

## Islamic Law Perspective on Good Corporate Governance and Moral Hazard Prevention in Indonesia's Insurance Sector

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**Abstract:** Corruption cases that occur in insurance companies are one of the most dangerous moral hazards that must be prevented for the sake of a healthy economic system and the implementation of good governance. The research employs a descriptive-qualitative approach in the field. Primary data were obtained through interviews, documentation, and observation, with technical analysis conducted through checking, analyzing, and comparing. The results showed that the Financial Services Authority mentored and evaluated the report on the implementation of GCG by insurance companies, as outlined in Article 79 of POJK Number 73/2016, which concerns good corporate governance for insurance companies. This is in line with the rules, which aim to eliminate the evil. The role of OJK in preventing moral hazard is carried out by providing sanctions listed in the regulations on administrative sanctions and additional sanctions, ensuring compliance with the principles of fiqh: danger must be eliminated.

**Keywords:** Corruption in Insurance Companies, POJK Number 73/2016, and Prevention of Moral Hazard in Insurance

**Abstrak:** Kasus korupsi yang terjadi di perusahaan asuransi merupakan salah satu moral hazard yang sangat berbahaya yang harus dicegah demi terciptanya sistem perekonomian yang sehat dan terlaksananya tata kelola pemerintahan yang baik. Penelitian ini merupakan penelitian lapangan (field research) dengan pendekatan deskriptif-kualitatif. Data primer diperoleh melalui wawancara, dokumentasi, dan observasi dengan teknis analisis melalui pengecekan, penganalisaan, dan perbandingan. Hasil penelitian menunjukkan bahwa Otoritas Jasa Keuangan melakukan pendampingan dan evaluasi terhadap laporan penerapan GCG oleh perusahaan asuransi yang tertuang dalam pasal 79 POJK Nomor 73 Tahun 2016 tentang tata kelola perusahaan yang baik bagi perusahaan perasuransian, hal ini sesuai dengan kaidah segala sesuatu tergantung pada

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*tujuannya dan kemudharatan harus dihilangkan. Peran OJK terkait pencegahan moral hazard dilakukan dengan memberikan sanksi yang tercantum dalam peraturan tentang sanksi administratif dan sanksi tambahan sehingga sejalan dengan kaidah fikih: bahaya harus dihilangkan.*

**Kata Kunci:** Korupsi di Perusahaan Perasuransian, POJK Nomor 73 Tahun 2016, dan Pencegahan Moral Hazard di Perasuransian

## Introduction

Muamalah activities are closely related to human interaction in a broad sense, one of which is economic activity (Aminah, 2017). In economic activities, humans require money, which is inseparable from the economic activities of modern society and almost impossible to separate from it (Adiyanto et al., 2019).

In Indonesia, these financial institutions are divided into two groups: bank financial institutions and non-bank financial institutions, including insurance companies, pawnshops, securities companies, and financing institutions (Wiwoho, 2014). The function of this institution is to provide services as an intermediary between capital owners and the money market, which is responsible for channelling funds from investors to companies that require these funds (Arief et al., 2022; Adiyanto et al., 2019). In carrying out its activities, financial institutions in Indonesia are supervised by an independent government agency tasked with overseeing all activities in the financial services industry sector, the Financial Services Authority (OJK). Law No. 21/2011 on OJK contains provisions on the organization and governance of the institution that has the authority to regulate and supervise the financial services sector (Muchda, 2014).

OJK has the function of organizing a system for regulating all activities in the financial services sector (Lestari, 2012). Indonesia is adopting an integrated approach to regulation and supervision, which means it will abandon the institutional model of supervision (Kalsum, 2018). All regulation and supervision of the financial sector, currently spread across Bapepam-LK and BI, will be unified under OJK (Hasan, 2012).

Data on consumer complaints to OJK from 2013 to 2018 show that consumer complaints related to the banking sector accounted for 53.3%, insurance for 25.8%, financing institutions for 12.7%, capital markets for 3.0%, and pension funds for 1.3% (Alfi, 2018). This indicates that many problems in the non-bank financial industry

(IKNB) sector are primarily driven by insurance companies, including those under the BUMN. Cases that have occurred in insurance institutions such as those of PT Asuransi Jiwasraya (Persero), PT Asabri (Persero), and Asuransi Jiwa Bersama (AJB) Bumiputera 1912. (*Sengkarut Jiwasraya, Asabri, & AJB Bumiputera, Ini Bedanya!*, 2020).

