

The Independence of Financial Services Authority Role in Regulating and Supervising Banking Credit Agreement Protecting the Parties

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Abstract— Independence is capable of carrying out duties and responsibilities without expecting the dependence of other parties with legal and regular, The role of OJK in regulating and supervising credit agreement of banking protecting the parties, require presence of government role in arranging and making authority of arranging and supervising role of OJK (Commissioner OJK, Board of Directors and Board of Commissioners of legal entities) working in concert with the role of Notaries, Public Accountants, Public Appraisers, Advocates, Liquidators, and Receivers, as well as the presence of government roles in the governance of fair and equitable, and collegial on a regular basis, integrated, independent, transparent, accountable, sustainable, stable and fair.

Keywords— Arrangements and Supervision can not be unified with the Collection because it maintains an independent attitude and without conflict of interest.

I. INTRODUCTION

The national economic development of the nation of Indonesia is expected to be stable and sustainable growth, providing widespread and equitable employment opportunities in all sectors of the economy, and can bring prosperity to society a lot in a fair way, then the nation's nation-wide economic development system must be implemented systematically by involving the role of society educated, competent, and able to work together with all the nations of the world, especially those capable of actively mobilizing business turnover, capable of reaching and covering all the real sectors of the economic activities of the Indonesian nation. To mobilize business turnover, requires currency as a medium of exchange for business transactions of services and goods that need to be governed by Bank Central Indonesia which previously include monetary authority and supervisory authority, currently needs to be integrated between the monetary authority in BI and the supervisory authority in OJK. The supervisory authority of Bank Indonesia (BI) is transferred to the Financial Services Authority (OJK) having an integrated objective between the monetary authorities in BI and the supervisory authority in OJK, in order to be independent and avoid any conflict of interest.

Whereas in order to realize a sustainable, and stable national economy, activities within the financial services sector are organized on a regular, fair, transparent and accountable basis, and capable of realizing a sustainable and stable financial system that protects the interests of consumers and community. (Considering the letter a, RI Law number 21 Year 2011 on the Financial Services Authority).

The role of OJK to minimize third party interference and party dispute on the banking sector with OJK has issued

implementing regulations, conducting compliance control of Business Service Actors (PUJK) on the implementation of consumer protection provisions directly related. "For consumer and community protection, OJK is authorized to conduct legal defense, which includes: a. order or perform certain actions to the financial services agency to resolve customer complaints harmed by the financial services institution; b. filed a lawsuit: 1. to recover the property of the disadvantaged party from the party causing the loss, whether under the control of the party causing the loss in question or under the control of another party with bad faith; and / or 2. to indemnify losses from the party causing the loss to the consumer and / or the financial service Institution as a result of violation of the laws and regulations in the financial services sector (Article 30 paragraph (1) of Law Number 21 Year 2011 About Financial Services Authority).

Indemnification as referred to paragraph (1) letter b number 2 shall only be used for the payment of compensation to the injured party. (Article 30 paragraph (2) of RI Law number 21 of 2011 on the Financial Services Authority).

Considering the substance of the Financial Services Authority Regulation (POJK), in general only consumers are protected, this is a question of banking practitioners, and in connection with the law for consumer protection, which makes banking more and more unequal. In fact, from the interference of other parties and disputes of parties involving the banking world, it could be the bank becomes unequal. For example, the case of non-performing loans, the certainty of legal protection for banks becomes a separate requirement for the banking industry, where banking institutions that serve customers also act as collateral holders, in particular the guarantee of some funds borrowed by the community through credit distribution programs.

Legal protection for banks in the event of non-performing loans where the bank as a creditor has the right (the Hypotik Certificate) to sell the object guaranteed by the debtor, through a public tender, the bank is entitled to take the receipt of the proceeds from the sale, it also applies when the debtor is in a state of bankruptcy. The Act recognizes the right of separatist to the creditor of the mortgage, the execution of the auction of mortgage rights is a logical consequence of the signing of the credit agreement by the creditor in this case the bank with the debtor in this case as the debtor when the debtor 'Wanprestasi' the principle of know your customer and equality as fairness remains as the basis for thinking and acting the actors of financial services and consumers, equally respect each other's rights and obligations.

