

EFFECTIVENESS OF THE REGULATION ON FINANCIAL SERVICE CONSUMER PROTECTION IN INDONESIA

Triyana Yohanes¹ and N. Budi Arianto W²

Law Faculty of Universitas Atma Jaya Yogyakarta

Abstract

Some cases of financial service business transaction practices in Indonesia had caused financial damages were suffered by the consumers. Eventhough Indonesia had well regulated the protection of financial service consumers, in practices of dispute settlement oftently the consumers could not got fair solutions, so their rights could not be well fullfild. The problem in this research was studied by a normative legal research, the data were analyzed by qualitative and comparative methods, and the conclusion was done by deductive method. From the analyzed data, it could be concluded that the effectiveness of the consumers protection in the sector of financial services business regulation in Indonesia was not high due to some reasons, such as, the weakness of the law enforcement, the OJK had not been pro-active in giving protection to the financial service consumers and the problem of legal culture of the Indonesian society.

Keywords: *Indonesian law, consumer protection, financial service, effectiveness.*

Abstrak

Beberapa kasus yang muncul dari praktik transaksi bisnis jasa keuangan di Indonesia telah menyebabkan para konsumen jasa keuangan menderita kerugian keuangan. Meskipun Indonesia telah mengatur secara baik perlindungan konsumen jasa keuangan, dalam praktik penyelesaian sengketa, seringkali para konsumen jasa keuangan tidak mendapatkan penyelesaian yang adil, sehingga hak-hak mereka tidak dapat terpenuhi secara baik. Permasalahan tersebut diteliti secara normatif, data dianalisis dengan menggunakan metode komparatif-kualitatif dan kesimpulan dilakukan melalui proses berpikir secara deduktif. Dari analisa data, dapat disimpulkan bahwa keefektifan pengaturan perlindungan konsumen jasa keuangan di Indonesia tidak cukup tinggi karena berbagai sebab, meliputi kelemahan penegakan hukum, OJK belum pro-aktif dalam memberi perlindungan terhadap konsumen jasa keuangan dan masalah budaya hukum masyarakat Indonesia.

Kata kunci: Hukum Indonesia, perlindungan konsumen, jasa keuangan, keefektifan.

A. Introduction

Finance has an important role in the economic development in all of developing countries, included the Republic of Indoneia. It can be said that

finances is one of the basic elements of the modern economic life. Therefore, financial sector of a state should be well regulated for the purposes of

¹ Department International Law, Law Faculty Universitas Atma Jaya Yogyakarta, Correspondence address: triyanayohanes@gmail.com

² Department Business Law, Law Faculty Universitas Atma Jaya Yogyakarta, Correspondence address: nikolauswijaya@gmail.com

supporting the economic development and maintaining the country's economic stability. The regulation of state financial sector should be included the regulation of financial business transactions.

Financial service transactions has developed rapidly in the modern economic life. In the year of 2004, finance has become industry with the biggest income (profit) in the World.³ According to the Merriem Webster Dictionary, transaction is defined as something transected, especially an exchange or transfer of goods, services or funds.⁴ The terminology of "financial service" usually refers to the services are provided by finance industry and also refers to the organization in the field of financial services management. Bank, insurance industry, credit card company, finance company, and stocks selling company, are examples of industries which provide financial services.

There are some interests of the parties in the financial business transactions that should be well protected by the law, that are the interests of producers (financial services providers), consumers and the society. In practices of financial transactions in Indonesia, oftently financial service consumer has a lower bargaining position in front of the financial services provider company such as a bank, insurance company, pawn shop and other finance company.

For protecting financial services consumers, the Indonesia Government has enacted some laws and regulations. Firstly, financial services consumers are protected by the Republik Indonesia Law Number 8, year of 1999 on Consumer Protection. Beside that, the Republic Indonesia Government has also enacted some other regulations on financial services business transaction, which also included the regulation on protection of financial services consumers. In the year of 2011, the Indonesia Government also established the "Otoritas Jasa Keuangan" (the OJK). The OJK has authority to regulate and supervise the practices of financial services business transactions.

