

The Role of Otoritas Jasa Keuangan (Financial Services Authority) in Supervising Sharia Banking Products in Indonesia

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Abstract: *The number of cross-sectorial issues in the financial services sector including Islamic banking, which includes moral hazard measures, lack of optimal protection of financial services, and the disruption of financial system stability increasingly encourage the need for the establishment of a supervisory institution in the integrated financial services sector. The source of moral damage in the management of the economy encourages the establishment of new supervision institutions, more accountable and has a tighter function in overseeing the financial system so that it can better guarantee the achievement of financial system stability. Based on that, Financial Services Authority was formed. Various regulations that have been and will be made by the Financial Services Authority related to Islamic banking are expected to be able to provide protection for the Islamic banking industry as well as spur the development of Islamic banking in Indonesia. More comprehensive and effective supervision of sharia banking is needed along with the increase in market players, product / service variants, and increasingly innovative and complex technological advancements. During this time the existence of Financial Services Authority for Islamic banking has not felt its existence. Financial Services Authority Law is still silent on sharia-based financial services.*

Keywords: *Financial services authority; product; sharia banking.*

I. Introduction

Banking plays an important role in the national development process. The main activity of a bank's business is to withdraw funds directly from the public in the form of deposits and channel them back to the public in the form of credit and / or financing, which are regulated both through the banking regulations themselves and other relevant laws. Communities in developed and developing countries really need banks as a place to conduct financial transactions. People in developed and developing countries consider banks as a safe financial institution in carrying out various kinds of financial activities. (Ishmael, 2011: 29).

One very significant development is the emergence of sharia-based banks. The birth of Islamic banking is an effort to transform *muamalah* fiqh into the laws and regulations, as seen in Lawno.7 of 1992 concerning Banking, Lawno.10 of 1998 concerning Amendment to Law no. 7 of 1992 concerning Banking, and Lawno. 21 of 2008 concerning Sharia Banking, as well as several Bank Indonesia Regulations between 1992 and 2008. The legislation of Law is a demand for reality, because until 2008 in Indonesia there were many Islamic banks. The first bank whose operations are based on sharia principles is Bank Muamalat Indonesia which was founded in 1991. (Karim, 2006:22). Bank Muamalat Indonesia originated from Bank Susila Bakti (BSB), a subsidiary of the former Bank Mandiri Bank Dagang Negara (BDN), which was converted to a Sharia Bank. (Judge, 2011: 9).

The establishment of Islamic banks precedes the establishment of regulations is something unique, because it is not supported by special rules regarding Islamic banking as a legal umbrella. Islamic banks were established in 1991 while the rules on profit sharing were

set in 1992. The uniqueness of this bank lies in the system that is the basis of bank operations, namely the system of profit and loss sharing, overriding the interest system. The existing banks at that time referred to Law Number 14 of 1967 concerning Banking Fundamentals, which stated; all banks in carrying out their business activities adhere to the interest system. (Judge, 2011: 9).

Banks with any system certainly face very complex problems related to the financial system itself and those related to moral hazard, the lack of optimal protection of financial services, and the disruption of financial system stability increasingly encourage the need for the establishment of a supervisory institution in the integrated financial services sector. (Hermansyah, 2005: 214). The establishment of the Financial Services Authority is needed to overcome the global financial complexity of the threat of crisis. On the other hand, the formation of Financial Services Authority is the government's commitment in financial sector reform in Indonesia. The government has a high commitment and carrying out a mandate to carry out reforms in the financial sector (Anonymous, www.radiansystem.com, accessed 24 April 2016).

The source of moral hazard practices boils down to the fact that there is a lack of coordination and there is no information exchange between financial institution supervisors. Both BAPEPAM (Capital Market Management Agency), Bank Indonesia and the Ministry of Cooperatives, so far do not have protocols that allow the three institutions to exchange information. As a result, the detection of moral hazard practices carried out between markets is difficult to detect, if not impossible. (Hermansyah, 2005: 215). Supervision of financial institutions in Indonesia has been carried out by 3 (three) agencies, namely the Ministry of Cooperatives, BAPEPAM and Bank Indonesia. Supervision of bank financial institutions, including commercial banks, rural banks and Islamic banks, is carried out by Bank Indonesia. Supervision of non-bank financial institutions (LKNB) is split into two, namely non-cooperative LKNB overseen by BAPEPAM financial institutions, while cooperative LKNB are overseen by the Ministry of Cooperatives.

