

JURIDICAL REVIEW OF THE ROLE AND FUNCTIONS OF THE FINANCIAL SERVICES AUTHORITY (OJK) IN THE FINANCIAL SYSTEM IN INDONESIA

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Abstract

This study aims to analyze the roles and functions of the Financial Services Authority (OJK) in the financial system in Indonesia. The research method used is juridical normative with a statutory approach. The results show that the OJK is an institution that carries out regulatory and supervisory tasks on the following activities: 1) Financial services activities in the banking sector, 2) Financial services activities in the Capital Markets sector, 3) Financial services activities in the Insurance sector, Pension Funds, Institutions Financing, and Other Financial Service Institutions. To carry out regulatory and supervisory duties. The roles and functions of the OJK can be seen based on the authority of the OJK as follows: 1) Supervision and Regulation of Bank Financial Institutions, 2) Regulation of financial services institutions (bank and non-bank) including, 3) Supervision of financial institutions (banks and non-banks), 4) Investigation of banking crimes.

Keywords: Role, Function, Financial, Services Authority, Financial System.

A. INTRODUCTION

The financial system is very important and has a principled role in the economy and life. The financial system itself is an economic order in a country that plays a role and carries out activities in various financial services carried out by financial institutions, which have the main task and function is to distribute funds. ¹ The distribution of these funds is obtained from parties who have a financial surplus to parties in need or who experience a financial deficit. Therefore, an economy must have a stable financial system in diverting these funds so that it runs well so that the economy can grow and improve living standards, because the unstable financial system will have an impact on the decline of the economy and may even cause a crisis. Therefore, it is necessary to have a financial institution that acts as a financial intermediation institution and runs the financial system.²

To ensure that the financial system can run healthily and safely, a realignment is needed related to the organizational structure of institutions that carry out regulatory and supervisory roles and functions in the financial sector. The arrangement aims to obtain an effective and mutually coordinated financial mechanism, so as to minimize problems that exist in the financial system. And it is also necessary to have an effective supervision, where regulations will certainly not have a good role if they are not accompanied by a good monitoring system. The supervision carried out is not only to look at things carefully and report on the results of supervising activities, but also to correct and

straighten so as to achieve the goals that are in accordance with the plan. Therefore, in order for supervision to run effectively, its objectives must be clearly stated and with appropriate mechanisms.³

⁴ In line with the increasing complexity of the global financial system, an institution is needed that has the duties and roles to carry out regulation and supervision. Thus, the Financial Services Authority (OJK) was formed to anticipate this complexity with the foundation to improve the supervision system of financial institutions based on the principles of good governance, which include accountability, transparency, independence, accountability, and fairness. The presence of the OJK causes all financial services industries to be unified under one roof, such as banking, insurance, pension funds, capital markets, and other non-bank financial institutions, so that there is no longer a mutual responsibility for their supervision. This integrated supervision system will also make it easier to exchange information between financial institutions.⁵

OJK, is an institution that not only holds independent, independent, but whose authority is also different from the authority of the previous institution, namely Bank Indonesia, which has not had the authority to conduct investigations, but the OJK has it. In addition to this, OJK also has the authority to collect fees from financial institutions it supervises. The fee will be used as the operating expenses of the nascent institution. In this transition period, on January 1, 2013 OjK will start with its task of supervising non-bank financial institutions and only from January 1, 2014 will start the task of supervising banking in Indonesia. In 2013 the operational budget will be allocated from the state budget, only from January 1, 2014 the operational costs of the institution will be collected from the financial institutions it supervises. What an interesting thing it is, an agency that is said to be independent attracts fees from the institutions it oversees. So far, banking supervision has been carried out by Bank Indonesia with the budget for these purposes entirely at the expense of Bank Indonesia without collecting from banking institutions and also not allocated from the State Budget.⁶

