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THE URGENCY OF ENFORCING LIABILITY FOR SHARIA BANK DIRECTORS REGARDING FRAUD IN THE MANAGEMENT OF CUSTOMER FUNDS

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Abstract

Fraud involves the manipulation or falsification of financial data committed with criminal intent, such as the deprivation of rights or the securing of unilateral benefits. As a Sharia banking institution, BSI has not been immune to fraud incidents. Annual reports from BSI covering the period of 2021 to 2023 indicate a rise in fraud cases within Sharia banking. Enforcing the accountability of Sharia bank directors regarding fraud which contravenes Sharia economic legal principles and good corporate governance standards has become increasingly critical, given that the protection of customer funds is a primary objective of banking operations. This study employs a normative-juridical research method, utilizing both statutory and conceptual approaches. The findings reveal three categories of director accountability regarding fraud in Sharia banks: First, directors directly (actively) involved in fraud may be held legally liable under both civil and criminal law. Second, director accountability regarding the failure of supervisory functions (passive involvement) in relation to fraud. Third, director accountability for implementing good governance within the scope of Sharia compliance across all organizational levels and tiers of Sharia banking activities.

Keywords: Legal Liability, Board of Directors, Sharia Bank, Fraud.

INTRODUCTION

The Sharia banking industry in Indonesia has demonstrated significant growth over the past few decades, emerging as a key instrument within the national financial system (Yudi et al., 2024). For instance, the emergence of PT Bank Syariah Indonesia Tbk (BSI)—resulting from the merger of PT BRI Syariah Tbk (BRIS), PT Bank BNI Syariah (BNIS), and PT Bank Mandiri Syariah (BSM)—illustrates how Islamic banks adapt through a unified approach (Qibtiyah & Wicaksono, 2022). The formation of BSI through the merger of three State-Owned Enterprises (SOEs) has positioned it as an SOE subsidiary subject to Law Number 16 of 2025 concerning the Fourth Amendment to Law Number 19 of 2003 concerning State-Owned Enterprises (Law on State-Owned Enterprises) (Hannany, 2025).

BSI's status as a sharia bank also subjects it to sharia economic legal principles, such as the public interest (maslahah), through the application of maqashid sharia (Rahmi & Sari, 2023). The implementation of maqasid sharia in the banking sector focuses on the protection of wealth (hifz al-mal), aiming to create a financial system that is more equitable, transparent, and sustainable (K et al., 2025). However, significant risks—such as fraud—persist in the operational activities of Sharia banks. In general, fraud refers to intentional acts of deception aimed at securing illicit gains or causing harm to others through the distortion of facts, the concealment of information, or the use of misleading methods (Mufarikoh, 2024). In the context of financial activities, fraud encompasses the manipulation or falsification of financial data carried out with criminal intent—such as the deprivation of rights or the securing of unilateral advantages. As a Sharia banking institution, BSI is not immune to instances of fraud (Reurink, 2018). Based on BSI's annual reports from 2021 to 2023, there has been an increase in fraud cases within the sharia banking sector; specifically, there were seven cases at BSI in 2021 (Bank Syariah Indonesia's 2021 Annual Report). Furthermore, in 2022, there were 14 cases of fraud at BSI (Bank Syariah Indonesia's 2022 Annual Report). On the other hand, there were 12 cases of fraud at BSI in 2023 (Bank Syariah Indonesia's 2023 Annual Report).

Based on the foregoing, fraud within the banking sector can essentially arise from the active role or passive role (negligence) of the Board of Directors in overseeing banking operations (Sarono, 2019). Forms of directorial negligence that can trigger fraud, as mentioned above, include: First, weak internal oversight, where the board of directors fails to establish and maintain an internal control system, resulting in fraud going undetected (Dewi et al., 2025). Secondly, risk management is ineffective (Larah & Sirega, 2025), the absence of routine risk assessments or financial audits regarding mudharabah financing, thereby enabling the misappropriation of funds; and third, the suboptimal implementation of Good Corporate Governance (GCG) principles (Mufarikoh, 2024). This means the board of directors consciously failed to properly implement GCG principles; even with the presence of a Sharia Supervisory Board (DPS), fraud still occurred due to the directors' negligence (Mufarikoh, 2024).

The emergence of a merger proposal subject to the State-Owned Enterprises (SOE) Law presents a dilemma when viewed through the lens of the Board of Directors' legal liability in the banking sector. As is known, there is ambiguity regarding the liability of the Board of Directors when considering the provisions of Article 1, point 9, and Article 9F. Article 1, point 9 of the SOE Law states that:

> "The Board of Directors is the organ of a State-Owned Enterprise (SOE) authorized and fully responsible for the management of the BUMN for the benefit of the SOE—in accordance with its purposes and objectives—both inside and outside of court, pursuant to the provisions of the Articles of Association.".

