

## The Roles of Bank Indonesia and Financial Services Authority as Rural Banks' Supervision Agency

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**Abstract :** Banks are financial institutions to collect and distribute funds to the public. As a public confidence institution, the banks must maintain the public confidence. In doing so, it is needed a supervision agency called Bank Indonesia. The purpose of this study is to see and to analyze the roles and the responsibilities of Bank Indonesia as rural banks' supervisory agency based on law No. 3 of 2004, Bank Indonesia and Act No. 21 of 2011, financial services authority. The writer employed a normative juridical approach by understanding, testing, and reviewing the secondary data. This research was a descriptive analysis describing the prevailing laws and regulations related to the authority of Bank Indonesia as a rural bank's supervision agency. The result of the research showed the roles of of Bank Indonesia and Financial Services Authority as rural bank supervisors were not aligned with the law provisions stipulated in Bank Indonesia article 27, a direct and indirect supervisions. Meanwhile, based on Article 28 of Law No. 21 of 2011, Financial Services Authority. The role of the Financial Services Authority in the legal protection of the consumer was not limited to facilitating the consumer protection. For instances, it is not only to accomodating and becoming a mediation institution but also becoming an institution that sides the consumers and society in the legal defense activities. As the central bank, bank indonesia is responsible for the case happening in Rural banks by putting it under a special supervision bank. In addition, if the rural bank is unable to improve its financial condition within a specified time, it will be declared as a failed bank and its business license will be revoked. The forms of protection, on the other hand, undertaken by the Financial Services Authority covers the prevention protection of violation and restoration of consumer rights if for instance the consumers suffer losses.

**Keywords:** Customer Funds; Misappropriation of Rural Banks; The role of the Financial Services Authority.

### Peranan Bank Indonesia dan Otoritas Jasa Keuangan sebagai Badan Pengawas terhadap Bank Perkreditan Rakyat

**Abstrak :** Bank merupakan lembaga keuangan yang menghimpun dan menyalurkan dana ke masyarakat. Sebagai lembaga kepercayaan masyarakat, bank harus dapat menjaga kepercayaan masyarakat, untuk menjaganya maka diperlukan badan pengawasan yaitu Bank Indonesia. Tujuan penelitian ini untuk mengetahui dan menganalisis peranan dan tanggung jawab Bank Indonesia sebagai badan pengawas terhadap Bank Perkreditan Rakyat berdasarkan Undang-Undang No 3 Tahun 2004 Tentang Bank Indonesia dan Undang-undang no 21 Tahun 2011 tentang Otoritas Jasa Keuangan. Metode pendekatan yang digunakan oleh penulis adalah metode pendekatan yuridis normatif dengan memahami, menguji, dan mengkaji data sekunder. Penelitian ini bersifat deskriptif analisis, menggambarkan peraturan perundang-undangan yang berlaku dan berkaitan dengan Bank Indonesia terhadap kewenangannya sebagai badan pengawas kepada Bank Perkreditan Rakyat. Hasil penelitian adalah Peranan Bank Indonesia dan Otoritas Jasa Keuangan sebagai pengawas dan pembina terhadap Bank Perkreditan Rakyat belum sesuai dengan yang ditetapkan Undang-Undang Bank Indonesia Pasal 27 yaitu mengenai pengawasan langsung dan pengawasn tidak langsung. Sementara berdasarkan Pasal 28 Undang-Undang No. 21 Tahun 2011 tentang Otoritas Jasa Keuangan, Otoritas Jasa Keuangan peran Otoritas Jasa Keuangan dalam sistem hukum perlindungan konsumen tidak terbatas hanya dengan memfasilitasi perlindungan konsumen yakni menampung dan menjadi lembaga mediasi tetapi juga menjadi lembaga yang berpihak kepada konsumen dan masyarakat dalam bentuk kegiatan pembelaan hukum. Bank Indonesia sebagai Bank sentral bertanggung jawab terhadap kasus Bank Perkreditan Rakyat dengan memasukkan bank tersebut ke dalam Bank Dalam Pengawasan Khusus. Pada waktu yang telah ditentukan Bank Perkreditan Rakyat tidak dapat memperbaiki kondisi keuangannya. Bank Perkreditan Rakyat dinyatakan sebagai bank gagal dan dicabut ijin usahanya. Sementara Bentuk-bentuk perlindungan yang dilakukan oleh Otoritas Jasa Keuangan meliputi perlindungan dalam upaya

