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Policy of the Financial Services Authority in Consumer Protection[‡]

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1. BACKGROUND OF STUDY

A number of factors lie behind the importance of regulation in processes, products, and the provision of financial services because, among others: (1) The complexity of products and product information; (2) The rapidly changing nature of many products; and (3) The long-term nature of many transactions that means consumers do not make regular purchases, and therefore do not develop market expertise (Consumers International, 2011). Then the idea of establishing an institution to oversee financial services, as a part of consumer protection, is strictly needed.

The establishment of oversight body to supervise financial services in Indonesia, which is known as the Financial Services Authority (FSA), is defined by the Law No. 21 of 2011 (FSA Law). FSA has to ensure that all activities within the financial services sector are organized on a regular, fair, transparent and accountable basis; able to realize a sustainable and stable financial

system; and able to protect the interests of consumers. To protect the interests of consumers, FSA is authorized to undertake prevention measures to avoid consumer's damage, which include: (1) providing information and education to the public; (2) to request the Financial Services Institution to cease its activities if it has the potential to harm the public; and (3) any other actions deemed necessary in accordance with the provisions of the laws and regulations.

In connection with the protection of financial services consumers, this research was conducted. It aims to analyze the extent of the policies taken by FSA in protecting consumers especially post the establishment of FSA. A concisely review before the establishment of FSA was also conducted to see how far the policy of consumer protection of financial services existed at that time. This is essential to be conducted, among other things, to see how far the consumer protection policy has strengthened and or better achieved in FSA era.

2. LITERATURE REVIEW

2.1. Rationality of Consumer Policy

Consumer who does not know the ins and outs of the processes and outcomes of a product of goods and or services, often has to accept what it is for the goods and or services it receives, even they have been damaged (Heureux, 1992). The weakness of consumer has been declared and recognized internationally in United Nations Guidelines for Consumer Protection (UNCTAD, 2016) stating that: "taking into account the interests and needs of consumers in all Member States, particularly in developing ones, recognizing that consumers often face imbalances in economic terms, educational levels and bargaining power".

Therefore consumer policy is increasingly needed along with various inherent weaknesses in consumers. Heureux formulated 3 (three) problems faced by consumers: (1) the absence of consumer awareness that they have the right (law) that can be utilized; (2) many consumers do not know how to formulate their demands; (3) their reluctance to take it to the court (Heureux, 1992). Thus the consumer policy is aimed at achieving fairness and efficiency for consumers and the public interest by combining the most effective market forces and regulatory or other interventions.

In principle consumer policy can be divided into three main parts: (1) consumer empowerment policy; (2) consumer protection policy; and (3) competition policy (Robin 2012, p.116-117). In order to realize the consumer policy, the existence of consumer protection law is undeniably necessary. The main theoretical basis for developing legislation in the field of consumer protection is frequently based on three general categories: (1) policies on market failure or creating an efficient market for consumer goods and/or services; (2) advancing ethical goals; and (3) paternalist protection of the consumer (Overby, 2001).

However, those three aspects of consumer policy should be examined in a comprehensive method. Because it is obvious that the existence of consumer protection law will not necessarily be able to empower consumers while improving consumer protection conditions in the market. Wilhelmsson states: "Consumer law cannot, however, remove all such (market) injustices without, at the same time, removing the market mechanism. Consumer law as a mechanism against market-based structural injustice is therefore, by necessity, insufficient" (Wilhelmsson, 1997).

Hence, in order to realize a comprehensive consumer policy, the role of competition law and consumer protection law is complementary. Huffman stated that consumer protection law is an important element of business competition policy (Max 2010). In this case Cseres also notes that: "In some countries, major parts of consumer protection are integrated in the general law of unfair competition. They created a general prohibition specially focused on consumers in their market law" (Katalin 2004).

While the aims of both policies are essentially the same, competition policy is more proactive in promoting consumer interest in the market, while consumer protection policies primarily encourage a reactive agenda to protect the interests of consumers

and provide access to compensation for abuse of business actors (UNCTAD, 2001). As also stated by Leary: "Competition Law, besides to aimed at keeping fair competition between businesses actors maintained and creating efficiency in business, another goal is to protect and realize the interests and consumer welfare" (Leary, 2005).

