

## Spin-Off Appropriateness Assessment: Propriety Test of Sharia Business Unit Spin-Off to Increase Return on Assets

Muhammad Daffa Alfandy<sup>1\*</sup>

<sup>1</sup>Universitas Brawijaya Malang, Indonesia

\*Corresponding Author: [daffa1379@gmail.com](mailto:daffa1379@gmail.com)

### Article History:

Submitted:

27-05-2024

Received:

31-05-2024

Accepted:

07-06-2024

### Keywords:

Banking; Sharia

Business Unit; Sharia

Commercial Bank;

Return on Assets;

Spin-Off.

### Abstract

The obligation to transform a sharia business unit into a sharia commercial bank through a spin-off from its parent bank, a conventional commercial bank, must be balanced with a strategy to increase the return on assets (ROA) of Islamic Business Entities (BUS). A higher ROA ratio correlates with increased profitability. The regulatory provision mandating spin-offs, however, tends to weaken the BUS, making it difficult to compete in the national Islamic banking industry. This is because the spin-off obligation for the UUS can actually diminish its profitability performance. As Watchell has noted, while spin-offs can create differentiation from investment targets in each business, they can also lead subsidiary companies to become more focused in determining their corporate strategy and operations. This focus, however, often results in new operational strategies that increase the subsidiary's operational burden and potentially reduce profitability. Empirically, several sharia commercial banks in Indonesia have experienced a decline in the profitability of their sharia business units after spinning off into independent sharia commercial banks. This research employs normative or doctrinal juridical methods, utilizing both a statute approach and a conceptual approach. As an innovative contribution, the author proposes the Spin-Off Appropriateness Assessment as a model for evaluating the implementation of spin-offs in sharia business units. This assessment aims to increase the ROA ratio and create an investment climate that is environmentally sound. It comprises three main components: fixed capital, non-performing loan identification, and capital sources mapping.

## 1. Introduction

The financial or monetary sector is one of the most important aspects in the national economic system in every country, especially in Indonesia. The financial sector tactically greatly influences the acceleration of regional economic growth and plays an important role in encouraging economic growth in an autonomous region. According to the World Bank, the financial sector is a locomotive of economic growth in the real sector through capital accumulation and escalation of technological developments.<sup>1</sup> Capital accumulation can be seen from the ability of the financial sector to mobilize sectoral capital from parties with surplus of funds to be channeled to parties who lack or need funds (lack of funds) or invested in various economic sectors that require financing to carry out their business activities. Meanwhile, in the context of escalating technological developments, the role of the financial sector can be seen from the emergence of financial technology (fintech) which in its implementation provides two domains to the public as consumers, namely electronically integrated payment systems (e-payments) and financial services, such as peer to peer lending (P2P lending), equity and securities crowdfunding, microfinancing, e-aggregators, and other

<sup>1</sup> Demirguc-Kunt, Beck (2021). *Finance for All? Policies and Pitfalls in Expanding Access*. Diperoleh dari <https://www.worldbank.org/en/topic/financialsector>.

financial services. To trigger the growth of the real sector, in theory, the financial sector needs several components, namely the monetary system and the system of non-bank financial institutions. The monetary system talks about the banking system organized by commercial banks and rural banks (Bank Perkreditan Rakyat hereinafter referred as to BPR), as well as the monetary authority commanded by Bank Indonesia (hereinafter referred as to BI) as the central bank of the Republic of Indonesia. The system of non-bank financial institutions is represented by several business activities, such as insurance, pawnshops, pension funds, capital markets, and guarantee companies.

The complexity of the financial sector that is so large and has a domino impact on other sectors needs to be followed by the presence of regulations and authorities who will later regulate and supervise. The patronage of regulation and supervision in the financial sector is imaged by two authorities, namely BI and the Financial Services Authority (Otoritas Jasa Keuangan hereinafter referred as to OJK). Initially, BI was authorized to regulate and supervise the financial services sector. However, in accordance with the mandate of Article 34 of Law Number 23 of 1999 concerning Bank Indonesia (hereinafter referred as to Law No. 23/1999), it is mandatory to establish an independent supervisory authority in the financial services sector. To respond to this mandate, OJK was formed based on Law Number 21 of 2011 concerning the Financial Services Authority (hereinafter referred as to Law No. 21/2011). The presence of the OJK Law has implications for the transformation of regulation and supervision in the financial services sector. The regulation and supervision of the banking industry, which was previously implemented by BI, has now shifted to OJK. The regulation and supervision of the non-bank financial services industry and capital market previously carried out by the Capital Market and Financial Institutions Supervisory Agency (Badan Pengawas Pasar Modal dan Lembaga Keuangan hereinafter referred as to Bapepam-LK), has now also shifted to OJK. In addition, regulation and supervision of microfinance institutions are also taken over by OJK. Thus, OJK is the only authority authorized to carry out regulation and supervision in the financial services sector. In the regulatory aspect, from the old order regime to the early reform period, the financial sector in Indonesia is regulated in several regulations that are partial, sectoral, and segmented.<sup>2</sup> This condition often causes several legal problems, such as overlapping regulations, conflicts of norms, and even legal vacuums. These legal issues justify the need for a comprehensive regulation regulating all aspects related to the financial sector.

Finally, on January 13, 2023, the President passed the Bill on the Development and Strengthening of the Financial Sector into Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector (hereinafter referred as to Law No. 4/2023). In relation to the banking industry, there is one normative transformation related to the existence of sharia business units (UUS). Normatively, the definition of UUS is contained in Law Number 21 of 2008 concerning Sharia Banking (hereinafter referred as to Law No. 21/2008) which reads, "Sharia Business Unit, hereinafter referred to as UUS, is a work unit of the head office of a Conventional Commercial Bank that functions as the parent office of an office or unit that carries out business activities based on Sharia Principles, or a work unit in a branch office of a Bank domiciled abroad that carries out business activities conventionally which

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<sup>2</sup> Otoritas Jasa Keuangan (2019). *Buku 1: OJK dan Pengawasan Mikroprudensial*. Diperoleh dari Buku 1 - OJK dan Pengawasan Mikroprudensial.pdf.

functions as the parent office of a sharia sub-branch office and/or sharia unit".<sup>3</sup> In essence, it can be said that UUS is a special part or division within the structure of Conventional Commercial Banks (hereinafter referred as to BUK) which in conducting their business activities uses sharia principles. UUS is present in order to answer the needs of market share in the Islamic banking industry which is oriented towards increasing the volume of sharia financing transactions and financing activities through the issuance of sharia sukuk.

