

Reconstruction of the Authority of the Financial Services Authority (OJK) in Supervision to Improve Value-Based Banking Policies in Justice (Case study in Indonesia)

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Abstract

OJK's authority is to deal with companies that make illegal investments by taking action to prevent losses for the sake of legal protection for consumers and legal defense. The Twin Peak Concept and Financial Customer Care programs are useful in providing information and education to the public on the characteristics, products and services in the financial services sector. The purpose of writing is to reconstruct the authority of the Financial Services Authority (OJK) in supervision to improve banking policies. The approach method in this study uses the constructivism paradigm, namely the paradigm with the ontology of relativism, the sociological juridical approach method. The results of this study, the researchers provide conclusions and suggestions that in fact the mandate of Article 4 of the Financial Services Authority Law on Consumer Protection assigns OJK to guarantee consumer protection in the financial services sector for all people, it turns out that justice has not been realized. While the suggestions are changing the rule breaking of OJK supervisory regulations, OJK supervision regulations are carried out by banking and non-banking financial services, as well as revising the customer protection law so that its effectiveness in protecting customers is more guaranteed.

Keywords: OJK, Banking Supervision, Consumer Protection, Justice.

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INTRODUCTION

I. Background of the Problem

The Financial Services Authority in carrying out supervisory and regulatory duties in the financial services sector in terms of legal protection and education for the public, is regulated in Article 28 of Law No. 21 of 2011 concerning the Financial Services Authority which, according to researchers, still does not provide justice such as the lack of integrated supervision of the capital market sector with IKNB which is still fragmented as well as the Twin Peak Concept Program and Financial Customer Care as a follow-up to consumer complaints that have been harmed by illegal investment activities, the researcher will provide a background of philosophical, normative, sociological reasons why it is necessary to write this dissertation to reconstruct the

Authority's authority. Financial Services (OJK) under supervision to improve banking policies so that in the future regulation of OJK's position in supervision can provide even more justice such as OJK supervision is carried out by banking and non-banking financial services and revise the customer protection law so that its effectiveness in protecting customers is more guaranteed.

Departing from these background problems, researchers need to conduct further research entitled, "Reconstruction of the Authority of the Financial Services Authority (OJK) in Supervision to Improve Banking Policies Based on the Value of Equity".

II. Theoretical framework

Talking about theory, 3 (three) theories will be referred to to analyze this research, namely:

- a) **Grand Theory: Pancasila Theory of Justice.** In Pancasila, the word fair is found in the second and fifth precepts. Fair human values and social justice contain a meaning that human nature as a cultured and natural creature must be fair in nature, that is fair in relation to oneself, fair to other human beings, fair to society, nation and state, fair to their environment and fair to God. Almighty. The consequences of the values of justice that must be realized include [¹]: Distributive justice, namely a relationship of justice between the state and its citizens, in the sense that it is the state that is obliged to fulfill justice in the form of dividing justice, in the form of welfare, assistance, subsidies and opportunities in living together based on rights and obligations; Legal justice, namely a relationship of justice between citizens and the state and in this case it is the citizens who are obliged to fulfill justice in the form of complying with the laws and regulations that apply in the state; and commutative justice, namely a relationship of justice between one citizen and another on a reciprocal basis. As is well known, social justice is part of the formulation of the fifth precept of Pancasila. This social justice presupposes the existence of individual justice. That is, the attitude or behavior of a Pancasilaist individual is an attitude and behavior that has the virtue or virtue of justice. Besides that, the individual is also the goal of justice. The point is that justice is not only addressed to society in general, but also to individuals. However, this individual is not just an atomistic entity that is completely detached from its socio-cultural context, but rather an individual in his relationship with other individuals and with his society. Here social justice is not the same as socialism which is not too concerned with individual interests.
- b) **Middle Theory: Lawrence M. Friedman's Theory of Legal Systems.** This theory talks about law as a system, Lawrence M. Friedman suggests that there are components contained in the law, namely [2]: The component is called the structure, namely the institutions created by the legal system such as district courts, administrative courts which have a function to support the functioning of the legal system itself. This structural component allows for the provision of services and regular legal proceedings. The substance component is in the

form of legal norms, be it regulations, decisions and so on, all of which are used by law enforcers and those who are regulated. The legal component is cultural, which consists of ideas, attitudes, expectations and opinions about the law. This legal culture is distinguished between internal legal culture and external legal culture, which is the legal culture of society in general.

