

REGULATION, SUPERVISION, AND IMPLEMENTATION OF SHARIA PRINCIPLES IN BANKING BY OJK (ANALYSIS OF LEGAL ASPECTS AND CHALLENGES)

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ABSTRACT

Banking institutions play an important role in the economic development of the country. Banks are intermediary institutions that cannot be separated from people's lives. Sharia banking is part of the existing banking system in Indonesia which has its own challenges in implementing sharia principles and maintaining its stability. Prior to the establishment of OJK (Financial Services Authority), Bank Indonesia had full authority in supervising the financial services industry, including banking. The Financial Services Authority was established as an answer to problems that arose in the banking sector after the crisis in several national banks. The OJK Law which came into force on November 22, 2011 authorizes OJK to conduct supervision, regulation and investigation in the banking sector in Indonesia. This study discusses the legal aspects of banking regulation and supervision as well as the implementation of sharia principles in OJK sharia banking. The research methods used are legal approaches and literature reviews. The results of the study show that OJK has an integrated regulatory and supervisory function in the entire financial services sector. OJK is considered a superior institution with great authority. OJK also plays a role in regulating and supervising Islamic banking

Keywords: Financial Services Authority, Regulation, Supervision, Banking System, Sharia Principles

INTRODUCTION

Banking institutions are developed to ensure a smooth payment system, the application of monetary policy, and to achieve financial system stability. Banks as intermediary institutions have become an integral part of people's lives. Success in economic development will be difficult to achieve

if the role of banking institutions is not maximized. This requires legal regulations that can support banking operations and provide legal tools and systems that can provide certainty in their implementation.

Based on Article 34 of Law of the Republic of Indonesia Number 23 of 1999 concerning Bank Indonesia, which has now become Law Number 6 of 2009, it determines institutions that can be responsible for supervising the financial services sector, including banking, insurance, and finance companies, as well as agencies that administer public funds.

Before the establishment of OJK (Financial Services Authority) to realize a healthy and stable banking system. The Bank is under the supervision of Bank Indonesia, which is domiciled as a central bank, as a central bank, BI has the duty to achieve and maintain rupiah stability. As stated in Article 8 of Law Number 23 of 1999, as follows: a) Establish and implement Monetary policy; b) Regulate and maintain a smooth payment system; c) Regulate and supervise banks.

This policy was made in response to various problems that arose in the banking industry after the crisis that hit 21 private and national banks liquidated by Bank Indonesia, where many people questioned Bank Indonesia's supervision. Moreover, it is surprising that the designation of the Central Bank as a failed bank has had a significant systemic impact. The increasing number of problems that occur in the financial services sector can disrupt the stability of the financial system, this further encourages the establishment of a comprehensive supervisory institution in the sector.

The debate over the establishment of an institution to oversee financial services arose due to Bank Indonesia's failure to maintain financial sector stability and build a sound banking system. The Financial Services Authority (OJK) was established after central banks in several countries, including Indonesia, failed. It is considered impossible for the central bank to achieve stability in the financial sector and a sound banking system.

The Financial Services Authority (OJK) Law dated November 22, 2011 opened a new chapter in Indonesia's banking history. The Financial Services Authority is an independent

institution that regulates and supervises all banking sector activities, including banking, capital markets, insurance and pension funds, and other

financial services companies. Indonesia's banking sector is regulated, supervised, vetted and investigated by this authority. In accordance with Law No. 3 of 2004 concerning Bank Indonesia *"Banking supervision functions may be placed at the central bank or in other bodies outside the central bank"* (Pikahulan, 2020).

According to Law Number 7 of 1992 concerning Banking, Indonesia runs 2 banking systems, namely conventional banking and Islamic banking, where both bank systems can operate at once with different management and operational systems. Sharia Bank itself is a bank whose operating system is in accordance with the principles of Islamic Sharia, which refers to the provisions of the Qur'an and Hadith. Operating in accordance with the principles of Islamic Sharia means that the bank in its operations follows the provisions of Islamic Sharia, especially those concerning Islamic customary procedures. Bermuamalah means to abstain from practices that contain elements of usury and are instead filled with investment activities on the basis of profit sharing and trade finance (Rachman, 2022).