pengecanaan terjadinya pelanggaran dan pemulihan hak-hak konsumen apabila konsumen mengalami kerugian.

**Kata Kunci:** Peranan Otoritas Jasa Keuangan; Penyelewengan Bank Perkreditan Rakyat; Dana Nasabah

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## INTRODUCTION

Banking institutions is a financial institution which has strategic values in the economic life of a country. The institution acts as an intermediary between parties that have surplus funds and those who are lack of funds.<sup>1</sup> Thus, banks will be engaged in credit activities and various services provided. Banks serve financing needs and accelerate the payment system mechanism for all economic sectors. This is to achieve maximum benefit. Furthermore, these banking activities formed a general and comprehensive banking system, the banks' characteristics and main functions are almost the same. In addition, there is a link between life and bank activities globally and across national borders. Thus, they are not limited to a particular territory of a country. It broadly covers the global economy. The banking activities are generally done by people who can be distinguished based on their business objective and function. It can be in the form of a central bank and a commercial bank. The activities in a commercial bank are fostered and supervised by the central bank. The central bank is carrying out its main duties based on policies set by the government. Globalization affects various aspects of life including public finances as perceived by society in general. It is considered providing convenience or conditions in each agreement made between the public and the bank.<sup>2</sup> The increase in foreign debt, the public and private debt made the Indonesian economy faced a difficult situation. This was due to the economic restructuring steps (debt, subsidy removal, and privatization). The International Monetary Fund (IMF) did not get strengthen but it weakened the economic resilience of the people.

The Central Bank is a state institution that has the authority to issue legal payment of a country, formulate and implement monetary policy, regulate and supervise banking, and function as a lender of last resort. The bank functions and applies authority like the central bank is Bank Indonesia.<sup>3</sup> The consequence of an institution aiming to maintain the stability of the rupiah exchange rate, Bank Indonesia has the duty to:<sup>4</sup>

1. Establish and implement monetary policy;
2. Regulate and maintain the smooth operation of the payment system;
3. Manage and supervise the Bank.

Bank Indonesia is carrying out the duty of regulating and supervising banks based on the provisions of Article 24 of Act Number 3 of 2004 on Bank Indonesia. It has the authority to enact regulations, grant and revoke licenses for certain institutions and bank business activities, do bank supervision, and impose sanctions on Banks according to statutory provisions. However, with the establishment of the OJK on December 31, 2013, it was officially stated the regulation and supervision of the banking system which was previously under BI supervision had to be delegated to OJK. In addition, OJK also has the authority and duties in regulating financial services activities in the capital market sector and non-bank financial institutions. Thus, all financial service activities in the banking sector, capital markets, insurance, pension funds, financial institutions, and other financial service institutions are under the Financial Services Authority.

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<sup>1</sup> Muchdarsyah Sinungan, *Uang dan Bank*, Bina Aksara, Jakarta, 1987, page 111

<sup>2</sup> Dwi Edi Wibowo, Handriyanto Wijaya, Liana Endah Susanti dan Ratna Anggraini, 2019, *The Analysis of Standard Agreement in Credit Transactions Through Financial Technology Viewed from Law No. 8 of 1999 Concerning Consumer Protection*, UNIFIKASI: Jurnal Ilmu Hukum, June 2019, page. 61

<sup>3</sup> Muhamad Djumhana, *Hukum Perbankan di Indonesia*, Citra Aditya Bakti, Bandung, 2006, page 118

<sup>4</sup> *Ibid*, page 222

The OJK establishment brings an important and major change to the financial system in Indonesia. This is expected to have a positive impact on the future of the Indonesian economy. However, in its implementation, there are several worrying obstacles such as problems arise due to the transition of authority or the delegation of tasks and functions from previous financial institutions to OJK. In the provisions of Law No. 7 of 1992 on banking or its amendments, the Law No. 10 of 1998, there are only two types of banks,<sup>5</sup> Commercial Banks and Rural Banks.

