

# Implementation of the Authority of Financial Services Supervision in Legal Protection of Customers Storing Funds in Sharia Banks

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**Abstract.** Some problems that occur in the bank, can result in losses for depositors. Therefore, consumers of financial services (bank customers) need legal protection. The implementation of this protection must be overseen by the Financial Services Authority. The purpose of bank supervision is to protect the interests of depositors and investment customers, who entrust their funds to Islamic banks. This legal research uses qualitative legal research methods. Based on Law Number 21 of 2011 concerning the Financial Services Authority, the regulation and supervision of financial institutions are the authority of the Financial Services Authority. The results of this study, the supervision of the Financial Services Authority, has not been maximized in implementing legal protection for depositing customers in Islamic banks.

**Keywords:** Supervision, legal protection, customers.

## 1. Introduction

Cross-sectoral issues in the financial services sector include moral hazard, not optimal protection of consumers of financial services (bank customers), and disruption of financial system stability, it is necessary to monitor the operations of banking activities. The purpose of bank supervision is to protect the interests of depositors who entrust their funds to banks to obtain repayments and benefits. The existence of this supervisory institution is expected to be able to overcome the impact of moral hazard and create checks and balances, avoid conflicts of interest in carrying out its duties and protect the interests of stakeholders, especially fund owners and minority shareholders.

The Financial Services Authority was formed with the aim that the overall financial services activities are organized regularly, fairly, transparently and accountable, and able to realize a financial system that grows sustainably and stably, is able to protect the interests of customers and the community, facilitates a more effective coordination mechanism in dealing with problems that arise in the financial system, which are realized through the existence of an integrated system of regulation and supervision of all activities in the financial services sector.

The new policy of transferring oversight to the Financial Services Authority, still raises doubts and concerns, in relation to the effectiveness of supervision through the OJK, because there is no empirical evidence regarding the advantages of combining the regulatory and supervisory authorities, both from the micro-prudential and financial system stability side. On the other hand, there is a fundamental difference between Islamic banks and conventional banks, where Islamic banks in operating their business activities are based on sharia

principles, while conventional banks are based on interest principles, of course, there are fundamental differences in the supervision system in sharia activities [1]. In this article, the author will discuss the Effectiveness of Financial Services Authority Oversight in the Application of the Principles of Legal Protection for Fund Depositors in Islamic Banks.

## **2. Research Methods**

The research method used in this study is the method of qualitative legal research (qualitative-legal research). Qualitative data is obtained through interviews with depository customers in randomly selected Islamic banks as well as bank officials and supervisory institutions, in accordance with the methods used in legal research. In qualitative legal research, the method uses a case study approach (case study), a legal approach (statute approach), a conceptual approach (conceptual approach), and a socio-legal approach.

## **3. Results and Discussion**

Customers as consumers of financial services must be protected to support equal legal relations with banks as business operators providing banking services. Increasing customer protection and empowerment has relevance with efforts to enforce customer rights as consumers who use banking services in carrying out legal relations with banks as banking service providers [2].

According to Article 1 number 15 of Law Number 21 the Year 2011 concerning the Financial Services Authority and Article 1 number 2 POJK Number 1/POJK.07/2013, the so-called consumers are:

Parties who place their funds and/or utilize services available at Financial Services Institutions include customers in Banking, investors in the Capital Market, policyholders in Insurance, and participants in the Pension Fund, based on legislation in the financial services sector.

In the explanation of Article 38 paragraph (1) of the Sharia Banking Act, customer legal protection is carried out, among others, through the mechanism of customer complaints, increasing product transparency, and educating customers. Legal protection for customers is carried out through mechanisms including [3]:

- a. Making new regulations;
- b. Implementation of existing regulations;
- c. Legal protection for depositors' customers through deposit insurance institutions;
- d. Tightening bank licenses;
- e. Tightening arrangements in the field of bank activities;
- f. Tightening bank supervision.

Article 2 of the Financial Services Authority Regulation Number 1/POJK.07/2013 concerning the Protection of the Consumer Financial Services Sector, establishes 5 principles of protection for customers, namely [4]:

- a. Principle of Transparency
- b. Principles of fair treatment
- c. Principle of Reliability
- d. Principles of consumer data protection
- e. Principles of complaint handling and consumer dispute resolution.

