BRIS AT IDX: A LOOK AT HOW SHARIAH BANK MERGER WORKS IN INDONESIA

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Abstract

This article provides a comprehensive exploration and analysis of the complex legal framework surrounding the merger of PT Bank Syariah Mandiri, PT Bank BRI syariah Tbk, and PT Bank BNI Syariah, resulting in the establishment of Bank Syariah Indonesia (BSI). The analysis meticulously categorizes the legal requirements applicable to both private and public Shariah banks, referencing key regulations such as POJK 41/2019, Law 40/2007, POJK 15/2020, POJK 74/2016, and others. The study delves into the essential elements of the merger process, navigating through the intricacies involved in formulating a comprehensive merger plan. This includes a detailed examination of share evaluation methodologies and the resolution of associated rights and obligations. The article places significant emphasis on the disclosure of material facts, highlighting the importance of transparently communicating information that has the potential to impact stakeholders. Additionally, the analysis extends to the multifaceted approval processes required for the successful execution of the merger, encompassing internal approvals from boards of directors and commissioners, as well as regulatory bodies. The article sheds light on the intricate procedures and criteria outlined by the Indonesia Stock Exchange (IDX) regarding such transformative transactions, further adding complexity to the overall process.

Keywords: *Bank Merger, Bank Syariah Indonesia, Shariah Bank*

1. INTRODUCTION

Indonesia, with an estimated 240 million Muslims comprising a remarkable 86.7% of its total population, stands as the world's most populous Muslim-majority nation, underscoring the country's profound Islamic heritage (The Royal Islamic Strategic Studies Centre, 2023). The nation's endeavor to address the financial needs of its substantial Muslim population has been an integral facet of its historical trajectory. The development of Shariah-compliant banking in Indonesia represents a noteworthy milestone, arising from the imperative to meet the financial requirements of the country's sizable Muslim demographic. A pivotal juncture in this evolutionary process unfolded in 1991 when Bank Muamalat Indonesia emerged as the inaugural financial institution to conduct operations based on Shariah principles. The establishment of Bank Muamalat Indonesia in 1991 marked a pioneering initiative, signifying the commencement of Shariah-compliant banking in Indonesia. This milestone heralded the inception of a financial sector committed to adhering to Islamic principles, prohibiting practices such as charging interest (*riba*) and involvement in unethical or haram activities.

The creation of Shariah-compliant banking aimed to provide a platform for the Muslim population to conduct financial transactions that align with their religious beliefs (Kettell, 2011). The significance of this step cannot be overstated. With the establishment of Bank Muamalat Indonesia, the country's Muslim population finally had access to a financial institution that provided services in line with their religious beliefs. For decades, Muslims in Indonesia had grappled with the ethical dilemma of participating in conventional banks that charged interest, as such practices were viewed as conflicting

with the principles of Islamic finance. With the introduction of Shariah-compliant banking, the Indonesian Muslim population gained access to a financial system that aligned with their values, creating a profound shift in the nation's financial landscape (Adrian, 2009).

The year 1992 saw the Indonesian government's introduction of Law No. 21 of 1992 on Banking, which allowed banks to operate on a profit-sharing principle without explicitly mentioning Shariah principles. Adopting the profit-sharing concept was a significant development as it acknowledged the existence and importance of Shariah banks within the Indonesian financial landscape. This legal framework categorically separated conventional banks and profit-sharing banks, making it clear that institutions could not operate under both principles, not even through branch offices. The legal separation of Shariah banks and conventional banks, while recognizing the importance of Shariah-compliant banking, has presented unique challenges to the competitiveness of the former. One significant challenge has been their inability to match the scale of the already established and often larger conventional banks. This has implications for their ability to provide a wide range of services, extend their geographical reach, and establish trust within the market. While conventional banks can capitalize on their existing infrastructure, Shariah banks have often faced limitations in channeling significant capital towards their operations.

Law No. 7 of 1998, officially known as the "Law of the Republic of Indonesia Number 10 of 1998 Concerning Amendments to Law No. 7 of 1992 Concerning Banking," introduced significant changes and clarifications in the financial sector. This law had several key implications for Shariah banks operating in Indonesia. First, it reaffirmed the legal standing of Shariah-compliant banking within the Indonesian financial system, underscoring their legitimacy and importance. Furthermore, it expanded the regulatory framework for banking activities, including those of Islamic banks, addressing issues related to risk management, capital adequacy, and prudential standards. One of the notable impacts of Law No. 7 Of 1998 on Shariah banks was the formal recognition of the Dual Banking System in Indonesia, allowing for the coexistence of both conventional and Shariah-compliant banks. This recognition facilitated a more structured environment for Shariah banks to operate and grow, giving them a clear legal foundation.