Through the consumer policy, consumers' access to justice can also be strengthened as well. Lyttle states that consumers' access to justice includes: (1) the ability to claim and succeed in obtaining compensation; (2) the ability to retain insufficient claims of evidence; (3) proportional costs; (4) effective and simple procedures; (5) rapid process from beginning to conclusion; and (6) the effective enforcement of a decision (Lyttle, 2009). While Viitanen states that consumers' access to justice can be divided into two groups: (1) Protection of the collective interest of the consumer, i.e. the interest in which no individual consumer has the right to remedy when a violation of this interest occurs; and (2) Protection of individual rights, namely how consumer rights are met in individual cases after contractual approval and the consumer is dissatisfied with the purchase (Viitanen, 2007).

2.2. Urgency of Consumer Protection in Financial Service

Consumer protection policy is indispensable because of the various weaknesses faced by consumers of financial services. Capuano and Ramsay shows the weaknesses of consumers, especially in terms of investment and selecting financial products among others consumers may not: (1) Consider the key features of financial products before making a decision to purchase a product; (2) read the terms and conditions of financial products; (3) compare the price and quality of different financial products from different providers; (4) evaluate financial products they already own to determine whether they are still needed; etc. While in terms of financial services information, consumer weaknesses include, among others: (1) Consumers may not receive or seek independent advice; (2) Consumers may believe that they are receiving independent advice from an entity with a vested interest; (3) Consumers may trust financial institutions to provide them with unbiased financial information in circumstances when some of the information is biased; (4) Consumers may rely on the advice of family or friends who are not financial professionals when making investment decisions; etc. (Angelo 2011). While CI identifies that financial services information at least meets the criteria: clear, sufficient, reliable, comparable, and timely (Consumers International, 2011).

Consumers therefore need extensive knowledge and information about the processes and products of financial services so that they are able to understand and select the financial services products they need. Lemos stated that: (1) Consumer needs to be clear that a particular product is the one that he or she wants and will do the job expected of it; (2) after making a purchase, the consumer needs to know that if something does go wrong they have someone they can trust to turn for redress; and (3) the consumer wants to know that the government is on their side (Gerard, 2011). In this context, the OECD since 2005 has actually issued recommendations on the principles and practices of both education and financial awareness

which, among others, require financial institutions to play a greater role in capacity building and public financial awareness (OECD, 2005).

In Indonesian context, the policy of consumer empowerment in financial services sector is increasingly significant and relevant because on the one hand Indonesia's financial literacy index is still low (at 29.66% in 2016) and on the other hand there are still many practices of violation of consumer rights by financial services providers. Various important information for consumers is frequently not adequately provided so as to culminate in their losses. If it was provided, many are incomplete, incorrect, or even mislead. Attention to the need for consumer protection through increasing financial literacy has long been a concern of many States. Cole, Sampson and Zia noted that the role of financial literacy has garnered increasing attention in both the developed and developing world (Shawn, 2011).

It is a challenge to be able to realize a comprehensive legal assistance to consumers, especially for poor consumers or those with limited resources. Consumers do need good protection that concerns the clarity of financial services products, risks that can arise, as well as the government's alignment to its interests. Frequently consumers have to bear the losses due to their ignorance, lack of product information, or even abuse of the dominant position of financial services providers. Indeed a well-informed consumer may choose the best financial service provider (FSP), however he or she does not have the ability or bargaining power when the FSP changes the terms of the existing contract. The similar condition is also felt by consumers in the United States: "Lenders draft the contracts and offer them to consumers on a "take it or leave it" basis. These contracts often give the lender the power to change the terms, and the consumer is considered to have "accepted" the changes if s/he merely uses the credit card again" (Hobbs 2015).

On the other hand financial institutions in Indonesia are growing rapidly, both in terms of quantity of providers and the type of services offered. Until 2015 significant growth in banking financial services in Indonesia was recorded: 118 commercial banks and rural banks amounted to 1,806. Likewise, the financial industry continues to grow where the year 2011 amounted to 139 to 146 in 2015. Meanwhile, in 2017 insurance companies have amounted to 150; financing institution 267; pension fund 244; microfinance institutions 164 (FSA, 2017). Therefore, besides consumers need empowerment to further increase their bargaining power as well as the simpler accessibility of financial services, consumers also need an independent oversight body that has enough authority to force the financial services providers to run their business and manage its financial services by transparent, fair and responsible ways.