Islam has always emphasized avoiding moral hazard (oppressive behaviour). Muslim moral equilibrium is directed against causing hardship and harm. However, we must be realistic enough to observe that eliminating harm from human life is relatively impossible (Sofyan, 2011). Therefore, this study aims to analyze the role of OJK in implementing good corporate governance and preventing moral hazard in the Regional Office 1 of OJK DKI Jakarta and Banten from the perspective of Islamic law.

### **Research Method**

This research is a type of field research (Susiadi, 2015) with a descriptive-qualitative approach conducted at the Financial Services Authority institution related to OJK's role in supervising insurance companies. Primary data were obtained from direct interviews with the Head of the Directorate of Insurance Supervision Subdivision and BPJS Health of the Financial Services Authority at the OJK Regional Office 1 in DKI Jakarta and Banten, as well as documentation and observation (Tika, 2006). Secondary data in the form of books, websites, and the results of previous studies that support the research theme.

The technical analysis of the research results is carried out through the stages of checking or checking the field data that has been collected, classification of OJK policies related to the implementation of GCG, OJK supervision mechanisms related to the implementation of GCG, and the role of OJK in preventing moral hazard in insurance institutions; and comparison of OJK policies and supervision with the implementation of governance in insurance institutions, so that it can be seen which results are more dominant in the many problems or cases that occur in insurance institutions.

### **Results and Discussion**

#### **Implementation of Good Corporate Governance and Prevention of Moral Hazard in OJK**

The Financial Services Authority (OJK), as a state institution that supervises the financial services industry sector, plays a crucial role in the Indonesian financial services industry. OJK supervision of insurance institutions related to the

implementation of GCG or good corporate governance for insurance companies, OJK has designed laws and regulations as outlined in POJK Number 73 / POJK.05 / 2016 and POJK Number 43 / POJK.05 / 2019 (Larasati, 2020). In terms of preventing moral hazard, OJK must prevent moral hazard that occurs in insurance companies.

In carrying out its activities, the OJK plays a role in implementing good corporate governance in insurance companies, which is in line with its obligation to prevent moral hazard in the financial services industry sector. The implementation of good corporate governance can minimize the occurrence of moral hazard behaviour within the insurance company. The implementation of good corporate governance can be seen from the OJK's assertiveness in supervising insurance institutions. OJK supervision of insurance companies can be carried out on-site and off-site. Supervision related to the implementation of GCG, as outlined in POJK No. 73 of 2016 and POJK No. 43 of 2019 (revision of POJK No. 73 of 2016, articles 7 and 8), is primarily conducted off-site (Arif, 2022). As for practice, off-site supervision is one example that can be observed through a self-assessment report highlighting corporate governance. Insurance companies are required to submit GCG self-assessment reports annually.

Supervision related to the implementation of GCG is carried out on-site on-site, namely through direct inspection of these companies. The inspection is conducted by considering various aspects, including governance aspects; however, the inspection depends on the company's risk in more high-risk areas (S. Supriatni, personal communication, July 22, 2024).

Factors that cause non-compliance with GCG implementation in insurance institutions can vary. In a company, governance is the most important aspect to consider, as it will affect other areas (Ramadhani et al., 2022). If a company's governance is good, then other risks can be mitigated. One of the factors that contribute to non-compliance with GCG implementation is a lack of experience or understanding of the applicable POJK, which can lead to violations.

Factors for non-compliance can originate from both internal and external sources. Externally, for example, the fulfilment of the board of directors or board of commissioners for state-owned companies, which is strongly influenced by the decision of the Ministry of BUMN, will undoubtedly affect corporate governance. Regarding the cause of the violation, it is caused by how the directors, board of

commissioners, and members of the organizational structure understand the applicable POJK (N. Hidayah, personal communication, July 22, 2024).

Factors that cause moral hazard in insurance institutions are often due to poor governance, control, and compliance (GCG) implementation, such as a lack of clarity in organizational structure. Another factor that can also cause moral hazard in insurance institutions is the non-implementation of the principles of good corporate governance (GCG principles), which include transparency, accountability, responsibility, independence, and fairness, which can be abbreviated as TARIF.

The application of GCG principles, such as organizational structure, is related to the principle of accountability, as the existing structure demonstrates that all aspects of the company can be accounted for (Susilawati, 2017). The rules regarding the implementation of good governance for insurance companies, as contained in POJK No. 73/2016 and POJK No. 43/2019, are one of OJK's steps to prevent moral hazard in insurance institutions. This means that in this POJK, OJK provides provisions regarding directors, the board of commissioners, DPS, shareholders, and others. These provisions can be risk mitigation or risk mitigation, which is an effort to reduce the possibility of risk impact, or it can also be said to take steps to reduce losses that the impact of risk can cause.