It can’t be denied that the pivotal moment in the evolution of Indonesia's legal framework for Islamic banking occurred with the passage of Law No. 10 of 1998. This legislation laid the foundation for Shariah-compliant banking operations in the country. However, it was perceived as lacking the specificity needed to effectively govern the unique nature of Islamic finance, especially in light of the continuous growth in Islamic banking activities. The rapid growth and diversification of the Islamic banking sector in Indonesia underscored the need for a more comprehensive and specialized legal framework. Law No. 21 of 2008 concerning Islamic Banking (the Islamic Banking Law) was introduced in response to these evolving dynamics. This legislation marked a significant shift towards greater regulatory clarity and specificity.

The central focus of the Islamic Banking Law was to ensure that Islamic banking operations were conducted in strict accordance with Shariah principles. By offering regulatory clarity, the law aimed to provide legal certainty not only for Islamic banking institutions but also for stakeholders and the broader public who engage with Islamic financial products and services. The law highlights the principles of profit-and-loss sharing (*mudharabah*), equity participation (*musharakah*), purchase and resale

(*murabahah*), lease (*ijarah*), and lease and purchase (*ijarah wa iqtina*) as the foundation for Islamic banking products and services. These principles align with Islamic finance values and ensure that financial activities benefit a broader population segment while adhering to ethical standards (Djaja, 2019).

The most significant leap in Indonesia's legal framework for Islamic banking occurred in 2008 with the introduction of Law No. 21 concerning Islamic Banking. This legislation provided clarity, specificity, and a comprehensive framework for Islamic banking operations, ensuring that they operated in strict accordance with Shariah principles. Law No. 21 of 2008 ("Law 21/2008") facilitated the establishment of standalone Sharia-compliant banks in Indonesia. This simplified the licensing process, reducing bureaucratic hurdles, and satisfying the rising demand for Islamic banking services among the predominantly Muslim population. The increased competition in the Shariah banking sector led to the development of innovative products and services, enhancing their appeal to customers (Chong & Liu, 2009).

The oversight and regulation of the banking sector have also undergone significant developments. In Indonesia, the supervision and regulation of commercial banks are collaboratively administered by the Financial Services Authority (*Otoritas Jasa Keuangan* or OJK) and the Central Bank of Indonesia (Bank Indonesia). OJK is entrusted with the responsibility of conducting micro-prudential supervision and regulation of individual banks, aligning its practices with the statutory provisions delineated in Law No. 21 of 2011, which pertains to the Financial Services Authority. In parallel, Bank Indonesia is engaged in macroprudential supervision while maintaining close coordination with OJK. Bank Indonesia primarily focuses on upholding economic stability by overseeing banking institutions, overseeing licensing processes, and formulating regulations for the banking system as a whole. These functions are expressly detailed in Articles 7 and 8 of Law No. 23 of 1999, with the responsibilities stipulated in Article 8(3) being delegated to OJK (Keuangan, 2017).

The regulatory development throughout the years paved the way for the creation of banks, such as PT Bank Syariah Mandiri, PT Bank BRI syariah Tbk, and PT Bank BNI Syariah, these banks, each individually significant, operated under a common objective: to align their financial practices with Islamic principles. However, the fiscal landscape in Indonesia experienced a paradigm shift in early 2021, marked by the Indonesian government's strategic initiative to initiate a merger involving these three state-owned Shariah banks. This monumental undertaking sought to create a single, formidable entity, Bank Syariah Indonesia (BSI). This union was not merely a financial merger but a comprehensive transformation encompassing the legal, regulatory, and strategic dimensions that shape the Islamic finance sector in Indonesia.

BSI's emergence as the largest Shariah bank in Indonesia is essential for the development of Islamic finance in the country. As of the second quarter of 2020, prior to the merger, the three constituent Shariah banks boasted substantial assets, with PT Bank BRI syariah Tbk standing at Rp49.6 trillion, PT Bank BNI Syariah at Rp50.78 trillion, and PT Bank Syariah Mandiri at an impressive Rp114.4 trillion (Kurniawan, 2023). The formation of BSI, with these impressive assets combined, established it as the largest Shariah bank in Indonesia. As of the fourth quarter of 2022, BSI's assets further expanded, reaching Rp305.72 trillion (Katadata, 2023). Such growth is a testament to the success of this endeavour and its potential to impact the broader Indonesian economy.