3. METHODOLOGY

This research is a qualitative legal research focused on the study of FSA policies in consumer protection of financial services. The approach used is a qualitative approach that describes and analyzes the protection policy of consumers of financial services by the FSA. The nature of the research is analytical descriptive

in which policies of FSA are reviewed by using important aspects in consumer protection of financial services as analytical tools. The source of data is secondary data especially the main legal material and related legislation such as consumer protection law, FSA law, other relevant regulations, and all of FSA policies related to the research substance (more than 20 regulations). Data were analyzed by using consumer protection principles and theories to measure its conformity and benefit for consumers. Organizing of this research was conducted firstly by collecting and clustering all of regulations and policies related to consumer protection and then it was systematically categorized based on the time of its enactment, before and after FSA. Thus each of regulations and policies were examined by using consumer protection principles and theories that have been determined. Conclusion is conducted by inductive method.

RESULTS AND DISCUSSIONS

4.1. Consumer Protection of Financial Services before FSA

Historically, efforts to provide consumer protection in Indonesia have been conducted since the era of Capital Market and Financial Institution Supervisory Agency (CMFISA). This is an institution under the Ministry of Finance of the Republic of Indonesia in charge of managing, regulating and supervising activities of the capital market and formulating and implementing technical policies and standardization in the field of financial institutions. It can be said that the independent nature of CMFISA is not really exist because in carrying out its functions and authority (especially the function of supervision, regulation and direction), CMFISA is under and responsible to the Minister of Finance. In addition, in view of the scope of supervision imposed on CMFISA, it appears that most of the attention provided by CMFISA is more devoted to the capital market than to other financial institutions.

There are some policies in the era of CMFISA related to consumer protection (albeit indirectly) among others about: (1) Guidelines for implementation of know your customer principles on non-bank financial institutions; (2) guidelines for delivery of reporting of financing companies; (3) contracts used in financing activities based on sharia principles; (4) the assessment of ability and fit the members of the board of directors and the board of commissioners of the financing company; (5) figure, structure, and submission of quarterly financial report and business activity report for semester of infrastructure financing company; (6) guidelines for implementation of know your customer principles for pension funds of financial institutions; (7) financing companies activities based on sharia principles as amended by chairman regulation of CMFISA No. PER- 06/BL/2012; (8) guidelines for inspection of Indonesian export financing institution; (9) guidelines for implementation of know your customer principles for financing companies; and (10) examination guidelines for infrastructure financing company.

From the above regulations it can be concluded that the concern of CMFISA still revolves around establishing the governance of financial institutions (indicated by the many regulations/policies in the form of Guidelines) and accountability reports

of financial institutions. It can be seen that almost no legal and policy products are directly aimed at providing protection to the consumers. Policies of CMFISA was still limited to managing financial institutions and have not paid attention to the consumers. Meanwhile in the era of CMFISA, Banking arrangements and supervision still exist and become the authority of Bank Indonesia. Bank Indonesia has issued policy to protect consumers such as Bank Indonesia Regulation No. 16/1/PBI/2014 about consumer protection of payment system services. The consumer protection principles set forth in this regulation include: fairness and reliability; transparency; protection of consumer's data and/or information; and effective complaints handling. However essentially, there were no specific policy to realizing consumer protection such as consumer empowerment or strengthening consumer financial literacy.

4.2. Consumer Protection Policy on Financial Service in the FSA Era

The existence of a regulatory standard on consumer protection of financial services is urgent and important; especially considering the volume of Indonesia's growing financial market. The growth is indicated by the increasing number of domestic and international investors who enter the financial markets and capital markets in Indonesia (Bank Indonesia, 2016). In this context FSA is required to have functions, duties, and authority of regulating and supervising the activities of financial services sector in an integrated, independent and accountable manner. The background of FSA Law's establishment is as follows: (1) The development of the financial system due to business conglomeration, hybrid product, and regulatory arbitrage; (2) problems in the financial sector due to moral hazard, consumer protection and across-sector coordination; and (3) Article 34 Law No. 3 of 2004 about Bank Indonesia which mandates the establishment of a supervisory agency for the financial services sector (Hendro 2014).

