

The assignments and functions of the Financial Service Authority in disputes related to the Legal Protection for the Consumers in Indonesia

Sufmi Dasco Ahmad^{1*}, Pujiyono²

The Member of Indonesian Parliament (Dewan Perwakilan Rakyat Republik Indonesia)¹

Faculty of Law, Universitas Sebelas Maret, Indonesia²

sdascoahmad@gmail.com¹

pujifhuns@staff.uns.ac.id²

*Corresponding author

Abstract- *This article aims to describe and examine the problems of how the Financial Services Authority's assignments and functions in disputes related to legal protection for consumers. This research is a normative legal research that is prescriptive. Secondary data types include primary and secondary legal materials. The primary data is collected from many regulations about financial, financial service authority, consumer and banking. Data collection techniques used are library studies and cyber media, and the analytical techniques are deductive by syllogism methods. The research result shows that the Financial Services Authority in carrying out its duties and functions of consumer protection was carried out with three forms of action, namely, loss prevention measures, consumer complaints services, and legal defense actions. The three tasks and functions must be carried out maximally by applying the basic principles of the implementation of the OJK's duties so that it can accommodate the protection of consumers and society.*

Keywords- tasks; functions; disputes; protection; consumers

1. INTRODUCTION

The Financial Service Institution as an actor of business activity needs consumers as a party who is able to perform cooperation with the Financial Service Institution. In Article 1 (15) of Regulation Number 21 Year 2011 on the Financial Service Institution/ OJK (OJK Law), it is stated that consumers are the parties who place their fund and/ or utilize some services available in the Financial Service Institution, including the customers of banking, financiers in the capital market, policyholder in Insurance, and participants in the Pension Fund, based on the regulation in the financial service sector.

Consumers and the financial service institution have a legal relation in various forms, for example: the banking consumers, in this case is called with customers, can perform a legal relationship with a bank as the debtor, the consumers in the capital market is called with financiers or investors who in this case performing legal relationship with entity or company by making some investment to the company's shares, and other consumers relationships. The legal relationship between the consumers and the financial service institution has a main purpose that is getting some profit, either from the consumers' side or the financial service institution side.

The construction of legal relationship between the financial service institutions with the consumers should be equal. But the condition *de facto* or *de jure*, the consumers are in a weak position in front of the financial service institution. Among the things that create the weak position of consumers are the consumers' nescience and

the absence of consumers' bargaining power factors. In the other side, the service providers or the financial service institution seems to be better informed and powerful in front of its consumers. Thus, in the middle of this inequality of position, the legal relationship between consumers and the financial service institution is built, which often creates various kinds of loss at the consumers' level. Besides that, a factor that has become the weakness of the consumers is their low awareness of rights, thus in order to protect the consumers generally, it has been established the Regulation Number 8 Year 1999 on the Consumers' Protection.

OJK Law was enacted on November 22 since mandated by Article 34 of Law No. 33 of 1999 concerning Bank of Indonesia indicates the existence of a tug Financial Services Authority, which will serve to organize system of regulation and supervision of integrated financial services sector. The establishment of Financial Service Authority (further is abbreviated with OJK) as well the mandate of Article 34 Regulation Number 3 of 2004 on the Change upon the Regulation Number 23 of 1999 on Bank of Indonesia is based on the financial reformation principles, including independence, integrated, conflict of interest. "There are many problem issues in the financial service sector, which includes acts of moral hazard, un-optimal consumer protection financial services, and disruption of the stability of the financial system further encourage the need for the establishment of supervisory agencies in the financial service sector are integrated".

From this definition can be known that are many problems in the financial service sectors, so that they

encourages a need of the establishment of supervisory institution in the financial service sector. It seems to become a new umbrella for the enactment the legal relationship between the consumers and the financial service institution. The another problem is the relation between OJK and other high institution in Indonesia, there are several problem in constitutional structure.

The Financial Service Authority on its performance has three duties or functions as well as explained in OJK Law. The three functions are regulation, supervision, and protection functions. OJK has high role and position in the financial service sector activities. But in performing the two functions, OJK still has to become an umbrella for all parties, especially for the consumers, whose in fact position relative weak in front of the financial service institution. Thus, it has been regulated the third function of OJK, that is protection function or duty, which is regulated in Article 4 point C of UJK Law which states that by the establishment of OJK, it has to be capable in protecting the consumers' and society's interest, which then regulated furthermore in Chapter VI of OJK Law on the Consumers' and Society's Protection.

