

Role of Financial Service Authorities on Legal Protection of The Sharia Banks Customers in Indonesia

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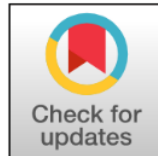
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Role of Financial Service Authorities on Legal Protection of The Sharia Banks Customers in Indonesia

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Abstract

Sharia Bank is a bank that runs its business activities based on sharia principles, in the collection of funds and the distribution of funds, in order to serve the needs of society and improve the standard of living of the people. Various banking problems, such as not yet optimal protection of consumer financial services (bank customers), therefore it is necessary to supervise the operational banking activities. The purpose of bank supervision is to protect the interest of the savers who entrust their funds to the bank. Based in Law Number 21 of 2011 on the Authority of Financial Services, the arrangement and supervision of financial institutions becomes the authority of the Financial Services Authority. This supervision is also applied to banks with sharia principles. In this paper will discuss the Financial Services Authority oversight in the application of the principle of legal protection for customers in sharia banks.

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Introduction

Banking as one of the financial institutions plays an important role in the success of national development programs in order to achieve income equity, create economic growth, and maintain national stability towards improving the welfare of the people. Banking as a business-oriented financial institution, its main activity is collecting funds from the public in the form of savings and channeling it to the community in the form of credit and or other forms in order to improve the standard of living of many people.

Sharia Bank as one of the banking system in Indonesia, runs its business activities based on Sharia Principles and according to its type consists of Sharia Commercial Bank and Sharia Financing Bank. In an effort to protect the customers and ensure the funds of depositors, Sharia Banking in conducting its business activities based on Sharia Principles, economic democracy, and prudential principles.

The emergence of cross-sectoral problems in the financial services sector, which includes moral hazard, lack of owner integrity and low competence of bank managers, so that the business activities of banks are no longer managed in a healthy manner, even used for the personal interests of the owners, managers and others; globalization of the financial services industry; not yet optimal protection of consumer financial services (bank customers), and disruption of financial system stability, for it needs to be supervised on the operations of banking activities. With the enactment of Law Number 21 of 2011 on the Financial Services Authority, supervision of financial institutions is conducted by the Financial Services Authority.

The Financial Services Authority carries out regulatory and supervisory duties on the activities of financial services, inter alia carrying out supervision, examination, investigation, consumer protection, and other actions against financial services institutions, actors, and / or supporting financial services activities as referred to in legislation in financial services sector, including licensing authority to financial services institutions.

The transfer of regulatory and oversight functions of financial institutions to the Financial Services Authority still creates doubts and concerns, in relation to the effectiveness of oversight through the Financial Services Authority. This supervision is also applied to the Sharia Bank, which of course there is a character difference between sharia banks and conventional banks. Based on this, the authors will review the supervision of the application of the principle of legal protection for depositors of funds in Sharia banks by the Financial Services Authority.

Research Method

The research method used in this research is qualitative-legal research method. In qualitative legal empirical research that analyzes the supervision of the application of the principle of legal protection for depositors in syariah bank by the Financial Services Authority, which examines the work of law (law in action) in the community, using statutory approaches, conceptual approaches, and socio- legal approaches. The conclusion is made by legal reasoning process.

Result and Discussion

According to Article 1 number 15 of Law Number 21 Year 2011 regarding the Financial Services Authority and Article 1 number 2 POJK Number 1 / POJK.07 / 2013, the so-called consumers are:

The parties placing their funds and / or utilizing the services available at the Financial Services Institution include the customers of the Banking, Capital Market investors, Insurance policyholders and participants of the Pension Fund, under the laws and regulations of the financial services sector.

According to Article 1 number 1, Law Number 8 Year 1999 on Consumer Protection states: "Consumer protection is any effort that ensures legal certainty to provide protection to consumers". Definition of Consumer Protection in the

Regulation of the Financial Services Authority Number 1 / POJK.07 / 2013 is : "Consumer protection with the behavioral coverage of Business Service Actors".

The essence of legal protection is to protect the interests of depositors and depositors in a bank, as well as the risk of losses that befall them. Legal protection is also an effort to maintain and maintain the trust of the community, especially the customers ".¹

The Indonesian banking system provides protection to depositors through 2 (two) ways, namely:²

Implicit Deposit Protection

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It is a protection produced by effective bank supervision and coaching that can prevent bankruptcy of the bank. This protection is obtained through: (a) banking laws and regulations, (b) the protection produced by effective supervisors and coaching, conducted by Bank Indonesia, (c) efforts to maintain the continuity of the bank's business as an institution in particular, and protection of the banking system in general, (d) maintain the soundness of banks;) conducting business in accordance with the precautionary principle, (f) the manner of lending that is not detrimental to the bank and the interests of the customer, and (g) providing risk information to the customer.