Based on Article 1, point 9 of the State-Owned Enterprises (SOE) Law, there is currently no clarity regarding the limits of the Board of Directors' liability concerning fraud that the Board might potentially commit or be held accountable for (Mucharam, 2022), (Azhari et al., 2025). This becomes an issue if the liability of the Board of Directors is eliminated under Article 9F of the State-Owned Enterprises (SOE) Law, which affirms the existence of the Business Judgment Rule principle (Sudarna, 2025).

In this context, the enforcement of legal accountability for the Board of Directors of Sharia banks becomes increasingly critical in cases of fraud that violate Sharia economic legal principles and Good Corporate Governance (GCG) standards, particularly given that the protection of customer funds is a primary objective of banking operations. Effective law enforcement serves not only to recover losses and sanction responsible parties but also acts as a preventive measure to foster greater compliance, integrity, and accountability in the management of Sharia banks. Accordingly, the author aims to examine the urgency of enforcing legal accountability for the Board of Directors of Bank Syariah Indonesia regarding fraud in the management of customer funds.

LITERATURE REVIEW

In general, fraud is a form of dishonesty intentionally committed to benefit personal or group interests, thereby causing loss to other parties (Komang Arthana, 2019). Fraud does not simply emerge in isolation; rather, it arises from interconnected, systematic processes within a corporate entity. However, in terms of causes and likelihood, fraud can be classified into specific categories—as outlined in Priantara's fraud triangle theory—namely: pressure, opportunity, and rationalization (Supriyadi & Antoro, 2024).

Regarding the issue of fraud in the context of Sharia banking, the Board of Directors plays a central role as the corporate organ responsible for the management and administration of the bank in accordance with prudential banking principles, good corporate governance, and Sharia principles. The current state of the art concerning the liability of the Board of Directors and fraud within the banking sector includes the following: First, a reserch by Muhammad Jihad Al Ghifari, Mochamad Edman Syarief, et al. (2023) on the impact of the Maqashid Shariah Index (MSI) and Good Corporate Governance (GCG) on fraud cases in Sharia commercial banks. The research's findings indicate that, based on data from 2017 to 2021, the MSI and GCG can reduce the incidence of fraud when implemented optimally within the operations of Sharia commercial banks (Ghifari et al., 2023). Secondly, there is the research by Wilda Efrilyati D., Farah Indah A., et al. (2023) regarding the application of good corporate governance in relation to fraud in Sharia banking. This research focuses on the implementation of corporate governance within the banking sector—which is deemed less than ideal—and suggests that to mitigate fraud in Sharia banking, it is necessary to apply Sharia principles such as honesty (shiddiq), public education (tabligh), trustworthiness (amanah), and professional management (fathanah) (Daulay et al., 2024). Third, research by Aisyah Nurhalizah and Handoyo Prasetyo (2025) addresses the reformulation of criminal liability for fraud within state investment institutions. The study focuses on the differing legal frameworks for fraud prevention in Indonesian and Singaporean investment institutions, revealing limitations in the Corruption Eradication Commission's (KPK) handling of fraud, whereas Singapore has successfully established an integrated, preventive legal system for addressing fraud based on the principle of corporate accountability (Nurhalizah & Prasetyo, 2025).

Based on the aforementioned prior studies, it is evident that extensive research has been conducted on fraud in the Islamic banking sector, corporate governance, and the liability of boards of directors. However, research specifically examining the urgency of enforcing the liability of Islamic bank directors regarding fraud in the management of customer funds remains relatively limited. In this context, this research offers novelty by focusing its analysis on the relationship between the authority and liability of directors, legal protection for customers, and the urgency of legal enforcement to ensure Islamic bank governance that is accountable and compliant with Sharia principles.

METHOD

This study employs a normative-juridical research method specifically, library-based research conducted by examining legal documents, such as legislation and literature. (Efendi & Susanti, 2014, p. 11). The approaches employed are the statute approach and the conceptual approach. The statute approach involves examining all legislation and regulations relevant to the legal issue under research. (Marzuki, 2017, p. 133), in this instance, namely Law Number 40 of 2007 concerning Limited Liability Companies, Law Number 16 of 2025 concerning the Fourth Amendment to Law Number 19 of 2003 concerning State-Owned Enterprises, Law Number 21 of 2008 concerning Sharia Banking, the Criminal Code (KUHP), and other related regulations. Furthermore, the conceptual approach involves examining legal materials specifically the views and doctrines developed within legal science that can be used to construct legal arguments. (Marzuki, 2017, pp. 135–136), particularly those relevant to this research, such as the theory of legal liability.