B. DISCUSSION

1. Background to the Establishment of a Financial Services Authority (OJK) in Indonesia

Historically, the presence of the Financial Services Authority (OJK) began with concerns from several parties about the supervisory function of Bank Indonesia. Bank Indonesia as the Central Bank is considered to have failed to supervise the banking sector. This failure was seen in many banks that were liquidated when the economic crisis hit Indonesia in 1997. For this reason, the government during the presidency of B.J. Habibie submitted a draft law that grants independence to the Central Bank. However, the idea of independence was also followed by the idea of separating the supervisory function of the banking industry by Bank Indonesia. The form of separation follows the pattern of the German Central Bank not supervising banks. In Germany, supervision of the banking industry is carried out by a special agency, the Bundesaufsichtsamt für das Kreditwesen.⁷

The discussion of the draft law submitted by the Government did not find common ground, this was due to rejection by the House of Representatives (DPR) and by Bank Indonesia itself. As a result of the impasse, it was agreed to form the OJK as a result of compromise to avoid the impasse. Therefore, it was agreed that the institution that will replace Bank Indonesia in supervising the bank is also in charge of supervising other financial institutions, but the authority to regulate the banking industry remains with Bank Indonesia. It is intended not to appear that the separation⁸ of supervisory functions is to cut the authority of the Central Bank.

The establishment of the OJK in Indonesia was triggered by the economic crisis (multi-dimensional) in 1997 and followed the trend of Central Banks in several countries including the United Kingdom (1997), Germany (1949), Japan (1998) which wanted an independent central bank, free from interference from any party including the government. Ironically some countries including the UK itself

with its Financial Services Authority (FSA) have failed so that its Central Bank (Bank of England) is again granted access to financial institutions in the country. In a recent development, on 28 October 2012 the Bank of England together with the FSA signed an MOU to establish the Prudential Regulation Authority (PRA) in early 2013.

Juridically, the background of the establishment of the OJK Law is based on the mandate of the Bank Indonesia Law which mandates the establishment of an independent and integrated supervisory agency that oversees all activities of the financial services sector. As well as the formation of the OJK is also influenced by the conditions and development of a dynamic and complex financial system. The Financial Services Authority (OJK) itself is an independent institution and free from interference from other parties, the duties of regulatory authority, supervision, examination, and investigation as referred to in the Financial Services Authority Law.⁹

The establishment of an institution in charge of supervising the financial sector in accordance with the mandate stated in Law No. 3 of 2004 concerning amendments to Law Number 23 of 1999 which states that the task of supervising banks will be carried out by independent financial services sector supervisory institutions, and is formed by law. The issuance and enactment of OJK Law No. 21 of 2011 indicates a shift in the supervision model in the financial industry, Bank supervision which has been under the supervision of Bank Indonesia (BI) and supervision of non-bank financial institutions under the supervision of the Capital Market Supervisory Agency and Financial Institutions (Bapepam-LK), which is delegated to the Financial Services Authority (OJK).

The purpose of the establishment of the OJK is to overcome the global financial complexity of the threat of crisis, eliminate abuse of power, and seek efficiency in the banking and other financial sectors. However, it should be understood that in fact the formation of institutions like the OJK has been widely practiced in other countries currently, namely in the industrial era 4.0, the development of the financial industry is something that cannot be avoided. The financial industry is experiencing rapid development and progress, especially in the field of information and technology. This financial technology revolution is a result of the globalization process which shows that new technologies are able to play a strategic role.¹⁰

The rapid evolution of finance does not always go according to expectations, of course various problems arise in its development. The technological revolution has created a highly complex, dynamic, and interrelated financial system between financial subsectors. As an example of the problems that arise are cases handled by the OJK, including the Banking Crime case carried out by the President Director of BPR KS Bali Agung Sedana related to the provision of credit to debtors with a value of IDR 24.225 billion which is not in accordance with procedures, causing false records. Similarly, the case of Banking Crimes committed by the Commissioner of BPR Multi Artha Mas Sejahtera with a value of Rp 6,280 billion which was used for personal interests by making false records in the books or in the process of reports, as well as in documents or reports on business activities, transaction reports or accounts of a bank. And there are many more complexities or problems of transactions in the financial system, both problems related to the existence of ownership relationships in various financial sectors (conglomerates), as well as cross-sectoral problems in financial services such as moral hazard actions, etc.¹¹

