

INVESTIGATION AUTHORITIES OF FINANCIAL SERVICES AUTHORITY IN SYARIAH BANKING

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Abstract

This paper aims to explore the authority of the FSA as one of the institutions that deal with crime investigation in banking institutions, especially in Islamic Banking. Investigators FSA has great authority other than the authority to conduct investigations that are not owned by other investigators. The existence of this authority would lead to overlapping investigation with a given investigation agencies such as the police and the prosecutor. Fundamental problems are experienced by the FSA in conducting the investigation is less availability of human resources of FSA investigator. Therefore, inevitably required cooperation with the Police in effecting the FSA investigation. Effectiveness of investigations conducted by the FSA task for banking crimes that occurred in Islamic Banking is need synergy of communication and coordination with the DSN as an institution authorized by the Islamic Banking Act to provide recommendations to other agencies including the FSA if there is suspicion of a criminal offense in Islamic Banking .

Keywords: financial service authority; investigation; syariah banking

Abstrak

Tulisan ini bertujuan untuk mengeksplorasi mengenai kewenangan OJK sebagai salah satu lembaga penyidikan yang menangani kejahatan di lembaga perbankan khususnya di Perbankan Syariah. Penyidik OJK mempunyai kewenangan. Adanya kewenangan ini tentu menimbulkan tumpang tindih penyidikan dengan lembaga yang diberikan penyidikan seperti kepolisian dan kejaksaan. Persoalan mendasar yang dialami OJK dalam melakukan penyidikan adalah kurang tersedianya sumber daya penyidik OJK. Oleh karena itu, mau tidak mau dibutuhkan kerjasama OJK dengan Polri dan Kejaksaan dalam mengefektifkan penyidikan. Untuk mengoptimalkan penyidikan yang dilakukan OJK terhadap kejahatan perbankan yang terjadi di Perbankan Syariah adalah perlunya sinergitas berupa komunikasi dan koordinasi dengan DSN sebagai lembaga yang diberi kewenangan oleh Undang-Undang Perbankan Syariah untuk memberi rekomendasi kepada lembaga lain termasuk OJK apabila ada dugaan pelanggaran pidana di Perbankan Syariah.

Kata kunci: otoritas jasa keuangan; penyidikan; perbankan syariah

Preface

The development of science and technology provide positive benefits to human life, but on the other hand the negative effect also appear of the new crime, not least in the banking sector in emerging more sophisticated new crimes. For anticipate the development of the banking crimes is needed legal instruments. One of solutions to overcome these crimes is the establishment of institutions Financial Services Authority (OJK) as a mandate of Law No. 21 of 2011 on the Financial Services Authority (Law of OJK) which was enacted on 22 November 2011.

Financial Services Authority (OJK) is really needed in the world of banking supervision. This is to avoid the occurrence of crime cases such BLBI and robbery of Bank Century.

Law of OJK in the explanation stated that OJK was formed with the goal of keeping the overall activities of financial services in the financial services sector held regularly, fair, transparent, and accountable, as well as the financial system is able to realize sustainable growth and stable, and capable of protecting the interests of consumers and society. OJK has the authority to supervise (right to control) in the

form of authority to conduct investigations (right to investigate). Implementation of the supervisory authority of OJK as an institution can be done preventively, namely in the form of rules, guidelines, guidance, and direction; can also be done repressive, in the form of inspection, investigation and application of sanctions.

Banking crime can happen anywhere, either in conventional banks and Islamic banks, large banks and small banks, foreign banks and national banks. Various banking crimes that occurred at this time showed weak of monitoring, both internal and external. Based on data from OJK, during the year 2013 take in hand 619 cases of banking crime scattered in various regions in Indonesia.¹

The example of a crime that occurred on Islamic banking is a fictitious credit with Bank Syariah Mandiri (BSM) Branch Bogor. The main cause of the fictitious credit is the weak internal control banks. This can be caused by any element of moral hazard, bank employees colluded with customers from outside banks to commit banks crime. In other words of collusion on the bank, the bank had been the object of fraud or embezzlement, while the culprit varies. However the variations, usually one of the parties is a person who colluded bank. This factor is often the cause of fraud and criminal banking potentially devastating banks financially and reputation.²