Explicit Deposit Protection

That is protection through the establishment of an institution that guarantees public savings, so that if the bank fails, the institution will replace the public funds stored in the bank that failed. This protection is obtained through the establishment of an institution that guarantees public savings, as stipulated in Presidential Decree No. RI. 26 of 1998 on Guarantee Against Obligations of Commercial Banks.

Consumer Protection in the Financial Services sector aims to create a reliable Consumer protection system, enhance consumer empowerment, and raise awareness of Business Service Providers regarding the importance of consumer protection so as to increase public confidence in the financial services sector.

The Financial Services Authority is established with the aim that the overall financial services activities in the financial services sector are organized on a regular, fair, transparent and accountable basis, and are capable of realizing a sustainable, stable financial system that protects the interests of customers and

¹ Mahesa Jati Kusuma, *Hukum Perlindungan Nasabah Bank*, (Bandung, Nusamedia, 2012), 56.

² Adrian Sutedi, *Hukum Perbankan Suatu Tinjauan Pencucian Uang, Merger, Likuidasi, dan Kepailitan*, (Jakarta, Sinar Grafika, 2007), 157-158.

society, the existence of an integrated regulatory and supervisory system for all activities within the financial services sector.

As regulated in Article 8 letter b of the Financial Services Authority Act on the authority of the Financial Services Authority is to stipulate regulations in the financial services sector. One of the manifestations of the government's alignment in balancing the consumers and business actors is by issuing the Financial Services Authority Regulation Number 1 / POJK.07 / 2013 on Consumer Protection of Financial Services Sector.

As a rule of conduct of the Financial Services Authority Regulation, the Financial Services Authority issues two Circular Letters related to education and consumer protection, namely: Circular Letter of the Financial Services Authority, Number 1 / SE OJK.07 / 2014 on the Implementation of Education in Order to Increase Literacy Finance to Consumer or the Community and Circular Letter of the Financial Services Authority Number 2 / SE OJK.07 / 2014 concerning Service and Completion of Consumer Complaint to Business Service Persons.

In addition to the regulatory functions, the Financial Services Authority, also has the authority to exercise oversight of financial institutions. The essence of supervision is to prevent as early as possible irregularities, waste, deviations, obstacles, errors and failures in the achievement of objectives and targets and the implementation of organizational tasks.³

Banking supervision is a continuous concept starting from the establishment of the bank until the liquidation of a bank. Sulistyandari, interpreted that banking supervision had to be done since a bank applied for a permit for certain institutional and business activities from the bank until the liquidation of a meaningful bank up to the revocation of a bank license as sanction against a bank that did not comply with banking rules and did not implement the principle prudence".⁴

³Muchsan, *Sistem Pengawasan Terhadap Perbuatan Aparat Pemerintah dan Peradilan Tata Usaha Negara di Indonesia*, (Yogyakarta, Liberty, 2007), 38.

⁴Sulistyandari, *Perlindungan Hukum Terhadap Nasabah Penyimpan Melalui Pengawasan Perbankan di Indonesia*, (Sidoarjo, Laros, 2012), 37.

The function of financial sector supervision in general can be classified into 3 (three) matrices:⁵

1. Macro-prudential supervision; aimed at limiting the financial crisis that could devastate the economy in real terms-focusing on the consequences of systematic institutional acts of financial markets, among others by informing the public authorities and the financial industry in the event of potential imbalances in a number of financial institutions as well as assessing the potential impact of financial institution failures to the stability of a country's financial system.
2. Micro-Prudential Supervision; aims to maintain the health of financial institutions individually. Regulators establish prudential and supervisory rules through two approaches: off-site analysis and on-site visit to assess the performance and risk profile and compliance of financial institutions against applicable

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- regulations .
3. Conduct of Business Supervision; emphasizes the safety of consumers as clients for cheating and injustice that may occur.

The basic functions of regulatory and supervisory agencies are:

1. Prudential regulation for the security and health of financial institutions;
2. Stability and integrity of the payment system;
3. Prudential supervision of financial institutions;
4. Management of business regulations, such as regulations on how a company manages the business with its customers;
5. Management of business supervision;
6. Determination of security networks, such as deposit insurance institutions and the role of lenders of last resort owned by central banks.