When referring to the Law No. 4/2023, there is a formulation of articles that regulate related to the obligation to transform the UUS into a Sharia Commercial Bank (hereinafter referred as to BUS). This provision can be found in Article 15 of Law No. 4/2023 which changes the normative substance of Article 68 of the Law No. 21/2008. Article 68 of the Law No. 21/2008 regulates the obligation of UUS to transform into BUS, namely by spin-off from its parent bank (BUK). Article a quo provides one condition for a spin-off, namely the value of assets from UUS has reached at least 50% of the total asset value of the parent bank. In contrast to the formulation of Article 15 of the Law No. 4/2023, which in its formulation does not require a minimum amount of asset value. The author considers that the amendment provisions presented by the Law No. 4/2023 are much more moderate. Why is that? When using grammatical and systematic interpretation, the formulation of changes contained in Article 15 of the Law No. 4/2023 does not require absolutely changing the UUS to BUS which is illustrated by the phrase 'after meeting certain requirements set by OJK'. In contrast to the provisions of Article 68 of the Law No. 21/2008 which expressly mandates the obligation for BUK to spin-off its UUS if the value of its assets has reached at least 50% of the total asset value of its parent bank. The Government's goal in requiring a spin-off for UUS to become a BUS is to encourage the growth of the Islamic banking industry which has been targeted by the OJK where the OJK targets the growth of the Islamic banking industry to increase to 15% in 2023. According to the OJK report outlined in the "Sharia Banking Statistics", until January 2023, there are already 13 UUS that have been transformed into BUS, and there are 20 BUS that have not been transformed into BUS.

Legal problems only arise when the norms contained in Article 15 of the Law No. 4/2023 only have practicality, but do not have efficacy. This is because the provisions of Article 15 of the Law a quo have not been followed up by OJK regulations as secondary legislation. In fact, the mandate for the establishment of implementing regulations related to the spin-off mechanism for UUS has been stated in Article 15 paragraph (3) Law No. 4/2023 which resulted in a legal vacuum in the implementing regulation sector. This implementing regulation is important considering that the provisions contained in Article 68 of the Law No. 21/2008 actually haunt the existing UUS in Indonesia. Linear with what was conveyed by Kindy Miftah as Chief Strategy of Young Islamic Banker who stated that the provisions regarding spin-off obligations in the Sharia Banking Law actually create a weak BUS and will be difficult to compete in the national Islamic banking industry.<sup>4</sup> This condition is caused by a condition

<sup>3</sup> Anastasia, dkk. (2023). Urgensi Kewajiban *Spin Off* Pada Unit Usaha Syariah di Era Omnibus Law Sektor Perbankan. *Jurnal Ilmiah Indonesia*, 8(3), 1-13.

<sup>4</sup> Syariahpedia.com (2024, 20 Mei). *Siapakah Bank Syariah Menghadapi Tenggat Spin-Off Tahun 2023?* Diperoleh dari <https://www.syariahpedia.com/2022/04/siapakah-bank-syariah-menghadapi-tenggat.html>.

where the spin-off obligation at UUS actually reduces its profitability performance. As stated by Watchell (2014), spin-offs can give birth to differentiation of investment targets in each business, besides that spin-offs can also cause subsidiary companies to be more focused or oriented in determining corporate and operational strategies, so that the release of new operational strategies will increase the operational burden of subsidiary companies and allow a decrease in profitability.<sup>5</sup>

Profitability performance in economic studies is described through the return on assets (ROA) ratio. Conceptually, ROA describes the capability or ability of a bank to obtain macro profits that are closely correlated with the operational performance of the bank concerned. Referring to the results of data analysis conducted by Atman Poerwokoesoemo using ROA statistical tests, it shows that there is a decrease in the ROA ratio on BUS.<sup>6</sup>

**Table 1.** Statistic Test of Return on Assets Ratio

|     | N  | Mean    | Std. Deviation | Minimum | Maximum |
|-----|----|---------|----------------|---------|---------|
| UU  | 47 | .01223  | .012668        | -.005   | .044    |
| S   |    |         |                |         |         |
| BUS | 48 | -.01436 | .031048        | -.097   | .015    |

| BUS-UUS                |        |
|------------------------|--------|
| Z                      | -4.921 |
| Asymp. Sig. (2-tailed) | .000   |

Source: Secondary Data, 2024 (Edited)

The table above shows significance values reflected in  $0.00 < 0.05$ . This means that the greater the ROA ratio of a bank, the greater the level of profitability of the bank which is characterized by optimizing the use of assets or assets. Judging from the table above, it shows that the mean value of the ROA UUS is much greater than the mean value of the ROA BUS. The calculation shows that there is a decrease in the profitability level of UUS after the spin-off into BUS. At the practical level, the decline in profitability level was experienced by several BUS in Indonesia, such as PT. Bank BNI Syariah, PT. Bank BRI Syariah, PT. Bank BNI Syariah, PT. Bank BJB Syariah, and PT. Bank Bukopin Syariah. In addition to Indonesia, even some banks abroad also experience similar things, such as the Bank of Scotland.<sup>7</sup>

With regard to the originality of the study, the Author identified three journal articles similar to the Author's research. The first study was entitled "Juridical Review of the Readiness of Spin Off Obligations for Sharia Business Units to Become Sharia Commercial Banks" written by Wiwin Muchtar and Iskatrinah from Wijayakusuma Purwokerto University in 2022.<sup>8</sup> The purpose of this study is to determine the impact of spin-offs for UUS when few UUS are overwhelmed in preparing capital to be able to stand alone. The results show that there is a

<sup>5</sup> Karin & Julian. (2018). Pengaruh ROA dan ROE Terhadap Nilai Perusahaan dengan Sustainability Reporting Sebagai Variabel Intervening Pada Perusahaan yang Terdaftar di LQ 45. *Journal of Accounting and Business Studies*, 3 (1), 51.

