearing uniforms according to the Muslim women dress | X | √ |

Source: Ministry of Tourism and Creative Economy (2014)

Hilar-2 supports our *Shariah* governance model. In this type, the *halal* hotel employs *Shariah* Supervisory Board to streamline the *fatwas* in the hotel's overall activities. Furthermore, this category has *Shariah* hotel Standard Operating Procedures (SOP). This guideline ensures the internal *Shariah* control system. However, in the current regulatory system in Indonesia, the existence of the *Shariah* Supervisory Board within the *halal* hotel is not compulsory. A hotel may choose either to employ or not this board. As a result, the *Shariah* audit function on that hotel may not work correctly because of the lack of internal arrangement that oversees the implementation of *halal* characters. Thus, it is up to the Board of Directors to ensure the compatibility of their hotel with *Shariah* rules.

Conclusion

The current paper focuses on the proposed model of *Shariah* governance for the *halal* hotel, which becomes a highly demanding concept through the rise of Islamic tourism and the *halal* hotel industry in Muslim majority countries, including Indonesia. The *Shariah* governance model still needs to be clearly defined. There are some potential and bright prospects that the proposed model can be implemented in some countries, including Indonesia. In Indonesia, the concept of *Shariah* governance for the *halal* hotel is new and needs further studies. This paper is concerned



with introducing the defining features of Shariah governance. Our model has highlighted some particular aspects, including internal and external arrangements, institutional arrangements, and stakeholders' indirect supervision. This finding is important as a stepping stone towards a more comprehensive system for Shariah governance in jurisdictions offering *halal* hotel services.

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