By providing banking services that follow noble values and justice, Islamic banking is expected to improve the benefit of the people, especially Muslims. Along the way, Islamic banks encountered various obstacles so that they were slow to respond and increase market share. One of the obstacles in question is the supervision and regulation system that is still integrated with conventional banking. To ensure that Islamic banking can continue to thrive and avoid violations of principles, development and supervision must be carried out. Supervision and guidance are expected to minimize the impression of formal sharia identity and the impression of no difference from conventional banks in terms of system operations and practices.

Based on the description of the background above, the problems to be discussed in this study are as follows:

- 1) What are the legal aspects regarding banking supervision and regulation by the Financial Services Authority?
- 2) How is the implementation of sharia principles in sharia banking supervision by the Financial Services Authority?

RESEARCH METHOD

This research uses a statutory approach (Statute Approach). This approach is used by the author because related to what is studied are legal rules related to the implementation of regulatory and supervisory functions carried out by the State Service Authority Agency which has been regulated in law. This research uses literature study as a data collection method. This method collects information from books, legislation, documents, literature, and papers related to the subject under study. The data analysis technique used in this research is a cutative descriptive analysis technique that develops theories that are built based on previously obtained data.

RESULTS AND DISCUSSION

Banking Regulation and Supervision Law by the Financial Services Authority

1. Legal Aspects of Banking Regulation and Supervision by the Financial Services Authority

Law No. 21 of 2011 concerning OJK, is equal or equal to Law No. 6 of 2009 concerning the Determination of Perpu No. 2 of 2008 which is the result of the Second Amendment to Law No. 23 of 1999 concerning Bank Indonesia.

However, based on the 1945 Constitution of the Republic of Indonesia, Bank Indonesia's position is constitutional in accordance with the provision that *"the State has a central bank whose structure, position, authority, responsibility, and independence are regulated by law"* (Article 36D). The law in question is Law No. 6 of 2009, while the Financial Services Authority is not regulated in constitutional provisions according to the 1945 Constitution.

According to Law No. 21 of 2011 that *"OJK 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"* (Article 2 Paragraph (2)). The Financial Services Authority is not mentioned as a state institution.

The discussion on the Financial Services Authority according to Law No. 21 of 2011, does not have significant differences with Law No. 6 of 2009

concerning Bank Indonesia, therefore if examined more deeply, the two laws and regulations do not completely intersect with each other, in other words, the enactment of Law No. 21 of 2011, does not abolish the implementation of Law No. 6 of 2009. A small part of the provisions in Law

No. 6 of 2009 has been transferred to the functions, duties, and authorities of OJK (Legenda, 2019). According to Law No. 21 of 2011 concerning OJK, it is stated that "*OJK functions to organize an integrated regulatory and supervisory system for all activities in the financial services sector*" (Article 5). Based on this article, OJK's functions must include regulation and supervision of all activities in the financial services sector. This integration function will make OJK look like a large institution with many functions, duties, authorities, and powers

2. Banking Regulatory and Supervision Functions by the Financial Services Authority

The function of Banking regulation by OJK is very important, meaning that in every banking operational activity that is so broad and complex requires an institution to carry out the functions, duties, and regulatory authority over the Banking.

Law No. 21 of 2011 concerning the Financial Services Authority regulates functions (Article 5) and duties (Article 6) to authority (Articles 7, 8, and 9). It said that the Financial Services Authority functions to "*organize an integrated regulatory and supervisory system of all activities within the financial services sector*" (Article 5). Then that the Financial Services Authority carries out regulatory and supervisory duties against (Pateh, 2015):

- a. Financial services activities in the Banking sector;
- b. Financial services activities in the Capital Market sector;
- c. Financial services activities in the Insurance sector, Pension Funds, Financing Institutions, and Other Financial Service Institutions (Article 6).