<sup>6</sup> Agil, dkk. (2020). Pengaruh Return on Assets, Return on Equity, Earning Per Share Dan Price to Book Value Terhadap Harga Saham. *Jurnal Bisnis dan Akuntansi Unsuraya*, 5 (1), 34.

<sup>7</sup> Ilham & Budi. (2022). Konsep Perbankan Syariah Pasca *Spin Off*. *Perspektif Indonesia*. *Notarius*, 15 (1), 470.

<sup>8</sup> Wiwin & Iskatrinah. (2022). Tinjauan Yuridis Terhadap Kesiapan Kewajiban Spin Off Bagi Unit Usaha Syariah (UUS) Menjadi Bank Umum Syariah (BUS). *Wijayakusuma Law Review*, 04 (02), 43-50.

need for re-enrichment of regulations and UUS can optimize the utilization of Third-Party Funds before becoming a BUS. The difference with the author's research, the focus of the author's research is the creation of a feasibility test addressed to UUS before becoming a BUS. Meanwhile, the research conducted by Wiwin and Iskatinah focused on the use of Third-Party Funds as an alternative to UUS capital when it had spin-off. The second study entitled "Increasing Sharia Compliance through the Spin-Off of Sharia Business Units of Conventional Commercial Banks" was written by Khotibul Umam from Gadjah Mada University in 2010.<sup>9</sup> This research focuses on aspects of USS compliance in carrying out regulatory orders in the context of spin-offs. The results showed that the level of compliance is still not optimal because many aspects are considered by the USS, such as capital. The study only focused on the level of obedience, while the author's research focused on the fit test. The third research is entitled "Analysis of Opportunities and Challenges for the Implementation of Sharia Business Unit Spin-Off Obligations into Sharia Commercial Banks (Case Study of PT. BNI Syariah)" written by Ari Andika Putra, et al in 2018.<sup>10</sup> The research aims to determine the opportunities and challenges faced by PT. BNI Syariah when the spin-off became BUS. The results of the study showed that the spin-off process at PT. BNI Syariah is driven by alternative strategies to face increasingly tight business developments. The research focuses on the case study of PT. BNI Syariah, while this research more broadly includes feasibility tests that must be presented.

Based on the background description above, the author identifies several problem formulations as follows: (1) How is the spin-off mechanism regulated in sharia business units in the legal system in Indonesia? and (2) How is the conceptualization of Spin-Off Appropriateness Assessment in order to increase the return on assets ratio in Islamic commercial banks? Based on these legal issues, the author constructed a scientific paper entitled "Spin-Off Appropriateness Assessment: Propriety Test of Sharia Business Unit Spin-Off to Increase Return on Assets".

## 2. Methods

The writing of this scientific paper uses the juridical-normative writing method, where the author identifies and analyse primary legal material as a basis for writing supported by literacy studies sourced from secondary and tertiary legal materials to answer the problems that are used as the object of writing. The approach used, namely: Statutory approach, which is an approach carried out by reviewing laws and regulations related to the implementation of the spin-off of UUS into BUS in the banking sector in Indonesia. The use of a statutory approach so that the author can identify and analyse legal issues contained in the latest provisions of Law No. 4/2023 on the banking sector, especially the spin-off mechanism in the UUS, so that the author can propose solutions as answers to these legal issues. Conceptual approach, which is an approach carried out by examining various concepts and doctrines related to the spin-off of UUS to create maximum return on assets so that the UUS can continue operations when it becomes a BUS. The conceptual approach is also useful as a basis for creating arguments when trying to solve legal problems that occur. The legal materials used

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<sup>9</sup> Khotibul. (2010). Peningkatan Ketaatan Syariah Melalui Pemisahan (*Spin-Off*) Unit Usaha Syariah Bank Umum Konvensional. *Jurnal Mimbar Hukum*, 22 (03), 607-624.

<sup>10</sup> Ari, dkk. (2018). Analisis dan Tantangan Pelaksanaan Kewajiban Spin-Off Unit Usaha Syariah Menjadi Bank Umum Syariah (Studi Kasus PT. BNI Syariah). *Jurnal Pendidikan dan Kebudayaan*, 1-12.

are primary, secondary, and tertiary legal materials.<sup>11</sup>The search technique used is a literature study, and the analysis technique used is a descriptive method, the author explains the stages and methods of interpretation related to legal materials and analytical methods which then obtain solutions to problems arising related to the spin-off mechanism in UUS which then transforms into BUS.

### 3. Results and Discussion

#### 3.1. Regulation of Spin-Off Mechanism in Sharia Business Units in the Legal System in Indonesia

In developing a company, not only mergers, consolidations, and acquisitions can be applied. In essence, spin-offs can also be used as a means of restructuring the company by restructuring the company's management system, including capital management and management, so that the company can become healthier. Legally, spin-offs in Indonesia are based on several rules, namely Law No. 40/2007 which can be found in the Law No. 4/2023. Meanwhile, activities covering the scope of Islamic banking began with the issuance of Law No. 21/2008 which mandated UUS to carry out spin-offs firmly and clearly. The mandate is contained in Article 68 paragraph (1) of the Law No. 21/2008. The main objective is to provide guarantees for the implementation of sharia principles so that there is no mixing between the company, directors, and capital so that the substance of the UUPS can be applied properly.