Consumer Protection which becomes the entrance of OJK to minimize the interference of other parties and disputes between the financial service actors with the customer or the consumer is regulated in "Article 2, Consumer Protection applies the principles of: a. transparency; b. fair treatment; c. reliability; d. confidentiality and security of Consumer data / information; and e. handling complaints and resolving consumer disputes simply, quickly and affordably. (REGULATION OF AUTHORITY OF FINANCIAL SERVICES NUMBER: 1 / POJK.07 / 2013 CONCERNING PROTECTION OF CONSUMER SECTOR FINANCIAL SERVICES).

Elucidation of Article 2; Letter a, What is meant by "transparency" in this letter is the provision of information about products and / or services to the Customer, clearly, completely, in an understandable language; Letter b, Referred to as 'fair treatment' in this letter is the fair and non-discriminatory treatment of the Consumer (Discriminatory is to treat other parties differently based on race, religion and race); Letter c, Referred to as 'reliability' in this letter is anything that can provide accurate service through reliable systems, procedures, infrastructures and human resources; Letter d, Referred to as 'confidentiality and security of Consumer data / information' in this letter is an action that provides protection, safeguards and security of Consumer data and / or information, and only uses it in accordance with the interests and purposes approved by Consumers, determined otherwise by applicable laws and regulations; Letter e, What is meant by "complaint handling" in this letter is the service and / or settlement of the complaint; and What is meant by "dispute resolution" is to carry out mediation agreement or adjudication decision. (ELUCIDATION TO THE REGULATION OF THE AUTHORITY OF FINANCIAL SERVICES NUMBER: 1 / POJK.07 / 2013 ON CONSUMER PROTECTION OF THE FINANCIAL SERVICE SECTOR).

The parties have the same rights and the same parties before the law, that the content of legal norms in legislation should be based on justice for parties without conflict of interest, meaning the law in the process of formation (preparation, discussion and endorsement, enactment and dissemination as well as community participation), its application and implementation shall be based on the basis of fair treatment of the parties. Justice is based on what is right for it, the size of what is right, gets what is its share. free to

determine what it will do, provided that it does not violate the same freedom from others, there is no other meaning to justice except equality, individual freedom in the pursuit of individual prosperity, so by limiting the freedom of the individual within the limits in accordance with the welfare of mankind, provide an opportunity for consumers and business actors to obtain their rights and to perform their obligations, the management framework shall protect the rights of the parties, the enterprise management framework shall ensure equal treatment for the parties.

Principles of public policy formulation: the process should be transparent, accountable and involve parties that should be involved, policy contents set policy issues to be regulated or focus on policy issues, not political or economic compromises, directly on regulated issues, more or equal policies, and the articles are synchronous, there is no conflict with each other, the parties directly related to the policy of applying the basic principles of good governance, paying attention to the rules of morality in policy making, the policy is really the rule of law, therefore the public policy is not an appeal, but rather provides the limits of the rules and implies strict sanctions for its violation and provides justice and security before the law for the public. The policy is systematic, workable, even though the implementation is not by the government, but the government can m effectively control, and have measurable impacts and impacts, that every public policy in Indonesia should use good and proper Indonesian, even if the policy is the result of cooperation with foreigners, and then, if necessary, translate into a foreign language or region ; the language must be good, that is, language that can be understood publicly in one meaning, and true, that there is no deviation to the logic of language.

The principle of justice, mandates that all citizens have equal rights and that everyone is equal before the law. Furthermore it can be said that any content of statutory content should reflect proportional justice for every citizen without exception. Because of the law in the process of formation (preparation, discussion and endorsement, promulgation and dissemination as well as community participation), its implementation and implementation should be based on the fair treatment of people who become citizens (Surachmin, Suhandi Cahaya, 2010).

Some formulas on justice:

1. Justice is a constant and constant will to give everyone what is right for them. (Iustitia est constans et perpetua voluntas ius suum cuique tribuendi-ulpianus cited Surachmin, Suhandi Cahaya, 2010).
2. Justice is a political policy whose rules form the basis of state regulations and these rules are a measure of what is right. (Aristotle quoted Surachmin, Suhandi Cahaya, 2010).
3. Justice is the policy that gives results, that everyone gets what is his share. (Justinian Justice quoted Surachmin, Suhandi Cahaya, 2010).
4. Everyone is free to determine what he will do, provided he does not violate the same freedom from others. (Herbert Spencer quoted Surachmin, Suhandi Cahaya, 2010).

