

Regulation on Independent Function of Financial Services Authority

Shohib Muslim*, Hudriyah Mundzir, Ane Fany Novitasari

Lecturer in General Courses
 State of Polytechnic of Malang
 Malang, Indonesia

*shohibmuslim@polinema.ac.id

Abstract—This study discusses about regulation on independent of Financial Services Authority. The purpose of this study is to describe and analyze the functions of financial authorities in Credit Agreement Regulation and Oversight.

Keywords: *Financial Services Authority, banking, independence*

I. INTRODUCTION

Development of Indonesian economy is expected to be stable and sustainable. Job opportunities are more likely to be broad and equally in all sectors of the economy, and it will bring prosperity for the people of many fair. Then the system development of Indonesian economy nation wide should be carried out systematically by involving the community educated, have competence, and can work together with all nations in the world. Especially those able to actively drive the business turnover which is able to reach and cover the entire real sector of economic activity of the nation of Indonesia to move the business turnover.

The integration between the monetary authority at Bank Indonesia and the supervisory authority at the Financial Services Authority, is carried out by changing the regulatory and supervisory functions of Bank Indonesia to the Financial Services Authority, so independent and avoid conflicts of interest. "That in order to implement the national economy that can grow in a sustainable and stable, necessary activities in the financial services sector are held regularly, fair, transparent, and accountable, and financial systems are able to realize sustainable growth and stable, and capable of protecting the interests of consumers and society.

Certainty of legal protection for the banks in the event of bad loans, the bank as creditor has the right to sell the pledged object debtor example through a public auction, the banks are entitled to take repayment of its receivables from the sales, it also applies when the debtor is in a state of bankruptcy. The rules indicate that the law recognizes the right of separatists for creditors of mortgage holders. The execution of the auction of mortgage is a logical consequence of signing the agreement between the lenders credit/bank and debtor/guarantor of debt to the time when the debtor is 'in default'.

Discourse protection of banking in the Banking Act is a positive discourse that protects the parties, if only the banking industry that is bound to the mediation decision, the question of

the dispute to mediation decision. Whatever the rules are made, at least the principles of fairness know you customer and still upheld by the perpetrators of financial services and consumers. Until the end, the perpetrators of financial services and consumers alike respect their rights and obligations.

Banking became a pillar that is important in the economic development of Indonesia at this time, related to "Law - Law of the Republic of Indonesia Number 3 of 2004 on the amendment - Act of the Republic of Indonesia Number 23 of 1999 on Bank Indonesia in Chapter II STATUS, POSITION, AND CAPITAL Article 4 set as follows:

- Indonesia Central Bank is the central bank of the Republic of Indonesia.
- Bank Indonesia is institution an independent state, in carrying out its duties and authorities, free from government intervention and/or parties - the other party, except for matters expressly stipulated in the Act - this Act. Bank Indonesia is a legal entity under Act - this Act.

Law of the Republic of Indonesia Number 3 of 2004 on the amendment - Act of the Republic of Indonesia Number 23 of 1999 on Bank Indonesia in Chapter III OBJECTIVES AND TASKS Article 7 of the set as follows:

- The objective of Bank Indonesia is to achieve and maintain IDR stability.
- To achieve the objectives referred to in paragraph (1), Bank Indonesia implement monetary policy in a sustainable, consistent, transparent, and should consider the government's general policy in the field of economy.

Elucidation of Article 34 paragraph (1), the watchdog of financial services that will be established to supervise the Bank and companies - companies other financial services, including insurance companies, pension funds, securities, venture capital, and finance companies, and other entities that organize management of public funds. This institution is independent in the performance of its duties collided outside government and required to report to the Audit Board and the Board of Representatives, in doing its job of this institution (supervisory board) coordination and cooperation with Bank Indonesia as the Central Bank will recognize in Law Of establishment institution referred supervision [1].

"Elucidation of Article 34 Paragraph (2), Transfer of bank supervision function of Bank Indonesia to the supervisory board for the financial services sector carried out gradually after the fulfillment of the requirements which include infrastructure, budget, personnel, organizational structure, information systems, documentation systems, and various regulations the implementation of such legal instruments, and reported to the House of Representatives.