Eventhough in Indonesia the financial services consumers has well protected by the law, some cases of financial services transactions still happened, and in the dispute settlements oftently the consumers suffered of economic loses (financial damages) because their rights could not be well fulfilled. For example, some financial services consumers in the case of Bank Century and PT Antaboga Deltras Securitas⁵ until now have not got their rights. So, it has raised a problem concerning with the effectiveness of Indonesian law and regulations concerning with the financial services consumers protection in Indonesia. This paper will examine some factors that

³ https://id.wikipedia.org/wiki/Jasa_keuangan?veaction=edit§ion=1, download 22 Agustus 2018.

⁴ Merriem Webster Dictionary, <https://www.merriam-webster.com/dictionary/transaction>, download 22 Agustus 2018.

⁵ Century and PT Antaboga Deltras Securitas case emerged since may, 2008, was started by the failure of payment to the Antaboga discretionary fund. The Antaboga discretionary fund was traded by the Century Bank. Afterward, the public trust to the Century Bank was decreased, bank rush happened, and finally the Century Bank was bankrupt (collapse).

influence the effectiveness of Indonesian laws and regulations concerning with the financial services consumer, and the needs and the ways to enhance the effectiveness of the regulations.

B. Discussion

1. Law protection of Financial Services Consumers in Indonesia

Finance industry has developed and being more and more important in the modern Indonesia's economic life. Financial services business has become attractive business, because it can result very much economic profits. Some financial services companies have rapidly developed in Indonesia, including the financial technology (fintech) companies. The Indonesian market of financial services consists of various forms of financial services as shown in the next diagram:

Tabel 1. Market's Share of Financial Industry in Indonesia⁶

Financial Industry	Market Share
Stock Market	52.50%
Sukuk (Islamic Bond)	17%
Banking	5-7.5%
Financing	5-7.5%
Insurance	5-7.5%
Mutual Fund	5-7.5%
Sharia Financing Industry	5%

⁶ Mardiasmo, *Kompas Newspaper*, 5 July 2018

Considering the important role of financial business transactions in the modern economic life, the Indonesia Government has enacted some laws and regulations concerning with the financial business transaction. The laws and regulations consist of:

- 1) Republic Indonesia Law Number 10, 1998 on the Modification of the Republic Indonesia Law Number 7, 1992 on Bank,
- 2) Republic Indonesia Law Number 23, year of 1999 on Bank of Indonesia, as amended by Republic Indonesia Law Number 3, year of 2004 and Republic Indonesia Law Number 6, year of 2009,
- 3) Republic Indonesia Law Number 21, year of 2008 on Bank of Sharia,
- 4) Republic Indonesia Law Number 21, year of 2011 on "Otoritas Jasa Keuangan",
- 5) Republic Indonesia Law Number 7, year of 2009 on "Lembaga Penjaminan Simpanan" (IDIC), and
- 6) Republic Indonesia Law Number 9, year of 2016 on Prevention and Overcoming Financial Crisis.

Based on Indonesian Law, financial service institutions (finance companies) can be divided into two categories, i.e., bank and non-bank financial services company. Based on Article 1 (1) Indonesia Law Number 10, year 1998 banking is defined as everything concerning with bank, included institutions, business activities, and ways and processing in doing their business activities". Non-bank financial institution, is financial

institutions, whose financial services activities are in the field of stock exchange, insurance, pension funding, money loans provider, financing company, capital market and other finance companies.

Based on the Indonesian Banking law, bank can be divided into two forms : “commercial banks” and “bank perkreditan rakyat” (special bank for low income peoples and small scale enterprises). Commercial banks consist of conventional banks and sharia banks. “Bank Perkreditan Rakyat” in it’s activities does not provide services payment transactions.

The role of financial services company, bank and non-bank financial services institutions in the economic life is become an intermediary institution for the parties who have funds (money) and the parties who need funds. Financial service companies accept/get money from the society in the forms of saving, deposito et cetera, and the funds will be lended to the parties who need funds, such as a company or personal person for developing their economic businesses. That is why, the financial services companies has an important role in the economic development in Indonesia. For instance, capital market, has become an alternative sources of the country’s economic development.

Basically, there are three parties in financial business transactions, that is, the producers (providers), the consumers and the government. Financial services companies have a role as producers. The consumers are the parties who use the financial services. The government has

a role as public body which has a duty to protect public interests (the society). The Indonesian law and regulation in the field of financial transaction should give protection to those parties of the financial business transactions.