RESULTS AND DISCUSSION

Legal Liability of Directors Directly Involved in Fraud at Sharia Banks

Based on BSI's annual reports from 2021 to 2023, there has been an increase in fraud cases within the sharia banking sector; specifically, there were seven cases at BSI in 2021 (Bank Syariah Indonesia's 2021 Annual Report). Furthermore, in 2022, there were 14 cases of fraud at BSI (Bank Syariah Indonesia's 2022 Annual Report). On the other hand, there were 12 cases of fraud at BSI in 2023 (Bank Syariah Indonesia's 2023 Annual Report). Although the report has not uncovered direct involvement by the Board of Directors in the fraud case, this does not rule out the possibility of active involvement by directors leveraging their positions. Drawing on the case of PT Dana Syariah Indonesia (DSI) which involved alleged fraud regarding fictitious projects and the disbursement of public funds there is a potential for Sharia banking directors to be actively involved in committing fraud, as was the case with Taufiq Lajufri, the President Director of PT DSI (Farisi & Belarimun, 2026).

In essence, fraudulent acts committed by the Board of Directors or individual members thereof demonstrate a direct conflict with the principle of fiduciary duties, a fundamental obligation incumbent upon the Board. As outlined in the writings of Ali Muhayatsa, the fiduciary duties of the Board of Directors are classified into three categories: the duty of care, the duty of loyalty, and the duty of obedience (Muhayatsyah, 2019). In that context, the deliberate involvement of the Board of Directors in fraud essentially constitutes a violation of two principles: the duty of care and the duty of loyalty.

The duty of care essentially emphasizes that the Board of Directors is required to carry out the company's management duties prudently, professionally, and in accordance with applicable authority and operational standards (Maristella, 2018). In this context, the deliberate involvement of the Board of Directors in fraudulent acts constitutes a breach of the duty of care, as the Directors acted beyond the scope of their authority and the company's operational procedures actions that were ultra vires thereby violating the principle of ensuring the security of customer funds. Conversely, the duty of loyalty establishes good faith and the prioritization of the company's interests as the fundamental basis for the exercise of the Directors' office. Consequently, the Directors' involvement in fraud clearly demonstrates that their actions were no longer aligned with the company's interests but were instead directed toward personal gain or the benefit of specific parties, directly harming others (customers) through unlawful conduct..

In this regard, the direct or intentional involvement of a company’s Board of Directors in fraud is clearly inconsistent with the provisions of the Limited Liability Company Law. As is well established, a Board of Directors proven to have committed fraud may be deemed in violation of Article 92 paragraph (1) of the Limited Liability Company Law, as such conduct directly breaches the Board's obligation to manage the company and carry out operational duties in accordance with the company's purposes and objectives (Anshari et al., 2025). Furthermore, Article 97 paragraph (1) of the Company Law reaffirms that the Board of Directors bears full responsibility for the management of the company in the event of negligence or fault in the performance of its duties. This naturally intersects with the Business Judgment Rule (BJR) principle, which serves to protect the Board of Directors.

In essence, the Business Judgment Rule (BJR) does not grant the Board of Directors total immunity for errors, particularly if such errors are proven to have been committed intentionally. As stipulated in Article 9F of the State-Owned Enterprises (SOE) Law which adopts Article 97, paragraph (5) of the Limited Liability Companies Law members of the Board of Directors cannot be held legally liable for losses if they can prove, among other things, that:

a. The loss did not result from their fault or negligence;
b. They are proven to have acted in good faith and with due care in the management of the company, in accordance with the objectives of the State-Owned Enterprise (SOE);
c. They had no conflict of interest regarding the loss incurred; and
d. They had taken preventive measures against such loss. (Wijayati et al., 2025)

Based on Article 9F of the State-Owned Enterprises (SOE) Law, protection for the Board of Directors through the Business Judgment Rule (BJR) principle cannot always be applied, particularly regarding directors proven to be actively and directly involved in fraudulent acts (Wijayati et al., 2025). The direct and active involvement of the Board of Directors is proven to violate several exemption criteria specifically regarding losses not caused by their own fault, the exercise of good faith and due care, and the absence of conflicts of interest. Consequently, fraudulent acts intentionally committed by the Board of Directors effectively negate the elements of liability exemption that underpin the protection afforded by the Business Judgment Rule (BJR) principle.