Authors pay attention to the regulation and supervision of financial services institutions the Financial Services Authority to the banking sector in the form of self-reliance in the Financial Services Authority occur Role conflicts of interest in article 2, paragraph 2 and Article 7 by diverting section 34; 35; 36; 37 Law Financial Services Authority, has led to elimination of the role of regulation and supervision of the Financial Services Authority (Republic Act Number, 21 of 2011 about Financial Services Authority, resulted in the independence of the Financial Services Authority questioned even the independence Financial Services Authority missing, should be more precise by diverting section 34, 35, 36 and 37 of Law Republic of Indonesia number 21, 2011 on the Financial Services Authority in article 10a-d 3 Republic Act number 2004 regarding amendment of Republic Act number 23 of 1999 concerning Bank Indonesia) [2].

Regulation and supervision of the Financial Services Authority in the system is running and Institutional Financial Services will function optimally if subjectively all disputes/problems (internal/external) natural persons or legal entities system has been made possible because the judicial system is composed of subjects (Advocate, police, prosecutor, judge) and object (the Civil Code, the Criminal Code, the Pancasila, the Constitution 1945 amendments, the Act follows the order and derivatives), thus optimizing the regulation and supervision of the Financial Services Authority to the institution Financial Services (Banking), natural persons and legal entities can be run and delivered justice to the welfare of society.

Occur conflicts of interest rule of law, against the Financial Services Authority is expected focus on regulation and supervision but the Financial Services Authority impose a levy to the party conducting the activity in the financial services sector which needs to avoid conflicts of interest and the integration of monetary authorities in Bank Indonesia with regulatory authorities in the Financial Services Authority, the study of philosophical object investigated is Republic of Indonesia Law Number 21 Year 2011 on the Financial Services Authority in Ontology; Regulation and Supervision does not reflect the value of the independence of the Financial Services Authority as a regulator and supervisor Financial Services Authority, epistemology; It has been going on conflicts of interest related to the functions, duties, and authority, Axiology; Consumers do not benefit educated and unprotected.

Banking Sector in the life of a country is the development agent (an agent of development), because the bank is a financial institution that has a function as a financial intermediary (financial intermediary institution) that as an institution conducting fund raising from the public in the form of deposits and withdraw them back to the community in the

form of loans or financing [3]. In addition, banks are also a trust agent (agent of trust) given the presence of one of the banks managing principle the principle of trust (fiduciary principle). Therefore, in this study the authors put forward a proposal entitled "REGULATION ON INDEPENDENT FUNCTION OF FINANCIAL SERVICES AUTHORITY".

II. METHODS

This research uses a normative juridical research approach, philosophical approach, legislative approach, conceptual approach, historical approach.

III. DISCUSSION

Understanding the Financial Services Authority Financial Services Authority, which is the sole authority in the financial services sector in Indonesia, the Financial Services Authority is a supervisory institution of financial services such as banking, capital markets, mutual funds, finance companies, pension funds and insurance must be established in 2010 [4]. The existence of the Financial Services Authority (FSA) as a supervisory institution in the Indonesian financial sector need to be considered, as should be well prepared everything to support the existence of the Financial Services Authority. Article 1 of Law Number 21 year 2011 states: "Financial Services Authority, hereinafter referred to by the Financial Services Authority, is an independent institution and freedom from interference by other parties, which have the functions, duties, and authority of regulation, supervision, inspection, and investigations referred to in this Act." [5]. In other words, it means that the Financial Services Authority is a supervisory board for financial services such as banking, capital markets, mutual funds, finance companies, pension funds and insurance [6]. Basically, the Regulation On Independence Function Of Financial Services Authority's Law only regulates the organization and administration of the financial activities of the institutions that have power in the regulation and supervision of the financial services sector. Therefore, with the creation of the Regulation On Independence Function Of Financial Services Authority is expected to achieve more effective coordination mechanisms in the handling of problems arising in the financial system. Thus, it can better ensure the achievement of the stability of financial systems and their regulation and supervision that is more integrated [7].

Function Financial Services Authority require the object of legal norms that legislation along consecution its rules and subject to the legal norms that the parties involved (Council Commissioner and their staffs with BOC following the Board of Directors and staff) and professionals (Notary Public Accountant, Advocate, Liquidator and Curator).