5. There is no other meaning to justice except for personal equality. (Nelson cited Surachmin, Suhandi Cahaya, 2010).
6. The norm of justice determines the scope of individual liberty in the pursuit of individual prosperity, thereby restricting the liberty of the individual within boundaries in accordance with the welfare of mankind. (John Salmond cited Surachmin, Suhandi Cahaya, 2010: 15-16).

The principles of consumer protection, the principle of justice, is intended to enable the participation of all peoples to be realized maximally and provide opportunities for consumers and business actors to obtain their rights and perform their obligations fairly (Surachmin, Suhandi Cahaya, 2010: 132).

Principles of Good Corporate Governance, Fairness, The first principle states 'the management framework should protect shareholder rights'. The second principle states that 'the corporate management framework should be able to ensure equal treatment for shareholders, including minority and foreign shareholders, all shareholders have the opportunity to obtain compensation for violations of their rights'. This second principle implies that the law should protect the rights of minority shareholders from the use of inappropriate assets and transactions conducted by majority shareholders. These principles of justice can be realized, among others, by creating corporate rules that protect minority interests, establishing corporate conduct and / or policies protecting corporations against insider bad deeds, self-dealing and conflicts of interest, defining roles and responsibilities directors and committees, including remuneration systems, presenting information fairly (full disclosure), and prioritizing equal job opportunities. (Surachmin, Suhandi Cahaya, 2010: 168).

The principle of Audi et alteram Partem (Equalization between parties in civil proceedings), in civil events, according to Western European legal system, both parties have the same position. Both parties must be heard. Each party shall have the opportunity to express his or her opinion on the disputed matter. If the court renders his decision solely on the basis of a lawsuit, or only on a plaintiff's complaint, then the court has made a mistake. The decision can already be canceled simply because it does not allow the defendant to give an answer, maybe the decision is correct or correct. If a Dean of the Faculty receives a complaint from a number of students about the treatment of a teacher, then he should give the lecturer the opportunity to defend himself, before he takes the conclusion, also in the opposite. A lecturer reported to the Dean, that one student had cheated on the exam, against the student having to take action. The dean would make a mistake, if he immediately imposed the punishment on the complained student, without giving the student the opportunity to defend himself, perhaps the Dean's decision was correct, correct, but the decision could be canceled by the superior only because he had violated the principle 'audi et alteram partem' is latin, meaning 'listening to the other', The principle of audi et alteram partem must be observed once in civil procedure law. In France, an executive's decision will be canceled by the Administrative Court, if the principle has been violated (Surachmin, Suhandi Cahaya, 2010: 73-74).

Principles of public policy formulation:

1. The Right Principle in the process, namely that the process must be transparent, accountable and involving the parties that should be involved. (Surachmin, Suhandi Cahaya, 2010: 138).
2. The Right Principle in content, that is, the content of the policy, regulates policy issues that must be regulated or focus on policy issues; is not a political and / or economic compromise; directly on the regulated issue; not contrary to more or equal policies, and the chapters are synchronous (there is no opposition to each other). The content of the policy includes, among other things, the articles governing the content of the policy (such as rules, restrictions, restrictions, incentives, and sanctions of policy violations), timing, process and implementation, including a discretionary reference frame for policy implementers when faced with situations which is remarkable, requiring policy discretion to be accountable, and the time for evaluation includes a section on policy refinement. (Surachmin, Suhandi Cahaya, 2010: 138-139).
3. Politically correct principles of ethics, which is to accommodate the parties directly related to the policy of applying the basic principles of good governance, as the principle of Right in the process is the process, and pay attention to the rules of morality in policy making. (Surachmin, Suhandi Cahaya, 2010: 139).
4. The law's right principle, namely that this policy is really a rule of law, hence public policy is not an appeal, but it provides rules and regulations and implies strict sanctions for violations thereon and provides justice and security before the law for the public. Surachmin, Suhandi Cahaya, 2010: 139).
5. The Principle True in management, the content of the policy is systematic, workable, although the implementation is not by the government, but the government can control effectively, and have the benefits, and impact (impact) measurable. (Surachmin, Suhandi Cahaya, 2010: 139 -140).
6. Correct Principles in a language, that every public policy in Indonesia should use good and proper Indonesian, even if the policy is the result of cooperation with foreigners, and then, if necessary, translated into a foreign or regional language; the language must be good, that is language that can be understood public in one meaning, and true, that there is no deviation to the logic of language. (Surachmin, Suhandi Cahaya, 2010: 140).