Supervision is needed because of the potential for moral hazard, which means fraud or abuse. The practice of moral hazard (misappropriation or misuse) by economic actors in the financial sector, is not only done by financial institutions, but may also be done by customers. (Hermansyah, 2005: 215) Moral hazard occurs due to the weak oversight system of financial institutions caused by several factors, namely the weakness of the financial system supervision system due to several factors, namely: the weakness of the financial supervision architecture system in Indonesia, the absence of exchange (data sharing and data interfacing) between institutions of supervisors of financial institutions and still high egocentric among institutions of supervisors of financial institutions. (Hermansyah, 2005: 215)

In connection with this problem, it is necessary to reorganize the organizational structure of institutions that carry out regulatory and supervisory tasks in the financial services sector which includes the banking sector, capital market, insurance, pension funds, financial institutions and other financial services institutions. This structuring is carried out in order to achieve a more effective coordination mechanism in handling problems that arise in the financial system so that it can better guarantee the achievement of financial system stability. The regulation and supervision of all financial service activities must be carried out in an integrated manner. The financial services sector supervisory institution is known as the Financial Services Authority. Then Financial Services Authority regulation is contained in Law no. 21 of 2011 concerning the Financial Services Authority.

II. Review of Literature

2.1 Law Arrangement of the Financial Services Authority

The Financial Services Authority is a regulatory and supervisory institution that is directly connected to all kinds of financial industry services. Financial Services Authority is a new institution established under Law No. 21 of 2011. The institute was established to conduct surveillance of the financial services industry in an integrated manner (Anonymous, www.radiansystem.com, accessed 24 April 2016). As stated in the General Explanation of Law no. 21 of 2011 concerning the Financial Services Authority, it is necessary to restructure the organizational structure of institutions that carry out regulatory and supervisory tasks in the financial services sector, including insurance businesses. This structuring is carried out in order to achieve a more effective coordination mechanism in handling problems that arise in the financial system so that it can better guarantee the achievement of financial system stability. The regulation and supervision of all financial service activities must be carried out in an integrated manner.

Based on Article 1 no. 1 of Law no. 21 of 2011 concerning the Financial Services Authority, it explains that:

"The Financial Services Authority, is an institution that is independent and free from interference from other parties, which has the functions, duties and authority to regulate, supervise, examine and investigate as referred to in this Law."

According to the provisions of Article 2 paragraph (2) of Financial Services Authority Law it is said that the Financial Services Authority is an independent institution in carrying out its duties and authorities, free from interference from other parties, except for matters expressly regulated in this law. Furthermore, in the elucidation section of the Financial Services Authority Law it is stated that the Financial Services Authority in carrying out its duties and its position is outside the government. So it should not be affected by the government (independent).

The establishment of the Financial Services Authority aims to ensure that all activities in the financial services sector are carried out regularly, fairly, transparently and accountably, and are able to create a financial system that grows sustainably and stably. No less important is that all activities in the financial services sector are able to protect the interests of consumers and society (Lestari, 21012: 558).

Historically, the idea of establishing a special institution to conduct banking supervision has been raised since the enactment of Act Number 23 of 1999 concerning Bank Indonesia. The Act explained that the supervision task of the bank would be carried out by an independent financial services sector supervisory agency, and was formed by law. Mandate of Article 34 paragraph (1) of the Bank Indonesia Act stipulates that the task of supervising banks will be carried out by an independent financial service sector supervisory agency by issuing provisions relating to the implementation of bank supervisory duties. In his explanation it was stated that the institution functions, among others, supervising banks etc. The mandate of Article 34 paragraph (1) of the BI Law emphasizes that the institution to act as a supervisory board can issue provisions relating to the implementation of bank supervision tasks in coordination with BI.