Thus, in the development of the financial sector in Indonesia, the presence of the OJK as a supervisory institution is expected to be able to bridge to help smooth the activities of financial service institutions. So that the regulation of financial services activities can be well protected, and in the end will have a positive impact on economic development in Indonesia in general.¹² Because OJK is one of the important components in the financial system and all financial services activities that carry out intermediation functions for various productive activities in the national economy.

2. The Role and Fungsi of the Financial Services Authority in the Financial System in Indonesia

Based on Law Number 21 of 2011 concerning the Financial Services Authority, it is stated that the OJK is an integrated and independent institution that has functions, duties, and authorities in regulating the regulatory system to supervise financial services activities.

OJK is an institution that is not part of the government's power, and is carried out by applying the principles of good governance, which include accountability, transparency, independence, accountability, and *fairness*.

The purpose of the establishment of this OJK is to meet and protect the needs and interests of the community, realize a stable and sustainable financial system, and the implementation of an orderly, fairly accountable and transparent financial system. Therefore, OJK has an important role in maintaining competitiveness and improving the economy in Indonesia.

OJK is an institution that carries out regulatory and supervisory duties on the following activities:¹²

- 1) Financial services activities in the Banking sector
- 2) Financial services activities in the Capital Market sector
- 3) Financial services activities in the Insurance sector, Pension Funds, Financing Institutions, and Other Financial Services Institutions. To carry out regulatory and supervisory duties,

The role and function of OJK can be seen based on the authority of the OJK as follows:¹³

1) Supervision and Regulation of Bank Financial Institutions

- a. Bank establishment permits, bank branch openings, articles of association, work plans, ownership, human resource management, mergers, consolidation of bank acquisitions, and revocation of business licenses
- b. Banking activities, including sources of financing, provision of funds, and bank activities in the service sector
- c. Regulation and supervision of bank health includes: liquidity, profitability, solvency, asset quality, minimum solvency ratio, maximum credit limit, loan-to-deposit ratio and bank reserves; bank statements relating to the health and performance of the bank; debtor information system; credit testing; and bank accounting standards
- d. Regulation and supervision related to prudential aspects of the bank, including: risk management; bank management; the principle of knowing customers; and prevention of money laundering, financing of terrorism and other bank crimes.

2) Regulations of financial services institutions (banks and non-banks) include

- a. Establish OJK regulations and decisions
- b. Establish regulations on supervision in the financial services sector
- c. Prepare and determine the implementation of OJK duties
- d. Develop and establish procedures for managing financial services institutions
- e. establishing an organization structure and co-supervising financial institutions

3) Supervision of financial institutions (banks and non-banks), including:

- a. Establish operational supervision policies of financial institutions
- b. Supervise the implementation, consumer protection, duties of the executive manager and other actions against financial institutions
- c. Provide written instructions to financial institutions and/or specific parties
- d. Appointment and Appointment of statuter managers
- e. Providing administrative sanctions against parties who violate regulations in the financial sector
- f. Granting and/or withdrawing business licenses, personal permits, registered registration letters, approval to conduct business activities, ratification, approval or determination of dissolution and other provisions. However, in general, not fully regulatory and supervisory functions are given to the OJK, but the OJK continues to cooperate with Bank Indonesia, which has its own responsibilities and authorities that are coordinated and integrated.