II. RESEARCH METHOD

Reviewing the problem then conducted research that is Juridical Normative. Data sources are obtained through primary legal materials and secondary legal materials and tertiary legal materials. The research method used is through literature study, while data analysis is done with qualitative juridical approach.

In Normative Juridical law research, the research approach used is the approach of legislation (statute approach), conceptual approach, comparative approach, and case approach (Johnny Ibrahim, 2007: 300).

The statute approach is conducted by reviewing all laws and regulations relevant to the legal issues being addressed. For research on practical activities, this law approach will open up opportunities for researchers to study whether there is consistency and conformity between a law with other laws or between laws and the Constitution or between regulations and laws. The results of the study are an argument to solve the issues at hand. For research for academic activities, researchers need to find the ratio of legis and the ontological basis of the birth of the law. By studying the legislation ratio and the ontological basis of a law, researchers are actually able to capture the philosophical content that exist behind the law. Understanding the content of the philosophy behind the law, the researcher will be able to infer whether there is a philosophical clash between the law and the issues at hand (Peter Mahmud Marzuki, 2011: 133-134).

Methods of approach to research legislation need to understand the hierarchy, and principles in legislation. According to Article 1 paragraph 2 of Law no. 12 Year 2011, legislation is a written regulation containing general legal norms binding and established or established by state institutions or authorized officers through procedures established in legislation. From this understanding, it can be said briefly that what is meant as statute in the form of legislation and regulation. If so, the approach of legislation is an approach using legislation and regulation. Products that are *beschikking* / decree, ie a decision issued by a concrete and special administration official, such as a presidential decree, a ministerial decision, a bupati's decision, and a decision of a particular legal entity, cannot be used in legislative approaches. (Peter Mahmud Marzuki, 2011: 137).

Furthermore, Article 7 paragraph (1) of Law no. 12 Year 2011 sets the Type and Hierarchy of the Law of the Republic of Indonesia. Under such provisions, the types and hierarchies of legislation are as follows: 1945 Constitution of the State of the Republic of Indonesia; Decision of the People's Consultative Assembly; Law / Government Regulation in Lieu of Law; Government regulations; Presidential decree; Provincial Regulations; and Regency / City Regulations (Peter Mahmud Marzuki, 2011: 137-138).

Article 8 of the law specifies the types of legislation other than those mentioned in Article 7 paragraph (1), which includes regulations established by the People's Consultative Assembly, the People's Legislative Assembly, the Regional Representative Council, the Supreme Court, the Constitutional Court, the Supreme Audit Board, A Judicial Commission, Bank Indonesia, a Minister, a body, an institution or a commission of the same level established by law or government on the order of legislation, a regional legislative assembly, a province, a governor, a district legislature, mayor, village head or equivalent. Paragraph (2) of Article 8 of the law states that "the law as referred to in paragraph (1) shall be recognized as having existence and possessing binding legal power as long as it is commanded by a higher legislation or by virtue of authority. Regarding this "Authority" can be referred to the explanation of Article 8 paragraph (2) which reads: "Referred to as" by virtue of authority "is the administration of certain governmental affairs in accordance with the provisions

of legislation." If such explanatory sound is still less clear as well. In such case, lawyers may use their scientific expertise (Peter Mahmud Marzuki, 2011: 138).

With regard to hierarchy, no provision explicitly stipulates where the position of the rules mentioned in Article 8 paragraph (1) is in the hierarchy of legislation. Is the regulation made by Bank Indonesia that can be called Bank Indonesia Regulation or PBI in line with Government regulation. Also in the elucidation of article by article the law is not mentioned hierarchy of the rules. In such a case, the lawyer should again be able to use his scholarship. Such understanding has significance in the judgment of the *lex superior derogate legi inferiori* principle. According to this principle, in the event of a conflict between hierarchically lower legislation and higher, the lower hierarchical legislation should be set aside (Peter Mahmud Marzuki, 2011: 139).

The legislation approach is conducted by reviewing all OJK legislation relating to the rights of the Parties to a sound credit banking agreement and protecting the just parties. The conceptual approach is undertaken by understanding, accepting, and grasping a just definition for the Parties in a regulatory and supervisory system with an independent principle and on the basis of the personality of the rights and obligations of the Parties. The comparative approach is made by comparative study of the rule of law on the rights of the Parties to the credit agreement of the banking system that protects the justice parties in the rule of law in Indonesia. The case approach is carried out by studying the application of legal norms or norms that are practiced in legal practice, especially concerning cases which have court decisions with permanent legal force relating to the rights of the Parties to a sound credit banking agreement and protecting the just parties.