Generally, it can be said that Indonesia law and regulation has accomodate (well protected) the interests of financial services companies, especially after the reformation of Indonesia regulations on banking and financial sectors, after the Government of Indonesia signed the *International Monetary Fund’s letter of intent* in the year of 1998. This IMF’s letter of intent give opportunities to the local/domestic and foreign investors to establish financial services company. On the other side, the interests of the consumers in financial business transactions and the public interests sometimes have not been well protected. Some cases of the financial services transactions, such as the Century Bank and PT Antaboga Deltras Securitas since the year 2008, has caused the consumers suffered of economic losses and their rights have not been fulfilled.

To protect consumers and public interests from suffering of economic losses in financial services transactions, the Indonesian Government, now has enacted some regulations for supervising the activities of financial services companies. In the beginning, the duty of regulating and supervising to the financial services business transactions was done by the Bank Indonesia (Indonesian Central Bank). Bank Indonesia has the duty to : 1). establish and excecuting

Indonesian monetary policy; 2). regulate and maintain the payment system; 3). regulate and supervise banking activities.

Beside the Bank Indonesia, in the year of 2011, the Indonesian government also establish other regulating and supervising institution, that is, the “Otoritas Jasa Keuangan” (the OJK). The OJK has functions to regulate and supervise financial services companies, included bank and non bank institutions. Based on Article 4 Act Number 21, year 2011 on OJK, the OJK is established for the purposes of maintaining the activities in the field of financial services transactions will be done based on the regulations, fairly, transparently, accountably, and can be able to create an sustainable development of a financial system; be able to protect the consumers and public interests. Based on Article 6 The OJK Act, the OJK has duties to regulate and supervise : a). banking financial services transactions; b. financial services activities in the capital market; c. Insurances financial services tarnsactions, pansion funds, financing companies and others financial services business transactions.

Based on it's functions, the OJK has made some regulations concerning with the financial business transactions, for instances, the OJK Regulation Number 1/POJK.07/2013 on the Financial Services Consumer Protection, the OJK Regulation Number 76/POJK.07/2017 on Enhancing the Financial Inclusion and Literation of the Consumers and/or the society and Circulation Letter Number 30 /SEOJK.07/2017 on the Performing

Activities in the Field of Enhancing Financial Literasion in the Sector of Financiaal Services.

Based on articles 28, 29 dan 30 the OJK Act, consumer protection efforts can be divided into two activities, *firstly*, the preventive action, and *secondly*, the repressive action.⁷ Preventive action done by the OJK in protecting the consumer and the public society is in the form of giving informations and education to the people (public society) concerning with the characteristic of the sorts and products of financial services. Repressive actions done by the OJK in giving protection to the consumers and the public society consist of some actions, included :

1. Ordering a Financial Services Company/Institution to stop it's activities if the activities can caused people (the pubic society) suffer of losses (Article 28);
2. Others necessary actions is needed in accordance with the regulations in the field of financial services;
3. Prepering a sufficient framework for consumers complaints;
4. Making a mechanism of consumer's complaint who has been suffered of economic losses due to producers acts;
5. Fasilitate dispute settlement in protecting the consumers of financial services transaction in accordance with the prevailing regulations;

⁷ Tri Hendro dan Conny Tjandra, *Bank & Institusi Keuangan Non Bank di Indonesia*, Yogyakarta: UPP STIM YKPN, 2014, p. 498

6. Ordering or doing a certain action to the LJK to overcome a problems that has caused consumer of financial services suffered of financial losses due to actions done by the LJK in settling a dispute;
7. Making a complain or a lawsuit in front of the court for the purposes of:
 - a. Getting back the properties belong to the suffering losses party, which are under the authority of the parties who has caused losses or under the authority of another party; and/or
 - b. Making compensations (redress) available from the producer (finance company) or the LJK due to the any violation of law and regulation concerning with financial services.

Beside based on the OJK regulations, financial services consumers also are protected by the Republic Indonesia Law Number 8, year of 1999 on the Consumer Protection. Based on Article 1.1 of the Indonesia Consumer Protection Law consumer protection means every efforts for giving guarantee for the consumers that their interests are well protected by the law. Consumer means every person who buy and use goods and/or services provided by producer, for his/her personal interest, his/her family, another persons or for the interest of other creature (animal), and is not to be traded.