Spin-off is a step that is often applied by a company in its business development. According to Merriam Webster, a spin-off is a distribution of certain assets to its shareholders.<sup>12</sup> Spin-off can also be interpreted as a separation between a subsidiary and the parent company that houses it. The concrete result of the spin-off is the formation of a new company whose management is carried out independently of the parent company. This is also what happened in the spin-off of UUS into BUS. In relation to banking, there is one normative transformation related to the existence of UUS. When referring to the Law No. 4/2023, there is a formulation of articles that regulate the obligation to change the UUS to BUS. The government's policy in requiring a spin-off for UUS to become a BUS aims to encourage the growth of the Islamic banking industry that has been targeted by OJK. This provision can be seen in Article 15 of the Law No. 4/2023 which changes the substance of Article 68 of the Law No. 21/2008. Changes in the formulation of Article 68 of the Law No. 21/2008 in the Law No. 4/2023 can be seen as follows.

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<sup>11</sup> Deassy, J. A. (2023). *Metode Penelitian Hukum*. Bandung: Penerbit Widina.

<sup>12</sup> Ramadhani, N. 2022. *Kenali Perbedaan Spin-off dan Split Off*. Jakarta. <https://www.akseleran.co.id/blog/spin-off-adalah/>.

**Table 2.** Changes in the Provisions for the Transformation of UUS into BUS  
**Transformation UUS to BUS**

| Law No. 21/2008   | Law No. 4/2023   |
|---|--|
| <p data-bbox="496 367 612 398">Pasal 68</p> <p data-bbox="496 400 612 432">Article 68</p> <ol data-bbox="336 434 810 1570" style="list-style-type: none"> <li data-bbox="336 434 810 1104">1. <i>Dalam hal Bank Umum Konvensional memiliki UUS yang nilai asetnya telah mencapai paling sedikit 50% (lima puluh %) dari total nilai aset bank induknya atau 15 (lima belas) tahun sejak berlakunya Undang-Undang ini, maka Bank Umum Konvensional dimaksud wajib melakukan Pemisahan UUS tersebut menjadi Bank Umum Syariah.</i><br/>           In the event that a Conventional Commercial Bank has a UUS whose asset value has reached at least 50% (fifty%) of the total asset value of its parent bank or 15 (fifteen) years from the enactment of this Law, the said Conventional Commercial Bank is obliged to separate the UUS into a Sharia Commercial Bank.</li> <li data-bbox="336 1144 810 1570">2. <i>Ketentuan lebih lanjut mengenai Pemisahan dan sanksi bagi Bank Umum Konvensional yang tidak melakukan Pemisahan sebagaimana dimaksud pada ayat (1) diatur dengan Peraturan Bank Indonesia.</i><br/>           Further provisions regarding Separation and sanctions for Conventional Commercial Banks that do not carry out Separation as referred to in paragraph (1) are regulated by <b>Bank Indonesia Regulations.</b></li> </ol> | <p data-bbox="1054 367 1155 398">Pasal 15</p> <p data-bbox="1054 400 1171 432">Article 15</p> <ol data-bbox="895 434 1369 2022" style="list-style-type: none"> <li data-bbox="895 434 1369 981">1. <i>Dalam hal Bank Umum Konvensional memiliki UUS, setelah memenuhi persyaratan tertentu yang ditetapkan oleh Otoritas Jasa Keuangan, Bank Umum Konvensional dimaksud wajib melakukan Pemisahan UUS tersebut menjadi Bank Umum Syariah.</i><br/>           In the event that a Conventional Commercial Bank has a UUS, <b>after meeting certain requirements set by the Financial Services Authority, the said Conventional Commercial Bank is obliged to separate the UUS into a Sharia Commercial Bank.</b></li> <li data-bbox="895 1144 1369 1529">2. <i>Selain persyaratan sebagaimana dimaksud pada ayat (1), Otoritas Jasa Keuangan dapat meminta Pemisahan UUS menjadi Bank Umum Syariah dalam rangka konsolidasi Perbankan Syariah.</i><br/>           In addition to the requirements referred to in paragraph (1), the Financial Services Authority may request the Separation of UUS into Sharia Commercial Banks <b>in the context of consolidating Islamic Banking.</b></li> <li data-bbox="895 1570 1369 2022">3. <i>Ketentuan lebih lanjut mengenai Pemisahan dan konsolidasi, serta sanksi bagi Bank Umum Konvensional yang tidak melakukan Pemisahan sebagaimana dimaksud pada ayat (1) dan ayat (2) diatur dalam Peraturan Otoritas Jasa Keuangan setelah dikonsultasikan dengan DPR.</i><br/>           Further provisions regarding Separation and consolidation, as well as sanctions for Conventional Commercial Banks that do not carry out Separation as referred to in paragraph (1) and paragraph (2)</li> </ol> |

are regulated in the **Financial Services Authority Regulation** after consultation with the DPR.

4. *Peraturan Otoritas Jasa Keuangan sebagaimana dimaksud pada ayat (3) harus ditetapkan dalam jangka waktu paling lambat 6 (enam) bulan terhitung sejak Undang-Undang ini diundangkan.*

The Financial Services Authority Regulation as referred to in paragraph (3) must be determined within a period of no later than 6 (six) months from the promulgation of this Law.

Source: Primary Data, 2024 (Edited)

Regulations related to the obligation to transform UUS to BUS through a spin-off mechanism have normatively been regulated in the Sharia Banking Law. However, the author considers that the amendment provisions presented by the Law No. 4/2023 are much more moderate. When viewed using grammatical and systematic interpretation, the formulation of changes contained in Article 15 of the Law No. 4/2023 does not require absolutely changing the UUS to BUS referring to the phrase 'after fulfilling certain requirements set by OJK'. This is different from the provisions of Article 68 of the Law No. 21/2008 which expressly mandates the obligation for BUK to spin-off its UUS if the value of its assets has reached at least 50% of the total asset value of its parent bank.