Based on Article 4 of FSA Law, it is mentioned that one of FSA's duties is to provide protection to consumer and/or the community. In this regard, FSA has issued FSA regulation No. 01/POJK.07/2013 about Consumer Protection in the Financial Services Sector. The FSAR applies the principle of equilibrium, which is between sustaining the sustainable financial services sector and simultaneously providing protection to consumers. The FSAR contains 3 main aspects, namely: (1) Increasing transparency and disclosure of benefits, risks and costs for products and/or services of FSP; (2) FSP's responsibility to conduct conformity assessment of products and/or services with risks faced by financial consumers; (3) simpler procedures and convenience of financial consumers to lodge complaints and dispute resolution of FSP products and/or services.

In order to see the extent to which the consumer protection policy has been issued by FSA, FSA's policies will be classified in several aspects along with some regulations as its example:

1. Aspect of supervision: Control of FSP is conducted among others by issuing FSAR No. 5/POJK.05/2013 about the Supervision of Social Security Administering Agency (SSAA) by FSA. This regulation stipulates the main issues concerning SSAA supervision such as oversight scope, authority, and

recommendation by FSA. Subsequently also issued FSAR No. 55/POJK.05/2017 about Insurance Company Periodical Report. The FSA is authorized to require the Insurance Company to submit the report periodically in a complete and timely manner (monthly, quarterly, semesters and yearly).

2. Aspects of minimum standards of financial products: In this matter it has been stipulated FSAR No. 67/POJK.05/2015 about Business Licensing and Institutional Insurance Company, Sharia Insurance Company, Reinsurance Company, and Sharia Reinsurance Company. The rules concerning minimum standards of financial products, related to the capital that must be provided in establishing an insurance business, are regulated in Chapter II of the fourth section of this regulation. In addition, it was also stipulated FSAR No. 34/POJK.03/2016 about the Amendment to the FSAR No. 11/POJK.03/2016 about the Minimum Capital Requirement for Commercial Banks. This regulation is made on the basis that in order to create a sound banking system, capable of developing and competing nationally and internationally and in line with the development of international standards, it is necessary to improve the provisions concerning the obligation of minimum capital provision of commercial banks.
3. Aspect of the fair treatment to the consumer: In line with the provisions of Article 18 of Consumer Protection Law (Law No.8 of 1999), FSA then also issued FSA Circular Letter No. 13/SEOJK.07/2014 about the Standard Contract. As it is known that the largest user of the standard contract is a business actor in the financial services sector so that must be restricted. In addition, FSA also issued FSAR No. 73/POJK.05/2016 about Good Corporate Governance for Insurance Companies. This FSAR regulates fair treatment to the consumers, especially consumers in the insurance sector.
4. Aspects of disclosure and transparency: In this context, FSA issued FSAR No. 6/POJK.03/2015 about Transparency and Publication of Bank Report as amended by FSAR No. 32/POJK.03/2016 of 2016. This regulation emphasizes on the transparency of financial institutions especially banking sector. Aspects of disclosure and transparency are also regulated through FSAR No. 21/POJK.04/2015 about Implementing of Corporate Governance Guidelines. This FSAR is established as a guide in order to improve transparency of good corporate governance practices. In addition, it was also issued FSAR No. 73/POJK.05/2016 about Good Corporate Governance for Insurance Companies.
5. Aspects of education and financial consciousness for consumers: In this context FSA issued FSAR No. 76/POJK.07/2016 about Increasing Literacy and Financial Inclusion in the Financial Services Sector for Consumer and/or Society. Additionally through Article 14 of FSAR No. 1/POJK.07/2013 defined regarding the provision of education for consumer in order to increase financial literacy. The result of survey conducted by FSA in 2013 showed that financial literacy index was 21.84% and 59.74% for financial inclusion index. Meanwhile in 2016, the second survey showed financial literacy index was 29.66% and financial inclusion index was 67.82% (FSA, 2014). It is determined that FSP are obliged to provide education in order to increase financial literacy to the consumer and/or the community which is compiled