The merger of PT Bank Syariah Mandiri, PT Bank BRI syariah Tbk, and PT Bank BNI Syariah into BSI represents a strategic move aimed at strengthening the position of

Shariah banking within Indonesia's financial landscape. Mergers in the financial sector, especially involving state-owned banks, are complex undertakings, characterized by multifaceted challenges. A merger of this magnitude entails the integration of disparate systems, processes, and corporate cultures. Such integration is fundamental to achieving operational efficiency and cost synergies post-merger. However, it necessitates meticulous planning and execution to ensure a smooth transition (Iqbal & Mirakhor, 2011). The successful completion of the merger hinged on obtaining regulatory approvals and establishing a clear legal framework. Given the inherent complexities of merging banks operating under Islamic finance principles, rigorous review and approval were required from Islamic finance scholars and regulatory authorities. These approvals ensured that the merger and BSI's operations complied with Shariah principles and legal requirements. The legal framework also played a critical role in defining the rights and responsibilities of stakeholders, including shareholders and customers. The framework provided the foundation for asset transfer and valuation, a process essential for the equitable treatment of shareholders and the smooth transition of assets to BSI. One of the most critical aspects of the merger was the transparent and fair transfer of assets from the individual banks to BSI. Valuation of these assets had to be conducted meticulously to prevent disputes and to guarantee that shareholders received just compensation for their contributions. Accurate valuation was not only a legal necessity but also essential for maintaining the trust of stakeholders, particularly investors and depositors (Sawitri, 2022).

This article aims to explore the various stages involved in establishing Bank Syariah Indonesia. It focuses on understanding the complex merger process, analyzing regulatory compliance, highlighting the challenges faced, celebrating achievements, and learning valuable lessons. This journey of establishment serves as an interesting case study, providing insights into the intricacies of financial sector mergers and the significant role played by regulatory and legal frameworks in shaping Islamic finance in Indonesia. The subsequent sections of this article will delve into the legal and regulatory complexities that characterized this transformative journey, offering insights into the challenges faced and the measures taken to ensure compliance. It will also extract lessons from this remarkable journey and assess its implications for the ongoing development of Islamic finance in Indonesia and its potential impact beyond national borders.

2. RESEARCH METHODS

The research methodology employed in this study combines a normative-legal approach with a case study approach. Normative-legal represents an approach that centers its focus on the regulatory aspects governed by legal norms and principles, particularly those that dictate what "ought to be" within the legal framework (Arikunto, 2012). Meanwhile, the case study approach represents an approach that tries to understand how the relevant regulation is applied within the case discussed (Marzuki, 2017). The primary aim of this research is to comprehensively analyze the relevant legal provisions governing the merger of Islamic banks and the associated limitations, with a specific emphasis on its corporate aspects with the Bank Syariah Indonesia merger serving as a case study on the relevant legal provisions affecting a real merger.

The research process employs an extensive literature review as a primary tool to gain a comprehensive understanding of the merger process and challenges of Islamic banks in Indonesia, specifically Bank Syariah Indonesia. This involves an in-depth study

of academic papers, government reports, legal documents, and scholarly works related to Islamic finance and banking in Indonesia.

The data utilized in this research is categorized as secondary data, obtained from sources external to the researcher's original experimentation and analysis. These data sources are further classified into three main categories: primary legal materials, secondary legal materials, and non-legal materials.

Primary legal materials encompass authoritative legal sources, such as statutes, regulations, and official legal documents. Secondary legal materials include academic legal publications and legal commentaries. Non-legal materials encompass a broader spectrum of sources from disciplines other than law, including academic works, reference materials, and interdisciplinary studies.

3. RESULTS AND DISCUSSION

3.1. BSI Merger Legal Framework

This section aims to unravel the merger preparation of BSI. Merger is a complex and crucial process that involves various stages and considerations. All the merging banks need to comply with the regulations and prepare the required documents that have been put in place by the legal framework. Under Law 21/2008, Shariah bank mergers have no specific rule. Instead, it delegates the roles of governing Shariah bank mergers to other regulations specifically governing bank mergers through Article 17 paragraph 3 of Law 21/2008.

Considering that the BSI Merger consists of private Shariah banks (PT Syariah Mandiri and PT BNI Syariah) and a public Shariah bank (PT BRI syariah Tbk), this paper will divide the legal framework into two categories, one concerning the framework that private Shariah banks have to adhere to and one concerning the framework that public Shariah banks have to adhere to.

a. The Private Shariah Bank
   Rules and regulations concerning the merger of private Shariah banks are regulated under POJK 41/2019 and Law 40/2007.
b. The Public Shariah Bank
   While the merger of a public Shariah bank shares the same regulations as the merger of private Shariah banks, there is some additional regulation that a public Shariah bank has to adhere to for merging. Those regulations are POJK 15/2020 POJK 74/2016, POJK 31/2015, Law 8/1995, and Government Regulation 28/1999.