With the spin-off, UUS will transform into a stand-alone BUS and have independent directors in all decision-making and management of the company. The implementation of this spin-off will certainly change several things in the company's system. The workload that must be borne by BUS legally will certainly be different from the pre-existing UUS. The sharia-oriented BUS principle also brings several changes in terms, rights, and obligations in the implementation of work when compared to BUK which are oriented towards conventional principles. The spin-off rules in Bank Indonesia Regulation (Peraturan Bank Indonesia hereinafter referred as to PBI) Number 11/10/PBI/2009 concerning Sharia Business Units and in Bank Indonesia Circular Letter (Surat Edaran Bank Indonesia hereinafter referred as to SEBI) Number 11/28/Dpbs on October 5, 2009 are a form of Bank Indonesia's support for this program. The execution of the spin-off can be carried out by the board of directors with the approval of the shareholders. This separation decision was made in the forum of the General Meeting of Shareholders (Rapat Umum Pemegang Saham hereinafter referred as to RUPS). If there is a disagreement between the board of directors and creditors, the resolution can be re-consulted by the board of directors to the creditors and discussed again at the RUPS.

The total capital of UUS becomes the basis of the output of the bank that carries out the spin-off. Therefore, in implementing the spin-off by UUS in Indonesia, there are several strategies that need to be considered including: (1) Good reach direction and target market of BUS in order to improve operational capabilities, (2) Cost efficiency by BUS by implementing mechanisms and easy measurement of resources for banks and employees, (3) Coordinated by OJK to obtain support from the government, and (4) utilization of the pace of bank



consolidation while still enforcing capital regulations. In Indonesia, Alif and Dewanti are of the view that the determining variable of increasing the target market of Islamic insurance has not been seen through a spin-off strategy. This is certainly very unfortunate, because the spin-off policy is very strategic for the improvement of derivative products in the insurance and financial sectors. The independence reflected in the spin-off policy should be able to improve the sharia insurance sector with high prospects, even though it is still classified as one of the new industries.

In its implementation, the spin-off caused several changes in the relationship between UUS and BUK. Prior to the spin-off, BUK as a whole bore the cost of opening UUS so UUS continued to rely on funds from BUK as its parent bank. However, after the spin-off UUS which has changed to BUS becomes independent and independent so that all types of financing are borne by BUS itself. As a result, after the spin-off, the BUS must prepare funds to finance all its own needs in order to survive. Employee recruitment and company relations are also things that BUS must bear independently without the help of BUK. These post-spin-off obligations can be seen as quite burdensome for BUS because they have to bear various things independently.

The spin-off of UUS into BUS itself can be done in two ways, the first by establishing a new BUS or by transferring the rights and obligations of UUS to an existing BUS.<sup>13</sup> Further provisions and details regarding spin-offs including sanctions for BUK that do not spin-off are contained in Bank Indonesia Regulations. PBI Number 11//10/PBI/2009 concerning Sharia Business Units stipulates that it is necessary to apply for a business license to Bank Indonesia if BUK wants to open a UUS. The business license application submitted by BUK must include a draft budget amendment at least containing the UUS's business activities and identity as well as supporting documents regarding the directors and officers who will be responsible for the UUS, the last of which contains a feasibility study of market opportunities and UUS's business plan to the medium term. Candidates for members of the board of directors must be competent and committed and undergo a series of selections conducted by BI. UUS is also required to have a Sharia Supervisory Board with a maximum number of three people. UUS owned by BUK must have a working capital of at least IDR. 100,000,000,000.00 in order to operate. Then over time, UUS which has started operating with the value of UUS assets has reached 50% of the total asset value of its parent BUK is given a deadline of fifteen years since the law takes effect to spin-off.<sup>14</sup>

Reviewing existing regulations, consideration of various aspects is needed in the process of spin-off UUS into BUS. The first thing to consider is the readiness of the party who will be responsible for running the business. The selection of competent directors is very time-consuming and the selection process is not easy and needs to involve various stakeholders. In addition, a business plan is also needed at least until the medium term in which careful calculations are needed. In other words, the spin-off regulation in the Sharia Banking Law is

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<sup>13</sup> Rasyid, A. (2018). *Spin-Off Unit Usaha Syariah Bank Umum Konvensional*. Jakarta. <https://business-law.binus.ac.id/2016/03/28/spin-off-unit-usaha-syariah-bank-umum-konvensional/>.

<sup>14</sup> Desyi, dkk. (2022). Analisis *Return on Asset (ROA)*, *Return on Equity (ROE)* dan *Corporate Social Responsibility (CSR)* yang mempengaruhi Nilai Perusahaan pada Perusahaan Manufaktur. *Jurnal Akuntansi dan Manajemen (JAM)*, 19 (1), 4.

not only burdensome in terms of requirements, but also has a post-implementation impact. It takes a lot of initial capital and must independently survive after the spin-off. In addition, with the mandatory spin-off, many new banks will emerge that can cause fierce competition. This makes it more difficult for new BUS whose prestige is still lacking to survive in the midst of many BUS that have already been present and known in the community.

Although the government's goal with the spin-off is as a form of consolidation of the Islamic banking sector, the reality on the ground does not always run smoothly. This was proven by what happened in early 2010 when Bank BCA Syariah decided to spin-off from its parent company, PT. BCA, Tbk. After the spin-off, it can be seen that Bank BCA Syariah's performance has decreased as seen from the declining ROA value. Before the spin-off, the ROA value ranged from 3.4-3.8%, but decreased to touch 0.8-1.0% after the spin-off. Meanwhile, since the passing of the Law No. 4/2023, the regulation regarding the spin-off mechanism of UUS into BUS automatically moved.<sup>15</sup> According to the Law No. 4/2023, the separation of UUS into BUS is carried out if it meets certain conditions, besides that it can also be requested by the Financial Services Authority as a form of Islamic banking consolidation. However, there are legal problems that arise because Article 15 of the Law No. 4/2023 does not have efficacy. This is because until now OJK regulations have not been ratified as implementing regulations governing the spin-off mechanism for UUS as mandated in Article 15 paragraph (3) of the Law No. 4/2023. This also causes until now there is a legal vacuum where there are no specific provisions governing the spin-off mechanism. The absence of implementing rules for the spin-off mechanism is vital because a model for testing the appropriateness of the spin-off implementation is needed. The appropriateness testing model aims to make the BUS generated from the spin-off mechanism a BUS that is ready independently to carry out its business processes. Another purpose of forming this appropriateness testing model is so that BUS can maintain profitability performance as measured by the return on assets ratio so that the possibility of BUS collapsing will be avoided.