The establishment of Financial Services Authority Law is intended to separate the banking supervision function from the central bank to an independent body or institution outside the central bank. The legal basis for the separation of the supervisory function is Article 34 Lawno. 3 of 2004 concerning Amendments to Lawno. 23 of 1999 concerning Bank Indonesia which states:

1. The task of supervising the Bank will be carried out by an independent financial service sector supervisory agency, and formed by Law.
2. Establishment of a supervisory institution as referred to in paragraph (1), will be carried out no later than December 31, 2010.

Supervision is being carried out on banks and other financial services sector companies which include insurance, pension funds, securities, venture capital, and finance companies, as well as other bodies that conduct public fund management. (Indaryanto, 2012: 334).

On the other hand, economists express their opinions on Financial Services Authority, that the Financial Services Authority is absolutely formed to anticipate the complexity of the global financial system. However, the Financial Services Authority Bill must be discussed simultaneously with other Financial Draft Bill packages, such as the Financial System Safety Net Bill, the Capital Market Draft Bill and amendments to Bank Indonesia Law, Insurance and Pension Funds. The establishment of Financial Services Authority is needed to overcome the global financial complexity from the threat of crisis. On the other hand, the formation of Financial Services Authority is the government's commitment in financial sector reform in Indonesia. The government has a high commitment and carrying out a mandate to carry out reforms in the financial sector (Anonymous, www.radiansystem.com, accessed 24 April 2016).

Other reasons for the establishment of Financial Services Authority are the increasingly complex and varied financial service products, the emergence of symptoms of conglomerations of financial service companies, and the globalization of the financial services industry. In addition, one of the reasons for the formation of Financial Services Authority is because the government considers Bank Indonesia as the central bank has failed in overseeing the banking sector. The failure was seen when the economic crisis hit Indonesia starting in mid-1997, a number of banks that were at that time were liquidated.

2.2 Functions, Duties and Powers of the Financial Services Authority

The function of the Financial Services Authority has been regulated in Law no. 21 of 2011 concerning the Financial Services Authority, based on Article 5 the Financial Services Authority functions to organize an integrated regulation and supervision system for all activities in the financial services sector. According to Article 6 of Law no. 21 Year 2011 concerning the Financial Services Authority, it states that:

"The Financial Services Authority carries out the regulatory and supervisory duties of:

- a. Financial service activities in the Banking sector;
- b. Financial service activities in the Capital Market sector; and
- c. Financial services activities in the insurance sector, pension funds, financial institutions and other financial service institutions."

III. Discussion

Economic globalization and trade liberalization have become the demands and needs of countries in the world today. From time to time, competition becomes tighter, especially in gaining market opportunities and world trade transactions. In addition to posing increasingly competitive challenges, economic globalization and trade liberalization also provide open opportunities for each country to develop its economic capabilities which are expected to follow the demands of economic globalization and free trade in the world. (Sugianto, 2014: 1). One element of the development of globalization in the world is banking. Banking institutions are the core of the financial system of each country. Bank is a financial institution that is a place for individuals, private business entities, state-owned enterprises, and even government institutions to save the funds they have. Through lending activities and various services provided, banks serve financing needs and launch payment system mechanisms for all sectors of the economy. (Hermansyah, 2005: 7).

Legally the formation of Financial Services Authority Act was based on Law no. 3 of 2004 concerning Bank Indonesia. This is expressly regulated in the provision of Article 34 of Law no. 3 of 2004 concerning Bank Indonesia which mandates the establishment of a financial services sector supervisory institution that includes banks, insurance, pension funds, securities, venture capital and financing companies as well as other entities that operate community fund management.

Before the birth of Financial Services Authority, according to Law no 21 of 2008 concerning Sharia Banking, it gave authority to Bank Indonesia to regulate and supervise sharia banks and sharia banks in Indonesia. Establishing a sharia bank or forming a Sharia Business Unit, and converting conventional banks to sharia banks must obtain permission from Bank Indonesia. (Sjahdeini, 2014: 99). Supervision conducted by Financial Services Authority is certainly different from the existence of the National Sharia Council. The urgency of establishing a National Sharia Board that will accommodate a variety of problems / cases that require a fatwa in order to obtain the similarity and handling of each Sharia Supervisory Board in Islamic financial institutions.