Rural bank (BPR) is a financial institution that has an important role in boosting the Indonesian economy. The existence of BPR is very helpful for micro, small and medium enterprises. This is because BPR business activities are primarily aimed at serving small businesses and people in rural areas. BPR which is part of the banking system must be healthy and can be trusted by the public to optimally contribute to moving the economy as a whole. BPR business development is driven by three main factors such as government policies that provide opportunities in the establishment of BPR, the banks' deregulation that enlarge the space movement for rural banks, and the amount of the community needs for banking services in suburban and rural areas. This BPR contribution will becoming more evident if the BPR is in a healthy and strong condition. Accordingly, this study formulated the following research questions: What is the role of Bank Indonesia and OJK as the Supervisory agency for Rural Banks? What is the responsibility of Bank Indonesia and OJK to Rural Banks in misusing customer funds?

## RESEARCH METHODS

This study used the Juridical-normative approach specifically a descriptive-analytical. The data used were primary legal materials consisting of statutory regulations, secondary legal materials in the form of books, and tertiary legal materials, the other relevant materials to the subject matter which provide information on primary and secondary legal materials. Data were collected using document studies and interviews which then analyzed using qualitative juridical methods. It was compiled qualitatively to achieve clarity on the issues discussed.

## RESULTS AND DISCUSSION

### 1. The Roles of Bank Indonesia and Financial Services Authority as Rural Banks' Supervision Agency

The Bank's management of public funds and the bank's business continuity are highly dependent on maintaining the level of public confidence. Thus, the Banking Law stipulates that banks must comply with strict rules, particularly in maintaining the banks' health level. In this regard, referring to Article 29 of the banking law and Article 8 letter (c) the law of Bank Indonesia, the institution given the authority by law to administer bank regulation, licensing, supervision, and bank sanctions is Bank Indonesia (central bank). In realizing a healthy, strong, and efficient banking system for creating a stable financial system and boosting the national economic growth, the Indonesian banking system is supported by six pillars as follows:

1. Healthy banking structures;
2. Healthy system settings;
3. Independent and effective monitoring systems;
4. Strong banking industries;
5. Sufficient supporting infrastructures
6. Consumers protection.

This is aimed to improve the performance, coordination and synergy of supervisory duties, and bank supervision by the Board of Governors. The role of Bank Indonesia as a supervisory agency

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<sup>5</sup> Ibid, page 111

stipulated in Act No. 23 of 1999 on Bank Indonesia. In connection with this role, Bank Indonesia has the following tasks: To determine and implement monetary policy; Regulate and maintain the smooth operation of the payment system; Regulate and supervise the banks.

Bank supervision by Bank Indonesia as the central bank can be either direct supervision or indirect supervision. According to the explanation of the provisions of Article 27 of Law No. 23 of 1999 on Bank Indonesia, direct supervision refers to an inspection followed by supervisory actions. Meanwhile, indirect supervision is early supervision such as research, analysis, and evaluation of bank reports. In carrying out supervisory duties, Bank Indonesia establishes several types of supervision based on an analysis of a particular bank condition as follows:<sup>6</sup>

1. Routine Supervision;
2. Intensive Supervision;
3. Special Surveillance .

According to Act No. 3 of 2004 on Bank Indonesia, Article 27 states Bank Supervision done by Bank Indonesia is in the form of direct and indirect supervision. In dealing with funds embezzlement of rural banks, Bank Indonesia conducts direct supervision. This is done by examining the bank to analyze and evaluate the level of bank compliance with applicable regulations or just passively waiting for reports. The supervision of bank financial institutions by Bank Indonesia includes commercial banks, BPR, and Syariah banks. Meanwhile, the Supervision of non-bank financial institutions is divided into two categories, non-bank and non-cooperative financial institutions. They are supervised by the ministry of cooperatives.<sup>7</sup>