3.2. Merger Plan Regulations

A Merger Plan is a blueprint for conducting a merger, crafted by the directors of the merging companies. Following the formulation of a merger plan, the subsequent step involves seeking approval through a voting process at the General Meeting of Shareholders. As outlined in Article 123 of Law 40/2007 directors of the companies conducting a merger should arrange a merger plan, a typical merger plan should cover the following elements:

a. Names and Registered Locations: Identification of each company involved in the merger.

b. Rationale and Requirements: Explanations and justifications provided by the Board of Directors of the merging company, including any requirements for the merger.
c. Share Evaluation and Conversion: Procedures for assessing and converting the shares of the merging company into those of the receiving company.
d. Amendments to Articles of Association: Proposed amendments to the articles of association of the receiving company in case of a merger.
e. Financial Reports: Financial statements for the past 3 fiscal years of each merging company, as stipulated in Article 66(2)(a) of Law 40/2007.
f. Continuation or Termination Plan: Plans outlining the future of the business activities of the merging company.
g. Pro Forma Balance Sheet: A pro forma balance sheet for the receiving company, complying with generally accepted accounting principles in Indonesia.
h. Resolution of Status, Rights, and Obligations: Procedures for addressing the status, rights, and obligations of members of the Board of Directors, Board of Commissioners, and employees of the merging company.
i. Resolution of Rights and Obligations with Third Parties: Procedures for handling the rights and obligations of the merging company with third parties.
j. Shareholder Rights: Procedures for addressing the rights of shareholders who oppose the merger.
k. Board of Directors and Board of Commissioners: Names and compensation details for members of the Board of Directors and Board of Commissioners of the receiving company.
l. Merger Timeline: Estimated timeline for the merger process.
m. Progress Report: A report on the current state, progress, and achievements of each merging company.
n. Company Activities: Details about the primary activities of each merging company, including any changes during the current fiscal year.
o. Issues Impacting Merging Company: Information on any issues that have arisen during the current fiscal year, affecting the activities of the merging company.

The bank merger plan shares some similarities with the requirements outlined earlier, but there are specific differences and additional elements mandated by POJK 41/2019. Article 9 of POJK 41/2019 segments the merger plan into three main sections:

a. First, Information about the banks involved in the merger. The additional rules specific to POJK 41/2019 are as follows:
    - Name, registered location, office network, business activities/products/activities, organizational structure, capital structure, shareholders, and the composition and names of members of the Board of Directors, Board of Commissioners, and Shariah Supervisory Board for each participating bank.
    - Financial statements and financial performance data, compliant with POJK 37/2019, for the last three audited fiscal years by public accountants for each bank undergoing the merger or consolidation
b. Second, Information about the merger plan. The additional rules specific to POJK 41/2019 are as follows:
    - Inclusion of interim financial statements and financial performance information for the current fiscal year concerning the merger.

- Legal counsel's perspective on the legal aspects of the merger or consolidation.
- A summarized report from an independent appraiser evaluating the fairness of the merger or consolidation.
- Disclosure of any conflicts of interest involving the participating banks and their respective members of the Board of Directors, Board of Commissioners, or Shariah Supervisory Board, if applicable. Expert opinions on specific aspects of the merger or consolidation, if deemed necessary.

c. Third, information about the resulting bank. The additional rules specific to POJK 41/2019 are as follows:
   - Details about the name, registered locations, office network status, business activities/products/activities, organizational structure, capital structure, shareholders, organizational structure, composition of the Board of Directors, Board of Commissioners, and Shariah Supervisory Board, along with information technology and human resources.
   - Plans for changing the bank's name and logo.
   - Pro forma financial data audited by public accountants, covering financial statements like the balance sheet, income statement, comprehensive income statement, equity changes statement, minimum capital adequacy requirement calculation, and bank financial ratios.
   - Projections for the bank's financial health during at least two assessment periods, ensuring a minimum Composite Rating of 3 (PK-3). The plan should include corrective actions if the bank's health is projected to fall below a Composite Rating of 3 (PK-3) during the two assessment periods.
   - An explanation of the potential benefits and risks associated with the merger or consolidation, along with strategies for risk mitigation.
   - Confirmation from the bank undergoing the merger or consolidation that the resulting bank will assume all rights and obligations of the bank undergoing the merger or consolidation.
   - Business plans.

Meanwhile, for a public company status bank as ruled in Article 77 of POJK 41/2019, the merger plan requirement will also have to adhere to rules set in POJK 74/2016. Article 4, Article 6, and Article 7 of POJK 74/2016 detail what public company (here also applies to public bank) merger plan should include. Additional elements listed in POJK 74/2016 are as follows:

a. A summary of crucial financial data sourced from audited financial statements conducted by Public Accountants for each company involved in the merger. If the company engaging in Business Merger is a Public Company, the summary should encompass the last 2 (two) years. If the company engaging in Business Merger is not a Public Company, the summary should span the last 3 (three) years.
b. A concise overview of the appraiser's report about the valuation of shares for each company participating in the merger. encompassing at a minimum: The identity of involved parties, the subject under evaluation, the objectives of the assessment, assumptions and constraining factors, evaluation methodology and approaches, and conclusive valuation results.

c. Any material changes affecting the nature, financial state, or other aspects influencing the Public Company resulting from the merger must be comprehensively included in the merger plan.
d. Information about the prospective Controlling Shareholder of the Public Company, along with a concise overview of the management's analysis and discussion concerning the company participating in the merger.