Prevention of moral hazard can also be done by imposing sanctions, and these sanctions can be in the form of administrative sanctions or other sanctions such as conducting a fit and proper test (ability and compliance test) again to directors or other members of positions that commit violations.

Another step taken by OJK in terms of preventing moral hazard is by conducting socialization activities. The OJK has its guidelines for conducting socialization activities, meaning that when a regulation is made, there is usually a request from the OJK to financial industry players to conduct socialization within their industry. This is done so that each company can be aware of the regulations that have been or will be applied. So, one of the prevention of moral hazard is carried out by the OJK using socialization, but during the process, the OJK mitigates by examining off-site the reports submitted. Other steps can also be taken by taking specific supervisory actions such as the imposition of sanctions or asking for a re-fit proper (M. R. Bisuk, personal communication, July 22, 2024).

To implement GCG principles, the OJK, in Article 8, paragraph 2, states that compliance directors may not be concurrently appointed by directors in charge of insurance technical functions, financial functions, and marketing functions. However, suppose OJK considers that a compliance director is necessary for a large company. In that case, OJK has the authority to request that the company fulfil this requirement (S. Supriatni, personal communication, July 22, 2024).

### **OJK Islamic Law Review on Good Corporate Governance and Moral Hazard Prevention at OJK Office**

Islamic law serves as the basis for the daily activities of Muslims, enabling them to understand the intentions of Islamic teachings (maqassid al-Shari'ah) more thoroughly. Consequently, the existence of qawa'id fihiyyah becomes very important (Andiko, 2011). OJK's policy on insurance institutions related to the implementation of GCG is the regulation of the interests of humanity in general and the state in particular, such as the establishment of laws, regulations, and policies by holders of power based on or in line with Islamic teachings, this is intended to realize common benefits and at the same time reject various harms.

In terms of maqasid al-syariah, the policy is as contained in the rules of fiqh:

تصرف الامام على الرعية منوط بالمصلحة

"All provisions/policies of the leader towards his people must be based on the kemashlahatan."

The Financial Services Authority's policy on insurance institutions related to the implementation of GCG is contained in POJK No. 73 of 2016 and POJK No. 43 of 2019. These regulations contain OJK policies regarding provisions on good corporate governance, including the relationships between management, directors, the board of commissioners, shareholders, and other stakeholders that regulate and direct company activities. The policy serves as a guideline for the implementation of good corporate governance in insurance companies, aiming to create mutual benefits.

Regarding POJK No.43 of 2019 concerning changes to POJK No. 73 of 2016 concerning good corporate governance for insurance companies, researchers can respond by referring to fiqh rules:

لا ينكر تغير الاحكام بتغير الامكنة والزمنة والاحوال



" It is undeniable that changes in the law occur due to changes in times, places and circumstances."

In Islamic law, specific rules stipulate that a legal provision for an event or problem does not have to remain in effect indefinitely, allowing for variations in different places and times. This means that a law governing an event that is materially the same is likely to apply only to a specific time, place, and circumstances when the event occurs. However, the provisions of the law must be reconsidered when applied in a different context or location, as the provisions themselves may not be suitable and may need to be modified (al-Qardawi, 1998).

The amendments made by OJK to POJK No. 73 of 2016 are based on OJK's observations and inputs from related industries. Changes to the POJK on governance are only made in Articles 7 and 8, which discuss compliance directors at insurance institutions. These articles initially required compliance directors; however, this requirement is now waived while other provisions are still considered.

Regarding the supervision carried out by the OJK on insurance institutions, supervision can be conducted either off-site (indirect) or on-site (direct). The supervision aims to create a healthy insurance company that complies with applicable laws and regulations. This is in line with the rules of fiqh:

الامور بمقاصدها

"Everything depends on its purpose"

This is in line with the hadith narrated by Bukhari:

إِنَّمَا الْأَعْمَالُ بِالنِّيَّاتِ، وَإِنَّمَا لِكُلِّ امْرِئٍ مَّا نَوَىٰ

"Verily, every action depends on the intention, and verily, every person will get what he intends" (HR. Bukhari, No.1)

What is intended in the discussion of the rule al-muru bi maqashidiha is every goal (intention) that is implemented in real actions or deeds (zahir). Based on this rule, an intention that is not realized through actual action will not have implications for the existence of Sharia law (Haidar, n.d.). In this case, the objectives implemented in real actions can be observed through OJK supervision, which is carried out on-site, namely by visiting the supervised company or institution directly.