### 3.2. Conceptualization of Spin-Off Appropriateness Assessment in order to Increase Return on Assets Ratio at Sharia Commercial Banks

The existence of a spin-off mechanism that is required of UUS raises several long-term problems that will affect the business continuity aspect of UUS when it becomes a BUS. This aspect of business continuity is reflected in the level of business efficiency. The level of business efficiency in the banking world is classified into three types, namely profit efficiency, cost efficiency, and revenue efficiency.<sup>16</sup> The three types of efficiency are based on capital penetration whose output will determine the size or size of the profitability performance of a bank. Capital penetration is a big concern considering that UUS has carried out an automatic spin-off mechanism regardless of BUK as its parent bank. This means that, legally, BUS is a stand-alone legal entity and does not have a structural relationship with its parent bank. When UUS has become a BUS, costs that were previously borne by BUK, such as bills, administrative costs, and technology costs are transferred to the responsibility of BUS. Therefore, a testing

<sup>15</sup> Arian, dkk. (2019). Perkembangan Perbankan Syariah Sebelum dan Sesudah Spin-off. *Tafaqquh Jurnal Hukum Ekonomi dan Akhwal Syahsiah*, 4(1), 78-110.

<sup>16</sup> Khotibul. (2020). Pemisahan UUS BUK dan Implikasinya Terhadap Hubungan Antara Entitas Konvensional dan Syariah. *Jurnal Hukum Ekonomi Islam*, 4 (1), 42-43.

mechanism is needed that will assess whether a UUS is appropriate to carry out a spin-off mechanism or not. The mechanism must later be regulated in detail and comprehensively in a technical regulation in the form of Financial Services Authority Regulation (Peraturan Otoritas Jasa Keuangan hereinafter referred as to POJK). To answer this problem, the author then conceptualizes Spin-Off Appropriateness Assessment (SAA).

SAA is important to implement considering that UUS which has become a BUS often experiences a decrease in profitability levels which leads to collapse. This is because UUS has done a spin-off, so UUS will not depend on BUK as its parent company. The spin-off mechanism cannot only be based on core capital ownership, but there are other variables that will show the appropriateness of carrying out a spin-off on a UUS. At least there needs to be identification of Non-Performing Loans to test the level of credit health of BUK as the parent company of UUS. If the credit health level of BUK is low, it will also affect the health level of UUS. In addition, it is necessary to map capital sources so that later BUS will get a standardized financing model to maintain the solvency level of its company. If the solvency level is low, then the BUS in question also has the potential to collapse.

SAA is a process reliability testing system and business model of UUS that includes assessment of health, capital posture, and risk management. The idea of SAA was motivated by the decline in the ROA ratio experienced by BUS after being subjected to a spin-off mechanism by BUK as its parent bank. The decline in the ROA ratio indicates that the profitability performance of BUS is not progressing and actually endangers the business continuity of the BUS. Therefore, SAA is present in order to answer these problems based on several objectives, including:<sup>17</sup>

- a. SAA aims to assess the reliability of the processes and business model of UUS before conducting a spin-off mechanism;
- b. SAA aims to assess the working capital capability of UUS before conducting a spin-off mechanism;
- c. SAA aims to improve the profitability performance of the BUS after conducting a spin-off mechanism;
- d. SAA aims to increase competitiveness for BUS in the banking market and capital market; and
- e. SAA aims to improve service quality and innovation in the form of diversity or variety of products from BUS.

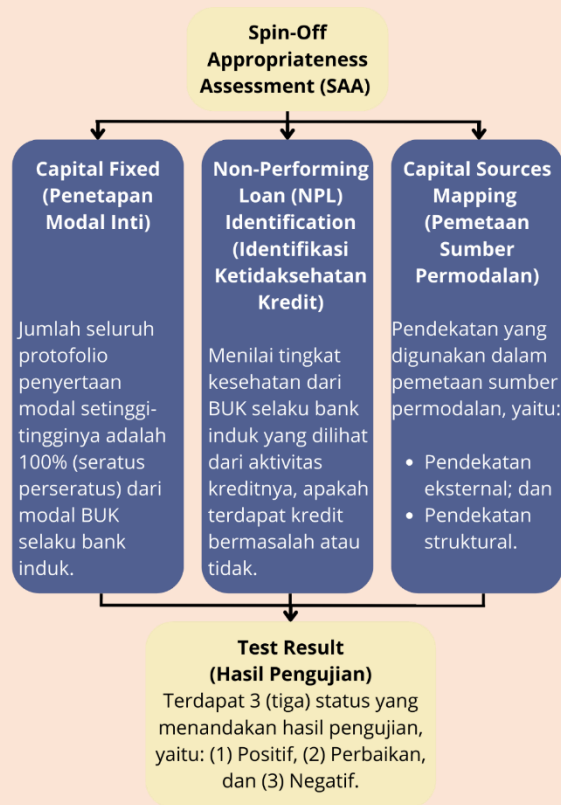
The implementation of SAA is based on several principles in the banking world, both conventional and sharia principles, namely: (1) Prudential banking principle. The SAA mechanism will make BUK more careful to spin-off with its UUS. SAA will provide standardization related to equity procedures that will determine and guarantee the competitiveness of UUS when it becomes a BUS. (2) Going concern principle. The SAA mechanism provides several alternative capitals that can later become options for BUS to carry out its business activities. (3) Fiduciary principle. The SAA mechanism will indirectly maintain and even improve the quality of service and product innovation from BUS, so that the level of trust from customers before and after the spin-off can be maintained or increased. (4) The