In the Explanation of the Law of the Financial Services Authority stated that, the Financial Services Authority in performing its duties and authorities is based on the following principles:

⁵KajiAkademikOtoritasJasaKeuangan-UI-UGM.2010. 23-24 (diakses tanggal 10 April 2016).

the Financial Services Authority, while maintaining the protection of personal and group rights and secrets of the State, including secrets as provided in the laws and regulations ;

1. Independence, which is independent in decision making and execution of functions, duties and authority of the Financial Services Authority, in accordance with the prevailing laws and regulations;
2. Legal certainty, that is, the principle within a State of law that places the foundation of legislation and justice in every policy of administering the Financial Services Authority;
3. Public interest, the principle that defends and protects the interests of consumers and society and promotes the general welfare;
4. Openness, the principle that opens itself to the right of the public to obtain correct, honest and non-discriminatory information about the operation of
5. Professionalism, the principle that prioritizes the expertise in the performance of the duties and authorities of the Financial Services Authority, in keeping with the Code of Ethics and the provisions of the laws and regulations;
6. Integrity, the principle that adheres to moral values and every action and decision taken in the conduct of the Financial Services Authority; and
7. Accountability, the principle that determines that each activity and the end result of any activity of the operation of the Financial Services Authority must be accountable to the public.

Supervision of sharia banks can be done directly or indirectly. Indirect supervision is conducted in the form of research, evaluation of bank statements sent periodically by banks. Direct supervision is done through direct examination to syariah bank.⁶ Assessment and analysis of banking reports, aims to assess the factors affecting banking performance, compliance-based supervision, and early implementation warning system to determine the level of difficulty faced by the bank from the beginning.⁷ Assessment is also conducted against current and future risk (risk-based supervision). Supervisors make an assessment of the bank's risk by making a risk profile whose valuation is rolled into a bank with high risk, moderate risk, and low risk.

Article 28 of the Financial Services Authority Act, establishes for the protection of consumers and the public, the Financial Services Authority, is authorized to take measure to prevent the loss of consumers and the public, which include:

1. Providing information and education to the public on the characteristics of the financial services sector, services and products;
2. Requesting a financial services institution to stop its activities if such activities have the potential to harm the community; and
3. Other actions deemed necessary in accordance with the provisions of legislation in the financial services sector.

⁶Trisadini P. Usanti, dan Abd. Shomad, Hukum Perbankan, (Surabaya, Fakultas Hukum Universitas Airlangga dan Lutfansah Mediatama, 2015), 94.

⁷ Adrian Sutedi, Aspek Hukum Otoritas Jasa Keuangan, Jakarta, Raih Asa Sukses, 2014), 152.

The supervision performed by the Financial Services Authority also applies to sharia banks. Therefore all matters and regulations relating to sharia bank operations must be based on sharia principles. The principle of sharia is the principle of Islamic law in banking activities based on fatwas issued by institutions that have authority in the

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establishment of fatwa in the field of sharia. Sharia principles can be applied in daily life practices for individuals, families, communities, and governments. Muslims in running the business are required to implement in accordance with the provisions of sharia. It is based on a rule of ushul "*al-aslu fi al-afal at-taqayyud bi hukmi ash-syari*" that the law of origin of an act is bound by syara 'law. The law of syara 'consists compulsory, sunnah, mubah, makruh and haram. So in carrying out a business must always adhere to and stick to the provisions of sharia, in other words syari'at is the main value that becomes a strategic and tactical umbrella for business organizations.⁸

In Article 21 of the Financial Services Authority Regulation Number 1 / POJK.07 / 2013 concerning Consumer Protection of Financial Services Sector Article 21 business actor shall fulfill equilibrium, fairness and fairness in making agreements with consumers. Therefore, the Financial Services Authority also oversees the form of the contract and especially the charge contained in the syariah bank contract. Has it been in accordance with sharia principles.

In the context of legal protection of the customer, the Financial Services Authority, also oversees the implementation of the principle of customer protection as stipulated in Article 2 of the Regulation of the Financial Services Authority Number 1 / POJK.07 / 2013, namely:

⁸ Johan Arifin, *Fiqh Perlindungan Konsumen*, (Semarang, Rasail, 2007), 37.

Bank Syariah in offering its products must be in accordance with the principles of sharia, which should not contain elements:⁹

As a concrete form of supervision by the Financial Services Authority is by requiring financial products to include halal stamps. The action is performed as a form of protection to customers for the lack of clarity of information related to financial products offered by Islamic banks.

⁹ Muhamad Sadi Is, *Konsep Hukum, Perbankan Syariah, Pola Relasi Sebagai Institusi Intermediasi Dan Agen Investasi*, (Malang, Setara Press, 2015), 39-40.

The principle of "transparency", which provides information about the product and / or service to the consumer, is clear, complete, in a language that is easy to understand. In connection with this principle the bank shall inform the Customer of any changes to the benefits, fees, risks, terms and conditions contained in the documents and / or contracts concerning the products and / or services of Financial Services BusinessActors.