Banking criminal acts on BSM Bogor branch can be a lesson, that banks with syariah label also not guaranteed out of the target of banks crime. Therefore, to increase customer confidence in the Islamic banking, the role of the OJK is needed to perform preventive and repressive measures against crime banking on Islamic banking. The authority of OJK investigation will require coordination between law enforcement and also needed human resources professional investigator seeing the complexity of banking crimes. Similarly, the OJK synergy with the Na-

tional Islamic Council (DSN) as an institution giving recommendations to the OJK if there is suspicion of a criminal offense in the Islamic banking.

Banking crimes not only occur in conventional banks but also in Islamic banking. Therefore the role of OJK is important in preventing banking crimes and taking action. There are two issues that are the focus of study. First, how OJK investigation authority on criminal offenses in the Islamic banking; and second, how OJK synergy with the National Islamic Council (DSN) in the investigation of criminal offenses banking.

Discussion

Investigation authority of OJK at Banking Crime in Syariah Banking

The only institution specifically designated by law to conduct an investigation against banking crimes is OJK. Under Article 1 point 1 UU OJK, that OJK is an independent institutions and free from interference by other parties, which have the functions, duties, and authority setting, supervision, inspection, and investigation referred to in this Law.

Investigation is one of OJK supervisory duties as referred to in Article 9 letter c Law of OJK reads:

To carry out supervisory duties referred to in Article 6, OJK has authority to conduct surveillance, inspection, investigation, consumer protection, and other actions against the Institute of Financial Services, actors, and/or supporting financial service activities referred to in the legislation in the services sector financial.

OJK authority in investigating is also confirmed in Article 49 paragraph (1) of the Law of OJK: In addition to Investigator of the Indonesian National Police, certain civil servants whose scope of duties and responsibilities include oversight of the financial services sector in OJK, was given

¹ Anonim, Jumat, 22 Agustus 2014, "OJK Tangani 619 Kasus Kejahatan Perbankan", web: <http://www.hukum-online.com/berita/baca/lt53f7754864477/ojk-tangani-619-kasus-kejahatan-perbankan>, accessed 9th Desember 2014.

² Hamsir, "Moral Hazard Tindak Pidana Kredit Fiktif Bank Syariah Mandiri", *Jurnal Jurisprudentie*, Vol. 1 No. 1 Juni 2014, Makassar: Jurusan Ilmu Hukum Fakultas Syariah dan Hukum UIN Alauddin Makassar, page 69.

special authority as investigators as referred in the Criminal Procedure Code.

In accordance with the provisions of Article 6 paragraph (1) letter b Criminal Procedure Code, the provisions of the PPNS investigator recognized as an investigator in accordance with applicable laws in which certain investigators specifically authorized by law. Not only against banking fraud in the country, according to Article 47 paragraph (1) letter c Law of OJK can also cooperate with the supervisory authority of the Financial Services Institute in other countries and international organizations and other international agencies in order to inspection and investigation and prevention of crime in the sector financial. The purpose of cooperation and mutual legal assistance in criminal matters to facilitate the investigation process in order to evidence in court cases especially for countries seeking legal aid.³

This investigation authority is not owned by Bank Indonesia as a bank supervisor. Wider authority in the context of this investigation as law enforcement authority. OJK can act more forcefully if we find a violation/misuse of the results of the examination. Notice that the banking industry is a systemic trust industry. For institutions supervisor/investigator banking has seen duty of two side. Enforcement/provisions side and the other side is to increase the national banks growth in a healthy way, so it should has a strategy if we find a violation like catching a fish not to turbid. This is somewhat different from other law enforcement agencies.⁴