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<sup>17</sup> Rendi. (2019). Analisis Perkembangan *Return on Assets* (Roa) dan *Return on Equity* (Roe) Untuk Mengukur Kinerja Keuangan. *Jurnal Ilmu Manajemen*, 9 (1), 42.

principle of mudharabah (profit sharing). The SAA mechanism allows BUS to cooperate with third parties in order to strengthen the foundation and capital structure, of course, by sharing profits in accordance with the initial agreement. (5) The principle of transparency. OJK as the organizer of SAA will be transparent in opening reliability assessment reports to third parties who want to help capital from BUS.

Chart 1. Spin-Off Appropriateness Assessment (SAA)



Source: Author Creation, 2024

The SAA mechanism consists of three main components, namely capital fixed, Non-Performing Loan (NPL) identification, and capital sources mapping.

1) Capital Fixed

In determining core capital, it is necessary to apply the precautionary principle. Core capital is represented by the value of assets owned by UUS which is independent of the total asset value of BUK as its parent bank. The value of these assets is of course also influenced by capital participation. In the provisions of the Sharia Banking Law, the minimum amount of assets that must be owned by UUS is 50% of the total value of assets owned by BUK, and the highest amount of the entire capital participation portfolio is 25% of BUK's capital. However, the maximum limit of capital participation is considered too low. If UUS has equity of IDR 2 trillion, then subject to capital participation of 25%, then the core capital owned by UUS when subjected to the spin-off mechanism is IDR 500 billion. This figure is not enough to support the resilience and competitiveness of BUS in the banking market and capital market in the future. Therefore, to encourage the

acceleration of BUS, it is necessary to reformulate the maximum limit of capital participation to 100%. So, the core capital held by BUK will be much more rational, both for business activities and paying bills to third parties.<sup>18</sup>

## 2) Non-Performing Loan (NPL)

One of the crucial indicators in determining whether or not the solvency of a bank is the NPL. NPL is a ratio that shows the level of non-current or unhealthy credit run by BUK. In other words, NPL is an indication of problems in the financial institution concerned. NPLs have a negative impact on BUK's solvency because it will reduce BUK's capital and if left unchecked, it has the potential to have a negative impact on future lending. The identification of NPL in BUK is very important, because the high NPL ratio can cause several problems that will directly befall UUS when it becomes a BUS, namely: (1) liquidity problems, namely conditions where the bank is no longer able to pay off all its obligations or dependents; (2) profitability problems, namely conditions where credit that has been distributed to borrower customers cannot return to the bank's treasury; (3) solvency problems, namely conditions where the capital owned by the bank decreases, so that it can trigger the occurrence of balance sheet insolvency which leads to bankruptcy. The SSA mechanism will also consider the NPL ratio attached to BUK before later conducting a spin-off mechanism to UUS.

## 3) Capital Sources Mapping

Mapping capital sources is important that must be prepared for UUS before carrying out the spin-off mechanism. It is important considering that UUS which has become BUS will stand alone as a legal entity, meaning that BUS will no longer receive capital injections from BUK as its parent bank. This makes BUS must be able to map and determine what can be a source of capital for them, because if they only rely on core capital, the business continuity of BUS will not be guaranteed. In the SAA mechanism, there are two approaches in mapping and determining the source of capital for BUS, namely the external approach and the structural approach. Capital sources based on external approaches can come from third party funds (Dana Pihak Ketiga hereinafter referred as to DPK). DPK is a collection of funds originating from the wider community, both in the form of deposits, current accounts, savings, time deposits, and certificates of deposit. Meanwhile, the source of capital based on the structural approach is the policy of the government and funds from other financial institutions. The provision of tax incentives from the government to BUS that has just carried out a spin-off mechanism can help the transition period from BUS which often has limitations in capital. In addition, the government also has the initiative right to apply for a credit program owned by BI, namely Bank Indonesia Liquidity Credit (Kredit Likuiditas Bank Indonesia hereinafter referred as to KLBI). This credit program has advantages in the form of low interest rates or subsidies.

Regarding its implementation, SAA is described through several stages, namely the registration stage, the appropriating stage, the recommendation stage, and the monitoring stage. The implementation scheme is illustrated as follows.

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<sup>18</sup> Mulyani, Jamilah. (2022). Implementasi Manajemen Dana Pada Bank Syariah. *Jurnal Perbankan Syariah*, 3 (1), 43-44.

**Chart 2.** Spin-Off Appropriateness Assessment Stages

Source: Author Creation, 2024

The description of the stages of the chart schema above is as follows.

1) Registration

For BUK and UUS who want to spin-off, they must make a written request to OJK. The application is also accompanied by supporting documents, such as: (1) Financial statements of BUK and UUS; (2) audit reports on the company's assets; (3) a report on the results of the BUK hearing with UUS; and (4) UUS capital source report. The four documents are cumulative, meaning that if there is one document that is not attached by BUK and UUS, the application will be rejected by OJK because it does not meet the formal requirements.

2) Appropriating

At this stage, all documents that have been attached by BUK and UUS will be verified by OJK. The document verification process by OJK is divided into two stages, namely internal verification and hearing. At the internal verification stage, OJK will conduct an internal inspection of the documents that have been attached. OJK will provide several notes which will later be submitted at the hearing stage. At the hearing stage, OJK will hold a meeting with BUK and UUS to reconfirm the previously attached documents. This hearing stage will produce three statuses, namely positive, correct, and negative status. A positive status indicates that the application for the spin-off mechanism has been approved by OJK based on the results of consideration with BUK and UUS. The status of improvement indicates that there are incorrect calculations in the company's financial statements and internal audit reports. If there is an error in recording the report, OJK can ask the parties to correct it first. A negative status indicates that OJK has not approved the spin-off mechanism. There are several factors that can cause negative status, such as the amount of UUS asset value that is not yet at 50% of the total value of BUK assets, manipulation in making documents, and the absence of capital sources (other than core capital) from UUS.