As the implementation rule of the POJK, OJK issued two Circular (SE) related to consumer education and protection, namely: SE OJK Number 1/SEOJK.07/2014 concerning Implementation of Education in Order to Improve Financial Literacy to Consumers or

Communities and SE OJK Number 2/SEOJK.07/2014 concerning Services and Settlement of Consumer Complaints on Financial Service Businessmen.

In addition to regulating functions, OJK also has the authority to supervise financial institutions. The essence of supervision is to prevent as early as possible the occurrence of irregularities, waste, fraud, obstacles, mistakes, and failures in achieving goals and objectives and the implementation of organizational tasks [5].

In conducting supervision, the Financial Services Authority conducts regular supervision every 1 year. One of the bank officers said, in practice, the supervision carried out by the Financial Services Authority still faced problems, namely the lack of adequate human resource support, capable of mastering the Islamic economy, understanding the Islamic banking and finance industry. Can blame and give sanctions but do not always provide solutions. He also said that it was still better when supervision was carried out by Bank Indonesia. Now the Bank must also pay to the Financial Services Authority.

In the context of implementing legal protection for customers, the Financial Services Authority oversees the implementation of the principle of customer protection as stipulated in Article 2 of the Financial Services Authority Regulations, namely:

- a. The principle of "transparency", namely the provision of information about products and/or services to consumers, clearly, completely, in language that is easy to understand. In connection with this principle, the bank must inform the customer about any changes in benefits, costs, risks, terms and conditions stated in the document and/or contract. As a tangible form of supervision carried out by the Financial Services Authority by requiring financial products to include a halal stamp. Sometimes bank officers or marketing in marketing bank service products, provide unclear, incomplete information, and some even offer tempting offers to attract prospective customers. This happens, because not all Islamic bank employees have an understanding of the operations of Islamic banks. This can be caused by Islamic Bank Human Resources, especially at the middle and upper levels, are employees who migrate from conventional banks. It is estimated that 70 percent of Islamic bank employees currently come from conventional banks and / or with non-Islamic educational backgrounds.

The composition of Sharia Bank employees, from the level of education status, appears in the table as follows:

**Table 1.** Composition of Sharia Bank Employees

Educational level	Mandiri Syariah	BNI Syariah	Bank Muamalat
Junior HS	282	-	-
Senior HS	5.226	18	67
College	1.502	937	602
Bachelor	9.856	3.119	5.838
Master	262	180	162
Doctoral	-	1	-
<b>Total</b>	<b>16.895</b>	<b>4.255</b>	<b>6.669</b>

Source: Annual Report ABISINDO 2016

- b. The principle of "fair treatment", namely to treat consumers fairly and not discriminatively. Sometimes bank officers cannot avoid because of the policies of the leadership or from the authorities who provide recommendations to give special treatment.
- c. The principle of "reliability", namely everything that provides accurate services through reliable systems, procedures, infrastructure, and human resources. In this case, it cannot be separated from the role of technology, because the progress of the banking system cannot

be separated from the role of information technology [6]. The use of this technology, in addition to facilitating the company's internal operations, technology devices also aims to facilitate services to bank customers. For example, the ease of transfer of funds, so customers do not bother carrying cash.

- d. The principle is "confidentiality and security of consumer data/information", namely actions that provide protection, maintain the confidentiality and security of consumer data and/or information and only use them in accordance with the interests and objectives agreed to by consumers, unless otherwise stipulated by applicable laws and regulations.
- e. The principle of "complaint handling" is the service and / or resolution of complaints.

In handling consumer complaint resolution, consumers or the public can monitor their complaints to the OJK through an integrated consumer service system that has been launched, which can be monitored in two ways, namely traceable and trackable.

As the banking industry supervisory authority, the Financial Services Authority has an interest in increasing the protection of the interests of customers in relation to banks.

Fundamentally there are several reasons for the need for banking supervision [7]:

- a. Maintaining public trust as the owner of the funds, towards the integrity of the banking system and individual banks. The public must be sure that the bank supervisor will apply strict sanctions and immediately revoke the bank's business license before it's too late.
- b. Regular direct inspection is the best step to determine bank compliance with the provisions. Adherence to legislation traditionally is a top priority for supervisors.
- c. Prevent the problem from getting worse so the cost of saving or paying for deposit customers becomes very large.
- d. Provide input to the supervisor about the form, level of seriousness and consequences of a problem for the bank and the necessary corrective steps.