It is actually a big challenge for OJK, where it has to be able to position itself as a regulator and supervisor but in the application of regulation and supervision authority, OJK should still become a protector for its side in order that every decision OJK takes does not give any effect on the economic stability in Indonesia.

Based on the above description, the Writer is interested to discuss about the duties and functions of the Financial Service Authority in dispute related to the legal protection for the consumers.

2. RESEARCH METHODOLOGY

The type of legal research which is used in this legal writing is normative legal research or also called with doctrinal legal research. According to Peter Mahmud Marzuki, every research which is related to legal (legal research) is always normative. The nature of this legal research is prescriptive. It is a legal research which is carried out to solve the submitted legal issues, and give prescription on what it should be.

In this research, the writer will use statue approach. The statue approach is carried out by analyzing all Statues and Regulations related to he handled legal issues. The legal material used in this research is primary legal material that is the enacted Statue, and secondary legal material. The collecting technique which is used in this research is document research method or related literature material. The analysis technique of this research uses deduction syllogism and interpretation by using deductive logics.

3. THE RESULT OF THE RESEARCH AND DISCUSSION

Legal Protection to the consumers and society as a follow up action from the regulation and supervision functions which is done by OJK is put into effect on the financial

service activities in banking sector, the financial service activities in capital market sector, and the financial service activities in non-banking which covers insurance, pension fund, financing institution and other Financial Service Institution. Although this authority fully holds by OJK, but it has to be done a synergy in the form of coordination with the Bank of Indonesia as the party who establishes and performs monetary policy, regulating and maintaining the paying system and maintaining the stability of the financial system.

The regulation on the consumers and society protection which is performed by OJK is poured in Chapter VI of OJK Law on the Customers and Society Protection. Chapter VI consists of three articles: Article 28, Article 29, and Article 30, where each of them regulates the OJK authority in order to protect customers and society. Article 28 states that to protect the customers and society, OJK has an authority to perform some loss-preventing actions, which consists of the following:

- 1) Giving some information and education to the society on the characteristics of financial service sector, its services and products;
- 2) Asking the Financial Service Institution not to continue its activities, if these activities potentially harm the society;
- 3) Other actions which are considered suitable with the provision of legislation in the financial service sector.

Article 29 regulates that OJK performs some consumers' complaint services, which consist of:

- 1) Preparing an adequate instruments for the complaint services of the consumers who are injured by the actors in the Financial Service Institution;
- 2) Making a mechanism of complaint for the customers who are injured by the actors in the Financial Service Institution;
- 3) Facilitating the complaint resolution for the consumers who are injured by the actors in the Financial Service Institution corresponding to the legislation in the financial service sector.

Article 30 contains the legal defense authority of OJK, with consists of:

- 1) Instructing or performing a certain action to the Financial Service Institution to resolve the Consumers' complaint who are injured by the intended Financial Service Institution;
- 2) Submitting a lawsuit:
 - a) In order to regain the wealth owned by the injured party from the party who have caused the loss, either who are under the supervision of the intended party who cause the loss or under the supervision of other party with a good intention; and/ or
 - b) In order to get compensation from the party who had caused the loss on the Consumers and/ or the Financial Service Institution as the result of an offence upon the legislation in the financial service sector.

- 3) The compensation as well as intended in clause (1) b number 2, is only used to give compensation to the party who injured some loss.

Civil disputes or civil violation in the financial service sector can be done by various parties, either by the service provider institution or the consumers. The forms of violation are also diverse, including the violation upon the regulation which contains the requirements for the formation and execution of the Financial Service Institution itself.

Generally, the consumers and society protection effort in the financial service sector covers the preventive effort and repressive effort. The form preventive protection as well as mandated in Article 28 OJK Law, including:

- 1) Giving some information and education to society on the characteristics of the financial service sector, its service and products;
- 2) Asking the Financial Service Institution to stop its activities if the activities potentially harm the society; and
- 3) Other necessary actions that corresponding to the legislation in the financial service sector.

