

The Role of the Financial Services Authority in Realizing Insurance Customer Protection

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ABSTRACT

The role of the Financial Services Authority is to provide consumer protection for the insurance business based on Law Number 21 of 2011, Law Number 40 of 2014, Law Number 8 of 1999 and Regulation of the Financial Services Authority in the context of protecting consumers of financial services as a business regulatory and supervisory agency insurance in providing protection to customers in the form of legal certainty for policyholders. The Financial Services Authority must further enhance its roles and functions, so that in the future there will be no more cases of default by insurance companies and stricter restrictions on investment placements for insurance companies. It is hoped that the Financial Services Authority will better understand its function in providing legal protection to consumers and the public.

Preliminary

Basically the law functions to protect human interests in every life and legal relationship, the parties have their respective interests.³ To protect economic stability and protect consumers, the Financial Services Authority⁴ was established based on Law No. 21 of 2011 as a supervisory and regulatory agency for policies in banking and other financial institutions, as well as protecting customers of insurance companies.

The Financial Services Authority was formed with the aim of protecting the interests of consumers and the public, having a role in preventing and overcoming the accumulation of illegal funds with an investment modus operandi, so that all financial services sector activities can be carried out in an orderly, fair, transparent and accountable manner, able to realize a financial system. that grows in a sustainable and stable manner, and is able to protect the interests of consumers and the public, through an integrated regulatory and supervisory system for all activities in the financial services sector.⁵

Insurance is a growing industry in society. Public awareness of the importance of protection against various kinds of risks is one of the causes of the high number of people who use insurance products.⁶ Basically, insurance or coverage is a contract or agreement called (policy) and states that one party, called the insurer (insurer) agrees, as compensation, for an indemnity or known as premium (premium),

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3. Suparman. *Sastrawidjaja, Hukum Kepailitan dan Penundaan Pembayaran Utang, Alumni, Bandung, 2010, hlm 71.*

4. *The establishment of the Financial Services Authority marks the start of a new era of the financial services sector supervision system. Law Number 21 of 2011 reorganizes the supervision system for the financial services sector; stipulates several fundamental changes to the supervisory system, First, implementing an integrated supervisory system. Second, separate microprudential supervision from macroprudential supervision. Third, establish a Financial System Stability Coordination Forum and appoint the Minister of Finance as the Coordinator. Fourth, improve financial education and consumer protection for financial services. Fifth, sharpen the role of the Deposit Insurance Corporation and finally, strengthen law enforcement in the financial services sector. Zulkarnain Sitompul, Functions and Duties of the Financial Services Authority in maintaining the stability of the Financial System, Paper at the Seminar on the Existence of the Financial Services Authority to realize a sustainable and stable national economy, Medan, November 25, 2014, page 1.*

5. Adrian Sutedi, *Aspek Hukum Otoritas Jasa Keuangan, Raih Asa Sukses, Jakarta, 2014, hlm 57.*

6. *Humans in living life and carrying out various activities are always faced with various possible uncertain circumstances, in the form of events that cause a sense of insecurity which is commonly called risk, Sri Rezeki Hartono, Insurance Law and Insurance Companies, Sinar Graphic, Jakarta, 1995, page 2. Derived from economic factors, natural factors, or human factors. The risk of causing the burden of loss of property or human life. Planning for human life cannot be separated from insurance or coverage which is a translation of Inkriesurance or assurantie, arising from human needs. Insurance as an action planning future life that is preventive (preventive). Suparman Sastrawidjaja, Legal Aspects of Insurance and Securities, Alumni, Bandung, 1997, page 1.*

will pay the amount of money that has been paid. agreed, to another party (insured; insured) to indemnify a loss, damage, or injury, on something of value in it.⁷

Insurance companies act as risk bearers who in running their business relate to the insured or through insurance brokers,⁸ are non-bank financial institutions in the field of financial services to the public in overcoming future risks.

For the general public, in addition to avoiding risks, preventing risks and holding risks faced in the present and in the future, insurance is a form of spreading the risk of being owned, although it is more accurately called risk transfer. The usefulness of insurance for companies is that through insurance agreements they will be able to increase their business and dare to set bigger goals. For the development of the country, the premiums collected in an insurance company can be cultivated and used as funds for development efforts. The results will be enjoyed by the community.⁹

Various problems in insurance triggered the issuance of Law Number 40 of 2014 as an answer to the complexity of the insurance regulatory system in Indonesia which is integrated with insurance regulations through the Financial Services Authority. Insurance companies in carrying out their business activities do not always run well, from several cases there are several insurance companies experiencing problems in carrying out their business activities. In practice, the expectation of an insurance institution does not match the expectations of society, there are many shortcomings in the implementation of insurance that result in customer losses, including insurance customers who do not get the rights according to the agreement in the insurance policy, and the difficulty of customers making insurance claims.

Consumer protection in the financial services sector minimizes disputes between financial service actors and customers. The existence of the Financial Services Authority, one of which has the authority to revoke the business license of an insurance company, turns out to cause new problems for insurance customers. The most important protection for insurance customers is obtaining compensation for the loss of insurance customer funds, in addition to maintaining economic stability. This is actually the hope of the community and insurance customers

Formulation of the Problem

Research starts from a problem or issue called foreshadowed problems,¹⁰ where this problem piques the curiosity of researchers with various questions,¹¹ to explain, understand, explore a process and describe experiences.¹²

In order to find the identification of the problem, it is necessary to ask what is the problem that will be studied further to find a solution to some of the problems identified.¹³ The formulation of the problem of this research is how the role of the Financial Services Authority in Realizing the Protection of Insurance Customers.