Investigation entire in financial crimes committed by OJK investigation, although not diminish the authority of the investigation is in the hands of the police. This certainty before only applies to crimes in the capital market, while other crimes in the financial sector is the authority of the police. There is no investigative

authority for bank supervisors affect effectiveness in carrying out the task of bank supervision. Supervisors often "overwhelmed" to face the bank officials whose are uncooperative and naughty. The authority possessed by OJK investigation is expected handling of all crime in the financial sector can be done by the institution which is OJK.⁵

Law No. 21 of 2008 about Islamic Banking regulate of banking crimes, from Article 59 to Article 66. The elements of the crime of covering the subject (actor) and form both positive actions is to do an act, and that is negative that is not to do anything that must be done. This means that the crimes defined in the Islamic Banking Law of the authority of OJK in enforcing the law.

Fundamental problems experienced by OJK in conducting the investigation is less availability of resources OJK Police investigators. OJK with Police must cooperate in effecting investigation. In a memorandum of understanding between OJK and police cooperate on the handling of criminal acts in the financial services sector, aid the investigation by the police to OJK is very necessary in view of the various considerations, such as: (1) The limited number of investigators of OJK, especially at the beginning of the function of the investigation by OJK; (2) The potential for criminal acts in the area, so it requires coordination between OJK and Police in the area; (3) Limitations authority OJK investigators, for example in the efforts to forcibly arrest and detention of suspects; and (4) The support facilities owned by the police investigation that can be utilized for the implementation of the investigation of criminal offenses in the financial services sector, for example Laboratory Forensic Police.

Law of OJK not give a clear reference as to the standards to be used and set. Not inte-

³ M. Irwansyah Putra, "Peranan Otoritas Jasa Keuangan Dalam Melakukan Pengaturan dan Pengawasan terhadap Bank, Transparency", *Jurnal Hukum Ekonomi*, Vol. II No. 1, June 2013, Medan: Fakultas Hukum Universitas Sumatera Utara, page 7.

⁴ Bambang Murdadi, "Otoritas Jasa Keuangan (OJK) Pengawas Lembaga Keuangan Baru yang Memiliki Kewenangan Penyidikan", *Value Added*, Majalah Ekonomi dan

Bisnis, Vol. 8, No. 2, March-August 2012, Semarang: Universitas Muhammadiyah Semarang. Page 35.

⁵ Zulkarnain Sitompul, "Konsepsi dan Transformasi Otoritas Jasa Keuangan (*Conception and Transformation Financial Services Authority*), *Jurnal Legislasi Indonesia*, Vol. 9 No. 3. October 2012, Jakarta: Kementerian Hukum dan Hak Asasi Manusia. Page 356.

grated function within the institution OJK investigators potentially differing interpretations, which in turn can lead to inconsistencies in the application of policy. UU OJK therein mentioned that investigators OJK consists of RI police investigating officers and officials of the Civil Service (PPNS) that certain authorized in accordance with the Criminal Procedure Code.

Considering the institutional OJK are outside government, so it does not become part of the Government power then no PPNS. OJK can recruit investigators from the police and prosecutors to meet the authority of the Directorate of Investigation OJK.⁶ The authority of the investigator OJK investigation, there will be verified investigator and will make increasingly overlapping investigations in specific criminal acts are crimes regulated outside the Criminal Procedure Code.⁷ The presence of the investigator Financial Services Authority, this will lead to seizure cases in the investigation of criminal offenses OJK.

In accordance with Article 43 paragraph (3) UU OJK, investigators OJK investigators have authority, in the form of:

- a. receive reports, notices, or complaints of a person of criminal activity in the financial services sector;
- b. conduct research in validity reports or information relating to criminal offenses in the financial services sector;
- c. do research on each person suspected of committing or engaging in criminal activities in the financial services sector;
- d. call, check, as well as asking for information and evidence from each person suspected of committing, or as a witness in a criminal offense in the financial services sector;
- e. conduct examination of books, records, and other documents relating to criminal offenses in the financial services sector;
- f. do a search in any particular place that allegedly contained any evidence of

books, records, and other documents and perform seizure of goods that can be used as evidence in criminal cases in the financial services sector;