OJK has regulatory and supervisory functions and authorities within the scope of microprudential, namely supervision that encourages individual financial institutions to remain healthy and able to maintain community interests, such as institutional regulation and supervision, health, prudential aspects, and financial institution examiners. Meanwhile, Bank Indonesia has regulatory and supervisory functions and authorities within the scope of microprudential, namely supervision in order to encourage financial institutions to participate in supporting economic growth and maintaining monetary stability.¹⁴

The Financial Services Authority (OJK) is a necessary institution to regulate and monitor the potential for violations or moral hazard that occur in the financial system in Indonesia. The practice of violations or misappropriations in the financial system is something that can happen either intentionally or unintentionally and can also occur not only by financial institutions, but does not rule out the possibility of this moral hazard being carried out by individuals. This happened as a result of the weak supervision system in financial institutions.¹⁵

The weak supervision system can be caused by the egocentric nature of each financial institution supervisor and the lack of information exchange between supervisory agencies. In this regard, the Financial Services Authority (OJK) is expected to be able to take a role in overcoming problems in the financial system in Indonesia.

The new authority assumed by the OJK in accordance with article 9(c) is to conduct investigations. In contrast to Bank Indonesia, which has so far had authority in bank supervision, but does not have investigative authority, it is limited to conducting investigations if it finds suspected criminal acts. The investigative authority itself includes the authority to;

- 1) receive a report, notification or complaint from a person about the presence of a criminal act in the financial services sector;
- 2) conduct research on the veracity of reports or information related to criminal acts in the financial services sector;
- 3) conduct research on any Person suspected of committing or engaging in criminal acts in the financial services sector;
- 4) calling, examining, and requesting information and evidence from any Person suspected of committing, or as a witness in a criminal offence in the financial services sector;

- 5) conducting examinations of books, records, and other documents relating to criminal acts in the financial services sector;
- 6) conducting searches in certain places where it is suspected that there is evidence of books, records, and other documents and conducting seizures of goods that can be used as evidence in criminal cases in the financial services sector;
- 7) request data, documents, or other evidence, both printed and electronic, to telecommunications service providers;
- 8) in certain circumstances request the authorized official to take precautions against persons suspected of having committed criminal acts in the financial services sector in accordance with the provisions of laws and regulations;
- 9) enlist the help of other law enforcement officials;
- 10) request information from the bank about the financial condition of the party suspected of committing or engaging in violations of laws and regulations in the financial services sector;
- 11) blocking accounts with banks or other financial institutions of parties suspected of committing or engaging in criminal acts in the financial services sector;
- 12) request expert assistance in the context of carrying out the task of investigating criminal acts in the financial services sector; and
- 13) Stated at the start and termination of the investigation.

The investigative authority, according to DR Sundari Ary (2003), includes, among other things, being able to directly search and confiscate the necessary documents as well as find, arrest and detain suspects. However, considering that the OJK is an independent institution formed by a separate law, where its employees do not include Civil Servants (PNS), if the OJK conducts an investigation, it must use / cooperate with civil servants who have the right to conduct investigations or with the Indonesian National Police. This also carries the consequences of providing the OJK budget for this purpose.

In carrying out its duties, OJK can coordinate with related financial service institutions and OJK is authorized to make regulations in the field of related financial services, for example OJK can coordinate with Bank Indonesia in making supervisory regulations in the banking sector.¹⁶

OJK is domiciled in the capital city of the State, but OJK can also have offices inside and outside the territory of the Unitary State of the Republic of Indonesia which is formed according to needs. OJK was formed with the aim that the implementation of all activities in the financial services sector can be carried out regularly, fairly, transparently, and accountably. In addition, OJK is expected to be able to realize a financial system that grows sustainably and stably and protects the interests of consumers and the public.

C. CONCLUSION

OJK is an integrated and independent institution that has functions, duties, and authorities in regulating the regulatory system to supervise financial services activities. OJK is an institution that is not part of the government's power, and is carried out by applying the principles of good governance, which include accountability, transparency, independence, accountability, and *fairness*.

The purpose of the establishment of this OJK is to meet and protect the needs and interests of the community, realize a stable and sustainable financial system, and the implementation of an orderly,

fairly accountable and transparent financial system. Therefore, OJK has an important role in maintaining competitiveness and improving the economy in Indonesia.

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