The Financial Services Authority, in conducting supervision related to the implementation of GCG, also aims to prevent moral hazard that occurs in many financial institutions, especially in the insurance sector, because poor GCG implementation can lead to moral hazard. Moral hazard is a *zholim* behaviour that can bring harm, so the role of the OJK in preventing moral hazard is vital for the financial services industry. This is in line with the rules of *fiqh*:

الضَّرَرُ يُزَالُ

“Harm must be eliminated”

This rule is like the *hadith* of the Prophet Muhammad:

لَا ضَرَرَ وَلَا ضِرَارَ

“It is not permissible to cause harm, nor is it permissible to cause harm” (HR. Ibnu Majah no. 2340, *shahih*).

Dharar or harm must be eliminated, whether to oneself or others. This is a general Islamic Shari'ah requirement because Shari'ah is intended to bring about good in both this world and the Hereafter. (Ahmad, 2018).

The role of the Financial Services Authority in supervising insurance institutions related to the implementation of GCG and preventing moral hazard that has been described above is related to Islamic law regarding *fiqh* rules that are relevant to the role of the OJK, namely regarding OJK policies on insurance institutions related to the implementation of GCG, OJK supervision of insurance institutions related to the implementation of GCG and the role of OJK in preventing moral hazard in insurance institutions.

This is undoubtedly very related and in line with the five pillars of Islamic law, including *hifdzul din* (protecting religion), *hifdzul nafs* (protecting the soul), and *hifdzul 'aql* (protecting the mind). The means to protect the mind is knowledge; with knowledge, it will give birth to souls that have high integrity, while religion will not be able to be upheld if there are no souls who uphold it, so if we want to uphold religion, it means we must protect the souls who will uphold this religion.

## Conclusion



OJK's supervision mechanism for insurance institutions related to GCG implementation is carried out through direct (on-site) and indirect (off-site) supervision. The Financial Services Authority conducts mentoring and evaluation of GCG implementation reports submitted by insurance companies, as stated in Article 79 of POJK Number 73/2016 concerning good corporate governance for insurance companies, specifically in Chapter XVIII, which addresses mentoring and evaluation of GCG implementation. The supervision aims to create a healthy insurance company by the rule: everything depends on its purpose.

OJK's role regarding the prevention of moral hazard is carried out by providing sanctions against anyone who commits violations or moral hazard; these sanctions are as stated in POJK Number 73 of 2016 article 80 Chapter XIX concerning sanctions, that 'Violations of POJK provisions are subject to administrative sanctions in the form of: (1) written warning, (2) restriction of business activities and (3) revocation of business licences, which are carried out in stages. OJK also regularly evaluates and monitors the results of supervision and examination through related reports, enabling OJK to provide input and advice on insurance companies that have the potential for moral hazard. A moral hazard is a behavioural pattern that can cause harm. OJK's role in preventing moral hazard aligns with the rules: harm must be eliminated.

The findings obtained in this study can serve as a basis for developing research on effective corporate governance models and preventing moral hazard in the Indonesian insurance sector. In addition, it significantly contributes to Good Corporate Governance (GCG) and the prevention of moral hazard in the Indonesian insurance sector, thereby encouraging the development of national Islamic law.

## REFERENCES

- . K. R., Saputra, M. S., & Wahyuni, L. (2022). Pengaruh Penerapan Green Accounting Dan Kinerja Lingkungan Terhadap Kinerja Keuangan Dengan Tata Kelola Perusahaan Perusahaan Sebagai Variabel Moderasi. *Jurnal Akuntansi Trisakti*, 9(2), 229–244. <https://doi.org/10.25105/jat.v9i2.14559>
- Adiyanto, Y., Supriatna, Y., & Sunaryo, D. (2019). *Bank dan Lembaga keuangan lainnya*. Penerbit Qiara Media.

Ahmad, H. (2018). Urgensi Kaidah Fiqhiyyah Dalam Perumusan Hukum Dan Implemetasinya Dalam Fatwa Dsn-Mui. *Et-Tijarie: Jurnal Hukum Dan Bisnis Syariah*, 4(1). <https://doi.org/10.21107/ete.v4i1.3900>

al-Qardawi, Y. (1998). *As-Siyasat asy-Syar'iyyah* (1st ed.). Maktabah Wahbah.