Furthermore, regarding the authority of the Financial Services Authority is contained in Article 7 that to carry out regulatory and supervisory duties in the Banking sector as referred to in Article 6 A, the Financial Services Authority has the authority (Pateh, 2015):

1. Regulate and Supervise bank institutions

2. Regulate and Supervise the health of the bank
3. Regulate and Supervise the prudential aspects of banks
4. Authorized in bank inspection

In Law No. 7 of 1992 concerning Banking, which states *"Every party that carries out activities to collect funds from the public in the form of deposits in the form of current accounts, time deposits, certificates of deposit, savings, or other forms likened to it, must first obtain a business license as a Commercial Bank or People's Credit Bank from the Minister, unless the activity of collecting funds from the community is regulated by a separate law"* (Article 16 paragraph (1). Furthermore, it is also determined that *"Business Licenses for Commercial Banks and Rural Banks are granted by the Minister after hearing Bank Indonesia's consideration"* (Article 16 paragraph (2).

Based on the article above, the OJK body has the authority to control and supervise banking, including in bank establishment licensing, opening bank offices, articles of association and others.

Implementation of Sharia Principles in Sharia Banking Supervision by the Financial Services Authority

The focus on the Islamic economic system is increasing, which leads to a more in-depth study of Islamic economics. Sharia Bank itself emerged initially around 1960 which was influenced by various factors (Antonio, 2001), including:

- 1) Neorevivalist condemnation of interest as usury
- 2) Wealth of conservative Gulf States
- 3) A number of Muslim countries are beginning to adopt conventional interpretations of usury.

Islamic banks are the same as conventional banks in general, the difference is the use of principles, namely justice, balance and the benefit of the people. Its main activity is to save funds from the community through savings or deposit products and redistribute these funds in the form of loans to the community. In conventional banks, pricing uses an interest range, while in Islamic banks using the Islamic concept of cooperation in a profit-sharing system both in profit and loss.

The rationale for the establishment of Islamic banks comes from the word *riba* in the Qur'an and Al-Hadith. Al Baqarah verse 275 is one of the verses in the Qur'an that discusses the prohibition of usury, the verse explains that a person who eats *riba* is threatened with hell as punishment (Kementrian Agama Republik Indonesia, 2010).

According to the doctrinal perspective, the principle of sharia is defined as the rules of an agreement based on Islamic law between a bank and another party to deposit funds for business activities or other activities in accordance with sharia. Sharia principles focus on the principles and rules that must be observed when the sharia-framed transaction agreement process is carried out. In his book entitled "Characteristics of Islam; Analytical Studies", Yusuf Qardhawi briefly mentioned seven (seven) principles of sharia or Islamic characteristics, which include "*Divinity (Rabbaniyi'iyah); Humanity (Insyanayah); Universal (Shumul); Moderate (Al-Wasthiyyah); Contextual (Al-Waqi'iyah); Clear (Al-Wudhuh), and uniting between Transport (Tathawwur) and consistent (Tsabat)*" (Qardhawi, 1994).

The first Islamic bank in Indonesia was Bank Muamalat, which was established in 1991 and started operations in 1992. During the Indonesian monetary crisis of 1998, Islamic banking managed to survive, which fueled its rapid growth (Muflihini, 2019).

With the issuance of Law No. 10 of 1998 and Law No. 7 of 1992 concerning Banking, the Islamic banking sector developed rapidly. This change in law opens up many opportunities and a strong legal foundation for the growth of Islamic banking. It also opens up many opportunities to build Islamic banking networks. Law No. 21 of 2008 on Sharia Banking, enacted on July 16, 2008, supplemented Law No. 10/1998. After the Law is enacted, the Islamic banking sector has a strong legal foundation that will drive its growth.