The establishment of the OJK had an impact on the changes of four laws and regulations related to insurance, capital markets, banking, the Capital Market Supervisory Agency, and other Financial Institutions. Substantially, the OJK must be able to connect each supervisory regulator's interest this time. OJK's duties are in line with Article 6 of the OJK Law, which is to carry out regulatory and supervisory duties on:

1. Financial service activities in the banking sector;
2. Financial services activities in the capital market sector;
3. Financial service activities in the insurance sector, pension funds, financial institutions, and other financial service institutions.

Supervision of rural banks by Bank Indonesia is done based on special supervision, supervision of banks deemed to be experiencing difficulties and endangering their business continuity. For a Bank with this special supervision status, Bank Indonesia takes several actions such as:

1. Instructing the Bank and/or Bank shareholders to submit a written capital restoration plan to Bank Indonesia;
2. Instructing the Bank to fulfill its obligations on doing mandatory supervisory actions.

In carrying out the task of regulating and supervising banks, Bank Indonesia refers to the provisions of Article 24 of Act Number 3 of 2004 on Bank Indonesia. It states BI has the authority to enact regulations, grant and revoke licenses for certain bank institutions and business activities, apply bank supervision, and sanctions based on statutory provisions. Referring to these provisions, it is very clear that Bank Indonesia has the full authority, responsibility, and obligation in banks' guidance and supervision by taking preventive and repressive efforts. As the bank established based on a business license from Bank Indonesia, Rural Bank is under the supervision of Bank Indonesia. However, the bank's supervision, guidance, and inspection conducted by Bank Indonesia on BPR are not in line with the provisions stipulated in the Bank Indonesia Act Article 27. The failure on the

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<sup>6</sup> See <<http://www.bi.go.id/> Bank Dalam Pengawasan Khusus (Special Surveillance)> accessed on December 8, 2007

<sup>7</sup> Hermansyah. 2005. Hukum Perbankan Nasional Indonesia. Jakarta. Prenada Media. page. 214

BPR's operations is not only due to the negligence of the bank manager but is also due to the weak implementation of supervision by Bank Indonesia.

The rural bank's task is to serve people who need financing on conditions determined by statutory regulations. In addition, the bank also has to refer all of its activities based on implied and express law.<sup>8</sup> On this basis, rural banks must also realize the need of knowing various business risks between banks and customers. Bank Indonesia states the Rural Banks are listed as banks under special supervision or DPK. The provisional investigation resulted in disgraceful actions done by a number of BPR directors. For this reason, during an investigation for three to six months, the RB can not accept new funds or extend new credit to customers. Bank Indonesia gave BPR six months to correct its bank. In the first three months, there will be an evaluation. Bank Indonesia gave Rural bank three months to evaluate and improve the internal condition of BPR. If there is no progress, Bank Indonesia makes a report to the deposit insurance agency (LPS) that the bank is a failed bank or cannot be rehabilitated.<sup>9</sup> The establishment of the Financial Services Authority in Indonesia can not be separated from the impact of the economic crisis in 1997 and following Central Bank trends in several countries including England (1997), Germany (1949), Japan (1998) which wanted the Central Bank to be independent, free from the interference of any party, the Financial Services Authority tries to imitate some practices used by other countries.<sup>10</sup> The need for a one-stop supervision system is considered very important nowadays, especially for banking institutions that are supporting the existence of the OJK as an independent supervisory institution, free from political intervention, or the interests of certain parties. The number of cross-sectoral problems in the financial services sector covers the actions of moral violence, inadequate protection of financial service consumers, and the disruption of financial system stability. This has increased the need for the establishment of an integrated supervisory institution in the financial services sector.<sup>11</sup>