The purpose of the supervision of Islamic banks is to obtain information about Islamic banking business activities, also to determine the level of compliance of Islamic banking operations, not only limited to applicable legal provisions, but also compliance with sharia (Syariah compliance). How is it possible to carry out maximum supervision, if, in the Financial Services Authority, it has not shown partiality towards Islamic banks. This is evident in the Organizational Structure of the Financial Services Authority, which in the composition of the members of the Financial Services Authority (DK-OJK) Board of Commissioners has no Special Council to oversee Islamic banking and other sharia financial institutions. This is different from Bank Indonesia which has the Directorate of Islamic Banking.

**Table 2.** Organizational Structure of the Financial Services Authority

Ojk Board Of Commissioners	Implementation Of Operational Activities
a. Chairperson concurrently member;	a. Chairperson of the Board of Commissioners leads the field of Strategic Management I;
b. Deputy Chairperson as Chair of the Ethics Committee concurrently member;	b. Deputy Chairperson of the Board of Commissioners leads the field of Strategic Management II;
c. The Chief Executive of the Banking Supervisor concurrently as a member;	c. Chief Executive Banking Supervisor leads the Banking Sector Supervision sector;
d. Chief Executive Officer of the Capital Market Supervisor and member;	d. Chief Executive of Capital Market Supervisors leading the field of Capital Market Sector Supervision;
e. Executive Chief of Insurance Supervisors, Pension Funds, Financing Institutions, and Other Financial Services Institutions concurrently members;	e. Chief Executive of Insurance Supervisors, Pension Funds, Financing Institutions, and Other Financial Services Institutions leading the IKNB Sector Supervision sector;
f. Chairman of the Audit Board concurrently member;	f. Chairman of the Board of Audit leads the field of Internal Audit and Risk Management; and
g. Members in charge of Consumer Education and Protection;	g. Members of the Board of Commissioners for Consumer Education and Protection lead the field of Consumer Education and Protection.
h. Ex-officio member of Bank Indonesia who is a member of the Board of Governors of Bank Indonesia; and	
i. 9. Ex-officio members of the Ministry of Finance who are officials at the level of Echelon I of the Ministry of Finance.	

The absence of the Sharia Banking Special Board of Commissioners, to supervise Islamic banks, the Financial Services Authority places supervisors under the Banking Sector Supervision sector. The importance of regulation and supervising for Islamic financial institutions, banks throughout the world have adopted the Basel Committee on Banking Supervision as a reference for the supervision of conventional banking. According to Umer Capra and Tariqullah Khan, the measures determined by the Basel Committee are also important for sharia financial institutions, although they differ in several respects. These fundamental differences are as follows [8]:

- a. System considerations. While the failure of a company can have a direct impact on shareholders, which they should protect, the failure of a bank can have an impact on the health and overall stability of the payment system and the economy. If the trust of depositors in the system has decreased, they will withdraw their funds, as a result of the withdrawal of these funds not only shake the financial system but also can reduce the ability of banks to channel financing.
- b. There are interests of depositors who also need to be protected. Likewise, with investment depositors, they need to get greater protection than the general shareholders get in non-banking companies. This is because of the large level of leverage in the banking business, and most of the leverage level comes from the checking account. The greater the proportion of checking accounts, the greater the leverage level of the bank. Thus, banks need to adopt certain procedures to prevent uncertainty in investment decisions, management errors and high-risk exposure, and to manage risk with the principle of prudence. They also need to provide sufficient reserves to anticipate the erosion of investment accounts
- c. Sharia Compliance. Islamic banks need to ensure that their operations are in accordance with sharia principles.

d. Compliance with international regulatory standards. Islamic banks must strive to be acceptable on the interbank market in the international financial system. This will not be possible without compliance with applicable international regulatory standards.

Supervision of Islamic banks can be done directly or indirectly. Indirect supervision is carried out in the form of research, evaluation of banking reports sent periodically by banks. Direct supervision is carried out through direct inspection of Islamic banks [9].