Sharia Banking regulations include: First, namely Law No. 21 of 2008 concerning Sharia Banking and Law No. 21 of 2011 concerning the Financial Services Authority; Second, Financial Services Authority Regulation (POJK), among others: "*1) Financial Services Authority Regulation No. 56/POJK.03/2016 concerning Share Ownership of Commercial Banks; 2) Financial Services Authority Regulation No. 24/POJK.03/2015 concerning*

Products and Activities of Sharia Banks and Sharia Business Units; 3) Financial Services Authority Regulation No. 38/POJK.03/2016 concerning the Application of Risk Management in the Use of Information Technology by Commercial Banks; 4) Financial Services Authority Regulation No. 57/POJK.03/2016 concerning the Application of Risk Management in Commercial Banks that perform excellent service; and 5) Financial Services Authority Regulation No. 8/POJK.03/2014 concerning Health Level Assessment of Sharia Banks and Sharia Business Units. Third, the Financial Services Authority

Circular Letter (SEOJK), among others: Financial Services Authority Circular Letter No. 10/SEOJK.03/2014 concerning Health Level Assessment of Sharia Commercial Banks and Sharia Business Units".

In the Islamic system of management, supervision is called "hisbah", which means commanding kindness if anyone abandons it and forbidding harm if anyone does so. According to Islamic teachings, there are two types of surveillance: surveillance within the system and surveillance outside the system. Supervision in the system comes from tawhin and belief in Allah Almighty. Supervision outside the system is related to the completion of tasks that have been given and the relationship between the completion of tasks and the planning of other tasks(Nur, 2022).

One of the expected benefits of the Islamic banking system is as follows: (1) general benefits from Law No. 21 of 2008, article 3, which "*stipulates that national development must be carried out with the aim of improving justice, togetherness, and welfare of the people*"; and (2) The special virtues of Law No. 21 of 2008 relate to institutional aspects, business activities, and the processes and ways in which business activities are carried out. These virtues include that "*every business activity is licensed and meets the requirements*" (article 5); "*There is a limitation of rights and responsibilities as a consequence of a limited liability company*" (Article 7)(Khusairi, 2015).

The errors avoided in the Islamic banking system can be understood both in whole and in particular, and both errors can be understood substantially from Islamic banking regulations. In general, Law No. 21 of 2008 prohibits anything that goes against the principles of sharia. Specific

errors relate to the organization, business procedures, and its elements, such as: unlicensed undertaking; monopoly; unlimited liability; nationalism in the ownership of Islamic banks; agreements contrary to sharia principles; business activities contrary to sharia principles (articles 24-26); There are elements of usury, gharar, dharar, maishir, illicit business, and tyranny (explanation of article 2)

The implementation of sharia principles in Islamic banking regulations can be understood as follows(Nur, 2022):

- a. The principle of representation (khilafah) in Law No. 21 of 2008, in article 29 *"in the board of directors of Sharia Banks as referred to in article 28 there must be 1 director in charge of ensuring compliance of Sharia Banks with the implementation of BI provisions and other laws and regulations"*.
- b. The principle of justice (is) that exists in Sharia Banking regulations is grouped into 3 types of justice:
 - Cumulative justice, Law No. 21 of 2008
 - Distributive justice, contained in the provisions regarding certain conditions that must be fulfilled by the subject of law
 - Remedial justice, the existence of punishment for those who do not implement regulations or commit violating acts that are given administrative, criminal or civil sanctions.
- c. Sharia principles and democratic principles, Article 2 of Law No. 21 of 2008

CONCLUSION

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The debate over the establishment of an institution to oversee financial services arose due to Bank Indonesia's failure to maintain financial sector stability and build a sound banking system. The Financial Services Authority (OJK) was established after central banks in several countries, including Indonesia, failed. It is considered impossible for the central bank to achieve stability in the financial sector and a sound banking system.

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Sharia principles focus on the principles and rules that must be observed when the sharia-framed transaction agreement process is carried out. The first Islamic bank in Indonesia was Bank Muamalat, which was established in 1991 and started operations in 1992. During the Indonesian monetary crisis of 1998, Islamic banking managed to survive, which fueled its rapid growth. 7 In 1992 regarding Banking, the Islamic banking sector developed rapidly.

This change in law opens up many opportunities and a strong legal foundation for the growth of Islamic banking. It also opens up many opportunities to build Islamic banking networks. 21 Year 2008 on Sharia Banking, enacted on July 16, 2008, added Law No. After the Law was enacted, the Islamic banking sector had a strong legal foundation that would encourage its growth

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