The inability of the Board of Directors to secure protection under the Business Judgment Rule (BJR) ultimately impacts the nature of the liability that may be imposed upon them. Active involvement by the Board of Directors in fraudulent acts can lead to the loss of the separation of liability between the company and its corporate organs a concept known as piercing the corporate veil (Apandi et al., 2023). In this regard, the doctrine of piercing the corporate veil allows for the principle of corporate separateness to be set aside if the company is proven to have been used as a vehicle for committing an unlawful act (Apandi et al., 2023). In this regard, liability for fraudulent acts is no longer limited to the corporation as a legal entity; instead, it may be imposed personally upon members of the Board of Directors proven to have been directly involved in such acts.

Consequently, the legal liability arising from the involvement of the Board of Directors in fraudulent acts is not confined to a single legal regime. Fraudulent acts committed within banking operations can trigger criminal liability due to violations of statutory provisions, while simultaneously giving rise to civil liability for losses incurred by the company or its customers. Therefore, legal liability for fraud should be understood not merely as the imposition of criminal penalties on the perpetrators, but also as a mechanism for redressing the losses suffered by the victims (customers).

From a criminal law perspective, fraudulent acts directly or actively committed by the Board of Directors based on deception constitute a criminal offense that may implicate various regulatory provisions. Referring to the Criminal Code as the source of general criminal law (lex generalis), any fraudulent act committed unlawfully by an individual can be classified as a violation of Article 492 of the Criminal Code. (Meng & Budiman, 2023). This article is formal in nature, meaning that a person can be declared to have committed the criminal offense of fraud simply upon the fulfillment of the elements of the prohibited act, without the need to wait for the actual material loss to occur.

Regarding banking fraud involving the active participation of the Board of Directors, objective elements naturally arise alongside the fraudulent act itself. Fraud committed by the Board of Directors inherently entails elements of deceit and/or a series of falsehoods. This is because the forms of fraud perpetrated by the Board are essentially acts of dishonesty even when manifested through specific banking fraud activities such as the presentation of financial information or financial statements, or the promise of returns that do not reflect the company's actual condition. The element of inducing another person to surrender property is satisfied when customers or the public relying on the position and representations of the Board hand over funds that are subsequently misappropriated.

The fulfillment of these elements creates grounds for the Board members actively involved in the fraud to face a maximum prison sentence of four (4) years, as stipulated in Article 492 of the Criminal Code. This article serves as a general provision a fundamental basis for criminal liability applicable to any individual, including Board members prior to further analysis regarding whether a more specific provision (lex specialis) might be more appropriate given the perpetrator's position and profession within the banking sector.

On the other hand, considering the positions held by the Board of Directors, it can be determined that fraudulent acts committed directly (knowingly) by the Board of Directors may be classified as the criminal offense of aggravated embezzlement, as stipulated in Article 488 of the Criminal Code (Silitonga et al., 2026). As stipulated in Article 488 of the Criminal Code, criminal offenses committed by an individual arising from an employment

relationship, office, or profession are subject to penalty enhancement. Furthermore, "possession by virtue of an employment relationship or office" is inherently tied to the function of the Board of Directors as a corporate organ entrusted with a fiduciary duty to manage the company's assets, funds, and wealth based on the authority lawfully granted under the Limited Liability Company Law (Prakasa & Sudarwanto, 2025). In this regard, the Board of Directors has by virtue of their position possessed lawful access to and control over company funds and assets from the outset. Therefore, when members of the Board abuse this authority by diverting, utilizing, or treating company or client funds as their own for personal gain, the aggravating circumstance warranting a five-year prison sentence based on the position held may be applied.

In the context of fraudulent acts committed by bank directors, the provisions of Articles 492 and 488 of the Criminal Code—acting as general offenses (lex generalis)—may essentially be set aside insofar as the same conduct is specifically regulated (lex specialis). (Shinta Agustina, 2015). In the context of banking, these more specific provisions are contained in Article 49 paragraph (1) of the Banking Law, which specifically regulates criminal offenses related to the bookkeeping, reporting, and recording of a bank's business activities. Furthermore, Article 49 paragraph (1) of the Banking Law defines three forms of conduct applicable to members of the Board of Commissioners, the Board of Directors, or bank employees who intentionally:

a. Making or causing the creation of false entries in the books, reports, documents, business activity reports, transaction reports, or accounts of a bank (item a);
b. Omitting, failing to include, or causing the failure to make entries that should have been made (item b); and
c. Altering, obscuring, concealing, deleting, or removing existing entries, including damaging such accounting records (item c).

The Banking Law stipulates that these three types of acts are punishable by imprisonment for a minimum of five years and a maximum of fifteen years, as well as a fine of at least IDR 10,000,000,000 (ten billion rupiah) and up to a maximum of IDR 200,000,000,000 (two hundred billion rupiah).