The National Sharia Council was formed by the Indonesian Ulema Council with the task of supervising and directing Islamic financial institutions to encourage the application of Islamic financial institutions to encourage the application of Islamic teachings in economic and financial activities. The National Sharia Council is part of the Indonesian Ulema Council. (Sjahdeini, 2014: 108). The National Sharia Council accommodates various problems / cases that require fatwa in order to obtain the same in handling by each Sharia Supervisory Board in the Islamic financial institutions. The task of DSN is to assist related parties such as the Ministry of Finance, Bank Indonesia, and others in drafting regulations / provisions for Islamic financial institutions. (Sjahdeini, 2014: 108).

The development of the sharia banking system in Indonesia is carried out within the framework of a dual-banking system or a dual banking system within the framework of the Indonesian Banking Architecture (API), to present alternative banking services that are becoming more complete to the people of Indonesia. Taken together, the Islamic banking system and conventional banking synergistically support broader mobilization of public funds to enhance financing capabilities for national economic sectors. The characteristics of the sharia banking system that operates based on the principle of profit sharing provide an alternative banking system that is mutually beneficial to the public and banks, as well as

highlighting aspects of fairness in transactions, ethical investment, promoting the values of togetherness and brotherhood in production, and avoiding speculative activities in financial transactions. The Islamic banking industry in Indonesia into the category of monopolistic market. The levels of the Islamic banking industry of Bank BNI, Bank BRI, Bank Panin and Bank Bukopin are monopolistic market while Bank Muamalat and Bank Mandiri are directed towards a joint monopoly market in the position of long-term equilibrium (Siregar, 2019). By providing a variety of products and diverse banking services with more varied financial schemes, Islamic banking has become a credible alternative to the banking system and can be enjoyed by all classes of Indonesian people without exception. (The Financial Services Authority, www.Financial Services Authority .go.id, accessed 24 April 2016). In the context of managing the macro economy, the widespread use of various Islamic financial products and instruments will be able to strengthen the relationship between the financial sector and the real sector and create harmony between the two sectors. The increasingly widespread use of Islamic products and instruments in addition to supporting public financial and business activities will also reduce speculative transactions, thereby supporting overall financial system stability, which in turn will contribute significantly to achieving medium-long-term price stability. With the enactment of Law No.21 of 2008 concerning Sharia Banking issued on July 16, 2008, the development of the national Islamic banking industry increasingly has an adequate legal basis and will encourage its growth even faster. With its impressive progress in development, which has achieved an average asset growth of more than 65% per year in the last five years, it is expected that the role of the Islamic banking industry in supporting the national economy will be even more significant.

The development of sharia banking is directed to provide the greatest benefit to the community and contribute optimally to the national economy. Therefore, the direction of national sharia banking development always refers to other strategic plans, such as the Indonesian Banking Architecture, the Indonesian Financial System Architecture, and the National Medium-Term Development Plan and the National Long-Term Development Plan. Thus the development of Islamic banking is a part and activity that supports the achievement of strategic plans on a larger scale at the national level. "Blueprint for Development of Sharia Banking in Indonesia" contains the vision, mission and targets for the development of sharia banking as well as a set of strategic initiatives with clear priorities to answer the main challenges and achieve targets within the next 10 years, namely achieving a significant share of the sharia banking market through deepening the role of Islamic banking in national, regional and international financial activities, in conditions of the beginning to form integration with other sharia financial sectors.

By seeing the presence of Financial Services Authority later, it can be intended to eliminate the abuse of power (abuse of power) which has tended to emerge. Because in Financial Services Authority, the oversight and regulatory functions are made separately. Even though the Financial Services Authority has a regulatory and supervisory function in one body, its functions will not overlap, because the Financial Services Authority will organizationally consist of seven commissioners. The Chair of the Board of Commissioners will appoint three members of the board of commissioners, each representing banking, capital markets and non-bank financial institutions. The authority of banking supervision by Bank Indonesia will be reduced, but Bank Indonesia still accompanies supervision. If all this time, the micro and macro prudential are at Bank Indonesia, the Financial Services Authority will focus on handling the prudential micro.