The merger plan that has been arranged by the directors of the companies conducting the merger together, it must have its summary announced to the public through a national newspaper and each company website no later than the end of the second working day after obtaining the approval of the Board of Commissioners and at least 30 days before convening the General Meeting of Shareholders (GMS). Afterwards, proof of the announcement must be submitted to OJK no later than two working days after the announcement to the public.

A public company must also submit their statement of merger that includes the merger plan to OJK as ruled under Article 11 of POJK 74/2016. OJK has the authority to seek modifications and/or supplementary information for scrutiny or public disclosure. Should the OJK require further details or modifications to the merger statement, the public company is mandated to provide these within a maximum of ten working days from the date of receiving the request, and subsequently, disclose the changes or additional information to the public two working days prior to the commencement of the GMS, as stipulated in Articles 14 and 15 of POJK 74/2016. A General Meeting of Shareholders (GMS) can only be convened once the statement of merger is deemed effective. The statement of merger achieves effectiveness when no further alterations or supplementary information are requested, typically within 20 days from its most recent revision.

PT Bank Syariah Mandiri, PT Bank BRI syariah Tbk, and PT Bank BNI Syariah published their summary of the merger plan to the public on 21 October 2020 and the statement of the merger on 11 December 2020. The merging companies' board of directors had successfully satisfied all the requirements outlined in the rules above. PT BRI syariah Tbk acts as the surviving entity in the merger and plans to change its name to Bank Syariah Indonesia after the merger has been completed. After the merger, PT BRI syariah Tbk's branch office would surmount over 1200 locations. The new capital structure planned following the merger plan would leave the parent company of the three Sharia banks to hold shares as follows: PT Bank Mandiri (Persero) Tbk (the parent company of PT Bank Syariah Mandiri) has a majority ownership of 51.2%, PT Bank Negara Indonesia (Persero) Tbk (the parent company of PT Bank BNI Syariah) holds 25% of the shares, and PT Bank Rakyat Indonesia (Persero) Tbk (the parent company of PT Bank BRI syariah Tbk) owns 17.4% of the shares, the remainder 6.4 % is in the hands of other shareholders. All amounting to a total of around Rp 40 trillion authorized capital. This results in PT Bank Mandiri (Persero) Tbk acting as the prospective controlling shareholders at the company receiving the merger.

3.3. Material Fact Disclosure

POJK 31/2015 mandates that a merger is considered a material fact, necessitating its disclosure to the public and reporting to the OJK. Material fact, as per the definition in Law 8/1995 under Article 1 number 7, encompasses information of significance and relevance about events, incidents, or details with the potential to influence security prices

on the Stock Exchange and the decisions of investors, prospective investors, and other stakeholders. Compliance with the regulations stipulated in Articles 3 and 4 of POJK 31/2015 requires the submission of announcements and reports of material facts within two working days from the time such information becomes known. These announcements should be made available on the public company website in Indonesia, in both English and the national Indonesian language, as well as on the IDX website and a national Indonesian language newspaper. The announcement should consist date of the event, the type of the event, description and impact of the event.

However, Article 6 of POJK 31/2015 does not explicitly address whether the term 'merger' encompasses the pre-merger processes. The inclusion of the Merger Plan and any subsequent changes falls under the broader category of 'other material facts' as delineated in the article. Letter number S.B.051-PDR/10-2020 which was published on 21 October 2020 acts as the fulfilment of the requirement by PT BRI syariah Tbk.

3.4. Proper Assets and Shares Valuation Obligation

Within their respective roles, the board of directors and commissioners are bound by a fiduciary duty to both the company and its shareholders. This duty obliges them to ensure that the merging entities, whether the dissolving or surviving company, contribute significant value to the stakeholders. This fiduciary duty, with the board of directors and commissioners acting as principals, necessitates the operation of the business in a manner that consistently serves the best interests of the company and its shareholders, who act as the ultimate beneficiaries (Munir, 2002). This fiduciary duty principle has been laid out in Law 40/2007, specifically under Article 92, paragraphs 1 and 2, Article 97, paragraph 2 for the Board of Directors, and Article 108, paragraphs 1 and 2, along with Article 114, paragraph 2 for the Board of Commissioners. The phrase “in accordance with policies deemed appropriate” used in Article 92 paragraph 2 was then further explained to mean policies that are based, among other things, factors such as expertise, available opportunities, and industry standards within a related business context.

As previously discussed, the formulation of a merger plan for companies necessitates the inclusion of an expert opinion, particularly when deemed necessary (Hu, Shao & Yu, 2022). This requirement involves a comprehensive expert assessment of various facets, including the assets, liabilities, operations, and overall well-being of the merging companies. Following the standard practices of mergers and acquisitions, this evaluation and disclosure to shareholders must occur before the formulation of the merger plan, ideally commencing even before the initiation of negotiation processes by the involved companies (Corporate Finance Institute, 2019). An approach commonly employed to guarantee an impartial and equitable assessment of assets or a business involves utilizing the services of the Office of Public Appraisal (KJPP). Nevertheless, it's important to note that KJPP services are subject to certain limitations. KJPP is exclusively authorized to appraise properties and businesses in accordance with Article 5 of the Ministry of Finance Regulation 228/2019.