- c) **Applied Theory: Satjipto Rahardjo's Progressive Legal Theory.** This theory says that progressive law is a legal thought that seeks to fight for justice and benefit, rather than legal certainty [³]. The formation and enforcement of Indonesian law requires the development of progressive legal ideas as initiated by Satjipto Rahardjo.

III. Gap Analysis and Problems

The problem faced is that in the regulation of OJK supervision on banking, there is no regulation regarding legal protection procedures for parties who are victims of investments or transactions with banks. This has resulted in a decrease in the level of consumer confidence in the Financial Services Authority as an institution or institution whose objective is to protect the interests of consumers in the financial services sector and affect fair service, resulting in problems. work optimally, particularly in the supervision of securities transactions. OJK requires a strong organizational structure, solid leadership, and support from human resources who are competent in the field of supervision. Second, the lack of HR experience in building an integrated supervisory system to deal with conglomerates in the financial services sector. Meanwhile, so far HR's experience has been in conducting sectoral supervision according to their respective fields.

Third, namely the lack of knowledge regarding the financial services sector, especially the capital market by the Financial Services Authority employees. This lack of knowledge can interfere with performance, especially in realizing integrated supervision. Fourth, the supervisory system for the capital market sector and the Non-Bank Financial Industry (IKNB) is not yet integrated, supervision is still separated so that supervision is not integrated. Even though supervision is carried out well on the one hand, it is not necessarily carried out properly on the other hand. This has the potential to have an unfavorable impact on the financial industry as a whole, especially if there is a "trouble" in one of the sectors in the financial industry.

¹ Yudi Latif. 2011. Plenary State: Historicity, Rationality, and Actuality of Pancasila, Gramedia Pustaka Utama, Jakarta, 2011.

² Lawrence Friedman, lihat dalam *Gunther Teubner* (Ed), *ibid*, 1986. h. 13-27. William J. Chambliss dan Robert B. Seidman, *Law, Order and Power*, Reading, Mass: Addison-Wesley, 1971, h. 5-13. Juga dalam

Lawrence Friedman "Law and Development, A General Model" dalam *Law and Society Review*, No. VI, 1972. dalam Esmi Warassih, *Op Cit*. h.81-82.

³ Suteki, Progressive Law: Law with a Transcendent Dimension in the Indonesian Context. Muhammadiyah University of Surakarta Scientific Publication, National Seminar Proceedings/January 2018, h. 9-15.

IV. State of Art

The component referred to as substance: Article 1 Number 1 of the Financial Services Authority Law 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 an independent institution free from interference from other parties with the authority to regulate it also carries out a governing function in the financial sector. Consumer Protection has clearly assigned the OJK to oversee all financial services by taking into account guarantees for the protection of the financial services sector for all people. Customer legal protection is stated in Law Number 8 of 1998 concerning Consumer Protection. The issuance of regulations regarding legal protection of customers by Bank Indonesia and settlement of customer disputes through mediation were continued.

The component called structure, namely institutions created by the legal system such as the DPR and the President as law-making institutions that can make rule breaking changes to OJK supervisory regulations as an independent supervisory body for the financial services sector by presenting several aspects according to applicable regulations. It must be clarified in the regulations that Bank Indonesia has the task of regulating banking related to macroprudential, while the OJK is responsible for regulating and supervising related to microprudential. This structural component enables the provision of services and the implementation of legal regulations that result in justice for the entire community as customers in the form of revisions to Law no. 21 of 2011 needs to make rules regarding "procedures for complaining when consumers/public are victims of illegal banking/fintech/investment transactions" because with the existence of these rules it will be very careful for application developers to make investment applications.