The transfer of the banking supervision function to the Financial Services Authority was carried out because initially there was an assessment that bank supervision conducted by BI had been ineffective, so that by harmonizing and synchronizing various laws and regulations concerning supervision of financial institutions, it was expected that the oversight function of financial institutions, especially banks which are now held by Financial Services Authority can be increased and done fairly to all institutions that are supervised. If this is not immediately responded, it is feared that the supervision of financial institutions, especially banks, is the same as that done by BI so that it does not solve the problem, but what happens is to transfer the same problem to other institutions formed with so many state budgets. The reason for the separation is to avoid the possibility of a conflict of interest between the task of maintaining monetary stability and the task of bank supervision. (Department of Assessment and Action of the 2014 BEM FEUI Strategies, www.kastratfeui.wordpress.com, accessed 24 April 2016).

The supervision aspect carried out by Financial Services Authority will be increasingly complex, including micro prudential aspects that prioritize the soundness of financial institutions specifically (soundness of financial institutions) and macro prudential aspects, namely aspects of overseeing financial system stability. For this reason, patterns of coordination between institutions need to be developed so that overlap can be minimized between institutions and loophole regulation and supervision (Department of Study and Action of the 2014 Strategic Action BEM FEUI, www.kastratfeui.wordpress.com, accessed 24 April 2016). In carrying out its function as an institution that carries out supervision of the banking sector, Financial Services Authority has the authority to supervise banks in Indonesia so that they continue to carry out activities in a healthy manner and are able to maintain the interests of the public as users of banking services (micro prudential). Finally, Financial Services Authority must ensure that banks in Indonesia must remain in a healthy financial and performance condition and can increase public confidence in the banking industry. (BEM FEUI 2014 Department of Study and Action Strategies, www.kastratfeui.wordpress.com, accessed 24 April 2016).

The transfer of authority of banking supervision from BI to Financial Services Authority does not make BI immediately release all responsibility of banking supervision to Financial Services Authority. The Financial Services Authority is focused on regulating and supervising the micro prudential scope, namely direct supervision of individual banks, while BI has authority in macro prudential supervision, which is more directed to the entire banking system used by BI for consideration in taking monetary policy. However, what happened was that the boundary between micro prudential authority by Financial Services Authority and macro prudential by BI was unclear, which was feared would have an impact on the poor performance of financial institutions in the region due to dualism of leadership.

Furthermore, the regulator in this case Bank Indonesia (BI) and the financial services authority must carry out strict supervision and must take full responsibility if the customer becomes a victim of banking / financial institution crime. Financial Services Authority which also oversees Islamic banking is required to have a high level of morality because the religious values that are used as references for Islamic banking are based on these noble religious values. The responsibility of the Financial Services Authority is certainly not only in the world but also hereafter as believed by every Muslim related to sharia banking activities.

In the Islamic banking organizational structure, there is one thing that needs to be considered, namely the position and authority of sharia supervisory board which in each

sharia bank is appointed or appointed by the board of directors, whereas sharia supervisory board is tasked with overseeing the operational activities of sharia banks. This procedure is certainly not Islamic in the sense of those who will supervise but are actually appointed by those who are supervised. The rules regarding sharia supervisory board in the structure of sharia banking need to get Financial Services Authority's attention as the party having authority to regulate the implementation of sharia banking in accordance with religious noble values. Sharia supervisory board should be included in the Financial Services Authority section which has the authority to oversee Islamic banking so that the sharia supervisory board is held by the Financial Services Authority not by the bank concerned. This is to realize the principles of professionalism that is good corporate governance while certainly fulfilling religious values that uphold morality.