7. Mulhadi, *Dasar-Dasar Hukum Asuransi*, Raja Grafindo Persada, Jakarta, 2017, hlm 2.

8 A. Junaedy Ganie, *Hukum Asuransi Indonesia*, Sinar Grafika, Jakarta, 2013, hlm 44.

9 Eman Suparman dan Endang, *Hukum Asuransi: Perlindungan Tertanggung Asuransi Deposito Usaha Perasuransian*, Alumni, Bandung, 1997, hlm 1.

10 Foreshadowed problems are a set of imaginable issues or problems (set of issues or some problems) or a shadow of community problems to be studied, it can also forecast problems before entering the research field. <https://mulyadinpermana.wordpress.com/2019/02/11/ethnography-principles-in-practice>

11 Hammersley, Martyn dan Paul Atkinson, *Ethnography : Principle in Practice*, Routledge, New York, 1997, dalam Sulistyowati Irianto dan Shidarta, *Metode Penelitian Hukum: Konstelasi dan Refleksi*, Yayasan Obor Indonesia, Jakarta, 2009, hlm 301.

12 John W Creswell, *Research Design, Qualitative and Quantitative Approaches*, Publication, London, 1994 dalam Sulistyowati Irianto dan Shidarta, *Op, Cit*, hlm 303.

13 Idham, *Konsolidasi Tanah Perkotaan Dalam Perspektif Otonomi Daerah*, Alumni, Bandung, 2004, hlm 18.

Legal Protection Theory

Insurance customers who experience losses must get legal protection so that they get their rights again. Legal protection is a protection for legal subjects in the form of preventive and repressive legal instruments, both written and unwritten.

Law as a means or instrument regulates rights and obligations, so that legal subjects carry out their obligations and obtain rights fairly. The law functions as an instrument of legal protection for legal subjects¹⁴. Law as the protection of human interests, to be protected. Legal protection provides protection for human rights that are harmed by others and that protection is given to the community so that they can enjoy all the rights granted by law.¹⁵ Legal protection is the guarantee of human rights and obligations in the context of fulfilling their own interests and in relationships with other humans.

Legal protection is all efforts to guarantee legal certainty based on all regulations or rules in a common life. All regulations can be seen in laws, ratifications and international conventions.¹⁶ Legal protection is protecting a person's interests by allocating a power to him to act in that interest. One of the nature and at the same time the purpose of law is to provide community protection.¹⁷ Legal protection is a description of the function of law, namely the concept where the law can provide justice, order, certainty, benefit and peace. Legal protection is a collection of rules or rules that can protect one thing from another. The law provides protection from something that results in the non-fulfillment of rights.¹⁸

The theory of legal protection is an important theory to study, because the focus of the study of this theory on legal protection to the community based on this theory is that the community is in a weak position, both economically and in juridical aspects.¹⁹ The term legal protection theory comes from English, namely legal protection theory, while in Dutch it is called *theorie van de wettelijke bescherming*, and in German it is called *theorie der rechtliche schutz*.²⁰

Legal protection for the people as a government action is preventive and repressive. Preventive legal protection aims to prevent disputes that direct government action to be careful in making decisions based on discretion and repressive protection aims to resolve disputes, including handling in the judiciary.²¹

The theory of legal protection is related to the provision of services to the community. Human interest is a demand that is protected and fulfilled by humans in the legal field.²² The law protects a person's interests by allocating a power to him to act in the context of his interests. The allocation of this power is carried out in a measurable manner in the sense that its breadth and depth are determined. Such power is called a right. But not every power in society can be called a right, but only certain powers are the reason for attaching that right to a person.²³

Legal Protection Theory is deemed appropriate to answer the problems in the Financial Services Authority's research to provide legal protection to insurance customers. This legal protection theory can

14. Ridwan H R, *Hukum Administrasi Negara, Universitas Islam Indonesia Press, Yogyakarta, 2003, hlm 265.*

15. Satjipto Raharjo, *Ilmu Hukum, Op, Cit, hlm 53.*

16. Sudikno Mertokusumo, *Mengenal Hukum Suatu Pengantar, Liberty, Yogyakarta, 1983, hlm 20.*

17. Satjipto Rahardjo, *Permasalahan Hukum di Indonesia, Alumni, Bandung, 1983, hlm 121.*

18. Philipus M, Hadjon, *Perlindungan Hukum Bagi rakyat di Indonesia Sebuah Studi tentang Prinsip-Prinsipnya, Penanganannya oleh Pengadilan dalam Lingkungan Peradilan Umum dan pembentukan peradilan Administrasi Negara, Bina Ilmu, Surabaya, 1987, hlm 2*

19. Salim H S dan Erlies Septiana Nurbani, *Penerapan Teori Hukum Pada Penelitian Tesis dan Desertasi, Raja Grafindo Persada, Jakarta, 2013, hlm 263.*

20. *Ibid, hlm 263.*

21. Ninik Wauf, *Kajian Teori Perlindungan Hukum, Rajawali, Jakarta, 2011, hlm 46.*

22. Salim H S dan Erlies Septiana Nurbani, *Op, Cit, hlm 266.*

23. Satjipto Rahardjo, *Ilmu Hukum, Op, Cit, hlm 53.*

be used to measure the services provided by the Financial Services Authority in providing legal protection for insurance customers.

Insurance customers who suffer losses due to defaults must obtain legal protection rights. Legal protection is a protection given to legal subjects in the form of legal instruments both preventive and repressive, both written and unwritten.²⁴ The state must be present in protecting its people, in this case the customers.