3) Recommendation

After the submission gets a positive status, OJK makes a written recommendation to BUK and UUS to carry out a spin-off mechanism. The written recommendation must be given to BUK and UUS a maximum of 30 days after a positive status statement from the feasibility test results.

4) Monitoring

After the UUS conducts a spin-off mechanism and its status changes to BUS, OJK will conduct short-term monitoring. This short-term supervision is carried out by OJK in order to assess whether there are obstacles to BUS in carrying out business activities related to its financial condition. If OJK considers that BUS can stand alone, both in its competition in the banking market and capital market, OJK will stop its short-term supervision. Short-

term supervision is carried out by OJK for one to two years since BUS gets legal entity status.

OJK will be fully responsible from the registration stage to the supervision stage in the SAA mechanism. OJK will also collaborate with BI in the context of mapping capital sources. If in the end the solvency level of the BUS depreciates, then the OJK can submit a recommendation to BI for the distribution of liquidity to the BUS concerned. BI as the holder of the role of lender of the last resort, is allowed to provide liquidity to banks that are categorized as systemic banks, namely banks that due to the size of assets, capital, and liabilities; the breadth of the network or complexity of transactions for banking services; as well as the relationship with other financial sectors which, if disrupted or failed, can result in the failure of other banks or the financial services sector, both operationally and financially. In addition, through this SAA, shareholders will find it easier to make decisions whether the shares planted in BUS will depreciate or not. The reason is, if BUS is threatened with collapse, surely shareholders will flock to sell their shares even though the value of the shares has depreciated. This will certainly be very detrimental to shareholders.

This SAA conceptualization is expected to prevent a decline in profitability performance of BUS resulting from the weak financial condition of BUS due to liquidity, profitability, or solvency. Through this mechanism, it is expected to accelerate the Islamic banking industry in order to realize its objectives, namely increasing the volume of sharia financing transactions and financing activities through the issuance of sharia sukuk. Arrangements regarding SAA will be regulated by POJK and technical provisions will be further regulated by Financial Services Authority Circular Letter (Surat Edaran Otoritas Jasa Keuangan hereinafter referred as to SEOJK). The accommodation of the SAA mechanism in both forms of rules will provide standardization related to the procedure for implementing spin-offs which certainly pays attention to economic aspects, both from BUK and from UUS or BUS, so that no party feels disadvantaged from the obligations of the spin-off mechanism.

#### 4. Conclusions

The obligation of UUS to spin-off into BUS has been normatively regulated in the Sharia Banking Law. According to the Law a quo, if the value of UUS assets has reached at least 50% of the total asset value of BUK as its parent bank. The Government's goal in requiring a spin-off for UUS to become a BUS is to encourage the growth of the Islamic banking industry which has been targeted by OJK where OJK targets the growth of the Islamic banking industry to increase to 15% in 2023. However, after the promulgation of the Law No. 4/2023, the regulation of the spin-off mechanism for UUS underwent a revolutionary transformation. The spin-off mechanism arrangement in the Law No. 4/2023 does not require absolutely changing the UUS to BUS as illustrated by the phrase 'after meeting certain requirements set by OJK'. Legal problems only arise when the norms contained in Article 15 of the Law No. 4/2023 only have practicality, but do not have usefulness (efficacy). This is because the provisions of Article 15 of the Law a quo have not been followed up by OJK regulations as secondary legislation. In fact, the mandate for the establishment of implementing regulations related to the spin-off mechanism for UUS has been stated in Article 15 paragraph (3) of the Law No. 4/2023 which resulted in a legal vacuum in the implementing regulation sector. This implementing

regulation is important considering that the provisions contained in Article 68 of the Law No. 21/2008 actually haunt the existing UUS in Indonesia.

To answer this problem, the author conceptualizes SAA. SAA is a process reliability testing system and business model of UUS that includes assessment of health, capital posture, and risk management. The idea of SAA was motivated by the decline in the ROA ratio experienced by BUS after being subjected to a spin-off mechanism by BUK as its parent bank. The decline in the ROA ratio indicates that the profitability performance of BUS is not progressing and actually endangers the business continuity of the BUS. The SAA mechanism consists of three main components, namely capital fixed, non-performing loan identification, and capital sources mapping. Core capital is represented by the value of assets owned by UUS which is independent of the total asset value of BUK as its parent bank. The value of these assets is of course also influenced by capital participation. To encourage the acceleration of BUS, it is necessary to reformulate the maximum limit of capital participation to 100%. So, the core capital held by BUK will be much more rational, both for business activities and paying bills to third parties. Then, one of the crucial indicators in determining whether or not the solvency of a bank is NPL. NPL is a ratio that shows the level of non-current or unhealthy credit run by BUK. Therefore, identification of credit health needs to be done before the spin-off mechanism. Not only that, mapping capital sources is important that must be prepared for UUS before carrying out the spin-off mechanism. It is important considering that UUS which has become BUS will stand alone as a legal entity, meaning that BUS will no longer receive capital injections from BUK as its parent bank. This makes BUS must be able to map and determine what can be a source of capital for them, because if they only rely on core capital, the business continuity of BUS will not be guaranteed. Regarding its implementation, SAA is described through several stages, namely the registration stage, the appropriating stage, the recommendation stage, and the monitoring stage.

## 5. Acknowledgments

The author expresses gratitude to the Faculty of Law at Universitas Brawijaya for enabling the completion of the article titled "Spin-Off Appropriateness Assessment: Propriety Test of Sharia Business Unit Spin-Off to Increase Return on Assets".

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