In conjunction with Article 49 paragraph (3) of the Banking Law, it is evident that these three elements essentially complement one another in describing a sequence of actions. Article 49 paragraph (1) letter (a) of the Banking Law applies when members of the Board of Directors actively create records that do not reflect the actual situation, thereby creating the impression that a transaction or financing arrangement is legitimate when it is, in fact, fictitious. Furthermore, Article 49 paragraph (1) letter (b) of the Banking Law applies when members of the Board of Directors deliberately fail to record a transaction to prevent its detection within the bank's reporting system. Conversely, Article 49 paragraph (1) letter (c) of the Banking Law applies when members of the Board of Directors alter or delete existing records to cover up prior actions—a common occurrence during the concealment phase of a fraud scheme.

Meanwhile, regarding the civil law dimension, fraudulent acts directly or actively committed by the Board of Directors can be viewed in terms of the resulting detriment to both the corporation and the clients. Regarding losses suffered by the corporation, the Board of Directors may be held liable under Article 97 paragraph (3) of the Company Law (UUPT), which stipulates that every member of the Board of Directors bears full personal liability for the company's losses if proven at fault in the performance of their duties. Regarding potential losses suffered by clients, the Board of Directors may be held liable under Article 1365 of the Civil Code, which considers several criteria for an Unlawful Act, including:

a. The existence of an unlawful act;
b. The existence of fault;
c. The existence of actual, quantifiable loss;
d. The existence of a causal link between the act and the loss (Febriansyah et al., 2024).

If fraud committed by the Board of Directors results in losses for a customer, such losses effectively satisfy the criteria for an unlawful act committed by the directors. The fulfillment of these four elements of an unlawful act entitles the customer to file a civil lawsuit for damages against the directors in their personal capacity.

However, it must be understood that criminal liability is distinct from, and does not supersede, civil liability. These two forms of liability operate in parallel through separate legal mechanisms: civil liability focuses on compensating the customer or the corporation for losses (restitutive), whereas criminal liability focuses on punishment and deterrence (punitive). Consequently, BSI directors directly involved in the fraud cannot evade either form of liability simply by citing the fact that one of the legal proceedings is currently underway..

Liability of the Board of Directors for the Failure of Oversight Functions Regarding Fraud in Sharia Banks

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In discussing the theory of liability, Hans Kelsen explains that individuals may bear not only personal liability but also liability for the acts of others. Furthermore, within his classification of legal liability, Kelsen identifies the existence of collective liability, wherein an individual is held responsible for a violation committed by another party (Cherieshta et al., 2024). This means that if a legal subject is collectively bound by law with another party, it is possible for one person to be held liable for the actions of the other party (Cherieshta et al., 2024). Forms of collective accountability do not arise in a vacuum; rather, they are shaped by legal relationships and the position an individual holds within a structure. In this context, the office held by an individual entails responsibility for the actions of parties falling within the scope of their authority.

Drawing upon the concept of collective responsibility, the imposition of liability for the actions of another party is exemplified by the position of the Board of Directors. Pursuant to Article 92 paragraph (1) and Article 97 paragraph (1) of the Company Law, the Board of Directors generally bears the responsibility of performing managerial duties oriented toward the interests and objectives of the company (Pangaribuan, 2023). However, in the context of banking, the liability of the Board of Directors is not governed solely by the general provisions of the Limited Liability Company Law but is also specifically regulated by the Banking Law. As stipulated in Article 49 paragraph (2) of the Banking Law, the Board of Directors is specifically responsible for overseeing and ensuring compliance with banking operational systems—matters further elaborated upon in Financial Services Authority Regulation Number 17 of 2023 concerning the Implementation of Governance for Commercial Banks.

In the context of oversight and the implementation of banking governance, the Board of Directors bears significant responsibility for ensuring banking compliance to prevent errors such as fraud (Nathanael, 2026). As stipulated in Article 1367 of the Indonesian Civil Code, an employer (superior) is liable for the actions of their employees (subordinates). This liability gives rise to the doctrine of vicarious liability, under which the Board of Directors is responsible for the performance of the employees under their supervision within the framework of banking governance (Ilyasa & Wahyuni, 2025). This means that when a bank faces fraud committed by an employee, the Board of Directors can be held accountable for the fraud that occurred. Such accountability arises not necessarily because the Directors directly participated in the act, but rather because they failed to prevent the fraud in the course of their supervisory duties and responsibilities.

Pursuant to Article 2, paragraph (4), letter h of POJK Number 17 of 2023 concerning the Implementation of Governance for Commercial Banks, the Board of Directors is required to manage risks associated with potential fraud threats. This requirement is further elaborated in Article 4, paragraph (2) of Financial Services Authority Regulation Number 39/POJK.03/2019 concerning the Implementation of Anti-Fraud Strategies for Commercial Banks, which mandates that banks implement anti-fraud pillars comprising, at a minimum, the following: (Himawan & Siswantoro, 2023)

a. Prevention
b. Detection
c. Investigation, reporting, and sanctions; and
d. Monitoring, evaluation, and follow-up.