## **2. The Responsibilities of Bank Indonesia and OJK to Rural Banks in the Missappropriation of Customer Funds**

Apart from having business objectives, banking institutions also carrying out the national mandate for the welfare of many people. Thus, banks must not ignore the community's interest called the common welfare. Accordingly, the regulations will force the banks to act fairly and to promote the improvement of people's welfare.<sup>12</sup> The responsibility of Bank Indonesia towards BPR can be seen in Article 37 paragraph (1) of Law No. 10 of 1998 on Banking. In the case a bank experiences difficulties endangering its business continuity, Bank Indonesia may take the following actions:

1. Shareholders increase the capital
2. Shareholders replace the board of commissioners and/or directors of the bank
3. Banks write-off bad loans or financing based on Syariah principles and calculate bank losses with their capital
4. The Bank conducts a merger or consolidation with other banks
5. The bank is sold to a buyer who is willing to take over all obligations
6. The Bank

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<sup>8</sup> Putri Maha Dewi, 2020, *Credit Insurance as an Effort to Overcome Bad Credit Risk in Modern Banking Economy in the Industrial Revolution 4.0 in Indonesia*, UNIFIKASI: Jurnal Ilmu Hukum Vol. 07, No. 01, April 2020, page. 88

<sup>9</sup> Timbuktu Harthana, Kompas, September 13, 2017

<sup>10</sup> Zainal Asikin, 2015, *Pengantar Hukum Perbankan Indonesia*, Jakarta, Raja Grafindo Persada, page.50-51

<sup>11</sup> Zulfi Diane Zaini. Hubungan Hukum Bank Indonesia Sebagai Bank Sentral dengan Otoritas Jasa Keuangan (OJK) Pasca Pengalihan Fungsi Pengawasan Perbankan. *Jurnal Media Hukum* Vol. 20 No. 02 December 2013 page. 365

<sup>12</sup> Lukmanul Hakim, 2019, *Credit Banking in Business Law Perspective*, UNIFIKASI: Jurnal Ilmu Hukum, Vol. 06 No. 01, Juni 2019, page. 53



7. will hand over all of the management or part of its activities to other parties
8. In paragraph (2) if:
  - a. The actions referred to in paragraph (1) have not sufficiently resolved the banks' difficulties, and/or
  - b. According to Bank Indonesia's assessment, the condition of a bank can endanger the banking system
  - c. The director of Bank Indonesia can revoke the bank's business license and instruct the bank's board of directors to immediately hold a General Meeting of Shareholders to dissolve the bank's legal entity and form a liquidation team.

In paragraph (3): In the case, the bank's board of directors does not hold a General Meeting of Shareholders as referred to in paragraph (2), the director of Bank Indonesia requests the court to issue a decision containing the dissolution of the bank's legal entity, the appointment of a liquidation team, and an order to carry out liquidation based on the prevailing laws and regulations. Pursuant to Article 33 of Act No. 3 of 2004 on Bank Indonesia, in the case based on Bank Indonesia's assessment, the bank condition endangers the business continuity of the bank concerned and or endangers the banking system or the banking problems endanger the national economy, Bank Indonesia may take the actions as regulated in the applicable banking law. Referring to bank regulation and supervision, basically, the bank supervisory authority can do as best as he can do. Bank Indonesia covers 4 powers: the authority to issue licenses; authority to regulate; authority to control or supervise; and the authority to impose sanctions. The authority to control or supervise banks assigns responsibility to Bank Indonesia. The Bank Indonesia's responsibility to BPR is to apply general and specific inspections. This aimed to obtain a description of the BPR's compliance with the applicable regulations, the law of Bank Indonesia Law. Furthermore, this is also to identify unhealthy practices done by the BPR. The results of an investigation done by Bank Indonesia found embezzlement of customer funds in the BPR. Thus, Bank Indonesia declared BPR as a failure.<sup>13</sup>