Discussion

Financial Services Authority as Independent Regulator

The Financial Services Authority is an independent²⁵ institution and is free from interference from other parties, has the functions, duties, and authorities²⁶ of regulation, supervision, inspection, and investigation. support the existence of the Financial Services Authority.²⁷

The plan to form the Financial Services Authority is because the government considers Bank Indonesia as the central bank to fail to oversee the banking sector.²⁸ Weak banking supervision led to the collapse of the banking industry and a prolonged downturn in the Indonesian economy.²⁹ In response to this situation, the government proposed a Draft Law on Bank Indonesia which provides for the independence of the Central Bank, and also issued a banking supervision function from Bank Indonesia.³⁰

The government's desire to create an independent supervisory institution has been seen since the

24 Sidharta, *Hukum Perlindungan Konsumen Indonesia*, Gramedia Widiasarana Indonesia, Jakarta, 2006, hlm 56.

25 Independent is independent, having understanding, free from dependence on others. Language Center of the Ministry of National Education of the Republic of Indonesia, *Great Dictionary of the Indonesian Language*, <http://centerBahasa.kemendiknas.go.id/kbbi>. The definition of an independent authority or an independent state commission as a state organ which is idealized to be independent and therefore outside the executive, legislative and judicial branches of power, actually has the intervention of all three. The independence of the Financial Services Authority does not mean an institution that has unlimited freedom. the question of independence must be linked to the principle of checks and balances because in principle there is no absolute independence. Jimly Assiddiqie, *Indonesia's Constitutional Structure After the Fourth Amendment of the 1945 Constitution, Papers in the National Law Development Seminar: Checks and balances can be seen from the structure of the Board of Commissioners of the Financial Services Authority which involves an Ex-officio member from Bank Indonesia who is a member of the Board of Governors of Bank Indonesia and an Ex-officio member from the Ministry of Finance. So that the Financial Services Authority is a functional independent institution. It is interpreted that an institution is free to determine the method and implementation of the policy instruments it determines which are considered important to achieve its goals.*

26 Article 1 point 1 of Law Number 21 of 2011.

27 Siti Sundari, *Report of the Compendium of Law in Banking Sector*; Ministry of Law and Human Rights, 2011, p. 44. Several reasons for the formation of the Financial Services Authority because the globalization of the financial system and advances in information technology and financial innovation have created a complex, dynamic, and interrelated financial system between financial sub-sectors, both in terms of products and institutions, adding to the complexity of transactions and interactions between financial service institutions. . *Elucidation of Law Number 21 of 2011.*

28 This can be seen when the economic crisis hit Indonesia in mid-1997, resulting in the liquidation of 16 banks and the disbursement of Bank Indonesia liquidity assistance. <http://www.landasanteori.com/2015/10/pengertian-otoritas-jasa-keuangan.html>.

29 Hesty D Lestari, *Financial Services Authority: A New System for Regulation and Supervision of the Financial Services Sector*, *Journal of Legal Dynamics*, Volume 12 Number 3 of 2012, p. 563. Previously, banking was well developed, suddenly fell. This is due to the fact that banks extend credit to high-risk projects or sectors, low levels of bank management, and too loose lending, and even deviations in credit limits. On the other hand, in developed countries, there is a tendency to separate banking supervisory functions from the central bank to be handled specifically by independent financial supervisory institutions, such as the Financial Service Authority in the UK. *Academic Papers, Alternative Structure of an Effective Financial Services Authority*, Research Cooperation Team of the Faculty of Economics, Gadjah Mada University and Faculty of Economics, University of Indonesia, page 2. Prior to the establishment of the Financial Services Authority, banking was regulated and supervised by Bank Indonesia as the Central Bank. Other financial institutions such as the Capital Market, Pension Institutions, Pawnshops and Financing are regulated and supervised by the Capital Market and Financial Institution Supervisory Agency.

30 The idea of separating the supervisory function from the Central Bank came from Helmut Schlesinger, the former Governor of the Bundesbank (German Central Bank) who at the time acted as a consultant for the drafting of the Bill on Bank Indonesia). Take the pattern of the German Central Bank which does not supervise banks. Zulkarnain Sitompul, *Possible Implementation of the Universal Banking System in Indonesia: A Study from the Perspective of Islamic Banks*, *Journal of Business Law*, Volume 20, August-September 2002, page 4.

issuance of Law Number 23 of 1999 concerning Bank Indonesia, Article 34 paragraph (1) states that the task of supervising Banks will be carried out by an independent supervisory institution for the financial services sector, and established by law. Then with Law Number 21 of 2011 there was an independent institution that regulates and supervises all activities in the financial services sector, not only the banking-sector.³¹ Based on this law, the Financial Services Authority functions to organize an integrated regulatory and supervisory system for all activities in the financial services sector in Indonesia.³²

The establishment of the Financial Services Authority provides new hope for the Indonesian people, with the aim that all financial services sector activities are carried out in an orderly, fair, transparent, and accountable manner, and are able to realize a financial system that grows in a sustainable and stable manner, protecting the interests of consumers and the public.³³ It is no less important to protect the interests of the community, in this case the consumers of the financial services sector.³⁴ To carry out the duties of the Financial Services Authority, it is authorized to:³⁵

1. To stipulate the implementing regulations of this law;
2. To stipulate laws and regulations in the financial services sector;
3. To stipulate regulations and decisions of the Financial Services Authority;
4. Establish regulations regarding supervision in the financial services sector;
5. Establish policies for the implementation of the duties of the Financial Services Authority;
6. To stipulate regulations regarding procedures for determining written orders against financial service institutions and certain parties;
7. To stipulate regulations regarding procedures for determining statutory managers at financial service institutions;
8. Establish organizational structure and infrastructure, as well as manage, maintain, and administer assets and liabilities; and
9. Establish regulations regarding the procedures for imposing sanctions in accordance with the provisions of laws and regulations in the financial services sector.