The legal component is cultural, which consists of ideas, attitudes, expectations and opinions about the law. This legal culture is distinguished between internal legal culture and external legal culture, which is the legal culture of society in general. All legal components are a binding system and determine the place of the legal system in the midst of the nation's culture as a whole. A person uses or does not use the law, and obeys or does not comply with the law depends on his legal culture. The legal culture of someone from the lower layers would be

different from those at the top. Likewise, the legal culture of an entrepreneur is different from that of people who work as civil servants and so on. So, no two men or women have the same attitude towards the law. Here it appears that there is a systematic correlation between various factors such as age, gender, occupation, nationality and so on [4], so as to reconstruct the Authority of the Financial Services Authority (OJK) in Supervision to Improve Banking Policies Based on the Value of Justice.

B. RESEARCH METHODS

This writing method uses constructivism paradigm [5] namely the paradigm with the ontology of relativism, the socio legal approach method [6] needed to address issues of injustice (which occurred in OJK supervision regulations for banking health that were not based on Pancasila values of justice because there were still human resource factors, experience factors, knowledge factors, factors that had not integrated supervision of the capital market sector with IKNB which were still separate -separate). The nature of the research is descriptive analytical [7] is a type of research intended to describe, describe, and report a state of an object or an event as well as draw a general conclusion about the object of the research, in this study the researcher used data collection techniques, namely data obtained from field data both interviews and/or questionnaire conducted by direct observation of the competent parties. The theoretical basis of this dissertation uses Pancasila justice theory, legal system theory, and progressive legal theory.

C. RESULTS AND DISCUSSION

1. OJK supervision regulatory policies for banking health have not been fair

The customer legal protection regulations are clearly not in accordance with Yudi Latif's theory of justice because with regard to justice, Yudi Latif emphasizes the importance of equality and fair treatment for all individuals in society. Social justice is realized through equal opportunity, access to resources, and elimination of all forms of discrimination. Meanwhile, according to consumer researchers, consumer legal protection regulations have not yet obtained comfort and certainty. Information on complaints that have been submitted to the Financial Services Authority for dispute resolution, there is no regulation regarding the time period for providing responses by the Financial Services

⁴ Lawrence Friedman, *Legal Culture and Welfare State*, dalam Gunther Teubner (Ed), *Dilemmas of Law in the Welfare State*. Berlin New York: Walter de Gruyter, 1986, hlm 13-27. William J. Chambliss & Robert B. Seidman, *Law, Order and Power*, Reading, Mass: Addison-Wesley, 1971, hlm 5-13. juga dalam Lawrence Friedman, *Law and Development, A General Model*, dalam *Law and Society Review*, No. VI, 1972 dalam Esmi Warassih, *Op Cit*. hlm. 82.

⁵ Erlyn Indarti, *Discretion and Paradigm A Study of Legal Philosophy*, (Semarang, Inaugural Speech delivered at the Acceptance Ceremony for Professorship in Legal Philosophy at the Faculty of Law, Diponegoro University, November 4 2010), h. 16

⁶ Zainuddin Ali, *Legal Research Methods* (Jakarta: Sinar Graphic, 2014), h. 103.

⁷ Hadari Nawawi and Martini Hadari, *Social Field Research Instruments*, (Yogyakarta: Gajah Mada University, Press, 1992), p. 47.

Authority from complaints submitted by consumers, is not transparent (non-transparent) in the management of OJK. Problems regarding the legal protection of customers are not only influenced by weak laws and regulations, but far more important is the application of the underlying legal principles or principles. The formation of Law Number 21 of 2011 concerning the Financial Services Authority as the legal basis exists with the aim of fulfilling the principle of justice in the provisions of legal protection for customers. Illegal investments that cause consumer losses and there is no legal protection for consumers and legal defense have made people distrust the products of the financial services sector. Therefore, the reconstruction of OJK supervisory regulations should have the courage to emphasize that OJK supervision regulations are carried out by all financial services sectors, both banking and non-banking, and the lack of HR experience in building an integrated supervisory system to deal with conglomerates in the financial services sector so that knowledge sharing is needed between senior to junior employees, as well as revising the customer protection law to further ensure its effectiveness in protecting customers.