Alfi, A. N. (2018). 25,8% Pengaduan Konsumen ke OJK Soal Asuransi. 25,8% Pengaduan Konsumen Ke OJK Soal Asuransi. <https://finansial.bisnis.com/read/20180426/215/789090/258-pengaduan-konsumen-ke-ojk-soal-asuransi>

Aminah, A. (2017). Maqāṣid Asy-Syari'Ah Pengertian Dan Penerapan Dalam Ekonomi Islam. *FITRAH: Jurnal Kajian Ilmu-Ilmu Keislaman*, 3(1), 167–184. <https://doi.org/10.24952/fitrah.v3i1.635>

Andiko, T. (2011). *Ilmu Qawa'id Fiqhiyyah: Panduan Praktis Dalam Merespon Problematika Hukum Islam Kontemporer* (1st ed.). Teras.

Arief, A. A. Z., Wahidah, I. N., Khasanah, U., & Taha, M. R. (2022). *Fungsi Dan Peranan Bank Syariah Dan Lembaga Keuangan Non Bank*. 1–14.

Arif, F. Z. (2022). *Analisis Kewenangan Pengawasan Otoritas Jasa Keuangan Terhadap Tingkat Kesehatan Bank Aceh Syari'ah (Ditinjau Menurut Perspektif Hukum Islam)* [UIN Ar-Raniry]. <https://repository.ar-raniry.ac.id/id/eprint/20635/>

Bisuk, M. R. (2024, July 22). *Wawancara Online Tentang Pengawasan Asuransi dan BPJS Kesehatan OJK* [Personal communication].

Haidar, A. (t.th.). *Durar al-Hukkam Syarh Majallat al-Ahkam* (1st ed.). Dar al-Kutub al-`Ilmiyyah.

Hasan, H. (2012). Efektivitas Pengawasan Otoritas Jasa Keuangan Terhadap Lembaga Perbankan Syariah (Effective Control Of Financial Services Authority On Sharia Banking Institutions). *Jurnal Legislasi Indonesia*, 9(3), 373–394.

Hidayah, N. (2024, July 22). *Wawancara Online Tentang Pengawasan Asuransi dan BPJS Kesehatan OJK* [Personal communication].

Kalsum, U. (2018). Otoritas Pengawasan Perbankan Syariah Di Indonesia. *Lifalah: Jurnal Studi Ekonomi dan Bisnis Islam*, 3(2), 50–61. <https://doi.org/10.31332/lifalah.v3i2.1196>

Larasati, N. F. (2020). *Manajemen Risiko Dalam Rangka Perlindungan Hukum Bagi Tertanggung Akibat Kegagalan Penerapan Good Corporate Governance Oleh Perusahaan Asuransi* [Universitas Airlangga]. <https://repository.unair.ac.id/104498/>

Lestari, H. (2012). Otoritas Jasa Keuangan: Sistem Baru Dalam Pengaturan Dan Pengawasan Sektor Jasa Keuangan. *Jurnal Dinamika Hukum*, 12(3), 558-567. <https://doi.org/10.20884/1.jdh.2012.12.3.127>

Muchda, M. W. (2014). *Pengalihan Tugas Pengaturan Dan Pengawasan Perbankan Dari Bank Indonesia Kepada Otoritas Jasa Keuangan Berdasarkan Undang-Undang Nomor 21 Tahun 2011 Tentang Otoritas Jasa Keuangan*. 22(2), 75-92.

Sengkarut Jiwasraya, Asabri, & AJB Bumiputera, Ini Bedanya! (2020). <https://www.cnbcindonesia.com/market/20200120143130-17-131287/sengkarut-jiwasraya-asabri-ajb-bumiputera-ini-bedanya/1>

Sofyan, S. (2011). *Bisnis Syariah Mengapa Tidak*. PT. Gramedia Pustaka Utama.

Supriatni, S. (2024, July 22). *Wawancara Online Tentang Pengawasan Asuransi dan BPJS Kesehatan OJK* [Personal communication].

Susiadi. (2015). *Metode Penelitian*. Pusat Penelitian dan Penerbitan LP2M Institut Agama Islam Negeri Raden Intan Lmpung.

Susilawati, E. (2017). Peran Audit Internal Dalam Mewujudkan Good Corporate Governance. *Jurnal Riset Akuntansi Dan Bisnis*, 3(2), 1-22.

Tika, Moh. P. (2006). *Metodologi Riset Bisnis* (1st ed.). Bumi Aksara.

Wiwoho, J. (2014). *Peran Lembaga Keuangan Bank Dan Lembaga Keuangan Bukan Bank Dalam Memberikan Distribusi Keadilan Bagi Masyarakat*. 43(1), 87-97.