In carrying out its supervisory duties, the Financial Services Authority is authorized to:³⁶

1. Establish operational policies for supervision of financial services activities;
2. Supervise the implementation of supervisory duties by the Chief Executive;
3. Supervise, examine, investigate, protect consumers, and other actions against financial service institutions, actors, and/or supporting financial service activities as referred to in the laws and regulations in the financial services sector;
4. Give written orders to financial service institutions and/or certain parties;
5. To appoint a statutory manager;
6. Determine the use of statutory managers;
7. Establish administrative sanctions against parties who violate the laws and regulations in the financial services sector; and

8. Grant and/or withdraw:

³¹ *The Financial Services Authority Institution has functioned from December 31, 2012 to replace the functions, duties and regulatory authorities that have been carried out by the Ministry of Finance through the Capital Market Supervisory Agency and Financial Institutions. Then at the end of 2013, it was the turn of the functions, duties and authority of banking regulation and supervision by Bank Indonesia to be transferred to the Financial Services Authority.*

³² *Zulkarnain Sitompul, Transfer of the Duties and Authority of Bank Supervision from Bank Indonesia to the Financial Services Authority, Paper on Dissemination of the Transfer of Supervision Function of the Financial Services Industry to the Financial Services Authority, Legal Development Institute For Indonesia Legal Development, Hotel Tiara Medan, dated November 29, 2013, p.*

³³ *Elucidation of Law Number 21 of 2011*

³⁴ *All financial service activities supervised and regulated by the Financial Services Authority are financial service activities in the banking sector, capital market, insurance, pension funds, financing institutions, and other financial service institutions. See Article 6 of Law Number 21 of 2011.*

³⁵ *Pasal 8 Undang-Undang Nomor 21 Tahun 2011.*

³⁶ *Pasal-9 Undang-Undang Nomor 21 Tahun 2011.*

- a. Business permit;
- b. Individual permission;
- c. Effectiveness of registration statement;
- d. Registered certificate;
- e. Approval to conduct business activities;
- f. endorsement;
- g. Approval or determination of dissolution; and
- h. Other stipulations, as referred to in the laws and regulations in the financial services sector.

The Financial Services Authority is an independent institution in carrying out its duties and positions outside the government, and is obliged to submit reports to the Supreme Audit Agency and the House of Representatives. The independence of decision-making is one of the principles of the Financial Services Authority in carrying out its duties and authorities. In carrying out the regulation and supervision, the Financial Services Authority is expected to be independent because it oversees the activities of financial services and transactions of business entities which have the potential to cause conflicts of interest and affect the interests of certain parties, including the government. In carrying out its duties and authorities, the Financial Services Authority is expected to be independent or free from the interference of interested parties, of course within the legal corridor, as well as guaranteeing independence that can be held accountable.³⁷

Functions of the Financial Services Authority in Providing Insurance Customer Protection

Insurance customers or policy holders, in Law Number 21 of 2011 are consumers.³⁸ Consumer protection in Law Number 21 of 2011 is the protection of consumers with the scope of behavior of financial services business actors.³⁹ The form of protection has many dimensions, one of which is legal protection. The existence of conflicts of interest must be minimized by the presence of the law.⁴⁰

Legal protection is the protection of the dignity and worth as well as the recognition of human rights owned by legal subjects in a state of law based on legal provisions, preventing arbitrariness, law as protection of human interests. Legal protection is an effort to protect individual interests over their position as human beings who have the right to enjoy dignity, by giving them the authority to act in the context of their interests.⁴¹

Law Number 21 of 2011 is one of the laws that was born to strengthen the consumer protection system. The Financial Services Authority functions in the regulation and integrated supervision of the activities of the financial services sector, including banking, capital market, and financial services in the insurance sector, pension funds, financing institutions, and other financial service institutions. The existence of the Financial Services Authority as an institution that protects consumers specifically in the financial services sector. Regulations related to legal protection for consumers and the public are contained

³⁷ *Academic text of the Draft Law on the Financial Services Authority, page 8.*

³⁸ *Consumers are parties who place their funds and/or take advantage of the services available at financial service institutions, including customers in banking, investors in the capital market, policyholders in insurance, and participants in pension funds, based on the laws and regulations in the financial services sector. Article 1 number 15 of Law Number 21 of 2011.*

³⁹ *Financial services business actors are banking companies, securities companies, pension fund companies, insurance companies, reinsurance companies, financing institutions, pawnshops, and guarantee companies, both those carrying out their business activities conventionally and in sharia.*

⁴⁰ *The existence of legal protection for all Indonesian people can be found in Article 27 paragraph (1) and Article 28 D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, therefore, every legislative product must be able to provide legal protection for the entire community.*

⁴¹ *Philipus M. Hadjon, Op, Cit, hlm 19.*

in CHAPTER VI Articles 28⁴², 29⁴³, 30⁴⁴ and 31.⁴⁵

After the establishment of the Financial Services Authority, in 2013 the Financial Services Authority issued regulations as well as the legal basis aimed at taking consumer protection actions in the financial services sector, namely Financial Services Authority Regulation Number 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector.

This is the commitment of the Financial Services Authority in providing protection to consumers in the financial services sector, creating a reliable consumer protection system, increasing consumer empowerment, and raising awareness of financial services business actors regarding the importance of consumer protection so as to increase public confidence in the financial services sector.⁴⁶

This protection is not only for consumers, but also for producers or financial service business actors. Consumer protection in the financial services sector must have a balance between the growth and development of the financial services sector and the protection of consumers and the public or the same level playing field.

The authority of the Financial Services Authority over insurance companies is not specifically regulated in Law Number 21 of 2011 concerning the Financial Services Authority, however, Article 8⁴⁷ and Article 9⁴⁸ state that the authority of the Financial Services Authority is to carry out the task of regulating and supervising the activities of the financial services sector, one of which is the activities of the Financial Services Authority. insurance. The new thing in Law Number 21 of 2011 is that the Financial Services Authority has the authority to conduct investigations. Chapter XI Article 49 states that in terms

42 Article 28 of Law Number 21 of 2011 states: For the protection of consumers and the public, the Financial Services Authority has the authority to take steps to prevent consumer and public losses, which include: Providing information and education to the public on the characteristics of the financial services sector, services and products; Requesting the Financial Services Institution to stop its activities if the activity has the potential to harm the community; and other actions deemed necessary in accordance with the provisions of laws and regulations in the financial services sector.