3.5. General Meeting of Shareholders Quorum for Approval Regulation

As ruled under Article 14 of POJK 41/2019 and Article 17 of POJK 74/2016, the banks that are conducting the merger require the approval of each GMS, especially regarding the merger plan and the merger deed concept. There are distinct rules and requirements regarding the General Meeting of Shareholders for private and public companies. GMS for private companies is regulated under Law 40/2007, while for public

companies OJK had promulgated POJK 15/2020 as a specific rule on conducting GMS for public companies. Private companies typically face fewer reporting and disclosure requirements compared to public companies, while public companies are subject to comprehensive reporting and disclosure requirements.

The quorum for a General Meeting of Shareholders (GMS) in the context of a merger in Indonesia is typically governed by Law 40/2007 and the company's articles of association, but public companies also have to follow the rules set under POJK 15/2020. The quorum refers to the minimum number of shareholders or shares that must be represented at the meeting to make it valid and capable of making binding decisions. The rules regarding GMS quorum in the context of a merger are generally similar for both public and private companies in Indonesia. Below are some key points regarding GMS quorum in the context of a merger:

a. Quorum Requirements: The quorum is the minimum number of shareholders or shares that must be represented at the GMS to validate the meeting and any decisions made. While the specific quorum requirements can vary based on the company's articles of association, the law often prescribes at least ¾ of the total voting shares are present or represented at the first meeting. If a decision or the quorum requirements cannot be met, then the second meeting requires at least ⅔ the total voting shares to be present or represented at the meeting. For public companies as ruled in Article 43 letter e of POJK 15/2020, if the quorum for the second GMS cannot be achieved, the third GMS can be deemed valid and granted decision-making authority. This is contingent upon attendance by shareholders holding valid voting shares and meeting the attendance and decision-making quorum requirements, as determined by the OJK upon the Public Company's request.
b. Vote Threshold: In the context of mergers in Indonesia, a substantial proportion of shares or votes must be represented for approval. According to both Law 40/2017 and POJK 15/2020, a decision is deemed valid when it receives the approval of more than ¾ of the total voting shares present during the first or second GMS.
c. GMS Minutes and Summary: The minutes of the GMS under Article 90 of Law 40/2007 and Article 49 of POJK 15/2020 are mandatory and must be drafted and signed for each GMS, with the document signed by the meeting's chairperson and at least one shareholder, as designated by the GMS attendees. Signatures are unnecessary if the GMS minutes are documented in the format of a notarial deed. For public companies, some additional rules are set for the GMS minute under Articles 49 and 50 of POJK 15/2020. The notarial deed for the GMS minute must be drawn up by a notary registered with OJK. Then GMS minutes must be submitted to the OJK at least 30 days after the GMS is held.

GMS approval mentioned previously is then incorporated into the merger deed prepared by a notary public in the Indonesian language as ruled under Article 128 of Law 40/2007 and Article 16 of POJK 74/2016.The GMS for the BSI merger was convened on 15 December 2020 and included a comprehensive meeting agenda. The primary objectives of this GMS were to secure approval for the merger, discuss and approve the merger plan, outline the concept for the deed of merger, address changes to the articles of association, and determine the appointment of new management for the merged entity.

Of particular note are the significant changes to the articles of association that were proposed and approved during this GMS. These changes are integral to the merger process and pertain to the substantial increase in the authorized capital to Rp 40 trillion, which is divided into 80 billion shares. Additionally, the paid-up capital was augmented to Rp 20,515,604,471,500.00, distributed among 41,031,208,943 shares. Most notably, the change in the official name of PT BRI syariah Tbk to PT Bank Syariah Indonesia was sanctioned during the GMS.

Subsequently, the deed of merger, a critical legal document that formalizes the merger process, was prepared. This pivotal document was first drafted on 16 December 2021 and subsequently restated on 14 January 2021. These actions were carried out and formalized under the guidance of Jose Dimas Satria, S.H., M.Kn., who served as the notary public for these essential proceedings. The deed of merger, with its legal and linguistic precision, serves as a foundational element in the merger process, encapsulating the GMS approval and reflecting the culmination of intricate legal and financial procedures.

3.6. OJK and Minister of Law and Human Rights Approval

Following the approval granted by the GMS, the Board of Directors of all participating merging companies is required to formally request a permit for the merger from OJK. This request must be submitted no later than three working days after the GMS decision to approve the merger. The request should be accompanied by essential documentation, including the notarized GMS approval minutes, the approved merger plan, the merger deed, amendments to the surviving bank's articles of association, and the financial report or information related to the merging banks' financial performance if the request is made more than six months after the merger plan summary is announced.