Board of Commissioners following the parties involved as a regulator and the banking supervision, if there is a case in banking, either internal or external bank between the bank or creditor by the debtor bank or the debtor bank with the supplier/buyer, from the beginning requires the maintenance process, clearance and settlement involving various professions such as notaries, Certified Public Accountants, Estate Appraisal, Advocate, Liquidator and curator who works in an integrated, independent and accountable in order to avoid from

corporations crime who require an independent attitude and does not have a personal interest.

Financial Services Authority function in regulatory and supervisory authorities in Financial Services Authority must have the support of the commissioners Financial Services Authority and other professionals [8]. The Finance Services Authority as an institution independent and free from interference of other parties who have the functions, duties and authority of the regulation, supervision, inspection and investigation established that there is no conflict of interest with Bank Indonesia monetary authorities in accordance with the mandate of the law. In the legislation explained that the task of supervising the banks will be carried out by the supervisory board for the financial services sector that is independent and established by law. The institute is tasked with overseeing the banking industry, capital markets, insurance, pension funds and financial institutions and other financial institutions. Financial Services Authority among other basic formation is increasingly complex and varied financial products, the appearance of symptoms conglomeration of financial services companies, and the globalization of the financial services industry. In addition, another factor is the formation Financial Services Authority government argues that Bank Indonesia as the central bank has failed to supervise the banking sector. As an example of such failure can be seen in mid-1997, where there are 16 banks liquidated .In that time the Financial Services Authority objectives established is that the overall activity in the financial services sector held regularly, fair, transparent and orderly so as to realize financial systems grow sustainably and stable and capable of protecting the interests of the parties. Besides that,

The function of the Financial Services Authority in regulating and supervising the banking credit agreement that protects the interests of the parties need support alternative theories as follows.

When viewed from the theory of justice that the state law requires the presence of the government in charge of maintaining the legal equality of the parties that an agreement in the agreement that the parties have certainty, usefulness and fairness of law of the parties in the community. According to John Rawls, a society is an independent association of people who interact with each other by recognizing specific rules as basis in the act, it could be such a rule establishing a system of cooperation designed to show the kindness of the people involved in it. Although society is a cooperative effort for mutual benefit, not infrequently conflict arises and the identity of interests. This is because social cooperation enables a better life for everyone. The existence of a conflict of interest is because people have different views in terms of how to divide the profits generated through cooperation they are awake, for the pursuit of their goals, everyone chooses a larger part than a small part. A set of principles necessary to choose among the various social arrangements which determine these and profit sharing to support a decent profit sharing. This principle is the principle of social justice, one of which gave way to provide rights and obligations in the existing institutions in the community and determine the distribution of benefits and burdens of social cooperation that is feasible [9].

In the perspective of the theory of the agreement, noted that countries that embrace economic democracy of Pancasila, duty, function and liability freedom the right to vote, determine and decided in the agreement of the parties in the community. Argues raw deal happens in society there are 4 types:

- Raw agreement is an agreement whose contents unilaterally determined by the strong position in the treaty, namely creditors typically have a stronger economic position than the debtor.
- Raw reciprocal agreement is an agreement raw contents by both parties, such agreement was made by the employer (the lender) and labor (the debtor).
- Standard agreement set by the government, namely raw treaty whose contents are determined by the government against certain legal actions, such as agreements relating to land rights object.
- Standard agreement which is determined by a notary or advocate is agreement that the concept had been provided to meet the demand from members of the public, in the Dutch language dictionary is called with a contract agreement models.

Based on the theory of this agreement should agreements relating to the financial services authority functions require agreement of the parties contained in the form of an authentic deed. In relation to the theory of legal protection, state law needs to do its job to protect the parties to provide protection and legal education.

Essentially every person entitled to the protection of the law, therefore any legal relationship should receive legal protection means providing shelter for human rights are harmed others and the protection given so that people can enjoy all the rights provided by law [10].

The function of the financial services authority in the regulation and supervision of credit agreement banking which protects the parties require the presence and support of the role of commissioner of the Financial Services Authority, the role of directors and commissioners of the Bank and non-Bank works with professional and presence of the government's role in the governance of dividends business entities of banks and non-banks reasonable and does not have a conflict of interest, therefore, the role of commissioner of the Financial Services Authority should be more focused on the regulation and supervision without any charges to the banks or other professions related to banking. It is also necessary to manage businesses in the field of services and goods in a transparent and accountable both by directors and commissioner's agency banks and non-banks as well as other professionals.