III. RESULTS AND DISCUSSION

Independence Efforts The role of OJK in the Regulation and Supervision of Credit Banking Agreements Protecting the Parties is **Self-Reliance** The role of OJK requires independent attitude and no conflict of interest between the parties (the Board of Commissioners of OJK with the Board of Commissioners and Board of Directors of the Bank) and requires a basic legal norm which becomes the fundamental effort of independence the role of OJK in the regulation and supervision of banking credit agreements that protect the parties.

The independence of the Board of Commissioners of OJK and its staff as the Regulator and Supervision of the Bank, if there is a case in the bank both internal bank and external bank between the bank or creditor with the debtor of the bank or between the bank debtors with the Supplier / buyer, here the Commissioner Council shall show independent attitude conflicts of interest in regulating and supervising the banking that occurs either internal bank or external bank between the bank or creditor with the debtor of the bank or between the debtor of the bank with the Supplier / buyer without intervention other party, from the beginning require the process of management, ordering and completion, which requires and involves the notary profession, Public Accountant, Public Appraiser, Advocate, Liquidator and

Curator who work in an integrated, independent, and accountable way to avoid corporate crime, which requires an independent attitude and no conflict of interest. However, there is a need for government presence in managing the national economy based on the authority of attribution given by the constitution of the Indonesian Reproductive state, namely;

The national economy is organized on the basis of economic democracy with the principles of togetherness, efficiency of justice, sustainability, environmental insight, independence, and by maintaining a balance of progress and national economic unity (Jimly Asshiddiqie, 2013: 142, article 33 paragraph (4) of the 1945 Constitution).

Elections shall be organized by a national, permanent, and independent electoral commission (Jimly Asshiddiqie, 2013: 81, Article 22 E Paragraph (5) of the 1945 Constitution).

The state has a central bank whose structure, position, authority, responsibility and independence are regulated by law (Jimly Asshiddiqie, 2013: 88, Article 23 D of the 1945 Constitution).

Everyone is entitled to the recognition, guarantee, protection, and fair legal certainty and equal treatment before the law. (Jimly Asshiddiqie, 2013: 117, Article 28 D Paragraph (1) of the 1945 Constitution).

Bank regulatory and supervisory functions are actually Bank Indonesia's duties as they have been protected by the constitution through Article 23 D and Article 28 D Paragraph (1) of the 1945 Constitution. Thus, Bank Indonesia has more constitutional basis in performing bank regulatory and supervisory duties. The provision of Article 23D which states that the State has a central bank whose structure, position, authority, responsibility and independence is regulated by law, the provision of Article 28D paragraph (1) which contains that: 'Everyone is entitled to recognition, guarantee, , and the just legal certainty and equal treatment before the law ', and which regulates in the formulation of the fundamental law various provisions or principles which provide guidance or guidance for the preparation of economic policy, in Article 33 Paragraph (4) Of the 1945 Constitution which contains that: 'The national economy is organized on the basis of economic democracy with the principles of togetherness, fair efficiency, sustainability, environmental insight, independence, and by maintaining a balance of progress and national economic unity'.

OJK is an independent institution in performing its duties and authorities, free from interference by other parties, except for matters expressly regulated in this Law (Article 2 Paragraph (2) of Law of the Republic of Indonesia number 21 of 2011 concerning Financial Fervices Authority).

Financial Services Authority, hereinafter abbreviated as OJK is an independent institution and free from the interference of other parties having the functions, duties and authority of regulation, supervision, inspection and investigation as referred to in this Law. (Article 1 number (1) Republic Law Indonesia number 21 of 2011 on the Financial Services Authority).

The task of supervising the Bank shall be conducted by independent financial services sector supervisory bodies, and

established by law, with the explanation of Article 34 Paragraph (1) that the Financial Services Supervisory Agency to be established oversees the Bank and other financial services sector companies including insurance, pension funds, securities, venture capital, and finance companies as well as other bodies conducting public funds management. This institution is independent in carrying out its duties and its position is outside the government and is obliged to submit reports to the State Audit Board and the House of Representatives. In performing its duties, this institution (supervisory board) shall coordinate and cooperate with Bank Indonesia as a Central Bank to be regulated in the Law establishing the supervisory institution concerned. This oversight body may issue a provision relating to the performance of the Bank's supervisory duties in coordination with Bank Indonesia and request explanations from Bank Indonesia of information and necessary macro data (Article 34 Paragraph (1) of the Law of the Republic of Indonesia number 6 Year 2009 concerning Stipulation of Regulation Government in lieu of Law number 2 of 2008 on the Second Amendment to Law number 23 of 1999 on Bank Indonesia into Law).