Article 18 of POJK 41/2019 outlines that OJK, within 14 working days from the receipt of the request, assesses the completeness and authenticity of the submitted documents, the suitability of the prospective Board of Directors and Commissioners, the Controlling Shareholders, and conducts interviews with the Shariah Supervisory Board. The latest financial performance of the entities is also considered in this evaluation. Upon satisfying these criteria, OJK grants permission for the merger. Subsequently, a proposal for approval and/or notification of amendments to the surviving bank's Articles of Association is forwarded to the Minister of Law and Human Rights within 30 days from the date specified in the Articles of Association amendment deed, as stipulated in Article 129 of Law 40/2007 and Article 21 of POJK 41/2019. Specific changes requiring approval or mere notification are detailed under Article 21 of Law 40/2007.

OJK officially approved of the merger for the BSI merger to go ahead on January 27 2021 via letter Number SR-3/PB.1/2021. Ministry of Law and Human Rights has also issued approval to all of the changes to the Deed of Association via Letter No. AHU-AH.01.10-0011384 dated January 28 2021. With all approval received, the merger will be effective on 1 February 2021 as the date listed on the Merger Plan. PT BRI syariah Tbk names are no longer used and officially have been replaced with PT Bank Syariah Indonesia Tbk. By Law, all the liabilities, assets and other obligations of the merging banks are now under the BSI book, this includes any credit lent, customer funds, accounts etc.

3.7. IDX Rules on Additional Shares of The Surviving Company

As an entity receiving the merger PT BRI syariah Tbk (BRIS) gains a massive increase in capital, represented by new additional shares. To complete the merger PT BRI syariah Tbk issued 31.130.700.245 new shares. This move increased the total number of outstanding shares in the stock market from 9.716.113.498 to 40.846.813.743 shares. New shares issued are then converted to the new shareholders at the agreed-upon rate in the merger plan. The rates of conversion to newly issued BRIS shares are as such: 1:34,97 for Bank Syariah Mandiri's shares and 1:3500,2767 for Bank BNI Syariah's shares. Regarding the regulatory framework governing the listing of new shares resulting from a merger, the Indonesia Stock Exchange (IDX) issued a directive known as Board of Directors Decision Number Kep-001/BEJ/012000, regarding Stock Listing Rules Number I-G, which pertains to Business Merger and Consolidation (SLR: I-G). SLR: I-G was introduced to provide comprehensive guidance on the procedural aspects of such corporate actions.

Section B of SLR: I-G mandates that the surviving listed entity in a merger must promptly submit an application to IDX for the listing of additional new shares on the following trading day after the merger submission statement has been filed with the Financial Services Authority (OJK). IDX is then obliged to furnish their in-principal approval for the listing within five trading days after the request submission. In addition to the merger submission statement, the application must be accompanied by the documents, projected schedules regarding the merger, and other information important for the merger (including information about the dissolving companies) as outlined in Section B. 1b. Furthermore if the dissolving companies in the merger is not a publicly listed company, important information about the companies that need to be disclosed to the IDX to protect the interest of investor are as follows: Statement of Debt/Obligation; Analysis from the management about its material obligation, extraordinary event and abnormal transaction; business risk; description about the business; business activities and prospect; management, oversight and human capital; production and marketing; last 3 years audited by listed public accountant financial report.

Furthermore, the listed entity is obligated to keep IDX informed through written reports at various pivotal stages of the merger process, including when the merger statement is deemed effective by OJK, the General Meeting of Shareholders' decision on the merger, receipt of OJK's merger permit, and any other pertinent merger permits obtained from relevant institutions. This mechanism ensures that IDX remains informed and engaged throughout the various stages of the merger. Notably, BRIS initiated the request for the listing of additional shares on October 21, 2020, as documented by Mutmainah & Putra (2022).

Section C of SLR I-G delineates the procedural steps for listing the newly issued additional shares following the formalization of the merger, marked by the execution of the merger deed and the subsequent approval/acknowledgement from the Minister of Law and Human Rights. Both the copy of the deed of merger and approval/acknowledgement from the Minister of Law and Human Rights are required to be submitted at the latest one trading day after obtaining such documents. Submission of the documents mentioned above must also be accompanied by a fixed schedule decision on the tentative schedule and information given during the request for the listing, other information as listed in sections c.6 and c.7 of SLR I-G. This notably includes information regarding the ownership of new shares, the date of listing of new shares, total outstanding shares after addition, the theoretical price of the shares, and the date when the newly listed shares can

be traded. The shares of the resulting company are first traded through the formation of an opening price, if such a price cannot be formed then the theoretical price submitted will be used as the basis for trading the shares.

Section D of SLR I-G provides a legal framework for the recognition of merging companies' collective share certificates as proof of ownership of newly issued shares in the receiving company. The conversion rate, as agreed upon, determines the value of each merging company's collective share certificates in terms of the receiving company's shares. However, it is crucial to note that the use of these collective share certificates as proof of ownership has a limited duration, which is stipulated in the schedule provided in Section C.