Independence of functions Financial Services Authority require independence and has no important other in carrying out tasks, functions and authorities supervision of the Financial Services Authority on banks so as to provide protection to the parties, this independence can be either for example in the event of a dispute board of commissioners may show brush is not taking sides in the dispute incorrect which is not to make policy and voting arrangements dues to banks, and other professions involved in it [11].

In line with the principles of governance, the Financial Services Authority should have a structure with the principle of "Checks and Balances" which is realized by making a clear separation between the functions, duties and authority of regulation and supervision performed Board of Commissioners. So as to act in justice. In the perspective of justice, laws and institutions no matter what form, if not reflect the sense of justice needs to be reformed or abolished. In providing legal protection for the parties to the agreement Mariam Darus Badruzaman [12] there are some road taken: (1) set up an appointment raw with a law as is done in some countries abroad, (2) creating a treaty law standard do jurisprudence, (3) through government oversight.

Independence of the function Financial Services Authority in the regulation and supervision of credit agreements require the presence of the government's role in preparing and making authority of the regulatory and supervisory functions of the Financial Services Authority in order to minimize interference by other parties in the settlement of disputes the parties can give a guarantee of legal certainty, simplify the licensing process and revocation of bank business a transparent. Provide education, especially in the financial services actors that have the ability to access to legal protection and the need for integration between Bank Indonesia monetary authorities with the Financial Services Authority.

IV. CONCLUSION

The function of the Financial Services Authority in providing legal protection for the parties is not optimal due to conflicts in Article 7 and Article 2 paragraph (2) of Law Number 21 of 2011 concerning Financial Services Authority resulting in a conflict of interest between the Financial Services Authority and the bank so that the independence of the

Financial Services Authority which is questioned in preparing and making the authority of the regulation and supervision functions of the Financial Services Authority..

REFERENCES

- [1] F. Aldhouse, "The Information Commissioner and The Financial Services Authority". *Journal of Computer Law & Security Review*. Vol 30, pp 321-323, 2014.
- [2] Undang-undang Nomor 21 Tahun 2011 Tentang Otoritas jasa Keuangan. Surabaya. Anfaka Perdana, 2012.
- [3] C. Wu, "Reward meritocracy or nepotism: The case of independent financial advisors appointed by Chinese listed companies". *Journal of Accounting Research*. Vol 12, pp 315-335, 2019.
- [4] F. Moshirian, "The global financial crisis and the evolution of markets, institutions and regulation". *Journal of Banking & Finance*. Vol 35, pp 502-511, 2011.
- [5] S. Undari, Laporan Kompendium Hukum Bidang Perbankan, Kementerian Hukum dan HAM RI. Jakarta, 2011.
- [6] B. Spalek, "Policing the U.K. Financial System: the Creation of the 'New' Financial Services Authority and its Approach to Regulation". *Journal of the Sociology of Law*. Vol 29, pp 75-87, 2001.
- [7] R.D. Sinaga, "Sistem Koordinasi Antara Bank Indonesia Dan Otoritas jasa keuangan Dalam Pengawasan Bank Setelah Lahirnya Undang-Undang Nomor 21 Tahun 2011 Tentang Otoritas Jasa Keuangan", *Jurnal Hukum Ekonomi Universitas Sumatera Utara*, 2013.
- [8] A. Shaddady, "Investigation of the effects of financial regulation and supervision on bank stability: The application of CAMELS-DEA to quantile regressions". *Journal of International Financial Markets, Institutions & Money*. Vol 58, pp 96-116, 2019.
- [9] J. Rawls, *Teori Keadilan*. Yogyakarta. Pustaka Pelajar, 2011.
- [10] Kasmir, *Manajemen Perbankan*. Jakarta: PT.Raja Grafindo, 2003.
- [11] S.S.M. Sofwan, *Hukum Jaminan di Indonesia Pokok-pokok Hukum Jaminan dan. Jaminan Perorangan*. Yogyakarta. Liberty Offset, 2007,
- [12] Badruzaman, Mariam Darus, *Perjanjian Baku (Standard)*. Bandung. Alumni, 1980.