- g. request data, documents, or other evidence, both print and electronic to telecommunications service providers;
- h. in certain circumstances to ask the competent authorities to take precautions against the person alleged to have committed the crime in the financial services sector in accordance with the provisions of the legislation;
- i. request assistance of other law enforcement agencies;
- j. request information from the bank about the financial state of the alleged conduct or engage violation against legislation in the financial services sector;
- k. blocked account at a bank or other financial institution of the alleged conduct or engage in criminal acts in the financial services sector;
- l. request expert assistance in the implementation of criminal investigation tasks in the financial services sector; and
- m. declare when starting and halt the investigation

OJK is an independent institution established by the Law itself, where employees not including the Civil Servants (PNS), then if OJK should investigate using/cooperate with civil servants who have the right to conduct investigations or to the police.

OJK synergy with the National Islamic Council (DSN) in the Crime Investigation Banking

In terms of structure and supervision system in Islamic banks differ from conventional banks. Islamic banking supervision includes two things: *first*, the supervision of the financial aspect, pursuant to banking in general, and the principle of prudence banks; *second*, supervision of the Islamic principles in bank operational ac-

⁶ Diana Wiyanti dkk, "Pemeriksaan Tindak Pidana di Bidang Pasar Modal dalam Rangka Melaksanakan Fungsi Pengawasan Pasca Lahirnya Undang-Undang Nomor 21 Tahun 2011 Tentang Otoritas Jasa Keuangan", *Prosiding Seminar Nasional Penelitian dan Pengabdian Kepada Masyarakat*. Vol 4 No.1, 2014, Bandung: Lembaga Pene-

litian dan Pengabdian Masyarakat Universitas Islam Bandung. page 111.

⁷ Wahyu Wiriadinata, "Masalah Penyidik dalam Tindak Pidana Jasa Keuangan di Indonesia (*Investigaor Problem in Crime Financial Services in Indonesia*)", *Jurnal Legislasi Indonesia*, Vol. 9 No. 3. October 2012, Jakarta: Kementerian Hukum dan Hak Asasi Manusia, page 409.

tivity. In the management structure of Islamic banks consist of the Board of Commissioners and Board of Directors and shall have the Syariah Supervisory Board to monitor the activities of Islamic banks.⁸

Islamic banking is at risk as conventional banks that also requires effective monitoring to ensure the stability of the overall system. Islamic banking face greater credit risk related to the problem of adverse selection, moral hazard and costly state verification. So is the case with the liquidity risk related to cash flow is more unpredictable and limitations of financial instruments to cover the deficit.⁹

If explored deeper, the risk of crime in Islamic banking is relatively small compared to the conventional banking, this is because the only defense that can withstand banker offense is moral responsibility, both to customers/man also to God. In Islamic banking activities is undertaken emphasized spiritual. If the conventional banking, trust the reputation associated risk, and losses on financial transactions.

According to Yury Petrovich Garmaev, banking crimes that occur because of the involvement of insiders.

Criminal activities usually involve the supervising officers and officials. That leads to an increasing of the corruption rates in the country. The crimes committed by the directors and employees of banks, as well as are crimes committed in complicity with them, are characterized by high social Sanger.¹⁰

According to Zulkarnain Sitompul, insiders crime is closely associated with the policies and administrative domination by one or several people and lack of the supervision carried out by internal and external supervisors (regulator). In addition, various provisions in force causes the banks often take excessive risks, which cause a dec-

rease of internal control, so that the bank failures caused by fraud by insiders to be higher.¹¹ Fictitious credit crimes that occurred in the BSM Branch Bogor because the involvement of internal circle BSM Branch Bogor.

OJK on Islamic banking must build cooperation with the National Shariah Council Indonesian Ulema Council (DSN-MUI) and the Shariah Supervisory Board (DPS). National Islamic Council (DSN) is part of the Indonesian Ulema Council (MUI) which is expected to help stakeholders such as OJK in drafting regulations.