Elucidation of Article 7 of RI Law number 21 of 2011 concerning OJK that the regulation and supervision on institutional, health, prudential aspects, and bank inspection is the scope of microprudential regulation and supervision which is the duty and authority of OJK. The scope of regulation and supervision of macroprudential, namely regulation and supervision other than the matters governed in this article, is the duty and authority of Bank Indonesia. In the context of macroprudential regulation and supervision, OJK assisted Bank Indonesia to conduct moral appeals to the Banking. (Elucidation of article 7 of the Law of the Republic of Indonesia number 21 of 2011 on the Financial Services Authority).

The transfer of banking supervision function from Bank Indonesia (BI) to the Financial Services Authority (OJK) has its own meaning for the newly born institution, as the recipient of attribution, OJK has a new field of education and consumer protection, since December 31, 2013, tasks and authority for the regulation and supervision of financial services activities in the Banking sector shifted from Bank Indonesia to OJK. (Article 55 paragraph (2) of the Law of the Republic of Indonesia number 21 of 2011 on the Financial Services Authority).

The word 'independent' in Article 1 Sub-Article 1 of the OJK Law is a mandate of Article 34 paragraph (1) of the BI Law which is the elaboration of Article 23D of the 1945 Constitution, so it is not wrong if the independent word is attached to OJK. In addition, the independent word in Article 23D of the 1945 Constitution is basically the meaning of the word given by the General Election Commission (Article 22E Paragraph (5) of the 1945 Constitution).

The independence of the role of OJK from the point of view of legal subjects, namely Board of Commissioners and Board of Commissioners and Board of Directors of Bank as parties, in implementing and running the role of OJK requires Notary profession, Public Accountant, Public Appraiser,

Advocate, Liquidator, Receiver, interests, then the parties and the professions need an independent attitude and not a conflict of interest is regulated by law.

he authority of attribution given by the state constitution in the role of OJK Commissioner assisted by the role of Board of Directors and Commissioners of banking and business legal entity and non legal entity as well as the role of Notary Public Accountant Public Appraiser, Advocate, Liquidator and Receiver are expected OJK role as independent supervisory regulation and supervision of the financial services sector, relating to the Theory of Authority.

According to J.G. Brouwer and A.E. Schilder, in terms of the concept of attribution, delegation, or mandate, states: a. With attribution, power is granted to an administrative authority by an independent legislative body. The power is initial (originair), which is to say that is not derived from a previously existing power. The legislative body creates independent and previously non existent powers and assigns them to an authority; b. Delegation is a transfer of an acquired attribution of power from one administrative authority to another, so that the delegate (the body that the acquired the power) can exercise power in its own name; c. With mandate, there is not transfer, but the mandate giver (mandans) assigns power to the body (mandataris) to make decision or take action in its name.(J.G. Brouwer and Schilder, 1998:16-17).

Independence of OJK's role in the role of OJK Commissioner assisted by the role of Board of Directors and Commissioners of banking and corporate legal entity as well as non legal entity and the role of Notary Public Accountant Public Appraiser, Advocate, Liquidator and Receiver are expected OJK role as independent supervisory muscle to carry out arrangement and supervision the financial services sector needs legal norms aimed at independent law and without conflict of interest, relating the Theory of Legal Purposes.

According to Lon L. Fuller states; the rule of law must meet the 8 (eight) terms, namely: (1) the rule of law must be a general rule of law, not merely ad hoc decisions; (2) the rule of law must be made publicly available; (3) the rule of law shall not be retroactive; (4) the rule of law should be structured in understandable formulas; (5) the rule of law should not be contradictory; (6) the rule of law should not contain more demands than what can be done; (7) the rule of law should not change often, or (8) the rule of law held must contain conformity between the rules enacted and its daily implementation), if any of the 8 (eight) terms are not met in a law , then the law in its implementation may create legal uncertainty in the community. Therefore, laws that do not meet the above eight conditions, it can be said that the law has failed to be called law (Leon L. Fuller, 1969: 39).