However, the implementation of the four anti-fraud pillars is sometimes suboptimal, leading to instances of fraud in the banking sector, such as those experienced by BSI. Reports covering the 2021–2023 period indicate a significant trend regarding fraud cases within the Sharia banking sector; specifically, BSI's annual reports from 2021 to 2023 show an increase in such incidents, with seven cases recorded at the bank in 2021 (Bank Syariah Indonesia's 2021 Annual Report). Furthermore, in 2022, there were 14 cases of fraud at BSI (Bank Syariah Indonesia's 2022 Annual Report). Conversely, in 2023, there were 12 cases of fraud at BSI (Bank Syariah Indonesia's 2023 Annual Report). This fact effectively demonstrates a failure on the part of the Board of Directors regarding their supervisory function which was not optimally performed thereby creating grounds for holding the Board of Directors accountable.

In criminal law, culpability is distinguished into two categories: culpa (negligence) and dolus (intent). Each of these forms of culpability has its own specific classifications, as follows: (Nano et al., 2026)

a. Classification of Culpa
    1. Culpa Levis (slight negligence)
    2. Culpa Lata (gross negligence)
b. Classification of Dolus
    1. Dolus Indirectus (intent with awareness of the possibility of the consequence occurring)
    2. Dolus Eventualis (intent)

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With regard to the nature of such misconduct, the repeated systemic failure of the Board of Directors to exercise its supervisory function effectively places the Board in a category ranging from culpa levis (slight negligence) to culpa lata (gross negligence), a distinction that determines the extent of legal liability (Setianto, 2017). However, even if the error amounts to only a minor degree of negligence, such a condition can still negate the protection afforded by the Business Judgment Rule (BJR) principle.

As stipulated in Article 97 paragraph (5) of the Limited Liability Company Law, members of the Board of Directors cannot be held legally liable for losses if they can prove, among other things, that:

a. The loss did not result from their fault or negligence;
b. They acted in good faith and with due care in the management of the company, in accordance with the objectives of the State-Owned Enterprise;
c. They had no conflict of interest regarding the loss incurred; and
d. They had taken measures to prevent such loss. (Wijayati et al., 2025).

In the wake of BJR implementation, the context of fraud actually entails a shifting of the burden of proof (Wangga, 2012). In this regard, if a bank's Board of Directors fails to demonstrate that an instance of fraud occurred independently of any negligence regarding established oversight or risk management strategies, the Board may be held legally liable. This is because the Board is required to perform its managerial duties in accordance with fiduciary principles such as the duty of obedience which emphasize the exercise of due care (Kusumawardani, 2013).

From a criminal law perspective, instances of fraud resulting from the Board of Directors' lack of oversight regarding banking risk management specifically the failure to implement anti-fraud strategies may conflict with banking regulations. Article 49, paragraph (2), letter b of the Banking Law stipulates that members of the Board of Directors proven to have failed to implement measures ensuring banking compliance such as those concerning risk management via anti-fraud strategies may be subject to a maximum prison sentence of eight (8) years and a maximum fine of IDR 100,000,000,000.00 (Ramiyanto, 2016). However, if it is discovered that the proceeds of fraud resulting from the Board of Directors' failure of oversight were subsequently neither reported nor acted upon by the Board meaning the fraud occurred with their knowledge then Article 3 of Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering may be invoked, carrying a penalty of up to 20 (twenty) years of imprisonment and a maximum fine of IDR 10,000,000,000.00 (Hutapea & Yusuf, 2025).

Meanwhile, regarding the civil law aspect, fraudulent acts whether committed actively or passively by the Board of Directors due to negligence are subject to the same principles discussed previously. For such negligence, the Board of Directors may be held liable under Article 97, paragraph (3) of the Company Law, which stipulates that every member of the Board of Directors bears full personal liability for the company's losses if proven at fault in the performance of their duties. Furthermore, regarding potential losses suffered by clients, the Board of Directors may be subject to Article 1365 of the Indonesian Civil Code, which mandates the payment of damages.

Responsibility of the Board of Directors in Ensuring Sharia Compliance

Sharia banking is a form of banking with a governance structure that differs from that of conventional banking. According to Bank Indonesia Regulation (PBI) No. 11/33/PBI/2009, the institutional structure of Sharia banking comprises not only internal bodies—namely the Board of Directors, the General Meeting of Shareholders (GMS), and the Board of Commissioners—but also an external body that oversees Sharia compliance, commonly known as the Sharia Supervisory Board (Pasaribu et al., 2024). In terms of accountability, the Board of Directors and the Sharia Supervisory Board share similar duties and authority regarding the assurance of banking operations based on Sharia principles and standards (Pasaribu et al., 2024). However, despite the similarity in duties and authority, there remain differences regarding the respective positions of each party within Islamic banking.