43 Article 29 of Law Number 21 of 2011 states: The Financial Services Authority shall provide services for consumer complaints, which include: Preparing adequate equipment for servicing consumer complaints that have been harmed by actors in financial service institutions; Create a mechanism for consumer complaints that are harmed by actors in financial services institutions; and Facilitate the settlement of consumer complaints that have been harmed by actors in financial services institutions in accordance with the laws and regulations in the financial services sector.

44 Article 30 of Law Number 21 of 2011 states: For the protection of consumers and the public, the Financial Services Authority has the authority to carry out legal defenses, which include: Ordering or taking certain actions to financial service institutions to resolve consumer complaints that have been harmed by the said financial service institution; File a lawsuit: To recover the assets belonging to the injured party from the party causing the loss, whether under the control of the party causing the loss or under the control of another party in bad faith; and/or To obtain compensation from parties who cause losses to consumers and/or financial service institutions as a result of violations of laws and regulations in the financial services sector.

45 Article 31 of Law Number 21 of 2011 states: Further provisions regarding the protection of consumers and the public are regulated by the Financial Services Authority Regulation.

46 Explanation of Financial Services Authority Regulation Number 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector

47 Article 8 of Law Number 21 of 2011 states: To carry out the regulatory tasks as referred to in Article 6, the Financial Services Authority has the authority: To stipulate the implementing regulations of this law; To stipulate laws and regulations in the financial services sector; To stipulate OJK regulations and decisions; Establish regulations regarding supervision in the financial services sector; Establish policies regarding the implementation of the duties of the Financial Services Authority; To stipulate regulations regarding procedures for determining written orders against financial service institutions and certain parties; To stipulate regulations regarding procedures for determining statutory managers at financial service institutions; Establish organizational structure and infrastructure, as well as manage, maintain, and administer assets and liabilities; and Establish regulations regarding procedures for imposing sanctions in accordance with the provisions of laws and regulations in the financial services sector.

48 Article 9 of Law Number 21 of 2011 states: To carry out the supervisory duties as referred to in Article 6, the Financial Services Authority has the authority to: Determine operational policies for supervision of financial service activities; Supervise the implementation of supervisory duties carried out by the chief executive; Carry out supervision, examination, investigation, consumer protection, and other actions against financial service institutions, actors, and/or supporting financial service activities as referred to in the laws and regulations in the financial services sector; Give written orders to financial service institutions and/or certain parties; To appoint a statutory manager; Establish the use of a statutory manager; Establish administrative sanctions against parties who violate the laws and regulations in the financial services sector; and Granting and/or revoking: business license; Individual permission; Effectiveness of registration statement; Registered certificate; Approval to conduct business activities; endorsement; Approval or determination of dissolution; and other stipulations, as referred to in the laws and regulations in the financial services sector.

of supervision of the financial services sector, the Financial Services Authority is given special authority as an investigator as referred to in the Criminal Procedure Code. Authority not owned by Bank Indonesia as Bank Supervisor. Wider authority in the examination such as the authority of law enforcement officers. The Financial Services Authority conducts special investigations into criminal acts in the financial services sector. As a basis for conducting investigations, the Financial Services Authority issued Regulation of the Financial Services Authority Number 22/POJK.01/2015 concerning Investigation of Crimes in the Financial Services Sector. In this regulation acting as Investigator is the Investigating Officer of the Indonesian National Police employed in the Financial Services Authority and/or Civil Servant Officer employed at the Financial Services Authority and given special authority as an Investigator.

Article 4 of the Financial Services Authority Regulation Number 22/POJK.01/2015 states that the investigators of the Financial Services Authority are authorized to carry out investigative actions in accordance with the provisions of Law Number 8 of 1981 concerning the Criminal Procedure Code and other laws, plus the provisions of the investigation in Law Number 21 of 2011. In accordance with Article 8 paragraph (4) of Law Number 40 of 2014, to further regulate the requirements and procedures for licensing insurance businesses, the Financial Services Authority issued Financial Services Authority Regulation Number 67/POJK.05/2016 concerning Licensing Business and Institutions of Insurance Companies, Sharia Insurance Companies, Reinsurance Companies, and Sharia Reinsurance Companies. Which is a refinement of the Decree of the Minister of Finance Number 426/KMK.06/2003 concerning Licensing and Institutional Companies and Reinsurance Companies.

The authority of the Financial Services Authority, further stated in Law Number 40 of 2014 is to regulate insurance companies that are required to implement good corporate governance. In regulating the implementation of good insurance company governance, the Financial Services Authority issued Financial Services Authority Regulation Number 02/POJK.05/2014 concerning Good Corporate Governance for Insurance Companies. The regulation is one of the efforts to strengthen the national insurance industry. Good corporate governance is the structure and process used and implemented by insurance company organs to improve the achievement of business results targets and optimize the value of the company for all stakeholders in particular.

The Financial Services Authority is expected to protect the rights of insurance customers. Legal protection for insurance customers can be carried out by means of preventive legal protection to prevent disputes through the actions of the Financial Services Authority based on the formation of relevant norms or discretion.⁴⁹ In CHAPTER VI Article 28 of Law Number 21 of 2011 concerning the Financial Services Authority which regulates the protection of consumers and the public in the financial services sector, which reads :

1. Provide information and education to the public on the characteristics of the financial services sector, services and products;
2. Requesting financial services institutions to stop their activities if these activities have the potential to harm the community; and
3. Other actions deemed necessary in accordance with the provisions of the legislation in the financial services sector.