The consumer protection efforts is very important in the modern economic life, because oftenly the consumers are in

the lower bargaining position infront of the producens. Zulham said, consumer powerless infront of the producen is not good for the purpose of creating fair economic relations. Usually producen use the argument that they have made standard contract, which they have signed. Sometimes producer also give wrong information to the consumers.⁸

From the perspective of consumer protection, the bargaining position of producer (especially producer of financial services), usually is stronger than the consumers. Sometime the consumers has to accept the goods and/or services in every contions, because they are lack of knowledge concerning with the process and the results in making the products, or giving the services done by the producer. On the contrary, the producer usually be able to give good argumentation, because they know very well about the product or services, and the producer also be able to avoid from his/her responsibility. Consequently, there is no balance of bargaining position between the producer and the consumer, especially in financial services business transaction. In this case, the consumers usually is in the weak bargaining position. The low consumer's bargaining position is also recognized by the United Nations. This recognition is contained at the *UN Guidelines on Consumer Protection* (UNGCP) based on General Assembly Resolution Number A/C.2/54/L.24, 9 April 1985 (and has been amended in the year of 1999 and 2015), which

⁸ Zulham, *Hukum Perlindungan Konsumen*, Kencana, Jakarta, 2013, pp. 1 -2.

stated : “ *Taking into account the interests and needs of consumers in all countries, particularly those in developing countries; recognizing that consumers often face imbalances in economic terms, educational levels, and bargaining power; ...*”

Concerning with the imbalancing position between the the producers and the consumers, based on the UNGCPC all of governments of the state members of the United Nations are asked to realize :

- 1) Consumer protection from anything which endanger of their safety and health
- 2) Promoting and protecting the economic interests of the consumers
- 3) Consumer accesability to the adequate information, which can make them be able to do some choices concerning with their needs and expectations
- 4) Consumer education, included education concerning with the environment, social, and economic impacts that can rise from their choices.
- 5) Effectively compensation to the consumers
- 6) Freedom in establishing consumers group/organization or other relevan organization, and dan giving any chances to the organization in delevering their opinion in decision making process to influence the consumers
- 7) Promotion to the suistanable consumption patterns (*sustainable consumption*)

Concerning with the financial services business transactions, Angelo Capuano and

Iain Ramsay indentified the weaknesses of financial services consumers, especially in doing investment and chosing financial services products, as mentioned bellow :

- 1) Consumers may not consider the key features of financial products before making a decision to purchase a product. This includes not considering risk and return, being over optimistic about return and having price insensitivity such that consumers are unaware of the actual cost of the products they hold;
- 2) Consumers may not read the terms and conditions of financial products;
- 3) Consumers may not compare the price and quality of different financial products from different providers;
- 4) Consumers may not evaluate financial products they already own to determine whether they are still needed;
- 5) Consumers may purchase financial products they do not need;
- 6) Consumers may not consider that the fees and charges attaching to financial products contribute to the overall cost of owning those products;
- 7) *Consumers may ignore their investment objectives and needs when purchasing financial products;*
- 8) Consumers may be “short sighted”, or look at initial short term cost without fully considering long term benefit and cost;
- 9) A number of consumers *rigidly* “compartmentalize” money. This means that some consumers may allocate particular funds or a

percentage of income to saving, and despite having accumulating credit card debt, continue to save and not repay that credit card debt.⁹

2. The effectiveness of the law and regulation on protection of financial services consumer

As has been mentioned in front of this paper, the Republic of Indonesia Government has established the OJK, and also has enacted some regulations for the purposes of protecting financial services consumers. But factually, some cases of financial services practices which has caused the consumers suffered of economic losses still happened in Indonesia. In the dispute settlement, sometimes the consumer's interests were not well protected. This phenomenon has raised a problem of the effectiveness of the law and regulation concerning with financial services consumers' protection in Indonesia.

a. *The Effectiveness of Law*

The terminology of effectiveness is a legal British English terminology. In the recent days, some writers also used the terminology of law effectivity for the same meaning. In the terminology of "*British English*" there is no terminology of law effectivity. Jean d'Aspremont said: "It should also be highlighted that, from a linguistic standpoint, the word "effectivity" does not exist in British

English.¹⁰

Some writers said that the terminology of "law effectivity" has the same meaning with the terminology of "law effectiveness". The terminology of "effectiveness" and "effectivity" are the noun forms of the terminology of "*effective*". In Bahasa Indonesia Dictionary effectiveness and effectivity mean have an effect, efficacious, has a result, usefull. Based on the same dictionary the terminology of "effectiveness" means has effect, efficacy, success.¹¹