There are 5 (five) strategies performed by OJK as the forms of consumer protection which are preventive in nature as follow (some Strategies of Financial Consumers Protection, 2007: 35):

- 1) Building an Integrated Financial Consumers Service System which is easily accessed by the consumers and society (including for some consumers with special needs).
- 2) Arranging and applying a standard of consumer complaint by the Financial Service Institution which is done through Internal Dispute Resolution mechanism (IDR).
- 3) Actualizing an Alternative Institution for Dispute Resolution in the financial service sector which is reliable and trustable.
- 4) Building an Information System which is supporting the Administration of Consumers Protection.
- 5) Administering monitoring and evaluation of consumers complain handling as an analysis material and policy formulation of consumer protection.

Whereas the preventive efforts refer to the Article 29 OJK Law which consists of preparation of consumers' complaint instruments, making a mechanism of consumers' complaint, and facilitating consumers' complaint resolution that are injured some loss by the actors in the Financial Service Institution. Besides that, OJK also has an authority which is regulated in Article 30 of OJK Law to perform a legal defense which consists of instructing or performing certain actions to the Financial Service Institution to resolve the consumers' complaint and also submitting lawsuits in order to get some compensation for the injured parties, in other words OJK gives an opportunity to the Financial Service Institution to perform an Internal Dispute Resolution (IDR) or it is solved between the consumers and society with the related Financial Service Institution. Based on Article 38

of the Regulation of the Financial Service Authority Number 1 of 2013, after receiving consumers' complaint, the actors of Financial Service Business is required to carry out an internal investigation upon the complaint competently, correctly and objectively, carry out an analysis to ensure the validity of the complaint, and submitting an apologizing statement and offering some compensation (redness/ remedy) or product and/ or service improvement, if the consumers' complaint is valid. The other protection efforts according to Article 30 OJK Law is OJK has an authority to submit a suit with an aim to regain the wealth of the injured parties from the party who has caused the loss, either which is under the control of the party who has caused the loss or under the control of other parties with a good intention and/ or to get some compensation from the party who has made the loss on the consumers and/ or the Financial Service Institution as a result of the violence upon the legislation in the financial service sector.

Every consumer's complaint to the Financial Service Institution does not always get an agreement, if it happens, the consumers can perform a dispute resolution either outside the court or through the court. The dispute resolution outside the court as well as intended is performed through an alternative institution for dispute resolution, besides that the consumers can also expressing an application to the OJK to facilitate the resolution of consumers' complaint who are injured by the actors in the Financial Service Business. It is regulated in Article 39 of the Financial Service Authority Regulation Number 1 Year 2013 on the Consumers' Protection of the Financial Service Sector.

The giving of complaint facility which is performed by OJK actually is an effort to bring the consumers and the Financial Service Business Actors together to fundamentally review the issues in order to get a resolution agreement, whereas in order to perform complaint resolution function, OJK will designate a facilitator. OJK begins the process of facilitation after the consumers and the Actors of Financial Service are agreed to be facilitated by OJK which is poured into a facility agreement which contains an agreement to choose a complaint resolution which is facilitated by OJK and an approval to be obedient and submissive on the facility rules which is established by OJK. The execution of facility process until the Agreement deed is signed takes maximum 30 (thirty) work days since the consumers and the Actors of Financial Sector sign the facilitating agreement.

Besides that, through Article 30 OJK Law, OJK also has an authority to perform a legal defense for the consumers, including giving instruction or doing certain actions to the Financial Service Institution to resolve the consumer's complaint who are injured, and submitting a claim which an aim to regain the wealth owned by the injured party from the party who has caused the loss, either which is under the authority of the party who has caused the loss or which is under the authority of other parties with a good

intention, and also in order to get some compensation from the party who has caused the loss on the consumers and/ or the Financial Service Institution as the result of a violence upon the legislation in the financial service sector.

4. CONCLUSION

The position of OJK is known as an institution which performs a protection function to the consumers and society through some loss prevention action; consumers' complain service, and performing a legal defense action. In order that the administration of protection for the consumers by OJK can be performed maximally, it is important that a legal protection aspect should be arranged for the supervising officers of OJK and be poured into legal regulations, for example OJK Regulation. It has an aim that in the future in its administration of supervising duty, the officers of OJK is more confident in performing the legal actions.

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