If you look at the formulation of the article, the effort taken is a form of preventive legal protection to prevent consumer and community losses. The Financial Services Authority has the obligation to provide education and information to consumers and the public on the characteristics, services and products of financial services sector institutions. Education is focused on informing the basic features of financial products and/or services, benefits, costs, risks, rights, and obligations with the aim of providing

⁴⁹ *There are two means of legal protection, one of which is preventive legal protection. Preventive legal protection is preventive in nature. Philipus M. Hadjon, Op, Cit, p. 117.*

confidence, knowledge, and skills of consumers and/or the public in order to determine products and/or services that suit their needs.⁵⁰ Chairman of the Board of Commissioners of the Financial Services Authority, Muliaman D. Hadad stated that educational programs to improve financial literacy and understanding of financial products and services should be considered as an investment so that with the more educated the public, it will increase access and use of financial products and services. can prevent crime in the financial sector.⁵¹

Financial services business actors are required to submit an education plan to the Financial Services Authority no later than November 30 before the year the business plan begins. The education plan in question must be submitted by the Board of Directors to the Financial Services Authority cq. Supervision Sector with a copy of the Consumer Education and Protection Sector. Regarding the implementation of education which is an obligation that must be reported to the Financial Services Authority, the Financial Services Authority issues Circular Letter of the Financial Services Authority Number 1/SEOJK.07/2014 concerning Implementation of Education in the Context of Improving Financial Literacy for Consumers and/or the Community. This Financial Services Authority Circular Letter can serve as a guide for financial services business actors to carry out education to the public at large.

In Article 8 of Law Number 40 of 2014 it is stated that every party conducting an insurance business must first obtain a business license from the Financial Services Authority. This article emphasizes the authority of the Financial Services Authority as a representative of the government or an extension of the government in terms of granting a license to establish insurance. This regulation is also a form of preventive protection carried out by the Financial Services Authority. Provisions regarding the requirements and licensing of insurance businesses are further regulated by the Financial Services Authority by issuing Financial Services Authority Regulation Number 67/POJK.05/2016 concerning Business and Institutional Licensing of Insurance Companies, Sharia Insurance Companies, Reinsurance Companies, and Sharia Reinsurance Companies.

In the course of an insurance business that has been granted a license by the Financial Services Authority, the Financial Services Authority is still entitled to know any developments in the insurance business, among others, in the event of the opening of a representative office outside its head office, the Financial Services Authority must also receive a report on the opening of a branch outside its head office. This is regulated in Article 10 paragraph (1) of Law Number 40 of 2014. In addition, this Financial Services Authority Regulation stipulates that only institutions in the form of legal entities, whether corporations or cooperatives, can run insurance businesses. as well as company ownership which is only allowed to be owned by Indonesian citizens, and other arrangements that are expected by the establishment of this regulation will prevent losses to consumers of financial services, especially insurance.

Another preventive protection measure carried out by the Financial Services Authority to oversee the operation of the insurance business is by issuing regulations on monthly reports in the Financial Services Authority Regulation Number 3/POJK.05/2013 concerning Monthly Reports of Non-Bank Financial Services Institutions. Insurance as a non-bank financial institution after the issuance of this Financial Services Authority Regulation is subject to and must comply with this regulation. The monthly report consists of: Statement of financial position; Comprehensive income statement; Report on the calculation of operating results; Cash flow statement; Asset and liability suitability analysis report; and other reports according to the characteristics of each non-bank financial service institution.⁵² Monthly reports must be reported by the insurance company no later than the 10th of the following month. The monthly report is submitted online through the Financial Services Authority data communication network system.

⁵⁰ *Workshop Module on Consumer Protection in the Financial Services Sector*, page 15.

⁵¹ <http://www.viva.co.id/ramadan2016/read/491058-ojk-program-edukasi-harus-dianggap-sebagai-investasi>

⁵² Article 2 paragraph (3) *Financial Services Authority Regulation Number 3/POJK.05/2013 concerning Monthly Reports of Non-Bank Financial Services Institutions*.

Preventive protection efforts are also carried out by the Financial Services Authority by regulating the organizers of insurance companies. The operator of the insurance company, be it directors, commissioners or equivalent positions and controllers in the insurance company, must meet the fit and proper requirements as regulated by the Financial Services Authority.

The fit and proper test is a means for the Financial Services Authority to approve or disapprove of the party that will own or manage a financial service institution.⁵³ These parties act as managers, supervisors who have a significant influence on the course of the insurance business. The arrangement for this is stated in the Financial Services Authority Regulation Number 4/POJK.05/2013 concerning Fit and Proper Test for Main Parties in Insurance Companies, Pension Funds, Financing Companies, and Guarantee Companies. and has been replaced with a new Financial Services Authority Regulation after the issuance of Law Number 40 of 2014 concerning Insurance, namely Financial Services Authority Regulation Number 27/POJK.03/2016 concerning Fit and Proper Test for the Main Parties of Financial Services Institutions.

Another form of preventive protection carried out by the Financial Services Authority specifically as an effort to prevent the occurrence of problems in the insurance business sector is to provide clear information about insurance products. Therefore, the Financial Services Authority issued the Financial Services Authority Regulation Number 23/POJK.05/2015 concerning Insurance Products and Insurance Product Marketing. There are three things that underlie the Financial Services Authority, releasing this regulation, namely:⁵⁴

1. The increasing number of insurance products and various and complex marketing methods can increase the risks faced by insurance companies and policy holders, the insured, or participants;
2. As part of implementing good corporate governance (GCG) and maintaining healthy insurance practices in insurance companies;
3. Increase access for low-income people and support the development of microinsurance.

This Financial Services Authority Regulation as a whole explains the obligations of insurance companies that must have standardized insurance products. In Chapter II Article 3, the Financial Services Authority requires that insurance products marketed in the community must be in accordance with the promised benefits. Furthermore, the article also states that an insurance policy must not contain words, phrases, or sentences that can lead to different interpretations and make it difficult for the policyholder, the insured, or the participant to manage their rights.