The Board of Directors is a corporate organ that plays a central role in the day-to-day management and administration of the company's business activities (Nima et al., 2024). In the context of Sharia banking, the duties, authority, and business decisions of the Board of Directors are subject to both conventional and Sharia banking regulations (Rongiyati, 2015). Based on conventional banking regulations that refer to Article 1 paragraph (5) of the Company Law, the Board of Directors bears two responsibilities: management (managerial) and representation. Furthermore, within the banking context, the Board of Directors has several duties regarding the implementation of compliance in conventional banking through Good Corporate Governance (GCG) principles, including:

a. Governance duties;
b. Risk management duties;
c. Internal control duties;
d. Communication duties; and

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e. Social responsibility duties.

In line with risk management duties, the Board of Directors is also subject to Financial Services Authority Regulation Number 39/POJK.03/2019 concerning the Implementation of Anti-Fraud Strategies for Commercial Banks, which stipulates that banks must adhere to four pillars of anti-fraud strategy, namely:

a. Prevention;
b. Detection;
c. Investigation, reporting, and sanctions; and
d. Monitoring, evaluation, and follow-up (Parulian, 2024).

Furthermore, regarding the regulatory framework for Sharia banking, the Board of Directors—pursuant to Article 2 of the Sharia Banking Law—is required to ensure that banking operations are conducted in accordance with Sharia principles. In line with this obligation, the principle of Sharia compliance is enshrined in Financial Services Authority Regulation Number 16/POJK.03/2022 concerning Sharia Commercial Banks. Adherence to Sharia compliance principles is an absolute prerequisite for financial institutions operating under Sharia standards. (Octasari et al., 2023). The principles of Sharia compliance within the scope of Sharia banking ensure, among other things:

a. Does not involve elements of riba (usury), gharar (uncertainty/ambiguity), or maisir (gambling);
b. Conducts business based on halal (permissible) profits;
c. Fulfills the trust placed by customers in the bank and manages zakat, infaq, and shadaqah in a trustworthy manner.(Abidin & Ahmad, 2024).

Following up on conventional banking and sharia banking regulations, it can be seen that the Board of Directors carries out the role of guarantor of compliance which means that he is not only obliged to meet banking compliance standards, but is also obliged to ensure that sharia principle standards are met in every aspect of banking operations. In the context of fraud, the Board of Directors and Commissioners are obliged through fraud risk management to ensure that the four anti-fraud pillars are met as a form of banking compliance (TriWahyudi et al., 2025). However, the Board of Directors in Islamic banking faces a dual compliance burden, resulting in their accountability being segmented between technical regulations issued by the Financial Services Authority and Sharia-principle regulations issued by the National Sharia Board of the Indonesian Council of Ulama (DSN-MUI). (Khoirunnisa, 2025).

Regarding the implementation of Sharia compliance, the Board of Directors of a Sharia bank does not operate in isolation; rather, they also take into account the opinions of the Sharia Supervisory Board. Article 46 of Bank Indonesia Regulation No. 11/33/PBI/2009 concerning the implementation of Good Corporate Governance indicates that the Sharia Supervisory Board effectively complements the role of the Board of Commissioners. In this context, Sharia compliance serves as the foundation for meeting customer demands for innovation and business-oriented approaches, while ensuring alignment with Sharia principles and Islamic law (Pradita, 2016). Furthermore, under Article 47 paragraph (2) of Bank Indonesia Regulation (PBI) Number 11/33/PBI/2009, the Sharia Supervisory Board (DPS) is tasked with several specific duties, including:

a. Assessing and ensuring the implementation of Sharia principles regarding the operational guidelines and products issued by the bank;
b. Overseeing the banking product development process to ensure alignment with existing DSN-MUI fatwas;
c. Seeking legal certainty through a fatwa from the DSN-MUI when a banking product is deemed novel and lacks a legal basis in existing fatwas;
d. Reviewing the implementation of Sharia principles regarding fund mobilization and disbursement mechanisms, as well as banking services; and
e. Requesting further data and information from the bank regarding Sharia aspects in the course of performing its duties.