According to Jean d'Aspremont, there is different meaning between the terminology of "effectiveness" and "effectivity". "Effectiveness" refers to the outward impacts of the law, law institutions, and the formulaions of law to the all of legal persons and law officers excecutors (lawyers, jugdes, police officers and prosecutors). In this meaning, the effectiveness of law can be seen as the establishing of the law, institutions or formulation of law, for the final goal is "the law obedience".¹² "Effectivity," for its part, evokes an inward process whereby facts are integrated into rules, institutions, and narratives as a condition of the operation of law and thus a condition of valid legal reasoning. By virtue of the idea of effectivity, valid legal reasoning is made contingent on the empirical verification of a certain factual

⁹ Angelo Capuano dan Ian Ramsay, 2011, Angelo Capuano and Ian Ramsay. *What Causes Suboptimal Financial Behaviour? An Exploration of Financial Literacy, Social Influences and Behavioural Economics*, *Legal Studies Research Paper No. 540*: Melbourne Law School, pp. 60-61.

¹⁰ Jean d'Aspremont, "*Effectivity*" in *International Law: Self-Empowerment Against Epistemological Claustrophobia*, ASIL Proceedings, 2014, p. 1

¹¹ Departemen Pendidikan Dan Kebudayaan, *Kamus Besar Bahasa Indonesia*, Balai Pustaka, Jakarta, 1988, p. 219

¹² Jean d'Aspremont, *loc. cit.*

variable.¹³

In this paper the terminology of “effectivity” is used in the same meaning with the terminology of “effectiveness”. The law effectiveness means the outward impacts of the law to its legal persons based on the end of the law. In this meaning, effectiveness of law should be understood as the outcome of the regulation based on the ends of the law, included law enforcement process. The effectiveness of law leads to make all of the legal persons of the law do conduct in accordance with the regulations, so there will be fair, safe and usefull relationships among persons in the society.

As has been mentioned in this paper, a law regulation will be usefull in the society if the regulation is obeyed and well enforced. Satjipto Rahardjo said, a law regulation is established for being performed and obeyed. A law regulation can not be said as law if the regulation never been performed.¹⁴ Therefore, the important thing of a law regulation is not determined by the formulation of the regulation, but it is determined by the effectiveness of the way and procedure of the law enforcement, so the regulation will be well obeyed by its legal persons (subjects), and the regulation will be well performed in the society.

Concerning with the effectiveness of law, Hans Kelsen said that effectiveness is a *conditio sine qua non* of the operation of law.¹⁵ When law stated a certain pattern

of human conduct, consequently, all persons should do in accordance with the pattern of conduct. Shortly, every single prson shall do what the law said (stated).¹⁶ The law or regulation will become effective if all of the persons do conduct in accordance with the prevailing law and regulation.

Paul and Dias in their writing (as was cited by Esmi Warassih) proposed five requirements that should be fulfilled in making the law system become effective, and the five requirements consist of:

1. The formulation of the regulation should be easy to be known and understood by the people;
2. There should be a big number of peoples in the society who know the content of the law or regulations.
3. The efficiency and the effectiveness of the mobilization of the law regulations
4. The law enforcement mechanism should be able to be accessed by all of the member of the society and also should be effective to settle every dispute
5. There should be a wide spread recognition of the members of the society that the law regulation has effective legal binding.¹⁷

To make a law or a regulation become effective, “efectivasi” process of law is needed. The terminology of “efectivasi” process means a process to make a regulation to be obeyed. Soerjono

¹³ *Ibid.*

¹⁴ Satjipto Rahardjo, *Penegakan Hukum*, Genta Publishing, cetakan ke 2, Yogyakarta, 2011, p. 2.

¹⁵ Hans Kelsen dalam Theo Huijbers, *Filsafat Hukum Dalam Lintasan Sejarah*, Kanisius,

Yogyakarta, 1988, p. 58.

¹⁶ Lihat Bernard L. Tanya, dkk, *Teori Hukum*, Genta Publishing, Yogyakarta, 2010, p. 115.

¹⁷ See www.definisi-pengertian.com>ilmuhukum, Efektivitas dan Kompleksitas Bekerjanya Hukum, 5 August, 2015, download 15 January 2019.