Article 4 of the Regulation of the Financial Services Authority Number 23/POJK.05/2015 regulates that insurance products containing investment value must have 3 criteria, including having a proportion of protection against the risk of death and benefits associated with investment, having a certain coverage period and having an investment strategy. specific one. For insurance companies, this regulation is a guideline for marketing products so as to prevent problems from arising in the future. This Financial Services Authority Regulation will make it easier for insurance companies to issue new products because as long as they follow this Financial Services Authority Regulation, it will be easy to get approval from the Financial Services Authority.

Another form of preventive legal protection carried out by the Financial Services Authority for insurance financial service institutions categorized as non-bank financial institutions is by issuing Financial Services Authority Regulation Number 10/POJK.05/2014 concerning Assessment of the Risk Level of Non-Bank Financial Services Institutions. This regulation was issued by the Financial Services Authority as a form of supervision by the Financial Services Authority on non-bank financial service institutions in

⁵³ *Explanation of Financial Services Authority Regulation Number 27/POJK.03/2016 concerning Fit and Proper Test for Main Parties of Financial Services Institutions.*

⁵⁴ <http://keuangan.kontan.co.id/news/ojk-rilis-aturan-pemasaran-produk-asuransi>.

order to be able to identify the risks of non-bank financial service institutions and encourage non-bank financial service institutions to address the existing risks as early as possible. So with this regulation, it is hoped that every non-bank financial service institution needs to implement risk management to minimize the potential for failure in its business operations.⁵⁵

In this regulation, non-bank financial services institutions are required to apply prudential principles and risk management in conducting their business activities. Furthermore, non-bank financial services institutions are required to compile a report on the results of the risk level assessment which must be submitted to the Financial Services Authority and then prepare a follow-up plan for the risk level assessment.

Chapter III Article 4 of this Regulation of the Financial Services Authority stipulates that non-bank financial service institutions conduct an assessment method on the probability of failure of non-bank financial services institutions to fulfill their obligations to customers and other parties. In this case, the next paragraph states that the risks that must be assessed include strategic risk, operational risk, asset and liability risk, management risk, governance risk, fund support risk, insurance risk (especially for insurance companies and reinsurance companies) and risk financing (specifically for financing companies).

The risk level assessment is carried out at least once a year at the end of the year. The risk level assessment uses the parameters as regulated in Article 5 with the provisions, among others, a risk value of 0 - 1 for a low risk level, a risk value of 1 - 1.5 for a Medium Low risk level, a risk value of 1.5 - 2 for a low risk level. Medium High risk, risk value 2 – 3 for High risk level and risk value 3 – 4 for Very High risk level.

Article 6 Financial Services Authority Regulation Number 10/POJK.05/2014 requires that the directors, commissioners, or organs that carry out the management and supervision functions at non-bank financial services institutions are responsible for the correctness, completeness of content, and timeliness of submission of the assessment report. risk level. In the report, non-bank financial service institutions inform the results of the risk level assessment as well as exposure to the follow-up plans to be carried out on the risks faced, especially as financial services institutions with high or very high risk values.

In Article 7 it is explained that the submission of the report on the results of the risk level assessment for the year-end position is submitted no later than February 28 of the following year, Article 8 paragraph (4) states that the follow-up report must be submitted no later than March 31 of the following year. Meanwhile, if deemed necessary, the Financial Services Authority may request to conduct a risk level assessment at any time. The Financial Services Authority also issued Circular Letter Number 3/SEOJK.05/2015 concerning Risk Level Assessment of Insurance Companies and Reinsurance Companies.

In this circular, it is stated that the probability that the company will fail is reflected in the risk value and risk level. The risk level is grouped into five levels, namely low, medium-low, medium-high, high, and very high. The risk value has a value range of 0 to d. 4. The higher the risk value, the more likely the company will fail. On the other hand, if the risk value is lower, the probability of company failure will also be smaller.

The most important thing is done by the Financial Services Authority in an effort to carry out preventive legal protection by issuing Financial Services Authority Regulation Number 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector. The Financial Services Authority Regulation regulates the overall obligations that must be fulfilled by business actors in running a business, regulates things that are prohibited from being done by business actors as well as for consumers who are

⁵⁵ *Explanation of Financial Services Authority Regulation Number 10/POJK.05/2014 concerning Assessment of Risk Level of Non-Bank Financial Services Institutions.*

required to have good faith and provide honest information to business actors. This arrangement is the main preventive legal protection effort carried out by the Financial Services Authority.

Repressive legal protection is the final protection in the form of sanctions such as fines, imprisonment, and additional penalties given if a dispute has occurred or a violation has been committed. In addition to preventive legal protection facilities, there are repressive legal protection facilities.⁵⁶ Repressive legal protection aims to resolve disputes.⁵⁷ In Indonesia, there are various bodies that partially handle legal protection for the people, which are grouped into two bodies, namely: Courts within the scope of general courts, and government agencies which are administrative appeal agencies.⁵⁸ Repressive legal protection occurs if there has been a dispute between the public as consumers and financial service business institutions, the Financial Services Authority is given the authority to supervise, also has the right to impose sanctions in accordance with applicable regulations.

Article 28 letter b of Law Number 21 of 2011 concerning the Financial Services Authority states that the Financial Services Authority has the authority to request financial services institutions to stop their activities if these activities have the potential to harm the community. This is done by the Financial Services Authority if in carrying out business activities, the Financial Services Authority assesses that financial services business actors are indicated to be carrying out activities that are detrimental to the community. Regarding complaints from the public for the actions of financial services business actors indicated to be detrimental to the community, Article 29 letter c gives the Financial Services Authority the authority to facilitate the settlement of consumer complaints that have been harmed by actors in financial services institutions.