- in an annual program and reported to the FSA periodically. Furthermore FSA also publishes FSA Circular Letter No. 30/SEOJK.07/2017 about Implementation of Activities in order to Increase Financial Literacy. In the context of financial inclusion, FSA issued FSA Circular Letter No. 31/SEOJK.07/2017 about the Implementation of Activities to Increase Financial Inclusion in the Financial Services Sector.
6. Aspects of responsibility of business ethics of FSP: In the field of banking, FSA has issued among others: FSAR No. 6/POJK.03/2015 of 2015 about Transparency and Publication of Bank Report as amended by FSAR No. 32/POJK.03/2016 of 2016. Besides ensuring the responsibility business ethics of the insurance finance industry, FSA has also issued FSAR No. 55/POJK.05/2017 about Permanent Insurance Company Reports and FSAR No. 73/POJK.05/2016 about Good Corporate Governance for an Insurance Company. Through both FSARs, FSA seeks to encourage FSP accountability in the insurance sector through the provision of periodic reporting obligations and the application of good corporate governance principles. Moreover to ensure the performance of FSP and their agents, particularly in terms of business ethics, FSA issues FSAR No. 3/POJK.05/2017 about Good Corporate Governance for the Guarantee Institution.
 7. Aspect of protection of consumer assets: Beside the existence of Indonesia Deposit Insurance Corporation which guarantees customer deposits in banks as regulated in Law No.24 of 2004 about Deposit Insurance Corporation, the protection of consumer assets in the financial services sector by FSA is confirmed in FSAR No. 1/POJK.07/2013. In this FSAR, it is affirmed that FSP are obliged to maintain the security of deposits, funds, or consumer assets. In the context of risk management that will impact on the protection of consumer assets, FSA has issued FSAR related to financial conglomeration, namely FSAR No. 17/POJK.03/2014 about Integrated Risk Management for Financial Conglomeration and FSAR No.18/POJK.03/2014 about Integrated Governance for Financial Conglomeration.
 8. Aspects of consumer data protection and privacy: To maintain the confidentiality and security of personal data and/or personal information, FSA issues Circular Letter No. 14/SEOJK.07/2014 about Confidentiality and Security of Consumer Data and/or Personal Information. In this Letter, it is stated that FSP is prohibited by any means, providing personal data and/or personal information to third parties. However, such matters may be disregarded if the consumer provides written consent or it is required by law. Through this Letter, FSP shall also establish written policies and procedures concerning the use of consumer data and/or personal information and put it into standard operating procedures on the use of consumer data and/or personal information.
 9. Aspects of complaint handling and dispute settlement: In this matter, the FSAR No. 1/POJK.07/2014 about the Alternative Dispute Settlement Institution (ADSI) in the financial service sector as one of the forms of responsibility and the effort to protect the interest of the consumers. Furthermore FSA issues Circular Letter No. 2/SEOJK.07/2014 about Service and Completion of Consumer Complaint on FSP. In this Letter, FSA obliges FSP to have or establish service mechanism and settlement of consumer complaints. Therefore to ensure that the above Regulation and Circular Letter are complied with and executed by FSP, FSA issues FSA Circular Letter No. 54/SEOJK.07/2016 about Monitoring of ADSI in Financial Services Sector. This Letter basically obliges FSP to make periodic reports on dispute resolution every 22 months.
 10. Aspects fair competition: Referring to Law No.5 of 1999 about the Ban on Monopolistic Practices and Unfair Business Competition, FSA further regulates through Article 13 of FSAR No. 1/POJK.07/2013 about Consumer Protection of Financial Services Sector. In this article it is determined that the FSP is obliged to develop guidelines for pricing of products and/or financial services. It is also stipulated that in determining the cost or price of financial products and/or services, FSP takes into consideration the reasonableness of cost or price, while considering the commercial aspect and fair competition. Meanwhile in the banking sector, FSA issues FSAR No. 26/POJK.03/2015 about the Minimum Capital Adequacy Requirement for Financial Conglomeration. In this FSAR, the Ratio of Minimum Capital Adequacy Ratio is at least 100% of the minimum capital requirement. The obligation is expected to overcome the impact of the risk of transmission is great, if in a financial conglomerate there are entities that have problems in liquidity (Hadad, 2017).