Soekanto said, law “efektivasi” is a process to make the law become effective. This process can be examined from the criteria of law effectivity. Soerjono Soekanto said, there are five elements of the law effectivity:

- 1) The law itself,
- 2) The law enforcement, included the law makers and law enforcement officers and agencies,
- 3) Supporting units of the law enforcement,
- 4) The society, where the law become the prevailing regulation.
- 5) The culture, as a result of work, mind, and feeling based on the human attitude in the relationships among peoples.¹⁸

Based on the Soerjono Soekanto’s effectivity of law theory, the effectivity of law depend on the five factors. The five factors of law effectivity has close connectivity, because all of the five factors also become the main element of law enforcement, so all of the five factors also become the effectivity of law enforcement.¹⁹

Concerning with the law effectiveness, external power as mean of enforcement and process in front of the court in enforcing the law are very important. Sanction is also become one the basic elements of law that can make a norm can be categorized as law. Sanction has an important role that can make law become effective. When a law regulation

is not effective, one question that can be raised is: what is the form of the external sanction ? Perhaps the sanction is not adequate. Or, perhaps the sanction is not well communicated in the society.²⁰

Discussing the effectiveness of law, it means that we discuss about the operation of law in regulating and enforced the members of a society to obey the law. A law regulation can be effective if all of the factors that can influence the operating the law works very well. The effective of a prevailing law is determined by the people’s conduct in the society. A law regulation will be effective if all of people members of the society do a conduct in accordance with the regulation, and the end of the regulation is achieved.

Concerning with the effectiveness of law, Anthony Allot, a wellknown law writer, said that:

“Effectiveness of a law, as I see it, is measured by the degree of compliance; in so far as a law is preventive, i.e., designed to discourage behavior which is disapproved of, one can see if that behavior is indeed diminished or absent. In so far as a law is curative, i.e., operating ex post facto to rectify some failing or in-justice or dispute, we can see how far it serves to achieve these ends. In so far as a law is facilitative, i.e., providing formal recognition, regulation and protection for an institution of the law, such as marriage or contracts, presumably the measure of its effectiveness is the extent to which the facilities are in fact taken up by those eligible to do so and the extent to which the

¹⁸ Soerjono Soekanto, *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum*, Rajawali Pers, Jakarta, 2004, p. 8.

¹⁹ Soerjono Soekanto, *ibid*, pp. 8-9.

²⁰ *ibid*

institution so regulated is in fact insulated against attack. Disregard of the norms of matrimony by a third party adulterer, for instance, indicates a partial failure in the protective mechanism of the law of marriage.”²¹

For the reasons of the ineffectiveness of law, Anthony Allot said: *“The first reason lies at the originating or transmitting end, in the equipment which formulates and “emits” a norm. A second reason for ineffectiveness of laws lies in the possible conflict between the aims of the legislator and the nature of the society in which he intends his law to operate.”²²* Furthermore Anthony Allots said: *“Lastly, we note failures in implementation of laws. Very often there are no sufficient implementing norms, orders, institutions, or processes incorporated in the law, which is left to make its way, along with all the rest of the legislated and unlegislated law, as best as it can.”²³*

Based on the what have been discussed in this paper, law effectiveness can be said as a situation in which all of the legal persons (subjects of the law) do conducts in accordance with the prevailing law and regulation. Triyana Yohanes, cs, said: *“Law effectiveness covers various factors (for examples law formulation and enforcement) which finally come to obey the law.”²⁴*

²¹ Anthony Allott, *The Effectiveness of Law, Valparaiso University Law Review*, Vol. 15, Number 2, Winter 1981, hlm. 234 -235, Winter 1981 Volume 15, Number 2.

²² *Ibid*, pp. 236 - 237

²³ *Ibid*, p. 238

²⁴ Triyana Yohanes, Cs., *“Effectiveness And Justice In The World Trade Organization Adjudicatory Dispute Settlement System : The Indonesia Experiences As Developing Country”*,

Factually, there are some ineffective law regulations due to some reasons, so the goal of the law can not be achieved. To make the regulations become effective, there should be an efforts or according to Soerjono Soekanto a process of “efektivasi” to enhancing the effectiveness of the law. In making some efforts for enhancing the effectiveness of a law and regulation, the role of law enforcement system and institution are very important. The enforcement system and institution should be work well and effective. The law enforcement institution should be completed with the power to give effective sanctions against any violator.

b. Enhancing the effectiveness of law and regulation

A law or regulation will be meaningful and usefull for the human relationships in the society if the regulation is well obeyed and can be enforced against any violation. For this reason, the real meaning of a law or regulation does not depend on the best formulation of the law or regulation, but it depend on effectiveness of way and procedure of the enforcement, and finally the law or regulation will be obeyed by the people.