One of authority in the possession of the DSN is issued a fatwa that became the basis for the rule or regulation issued by the competent authority, such as the Ministry of Finance and Bank Indonesia (including OJK). While DPS is an institution under the DSN that oversees the activities of banks that are always in accordance with the principles of Syariah. DPS is a element set up and placed in a bank conducting business based on syariah principles to ensure that the operations of Islamic banks do not deviate from the principles of syariah.

DSN and DPS are the institution that directs the Islamic banks to apply the principles of syariah in its activities. Therefore, accordance MUI Leadership Council Decision No. Kep-754/MUI/II/1999 on the Establishment of the National Sharia Council MUI, DSN can give a warning to the Islamic financial institutions to stop the deviation of the fatwa issued by the DSN and propose to instance authorities to take action if a warning ignored.

The instance authority referred to in the Decision of the Governing Council MUI No. Kep-754/MUI/II/1999 one of them is OJK. Therefore, communication and coordination between OJK and DSN into a thing that must be filled. DSN recommendation regarding the alleged criminal

⁸ Amiruddin K, "Perbankan Syariah dalam Perspektif Hukum", *Jurnal Al-Risalah*, Fakultas Syariah dan Hukum UIN Alauddin, Vol. 11 No. 1 May 2011, Makassar: Fakultas Syariah dan Hukum UIN Alauddin, page 184.

⁹ Yusuf Wibisono, "Politik Ekonomi UU Perbankan Syariah Peluang dan Tantangan Regulasi Industri Perbankan Syariah", *Bisnis & Birokrasi, Jurnal Ilmu Administrasi dan Organisasi*, Vol. 16, No. 2, May-August 2009, Jakarta: Fakultas Ilmu Sosial dan politik Universitas Indonesia, page 108.

¹⁰ Yury Petrovich Garmaev, "Features of Combating Crimes in The Banking Sector in The Russian Federation and in China" *European Scientific Journal*, Vol.10, No.10, April 2014, European Scientific Institute, page 45.

¹¹ Zulkarnain Sitompul, "Tindak Pidana Perbankan dan Pencucian Uang (*Money Laundering*)," *Reformasi Hukum*, Vol. VII No.2 July-December 2004, Jakarta: Fakultas Hukum Universitas Islam Djakarta, page 7.

acts occurred banking on Islamic banking is the entrance to the investigation and investigated by OJK investigator. This does not mean the new OJK investigators to act upon the recommendations of the DSN considering banking crime is a crime committed in a structured and systematic

DSN on Islamic banking institutions has a function as moral shariah guardians/ethics while OJK apart as supervisor also serves law enforcement agencies. Therefore, there should be a synergy of both institutions in exposing the crimes that occur in Islamic banking. This synergy is important in view of the various modes of operation performed in the banking crimes, from forgery of bank documents, issuance of L/C fictitious, lending to a fictitious company, set up an illegal bank, make installment credit crunch and the company declared bankruptcy, credit application with bulging guarantee, crime through internet banking, securities forgery crime through (bonds and mutual funds) and exchange are basically not only violate the provisions of national law but also violated the principles of shariah.

Closing

Conclusion

One institution that is authorized to investigate criminal acts of Islamic banking is OJK. Issues that may occur later in the investigation is overlapping of investigation either by the police or the prosecutor. Besides that, the problems experienced by OJK in conducting the investigation is less availability of resources investigation, considering OJK is an institution outside the government structure so that OJK does not have investigators.

To carry out the duties of investigation for crimes that occurred in Islamic Banking is to build synergy in the form of communication and coordination with DSN as an institutions authorized by the Islamic Banking Act to provide recommendations to other agencies including OJK if there is suspicion of a criminal offense in Islamic Banking.

Suggestion

First, In normative there are three institutions authorized to conduct investigations on criminal acts of banking, namely: OJK, the Police and the Attorney then need effective coordination so that the investigation did not overlap. *Second*, OJK must coordinate with DSN-MUI to optimize the investigation of the crimes committed in Islamic Banking.

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