Table 1. Comparison of the Duties of the Sharia Bank Board of Directors and the Sharia Supervisory Board (DPS)

No	Aspect	Sharia Bank Board of Directors	Sharia Supervisory Board
1	Status of the organ	Internal corporate organ	External corporate body
2	Role	Conducts the day-to-day management and administration of business activities (Article 1	Oversees the implementation of Sharia principles in Islamic banking (Article 47 paragraph

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		paragraph (5) of the Company Law)	(2) of PBI Number 11/33/PBI/2009)
3	Company management (operational)	Has a direct connection to the company's management and operations	Has no direct connection to the company's management
4	Conditions for liability to arise	Automatically arises when Sharia compliance obligations are not met within the operations under their leadership	Arises only if the Sharia Supervisory Board (DPS) is proven to have been indifferent or negligent in reporting or recommending corrective actions regarding non-compliance with Sharia principles
5	Determination of the party liable	Determined by the Board of Directors' central role in the occurrence of fraud through managerial functions	Determined by whether or not there was negligence on the part of the DPS in carrying out its supervisory and reporting functions

Source: Processed by the author, 2026

An analysis of the differing responsibilities of the Board of Directors and the Sharia Supervisory Board (DPS) in Islamic banking reveals that the concepts of direct and indirect liability play a crucial role in distinguishing their respective roles. Direct liability arises from legal obligations personally attached to a specific position; if such an obligation is not met, direct liability applies immediately without the need to examine other structural relationships. In the context of Islamic banking governance, the Board of Directors bears direct liability for failures in Sharia compliance that create opportunities for fraud, as this obligation is explicitly assigned to the position of Director under the Banking Law and the Sharia Banking Law. In contrast, the DPS acting as a complement to the supervisory function of the Board of Commissioners fulfills its obligations solely by reporting on Sharia compliance regarding all aspects of Islamic banking operations and recommending corrective actions..

Following the discussion regarding the division of responsibilities between the two parties, it is evident that fraudulent acts violating Sharia compliance are fundamentally linked to the Board of Directors. Through their managerial function as defined in Article 1 paragraph (5) of the Company Law, the Board of Directors bears direct responsibility for the operation of the company's systems in accordance with statutory regulations. Furthermore, in the banking context, the Board of Directors of a Sharia bank is obligated to implement good governance regarding Sharia compliance across all activities of Full-Fledged Sharia Banks (BUS) and Sharia Business Units (UUS) at every organizational level. Conversely, the Sharia Supervisory Board (DPS) cannot be held directly liable for fraud, as it has no direct involvement in the company's management. Operating under the auspices of the Indonesian Ulema Council (MUI) within the Sharia banking sector, the DPS serves solely to ensure the implementation of Sharia principles, particularly those embodied in the DSN-MUI fatwas (religious rulings). Indirect liability may arise for the DPS if it displays negligence regarding banking violations of Sharia compliance—such as indications of fraud. Thus, the occurrence of fraud in Sharia banking is essentially linked to the accountability of both the Board of Directors and the DPS. However, determining which party bears responsibility depends on the specific circumstances of the fraud and the extent to which the central roles played by these parties contributed to its occurrence.

CONCLUSION

The legal liability of the board of directors as a form of law enforcement regarding fraud in Sharia banks can be classified into three categories: First, the liability of directors directly (actively) involved in the fraud encompasses both criminal and civil dimensions; these operate separately and in parallel through distinct legal mechanisms, with civil liability focused on restitution (compensating customers or the corporation for losses) and criminal liability focused on punishment and deterrence. Second, the liability of directors for failing to exercise oversight regarding fraud specifically, where a lack of directorial supervision over banking risk management and a failure to implement anti-fraud strategies conflict with banking regulations; for instance, Article 49 paragraph (2) letter b of the Banking Law stipulates that directors proven to have failed to implement measures ensuring banking compliance—such as risk management via anti-fraud strategies may face up to eight years in prison and a maximum fine of IDR 100 billion. Furthermore, regarding such negligence under civil law, directors may be subject to Article 97 paragraph (3)

of the Company Law, which holds individual directors fully personally liable for company losses if they are proven at fault in the performance of their duties; additionally, regarding potential customer losses, directors may be held liable under Article 1365 of the Civil Code, which mandates compensation for damages. Third, the liability of directors in ensuring Sharia compliance. Pursuant to Article 1 paragraph (5) of the Company Law, the Board of Directors of a Sharia bank bears direct responsibility for the functioning of the company's operational systems which must comply with statutory regulations and for implementing good governance within the scope of Sharia compliance for all activities of Full-Fledged Sharia Banks (BUS) and Sharia Business Units (UUS); consequently, the Board of Directors remains directly accountable for Sharia non-compliance that creates opportunities for fraud even where a Sharia Supervisory Board (DPS) exists because this obligation is explicitly assigned to the Board of Directors under the Banking Law and the Sharia Banking Law.

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