The assessment and analysis of banking reports aim to assess the factors that affect banking performance, compliance with applicable regulations (compliance-based supervision), and the implementation of an early warning system to determine the level of difficulties faced by banks. Since the beginning [7]. Assessment is also carried out on the risks that exist in banks, both now and in the future (risk-based supervision). Supervisors conduct an assessment of bank risk by making a risk profile whose valuation is classified as a bank with high risk, moderate risk, and low risk.

Based on the results of interviews with bank officers, after evaluating the report sent by the bank, the Supervisor will conduct an inspection. OJK checks are carried out to assess the truth of the reported data, have the activities carried out by the bank be in accordance with the work plan; administrative examination; audit; also digging information on problems faced by banks, and other matters relating to supervision. OJK conducts checks, at least once a year, at an indefinite time, and can be done more than once, if there is a problem that must be corrected and corrected for deviations found.

The supervision of the Financial Services Authority on sharia banking is very dependent on coordination between the Financial Services Authority and institutions related to Islamic banking because there are fundamental differences between Islamic banks and conventional banks. Islamic banks in operating their business activities are based on sharia principles, while conventional banks are based on the principle of interest.

These differences lead to fundamental differences in the structure of corporate governance in the supervision system in sharia activities. Islamic banking supervision basically has two systems, namely:

- a. Supervision of financial aspects, compliance with banks in general and bank prudential principles;
- b. Supervision of sharia principles in bank operations [10].

The Supervision Structure in Islamic banking consists of the following two systems [7]:

- a. Internal Supervisory System, which consists of elements of the Shareholders Meeting (GMS), Board of Commissioners, Board of Audit, Sharia Supervisory Board (DPS), Compliance Director, and SKAI - Internal Sharia Review. This internal oversight system is more regulating inwardly and carried out so that there are mechanisms and control systems for management's interests.
- b. External Oversight System, which consists of elements of Bank Indonesia (currently by the OJK), the National Sharia Council-Indonesian Ulama Council (DSN-MUI), and Stakeholders. This external surveillance system is oriented to meet the interests of customers and the public in general.

Supervision of Islamic banking with a systems approach based on the standards issued by AAOIFI, as follows:

**Table 3.** AAOIFI Supervision Standards

AAOIFI standard related to Sharia Compliance No	Standard	Role	
1	ASIFI No. 4	Testing for Compliance with Sharia rules and Principles by Sharia Supervisory Board;	Auditor Eksternal
2	GSIFI No. 1	appointment, Composition and Report	Dewan Pengawas Syariah
3	GSIFI No. 2	Sharia Review	Dewan Pengawas Syariah
4	GSIFI No. 3	Internal Sharia Review	Auditor Internal
5	GSIFI No. 4	Audit and Governance Committee for Islamic Financial Institutions	Komite Audit & Governance

Looking at the system above shows that the Sharia Supervisory Board has a very important role in the Islamic banking supervision system. The Financial Services Authority in carrying out its duties as supervisor of Sharia Banking apparently did not supervise all Islamic banking activities, but there were several aspects specifically monitored by other institutions, namely the Sharia Supervisory Board (DPS). Sharia Supervisory Board is a body established and placed in a bank that conducts business activities based on sharia principles to ensure that the operations of Islamic banks do not deviate from sharia principles, which are placed on the approval of the National Sharia Board (DSN). The Sharia Supervisory Board oversees the implementation of DSN decisions at Islamic Financial Institutions. DPS is appointed and dismissed at the Islamic Financial Institution through the General Meeting of Shareholders after obtaining a recommendation from the DSN.

#### 4. Conclusion

In order to provide protection to sharia banking customers, the Financial Services Authority has carried out its duties and authorities, but has not been able to be implemented optimally, because there are still several problems, including the insufficiency of Human Resources, both in terms of competence and quantity that understand the principles of Islamic finance. To optimize the supervision of the Financial Services Authority on Islamic banking, it is highly dependent on coordination between the Financial Services Authority and institutions related to Islamic banking, such as the National Sharia Council-Indonesian Ulama Council (DSN-MUI) and Sharia Supervisory Board (DPS) and Compliance Unit Sharia in Islamic banking. The need to add a Sharia Compliance Commissioner to the organizational structure of the Financial Services Authority.

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