4.3. Weakness, Challenge and Expectation towards FSA's Policy

FSA's responsibilities in the context of regulating and overseeing the provision of financial services are huge because of the sustainability of governance and the circulation of large amounts of funds in the community. As of mid-2017, total outstanding funds overseen by FSA were 6,730 trillion in the banking sector, and 1.907 trillion in the non-bank financial industry (Khairul 2017). Apart from all efforts and achievements that have been generated by FSA so far, the great expectations of the community must be answered. FSA should improve their performance so that its role and function can be concretely felt by the public, not only for FSP but also consumers of financial service.

Indeed, FSA has issued FSAR No. 1/POJK.07/2013 about Consumer Protection in Financial Services Sector and FSAR No. 1/POJK.07/2014 about the ADSI. However it seems that these regulations are still not adequate, especially when viewed from the consumer side. Hereby some weaknesses:

1. The FSAR No. 1/POJK.07/2013 does not explicitly state what the consumer rights of financial services that may be sued if such rights are not met. This is important because the low level of consumer financial literacy and its understanding to the various practices of irregularities made by the financial services industry that has the potential to harm consumers. This FSAR merely specifies that financial services providers shall provide an understanding of the rights and obligations of consumers;
2. The FSAR also requires consumers when they have problems with FSP to pursue a settlement with the FSP before carrying it to ADSI. This provision assumes that FSP will always be responsive and cooperative in responding to any consumer complaints. However various complaints of financial services

users who feel harmed so far frequently not or slow responded. 20 working days given to FSP to follow up complaint are too long for consumers, moreover it could be extended up to a maximum of 20 subsequent working days. Consumers need to solve the problem quickly and not convoluted;

3. Not all of FSP have a supervisory system for directors or management in the framework of consumer protection. FSP should have an internal control system related to consumer protection to ensure that the implementation of consumer protection principles has been conducted as well as follow up of each consumer complaints, then FSA must ensure it happens;
4. FSA function is merely limited to facilitate the settlement of disputes between consumers and FSP. Supposedly as the ultimate authority in oversight and enforcement, FSA can take a greater role in providing consumer protection. If FSA only acts as a "facilitator" then perhaps there is no deal between the parties in dispute and it impacts on unresolved consumer problems (Samsul, 2013). So FSA should not merely provide facilitation, but take the role as a decision maker independently like an adjudicator or arbitrator;
5. The role of FSA to oversight the practice of financial services should be more active in order to prevent consumer detriment. Rigorous supervision and strict sanctions should be applied in order for financial services consumers to be better protected. FSA's authority should not only ask for data and information but also include further investigation. Even if an indication of violation of criminal law by the FSP is proven, FSA may take legal steps, including following up by making a report to the police. Then administrative sanctions alone are not enough to provide justice for consumers.

In relation to the above matters, the great expectation of FSA in educating and protecting the rights of consumers must be promptly answered and proven by FSA because financial services also involve a large number of public funds with the risks or its impacts are frequently also systemic. The challenge now is to ensure that financial services are continuously followed by financial education to expand financial inclusion. FSA should take a larger role so that consumer education programs can be more effective. FSA should involve many parties to do this synergistically such as consumer organizations, universities, local governments, and other stakeholders. More than that there are some serious problems faced by FSA in the future. Among these are the Capital Market and Non-Bank Financial Industry supervision system. Non-bank supervision is not as good as banking. Meanwhile there are still investment products that are not controlled and potentially plunge the community.

5. CONCLUDING REMARKS

The growth of consumer protection policy in the financial services sector in the FSA era did appear to be more progressive than in the era of CMFISA. Huge authority and supported by strong and independent organizational characteristics proved capable of generating policies that forced the FSP to comply with existing rules. Nevertheless, FSA's concrete role in providing consumer protection remains to be improved and strengthened, especially not only in the context of financial literacy and inclusion but also

effective dispute resolution. Indeed there are an increasing index of financial literacy and financial inclusion since 2013, however that is approximately still low. Furthermore in one side, the empowerment of consumers will have a positive and significant impact on consumer protection, albeit in other side, strengthening the oversight of the Financial Institutions and realizing of fair competition among them also should not be loosened. More than that, law enforcement must be consistently conducted.

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