Based on the pragmatcal legal realism theory, law is not the sentences were well formulated in the tex of an act, but law is a regulation that be applied in the daily life by the police officers, prosecutors, lawyers and judges.²⁵ Consequently,

International Journal on Humanities and Applied Social Sciences (IJHASS), Vol. 2, Issue 4, April 2017, CPER – USA, <http://IJHASS.COM>, p.7, download 12 May 2017.

²⁵ The pragmatcal legal realism theory, in the

law enforcement become an essential element of a law and regulation. A law or regulation will be able to become effective and will be obeyed by its legal persons if the enforcement of the law or regulation can be well done against any violation.

In the contexts of the law and regulations on financial services consumer protection in Indonesia, it can be said that in reality the regulation can not be well applied. It is showed by some cases that had caused damages were suffered by financial services consumers, which happened before and after the establishment of the OJK. An example case before the establishment of the OJK is the case of Century Bank and PT Antaboga Deltras Securitas, as has been mentioned in this paper. Untill now, the financial services consumers of Century Bank and PT Antaboga Deltras Securitas have not get their rights (to get back their money). After the establishment of the OJK, some cases of financial services transactions also happened and the consumers in those cases also suffered of economic losses. For intances, the case of Golden Traders Indonesia Sharia, the case of First Travel, the case of Cipaganti Cooperation, the case of Pandawa Cooperation, the Case of PT Primaz, and the case of "Dream for Freedom". The total number of financial losses were suffered by the consumers more than IDR 30 trilliun, and the consumers' rights never be

Adi Sulistiyono, *Sistem Peradilan Di Indonesia*, Reading Material for the PhD Program Student, Faculty of Law Sebelas Maret State University, Surakarta, Indonesia, 2012, p. 156.

well fulfilled.²⁶ Beside those cases, in Indonesia some illegal banks, illegal pawn shops, illegal financial technology (fintect) companies, still doing their business, so it potentially will caused financial damages to the consumers. At the end of the year of 2018, the OJK has stopped at least 400 illegal financial technology (fintect) industry per to per lending in Indonesia.²⁷ Based on a survey done by the OJK together with "PT Pegadaian (persero)", there are 551 private pawn shops doing their business in Indonesia without any permission or license from the OJK. According to the OJK speaker, Sekar Putih Djarot, the number of the illegal private pawn shops is potentially increase.²⁸

Some cases arose from violations and disobeydiances to the regulations on the financial services in Indonesia indicate that the effectiveness degree of the regulations on protection of financial services are not good (is not in the high level). As has been mentioned, according to Antony Allot, when the end of a law is directed to protect (in this contex to protect the consumer's interests), and in fact the consumers are not well protected, it can be concluded that the effectiveness of the law is in low degree. When the end of the law is directed to prevent certain acts, in this contex to prevent financial services producers to do any act that

²⁶ See Tribunjogya.com, 6 January, 2018

²⁷ REPUBLICA.CO.ID, Bandung, OJK Blokir 400 Fintech *P2P Illegal Lending*, in the <https://republica.co.id/berita...>, 26 October 2018, download 16 December 2018.

²⁸ KONTAN.CO.ID, Jakarta, *Awas, ada 551 pegadaian illegal beroperasi di Indonesia*, in the <https://keuangan.kontan.co.id.news>, 01 August, 2018, download 16 December 2018.

can raise damages/losses suffered by the consumers, and factually some violations to the regulation happened, so it can be concluded that the effectiveness of the regulation is not in high degree.