Independence of OJK's role in the role of OJK Commissioner assisted by the role of Board of Directors and Commissioners of banking and corporate legal entity as well as non legal entity and the role of Notary Public Accountant Public Appraiser, Advocate, Liquidator and Receiver are expected OJK role as independent supervisory muscle to carry out arrangement and supervision the financial services sector needs state presence in regulating legal norms aimed at

independent law and without conflict of interest, related to the Theory of State Law.

According to Hotman P. Sibuea states; The idea of a formal legal state that restricts the power of government or rulers strictly based on the law (wetmatig) with the aim of providing legal certainty to the people, has failed to provide welfare for the people. The failure of the state and government to provide welfare for the people raises an idea that puts the government or the authorities as the party responsible for the welfare of its people. This idea embodies the state of welfare law. In the welfare state, the state and government are empowered to intervene in all aspects of the life of the people of origin in legal consolidation and beneficial to the people (rechtmatig and doelmatig). Thus, the state and government can carry out activities in order to achieve prosperity for every citizen. The development of the idea of a legal state as stated above is in fact a human endeavor to enhance the protection of individual rights. Protection of individual rights is done by limiting the power of government (ruler). In connection with the limitation of government power (rulers) applies a principle in the practice of state administration ie no state power that can be left free without restrictions and supervision (Hotman P. Sibuea, 2010: 140).

Independence of OJK's role in the role of OJK Commissioner assisted by the role of Board of Directors and Commissioners of banking and corporate legal entity as well as non legal entity and the role of Notary Public Accountant Public Appraiser, Advocate, Liquidator and Receiver are expected OJK role as independent supervisory muscle to carry out arrangement and supervision the financial services sector needs the presence of the state in regulating legal norms aimed at independent law and without conflict of interest, the parties are given freedom of choice and determination of the standard agreement, relating to the Theory of Agreement.

According to Mariam Darus Badruzaman stated; there are several ways in which it can be pursued, namely: (1) to set standard agreements with the law, as done in several overseas countries, (2) to create standard contract law through jurisprudence, (3) through government oversight (Mariam Darus Badruzaman, 1980: 25).

Independence of OJK's role in the role of OJK Commissioner assisted by the role of Board of Directors and Commissioners of banking and business entities as well as non-corporate legal entities as well as the role of Notary Public Accountants Public Appraisers, Advocates, Liquidators and Receivers are expected OJK's role as independent supervisory muscles in implementing regulatory and supervisory the financial services sector needs the presence of the state in regulating legal norms aimed at independent law and without conflict of interest, Preventif, is a social control performed to prevent events that have not occurred, Represif, is a social control that is done after the occurrence of a violation, related to the theory of protection law.

According to Philipus M. Hadjon states; legal protection for the people as a preventive and repressive government action. (Philipus M. Hadjon, 1987: .2).

Independence of OJK's role in the role of OJK Commissioner assisted by the role of Board of Directors and Commissioners of banking and business entities as well as non-corporate legal entities as well as the role of Notary Public Accountants Public Appraisers, Advocates, Liquidators and Receivers are expected OJK's role as independent supervisory muscles in implementing regulatory and supervisory the financial services sector needs the presence of the state in regulating legal norms aimed at independent law and without conflict of interest, the authority derived from the result of the legal process of law in constitution, related to the theory of justice.

According to John Rawls states; Political Justice and the Constitution.

I will now discuss political justice, namely constitutional justice, and will describe the meaning of equal freedom for this part of the basic structure. Political justice has two aspects that arise from the fact that a just constitution is an imperfect procedural fairness. First, the constitution wants to be a fair procedure that satisfies the demands of equal freedom; and Second, it wants to compose so that all possible arrangements are more likely than others to produce a fair and effective legislation system. The justice of the constitution is to be judged on both themes from a permissible point of view, these judgments made from the position of constitutional convention.

The principle of equal freedom, when applied to political procedures established by the constitution, I shall refer to as the principle (equality) of participation. This principle states that all citizens have equal rights to take part, and to determine the outcome of constitutional processes that enforce the laws they must obey. Justice as fairness begins with the idea that when the general principles are important and beneficial to everyone, they are to be done from the point of view of a well-defined situation of equality in which everyone is fairly represented. The principle of participation transfers this idea from its original position to the constitution as the supreme system of social rules to make rules. If the state wants to exercise final authority and force a certain territory, and if in case it permanently affects human expectations in life, then the constitutional process must retain an equal representation of the original position to the extent possible. I consider that a constitutional democracy can be structured in such a way that it meets the principle of participation. But we need to know more clearly that this principle requires a favorable state, when brought to its limit. (John Rawls, 2011: 280-281).