During the timeframe specified in the schedule, the proof of ownership can be converted into the collective share certificate of the receiving company. Section D.5 imposes an obligation that any request for this conversion must be completed within five trading days after the submission of such a request. Furthermore, transactions on the stock exchange involving receiving company shares that use proof of ownership are permissible as long as they adhere to the prescribed timeline, which cannot extend beyond five trading days following the listing of the newly issued shares. Settlement of these transactions must occur before exceeding five trading days after the specified time limit concludes. This regulatory framework ensures the integrity and legality of ownership transfer in the context of corporate mergers.

The successful listing process of the newly issued shares of PT Bank BRI syariah Tbk (BSI) is a significant milestone in the completion of BSI's merger. This process, initiated with Company Letter No. S.B.065-PDR/01-2021 dated January 27, 2021, which pertained to the Application for Listing of Additional Shares Resulting from the Merger, followed by IDX's share listing announcement letter No. Peng-P-00041/BEI.PP1/01-2021, signifies one of the final steps in the merger. It highlights the company's commitment to ensuring the seamless transition of ownership and capital structure in line with regulatory requirements. The successful listing of newly issued shares marks one of the final steps in a public company's journey towards the realization of a merger. It is crucial to note that these shares will eventually become integral to the post-merger company's capital structure and shareholder dynamics. Their listing serves as a vital aspect of ensuring transparency, market access, and compliance with regulatory standards.

4. CONCLUSION

The examination of the Bank Syariah Indonesia's (BSI) merger preparation elucidates the intricate legal framework and regulatory nuances inherent in such a complex corporate initiative. Governed by Indonesian laws and regulations, this merger provides insightful perspectives into the sophisticated process of amalgamating private Shariah banks (PT Syariah Mandiri and PT BNI Syariah) with a public Shariah bank (PT BRIsyariah Tbk). This comprehensive discussion unravels key aspects, including the legal framework classification, merger plan requirements, material fact disclosure, assets and shares valuation, GMS quorum, OJK and Minister of Law and Human Rights approval, and IDX rules on additional share listing.

The successful execution of BSI's merger stands as a testament to the efficacy of the existing legal and regulatory framework in facilitating intricate financial transactions. It underscores the paramount importance of adhering to the rule of law and best practices

to ensure the transparency and integrity of corporate consolidations within the financial sector. As suggestion for future academic, a comparative analysis of legal and regulatory frameworks governing bank mergers in Indonesia and other nations holds promise for yielding valuable insights and contributing to regulatory refinements. Additionally, studying stakeholder perspectives, evaluating post-merger performance, and advocating for regulatory clarity in public bank mergers offer promising research avenues to enhance our understanding of financial transactions and contribute to regulatory advancements.

REFERENCES

Adrian, S. (2009). Perbankan Syariah Dan Beberapa Segi Hukum. *Ghalia Indonesia, Jakarta*.

Arikunto, S. (2012). Prosedur Penelitian Suatu Teknik Pendekatan. *Jakarta: Rineka Cipta*.

Chong, B. S., & Liu, M.-H. (2009). Islamic banking: interest-free or interest-based? *Pacific-Basin Finance Journal*, *17*(1), 125–144.

Djaja, B. (2019). Hukum Perbankan. *Yogyakarta: Publisher ANDI*.

Iqbal, Z., & Mirakhor, A. (2011). *An introduction to Islamic finance: Theory and practice* (Vol. 687). John Wiley & Sons.

Kettell, B. (2011). *Introduction to Islamic banking and finance* (Vol. 551). John Wiley & Sons.

Keuangan, O. J. (2017). Otoritas Jasa Keuangan. *Salinan Peraturan Otoritas Jasa Keuangan Nomor*, *65*.

Kurniawan, A. (2023). The Role of Indonesian Islamic Banks in Improving Economic Growth in Indonesia (Analysis of Opportunities and Obstacles of Islamic Banks Post Merger. *KnE Social Sciences*, 283–298.

Marzuki, M. (2017). *Penelitian Hukum: Edisi Revisi*. Prenada Media.

Munir, F. (2002). Hukum tentang Pembiayaan (Dalam Teori dan Praktek). *Penerbit PT. Citra Aditya Bakti. Bandung*.

Mutmainah, S., & Putra, R. P. (2022). Prosedur Pendaftaran Pinjaman Kredit Usaha Rakyat (Kur) Pada Pt. Bank Rakyat Indonsia (Persero) Tbk. Unt Tanjungsari Cabang Pamanukan. *The World of Financial Administration Journal*.

Sawitri, N. N. (2022). Differences In Banking Financial Performance Before and After Merger (Case Study Of Domestic Banks in Indonesia). *International Journal of Advanced Multidisciplinary*, *1*(2), 163–175.

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