As a new independent state institution in Indonesia, the Financial Services Authority is expected to be able to carry out one of Bank Indonesia's tasks in conducting banking supervision. The task of bank supervision, especially in the context of creating a healthy banking system and in the end can encourage the effectiveness of monetary policy. Over the past two decades the national Islamic economy has continued to develop. Sharia economic activity is not only in the banking and non-banking financial institutions sector, but also in other real sectors such as education, trade, fashion, creative industries, UMKM, and investment.

The development of the national sharia economy can be reflected in the growth of activities in the sharia banking sector, sharia insurance, sharia capital markets, sharia microfinance institutions, and zakat management. In the sharia banking sector, in the last five years, the growth rate of sharia banking, both in terms of assets, financing, and third party funds, shows an increasing trend. Financial Services Authority as the supervisor of the financial industry, is expected to make policies and regulations far better than it is today, so that it can encourage the progress of the national financial industry. In order for this institution to be credible, Financial Services Authority is expected to undertake several steps in the financial industry. First, applying consistently prudential regulations that apply internationally, second, regulating financial instruments and markets, and third, developing transparency and building supporters to create a 'market discipline'. Along with the presence of the Financial Services Authority and the promising growth of Islamic financial institutions, Financial Services Authority is certainly expected to be able to provide even stronger impetus, so that the growth rate and health of Islamic financial institutions are better than at present.

In the 2011 Global Islamic Financial Report assessment, Indonesia ranks fourth in the country that has potential and is conducive to the development of the Islamic financial industry after Iran, Malaysia and Saudi Arabia. By looking at several aspects in the calculation of the index, Indonesia is projected to be ranked first in the next few years. This optimism is in line with the pace of institutional expansion and accelerated growth of Islamic banking assets which is very high, coupled with the increasing volume of sukuk issuance.

In the global constellation, the value of sharia financial industry assets in Indonesia in 2013 will rise 24 percent from the previous year to USD 27.7 billion and is expected to continue to rise so that in 2014 it is projected to be USD 33.9 billion or up 22 percent. With these developments, the Islamic Finance Country Index for Indonesia will continue to improve to number 5 in 2013 and is expected to become number 4 in 2014. Financial Services Authority Law No. 21 of 2011 does not explicitly explain the blueprint for

developing the Islamic banking industry. This is different from Bank Indonesia which already has a Directorate of Islamic Banking. Therefore, the assumption arises that the growth of Islamic banking may be hampered, because the Financial Services Authority's organizational structure does not explicitly mention the form of development, regulation, supervision and research on Islamic financial services.

Although there are pros and cons about the existence of the Financial Services Authority on Islamic banking, but it must be known that the supervisory structure in Islamic banking consists of two systems. So far, Bank Indonesia has not been effective in creating sharia banking institutions that are free from stakeholder intervention in implementing sharia principles, so that with the Financial Services Authority, it is expected that supervision of sharia banking performance will run in a balanced manner, in addition to internal supervision, there will also be external supervision by the Financial Services Authority. In practice, there are still many sharia banks that provide financial services wrapped in sharia contracts, but in substance not sharia, so that it has the potential to cause harm to customers. Financial Services Authority as an authority that holds full authority over supervision, regulation, investigation and consumer protection in facing these conditions must be able to provide legal certainty and protection for customers of Islamic financial institutions.

IV. Conclusions

The existence of the Financial Services Authority in the banking world, especially sharia banking is not only as a supervisory institution for bank activities, but is expected to be able to provide enlightenment for stretching of sharia banking in Indonesia. Various regulations that have been and will be made by the Financial Services Authority related to Islamic banking are expected to be able to provide protection for the Islamic banking industry as well as spur the development of Islamic banking in Indonesia. The national sharia banking industry shows increasingly rapid growth. More comprehensive and effective supervision of sharia banking is needed along with the increase in market players, product / service variants, and increasingly innovative and complex technological advancements. This is for the realization of a healthy Islamic banking system to support the achievement of financial system stability and national economic growth in general. During this time the existence of the Financial Services Authority for Islamic banking has not felt its existence. The Financial Services Authority Law is still silent on sharia-based financial services. The reason is, in this Financial Services Authority Law, the word sharia is only found once, that is in Article 1 General Provisions item no. 5.

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