1. *Riba*, which is the addition of unauthorized income (*batil*).
2. *Maisir*, a transaction that is hung on an uncertain circumstance and is a chance.
3. *Gharar*, a transaction whose object is unclear, not owned, not known to exist, or can not be delivered at the time of transaction unless otherwise stipulated in sharia.
4. *Haram*, a transaction whose object is prohibited in sharia.
5. *Zalim*, a transaction that creates injustice for others.
6. The principle of "fair treatment", which is fair and non-discriminatory treatment of consumers. Discriminatory is treating others differently based on race, religion and race. This kind of treatment happens sometimes. Sometimes bank officials can not avoid because of the policy of the leadership or from the authorities who provide recommendations to provide special treatment.

The principle of "reliability", ie everything that provides accurate service through reliable systems, procedures, infrastructure, and human resources. In this case can not be separated from the role of technology, because the progress of the banking system can not be separated with the role of information technology. (Ronny Prasetya, 2010). The use of this technology, in addition to facilitate the company's internal operations, technology tools also aims to facilitate service to bank customers. For example, ease of funds transfer, so customers do not bother to bring cash. However, in addition to the ease, it also provides legal problems in the form of information crime and electronic transactions that could harm customers and banks.

The principle of "confidentiality and data security/ consumer information" is an action that provides protection, maintains the confidentiality and security data and / consumer information and uses it only in accordance with the interests and purposes agreed by the consumer, unless otherwise provided by applicable legislation.

The principle of " Servis and / or settlement of complain". Consumer dispute resolution is done by implementing mediation agreement or adjudication decision. In the event of non-compliance settlement settlement, customers may settle non-court disputes through alternative dispute settlement or court settlement institutions. If dispute resolution is not made through an alternative dispute settlement institution, the consumer may apply to the Financial Services Authority to facilitate the settlement of the Consumer complaint.

The Financial Services Authority in conducting customer complaints services, including:

1. Preparing adequate devices for customer complaints services harmed by actors in financial services institutions;
2. Create a consumer complaints mechanism harmed by the perpetrator at the Financial Services Institution;

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and

3. Facilitate the settlement of consumer complaints harmed by the perpetrators of the Financial Services Institution in accordance with the laws and regulations of the financial services sector.

In dealing with consumer complaints settlements, consumers or the public can monitor their complaints to the Financial Services Authority, through an integrated consumer services system that has been launched, which can be monitored in two ways, traceable and trackable.

For the protection of customers and the public, the Financial Services Authority is authorized to defend the law. This legal defense includes ordering or performing certain actions to the Financial Services Institution to resolve complaints of disadvantaged consumers. The Financial Services Authority, may

also file a lawsuit to recover the property of the disadvantaged party from the party causing the loss, whether under the control of the party causing the loss, or under the control of another party in bad faith; and to obtain indemnification from the party causing the loss to the consumer and / or financial services institution as a result of violation of the laws and regulations in the financial services sector.

From the findings of the field, sometimes bank officials or marketing in marketing services bank products, providing information that is less clear, incomplete, even some deceptive or tempting offers to attract prospective customers. Not all sharia bank employees have an understanding of sharia bank operations. As well as for customers, not many questions, especially for the type of savings Wadiah, Mudharabah savings and Hajj Savings. The important thing for him is to deposit his funds in the bank to be safe.

After assessing the report submitted by the Bank, the Financial Services Authority will conduct an inspection, at least once a year, indefinitely, and may be performed more than once, in the absence of a problem. Inspection by the Financial Services Authority is conducted to assess the veracity of the reported data, the activities performed by the bank in accordance with the work plan; administrative examination; audit; also explore information on problems faced by banks; as well as other matters relating to supervision. Sharia compliance has not been implemented by sharia banks.

The supervision conducted by the Financial Services Authority is the same as the supervision conducted by Bank Indonesia, only different from the institution. Better still when supervision is done by Bank Indonesia. Even today the bank has to pay. Supervision by the Financial Services Authority also faces problems, as lack of adequate Human Resource support, capable of mastering sharia economy, understands the finance industry and sharia banking. There are officials who are easy to blame, but do not help provide solutions, because they do not have experience in sharia banking.

Conclusion

The Banks has implemented legal protection against customers in accordance with the principles of legal protection as regulated in the Financial Services Authority Regulation, although not yet maximized. This is because they have not fully implemented Shariah compliance; not sufficient Human Resources sufficient to understand the principles of Islamic finance. Unfulfilled human resource support that controls financial institutions based on sharia principles in the employees of the Financial Services Authority and the existing supervisory system, so this supervision has also not been effective.

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