1. In OJK supervision of Indonesian banks

The Financial Services Authority or better known as OJK based on Article 1 Number 1 of the Financial Services Authority Law 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 an independent institution and free from interference from other parties with the authority to regulate it also carries out a governing function in the financial sector. Article 4 of the Financial Services Authority Law on Consumer Protection clearly stipulates that OJK guarantees consumer protection in the financial services sector for all people. It is clear that it can be found that consumers have not received comfort and certainty about information on complaints that have been submitted to the Financial Services Authority for dispute resolution.

The problem that generally arises in OJK supervision of banking is that the Financial Services Authority has a shortage of Human Resources (HR) so that OJK cannot work optimally, especially in supervising securities transactions. OJK requires a strong organizational structure, solid leadership, and support from human resources who are competent in the field of supervision; lack of HR experience in building an integrated supervisory system to deal with conglomerates in the financial services sector. Meanwhile, so far HR's experience has been in conducting sectoral supervision according to their respective fields; lack of knowledge regarding the financial services sector, especially the capital market by the Financial Services Authority employees. This lack of knowledge can interfere with performance, especially in realizing integrated supervision; The supervisory system

for the capital market sector and the Non-Bank Financial Industry (IKNB) is not yet integrated, supervision is still separated so that supervision is not integrated.

With the changes, it is hoped that Article 28 paragraph (1) of Law Number 21 of 2011 concerning the Financial Services Authority will also be amended, which still has weaknesses, as follows: after the researchers read the rules of Article 28 paragraph (1) there is nothing that regulates regarding "ways to sue if you become a victim of illegal investment or fintech etc."

2. Reconstruction of regulations on the position of the Financial Services Authority in supervision to improve banking soundness based on the value of justice

Analyzing OJK supervision regulatory policies on banking health, including interpretation of legal realities both concerning people's behavior and law enforcement agencies (at the stages of police investigation, prosecution by prosecutors and examination by judges) as well as related policy regulatory texts, using a justice perspective based on the Pancasila philosophy, the 1945 Constitution of the Republic of Indonesia to laws and regulations in Indonesia and John Rawls's theory of justice. Supervision by the OJK by means of separating the Microprudential and Macroprudential supervision functions is more focused and sustainable in order to be able to protect the interests of consumers or customers. An appeal to every business actor in the financial services sector to make supervisory regulations in the banking sector a basic service standard that will be used as a reference for conducting business activities and producing banking products in accordance with existing regulations.

Reconstructing Article 28 paragraph (1) of Law Number 21 of 2011 concerning the Financial Services Authority "For the protection of consumers and the public, OJK has the authority to take actions to prevent losses for consumers and the public, which include: providing information and education to the public on the characteristics of the financial services sector, services, and its products ask the Financial Services Institution to stop its activities if the activity has the potential to harm the community. It is hoped that the results of the reconstruction of Law no. 21 of 2011 needs to make rules regarding "procedures for complaining when consumers/public are victims of illegal banking/fintech/investment transactions" because with the existence of these rules it will be very careful for application developers to make investment applications.

D. CONCLUSION

From this writing, it can be concluded that the mandate of Article 4 of the Financial Services Authority Law on Consumer Protection stipulates that OJK guarantees consumer protection in the financial services sector for all people. For example, consumers have not

received comfort and certainty regarding information on complaints that have been submitted to the Financial Services Authority for dispute resolution, the timeframe for providing responses by the Financial Services Authority to complaints submitted by consumers is not regulated, there is no transparency (non-transparency) in the management of OJK and to reconstruct the authority of the Financial Services Authority (OJK) in supervision to improve banking policy, namely by carrying out Supervision by the OJK by means of separating the functions of Microprudential and Macroprudential supervision to be more focused and sustainable so as to be able to protect the interests of consumers or customers while the suggestion is to change the rule breaking of OJK supervision regulations, OJK supervision regulations are carried out by all financial services sectors, both banking and non-banking, and the lack of HR experience in building an integrated supervisory system to deal with conglomerates in the financial services sector so that knowledge sharing between senior and junior employees is necessary, as well as revising the customer protection law so that more guaranteed its effectiveness in protecting customers.

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