The endeavor of the realization of Social Justice, Any legislation that has been approved by the Legislature (the People's Legislative Assembly) and has been signed by the Executive and used by the Judiciary, from the law until the law is legally constitutional and reflects the meaning equal freedom in accordance with the Constitution of 1945. If the law produced there is an element of conflict of interest of a certain party then there is the possibility of conflict of interest, "If someone is not trust in money, he will not trust in everything", the role of OJK means; Legislation in the legislative and executive processes, if the official formulating

the Law is not mandated in the matter of money, then the resulting law will also not be mandated.

Every individual and legal entity is entitled to get income in the form of money, but the way to get his rights by taking or seizing the rights of others, then the person is not trust, it will not be trust in everything. The issue of any individual case or legal entity must be known from the outset by law enforcers rather than the court proceedings may have just been revealed; this tends to cause social injustice in society, because the position of the problem will be blurred and will become gray, resulting in equality and balance ends inequality (non fairness) or feeling nothing (certainty, usefulness and justice) is felt to happen in society. A corporate crime committed by one party to another, there will also be another party to a particular party, the other party will also happen to certain parties, all cases of this event requires information from the beginning of an event / events, which need to be known from the beginning of a the case of the incident is not already a case of a new advocate lawyer advocacy. Objectives that exist in a private person and legal entity is the parties want to get and have rights and interests, from the beginning to the conflict needed Advocates to enforce the rights of one party or other parties and not conflict of interest.

"Working Together for the Interest of Money Turnover as a strategy to maintain currency stability and people's purchasing power" related to the independence of OJK's role means; we may be able to invite individuals and legal entities and or governments to turn around money and invest in the territory of Indonesia and vice versa, it will affect the stability of the currency by giving equity to the role of investors to make the velocity of money in the territory of Indonesia and the opposite by investing. The entry of investment means that Indonesia gets the same foreign exchange as Indonesia exports its products, strengthening or weakening of the currency that will result in powerless people's purchasing power. Need to support the situation of social life, politics, economy, culture, religion and law that is conducive and stable under control. If there are certain parties to close themselves, this will make and hamper the growth of the Indonesian economy nationally because God only gives creatures mind, time and opportunity, we must choose and decide, otherwise the opportunity will be taken by others. For example, a country with a particular tribe or religion, daily needs economic activities to survive which require currency rotation, meaning we need the mind, time and opportunity given by God where in certain tribal conditions or certain religions are the same in the condition of a particular nation or world community, so we must choose the economy of the world community because the prospect and the opportunity to get a profit (proceed margin) greater chances. We need legitimate and orderly supply and demand, currency movement, service, investment, infrastructure, legal certainty, political conditions, religious life, educational development, social situation and cultural life are the means of measuring the success of a country educating, protecting and prospering the nation and its people.

Proposed Authors' Considerations:

1. Minimize the interference of other parties and the parties' dispute over the role of OJK in the banking sector.
2. Facilitate the process of licensing the financial services sector that is organized on a regular basis, fair, transparent, and accountable.
3. The perpetrators of banking services shall have capability and competence in the bank's business activities, including sources of funds, provision of funds, hybridation products, and activities in services.
4. Banking health conditions must be maintained and bank performance should be good.
5. The condition of liquidity, profitability, solvency, asset quality, minimum capital adequacy ratio, Maximum Limit of Credit, loan to deposit ratio, and bank reserve need to be stable;
6. Bankers shall comply with the precautionary aspects from time to time.
7. The Parties shall be upgraded in their education and protection.
8. Need to be integrated between the monetary authority in BI and the supervisory authority in OJK.
9. Currency turnover and margin proceeds should be enjoyed and perceived by the parties and for all Indonesians.

IV. CONCLUSION

The independence of the role of OJK in the regulation and supervision of the banking credit agreement that protects the parties requires the presence of the government's role in formulating and making the authority of regulating and overseeing the role of OJK (OJK Commissioner, Board of Directors and Board of Commissioners of legal entities) working together with the role of Notary Public Accountant, Public Appraisers, Advocates, Liquidators and Receivers, and the presence of governmental roles in the governance of fair and non-conflict of corporate dividends, every decision is collective and collegial in a regular, integrated, independent, transparent, accountable, sustainable, stable and equitable manner.

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