Article 30 paragraph (1) letter a of Law Number 21 of 2011 concerning the Financial Services Authority regulates the authority of the Financial Services Authority to carry out legal defense, which includes ordering or taking certain actions to financial service institutions to resolve consumer complaints that have been harmed by the said financial service institution.

The criminal sanctions related to Article 30 paragraph (1) letter a are contained in Article 53 of Law Number 21 of 2011 concerning the Financial Services Authority, which states:

- (1) Anyone who intentionally ignores, does not fulfill, or hinders the implementation of the authority of the Financial Services Authority as referred to in Article 9 letter c, letter d, letter e, letter f, letter g, and/or Article 30 paragraph (1) letter a, shall be sentenced to a minimum imprisonment of 2 (two) years and a minimum fine of Rp. 5,000,000,000,- (five billion rupiah) or a maximum imprisonment of 6 (six) years and a maximum fine of Rp15,000,000,000 (fifteen billion rupiah).
- (2) If the violation as referred to in paragraph (1) is committed by a corporation, the punishment shall be a fine of a minimum of Rp. 15,000,000,000 (fifteen billion rupiah) or a maximum of Rp. 45,000,000,000 (forty five billion rupiah). rupiah).

Article 30 paragraph (1) letter b of Law Number 21 of 2011 regulates the authority of the Financial Services Authority to file a lawsuit with the aim of recovering the assets of the injured party from the party causing the loss, both those under the control of the party causing the loss. or under the control of other parties in bad faith and or to obtain compensation from parties who cause losses to consumers and or financial service institutions as a result of violations of the laws and regulations in the financial services sector.

This article regulates the position of the Financial Services Authority in filing a lawsuit in court to protect the interests of consumers. In the case of filing a civil lawsuit in court, one of them can be done by

⁵⁶ Muchsin, *Perlindungan dan Kepastian Hukum bagi Investor di Indonesia*, Magister Ilmu Hukum Program Pascasarjana Universitas Sebelas Maret, Surakarta, 2003, hlm 14.

⁵⁷ Philipus M. Hadjon. *Op, Cit*, hlm 30.

⁵⁸ Salim H S dan Erlies Septiana, *Op, Cit*, hlm 264.

filing a legal standing lawsuit.⁵⁹ The Financial Services Authority as a supervisory agency through Article 30 is authorized to represent the interests of the public who have suffered losses.

The explanation of Law Number 21 of 2011 concerning the Financial Services Authority states that filing a lawsuit is based on the assessment of the Financial Services Authority that a violation committed by a party to the laws and regulations in the financial services sector results in material losses for consumers, the public, or the financial services sector. , so that the parties who feel aggrieved from any violations that occur in the legislation are expected to receive compensation whose value is as determined by the competent authorities.

Repressive legal protection is carried out by the Financial Services Authority, especially if there is a violation by financial services business actors against the Financial Services Authority Regulation Number 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector. For such violations, the Financial Services Authority has the authority to impose administrative sanctions in the form of:⁶⁰

1. Written warning
2. Fines, namely the obligation to pay a certain amount of money;
3. Restrictions on business activities;
4. Freezing of business activities; and
5. Revocation of business activity license.

The most severe sanction is the revocation of the business license, because in its entirety it is no longer allowed to operate. Such sanctions can be imposed with or without the imposition of a written warning.

In Regulation of the Financial Services Authority Number 01/POJK.07/2013 concerning Consumer Protection, the Financial Services Authority can provide facilities for resolving complaints submitted by insurance customers to the Financial Services Authority if the customer feels that the complaint submitted to the insurance company does not find a way out. The provision of customer complaint settlement facilities has its own characteristics, different from other financial service institutions regulated in this Financial Services Authority Regulation. The difference concerns the amount of loss suffered by insurance customers. Article 41 letter a of the Financial Services Authority Regulation Number 01/POJK.07/2013 states that the Financial Services Authority can facilitate complaints submitted by customers, especially for life insurance customers, if the life insurance customer experiences financial losses caused by business actors or insurance companies at most of Rp. 500,000,000, - (five hundred million rupiah) while in general insurance the maximum amount is Rp. 750,000,000.00 (seven hundred and fifty million rupiah). The financial loss referred to here is the value of the dispute disputed by the customer. More than the regulated financial loss arrangements, the Financial Services Authority is unable to facilitate complaints submitted by insurance customers.

Closing

The role of the Financial Services Authority is to provide consumer protection for the insurance business based on Law Number 21 of 2011, Law Number 40 of 2014, Law Number 8 of 1999 and Regulation of the Financial Services Authority in the context of protecting consumers of financial services as a business regulatory and supervisory agency insurance in providing protection to customers in the form of

⁵⁹ *Standing or personae standi in judicio is the right or legal position to file a lawsuit or application before the court (standing to sue), i.e. the party has a sufficient interest in a dispute that can be sued for a court decision. Maruarar Siahaan. Procedural Law of the Constitutional Court of the Republic of Indonesia. Constitutional Court of the Republic of Indonesia, Jakarta, 2006, p. 94.*

⁶⁰ *Article 53 paragraph (1) Financial Services Authority Regulation Number 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector.*

legal certainty for policyholders. The Financial Services Authority must further enhance its roles and functions, so that in the future there will be no more cases of default by insurance companies and stricter restrictions on investment placements for insurance companies. It is hoped that the Financial Services Authority will better understand its function in providing legal protection to consumers and the public. Finally, the Commissioners entrusted by the President and the House of Representatives of the Republic of Indonesia to lead the Financial Services Authority which is the only regulator and supervisor of financial services in Indonesia must be independent, have no conflict of interest and be free from all forms of political and capital intervention from the owners of insurance companies. which are generally politicians (having political influence) and capitalists (large investors so that they can provide consumer protection effectively and efficiently to policyholders.

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