Bank Indonesia was being negligent in carrying out the duties of fostering and supervising the Rural Bank. This has resulted in the liquidation and revocation of its business license. Thus, Bank Indonesia had to be responsible for settling the problem. Bank Indonesia's responsibility on rural bank customer deposits is to submit the customer funds' payment to the Deposit Insurance Corporation (LPS). The payment of the BPR customer funds done by the Deposit Insurance Corporation (LPS) is in line with the results of verification by paying a maximum of up to IDR of 100 million.<sup>14</sup> Institutionally, OJK is outside the Government. This indicates that OJK is not part of the Government's power. However, there is a possibility of the existence of government representative elements. This is because OJK is basically an authority in the financial services sector that has strong relations and links with other authorities such as the fiscal and monetary authorities. Therefore, this institution involves an Ex-officio element representation of the two authorities.<sup>15</sup>

In Article 28 of Law no. 21 of 2011 on the Financial Services Authority, regulates the protection of consumers and the public. The Financial Services Authority has the authority to a preventive action to consumers and the public losses. It includes: a) Providing information and education to the public regarding the characteristics of the financial services sector, services and products; b) Requesting Financial Services Institutions to stop their activities if these activities have the potential to harm the community; and c) Other necessary actions referring to the provisions of laws and regulations in the financial services. Apart from the efforts of preventing violations, Article 29 of Law no. 21 of 2011 on the Financial Services Authority, states there is a customer complain

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<sup>13</sup> [Http://www.deikfinance.com/index..php.read/tahun/2007/12/07](http://www.deikfinance.com/index..php.read/tahun/2007/12/07)

<sup>14</sup> Ibid, [Hptt://www.deikfinance.com/index..php.read](http://www.deikfinance.com/index..php.read)

<sup>15</sup> Rati Maryati Palilati. *Perlindungan Hukum Konsumen Perbankan Oleh Otoritas Jasa Keuangan*. Jurnal IUS Bo. IV No. 3 December 2016. page. 50

service for violations committed by businessmen as follows: a). Preparing adequate tools for customer complaints services being impaired by financial service institutions. b) Creating a consumer complaint mechanism who are disadvantaged by financial service institutions. and c) Facilitating the resolution of consumer complaints who are harmed by financial services institutions based on laws and regulations in the financial services sector.

## CONCLUSION

Based on the findings, it is concluded the roles of Bank Indonesia and OJK as supervisors agencies for Rural Banks are not in line with stipulated law Bank Indonesia Article 27 on direct and indirect supervision. Meanwhile, based on Article 28 of Law no. 21 of 2011 on the Financial Services Authority, The Financial Services Authority's role in the legal system of consumer protection is not limited to facilitating consumer protection, such as not only accommodating and becoming a mediation institution but also being an institution that sided with consumers and society in any legal defense activities. Bank Indonesia as the central bank is responsible for BPR cases. For instance, placing it under Special Supervision. If within the stipulated time BPR cannot improve its financial condition, it will be declared a failed bank and its business license will be revoked. Meanwhile, the forms of protection undertaken by the Financial Services Authority cover the protection of preventing violations and restoring consumer rights once the consumer experiences a loss.

## SUGGESTION

The researchers suggest the role of Bank Indonesia as a supervisory agency to be further enhanced. Thus, public confidence in banking institutions is maintained. This can be done by improving the implementation of supervision and guidance systems such as tightening bank supervision and coaching. In addition, Bank Indonesia should also improve its supervision quality and quantity of supervision to not causing a burden to the Indonesian economy. The responsibility of Bank Indonesia as a supervisory agency for banks must be addressed and reorganized. Thus, similar cases in Rural Bank do not appear for the second time. Bank Indonesia is also expected to renew its supervisory agency to not losing public confidence. OJK must also demonstrate its existence as an independent banking supervisory institution based on its main duties. This should be in line with the guarding protection strategy for banking customers. Accordingly, a fair and equitable agreement between banks and customers is achieved.

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