Based on the Soerjono Soekanto's theory of the factors that influence the effectiveness of law, there is some certain factors that influence the effectiveness of the law and regulation on the protection of the financial services consumers in Indonesia. In this paper, based on the data analysis, are founded some factors that have caused the degree of the effectiveness of the law and regulations on financial services consumer protection in Indonesia is not high. Those factors are:

- 1) The weakness of the law enforcement system. For example, decision in favor of the consumers made by the court in the Century Bank case, can not be executed, so the consumers rights have not been fulfilled. Furthermore, the consumers of PT Antaboga Deltras Securitas can not get their rights. The weakness of the law enforcement sometimes also be shown by the complicated birocracy of the Indonesian court, expensive and uncertainty of the Indonesia court in making decision. Moreover, the OJK recognize the weakness of the *law enforcement* of the law regulation on privacy of the consumer's data.²⁹
- 2) The OJK as a regulator and supervisor is not pro-active in supervising and controlling the

dispute settlement process. Until now, the OJK sometimes still be passive in overcoming problems of financial services transaction, and the OJK sometime just only wait a complain done by the consumers. The supervision done by the OJK to the financial services transactions is not maximum. A big part acts of the OJK are prevention, in dispute settlement process the OJK just only act as facilitator. Moreover, the duty to give education to the consumers have not been well done by the OJK and the Financial Services Company.

- 3) There are some problems of the Indonesian society legal culture. Obyeing the law or regulation has not become an important basic value for the Indonesian society. Indonesian people as a member of communal societies has no litigation culture and making a lawsuit (go to court) in settling dispute should be avoided. Moreover, the big part of Indonesian people are not very well educated. The Indonesian people tend to give up in facing a problem (dispute).

For the purpose of enhancing the effectiveness of the law and regulations concerning with the financial services consumers protection in Indonesia, some efforts should be made, included :

- 1) The improvement of the law enforcement system, included the regulation of the effective sanctions against any violation, and creating the credible dispute settlement institution.

²⁹ Interview with Sabar Wahyono, the OJK Deputy Director of Advocation concerning with the Law on Consumer Protection on 6 June, 2018

- 2) The Indonesian Government should be pro-active in protecting the financial services consumers, especially against any producer act which is potentially will caused damages to the consumers;
- 3) The OJK should have a bigger authority and power to give effective sanctions to the parties, especially the producers, inculed to confiscate the property of the producers and to force the producer to give financial compensation.
- 4) The improvement of the Indonesian society legal culture for the purpose of directing the Indonesian people do conducts in accordance with the prevailing laws and regulations in their daily life,
- 5) The enhancing of the education to the Indonesian society concerning with the financial services transaction business practices, and the consumers' rights. The important of giving education (literacy) in the finance sector to the people was stated by the OECD: "The role of financial institutions in financial education should be promoted and become part of their good governance with respect to their financial clients. Financial institutions' accountability and responsibility should be encouraged not only in providing information and advice on financial issues, but also in promoting financial awareness clients, especially for long-term commitments and commitments which represent a substantial proportion of current and future

income."³⁰

- 6) The improvement of the law enforcement concerning with the law and regulations on protection of the financial services consumers is very important, especially for giving any access of justice to the consumers. Michell Lyttle said that access to justice of consumers consists of capability to make a lawsuit and succeeded to get redress; capability to make a defend a claim eventhough the claim is lack of evidences; proportional fee; effective and simple procedure; quick process from the beginning until the conclusion is done; and effective law enforcement in execution of the dispute settlement decision.³¹

Concerning with the role of Indonesian Government and the consumer protector institution, the Indonesian Government should establish an institution of "financial advisor". As a comparation, in England, there are "the Money Advice Service", a body which has a role to give free information and advice services to the consumers concerning with the financial services. The "The Money Advice Service" is an independent body, and according to Gerard Lemos, *Chairman of The Money Advice Service*, the independency of such body is very important, because of the following reasons:

³⁰ OECD-Directorate for Financial and Enterprise Affairs, *Recommendation on Principles and Good Practices for Financial Education and Awareness*, July 2005.

³¹ See Michell Lyttle, "Consumer Access to Justice", paper on the *Conference on Litigation Costs and Funding*, University of Oxford Faculty of Law, 6-7 July, 2009

1. The 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;
3. The consumer wants to know that the government is on their side.³²

C. Conclusion

Indonesia has well regulated the protection of financial services consumers by enacting some laws and regulations, but the effectiveness of the laws and regulations still become problems in protecting the financial services consumers. Consequently, there are some cases that arose from financial services transactions practices that had caused the consumers were suffered of damages (economic losses). Moreover, in some cases the consumers rights were not well fulfilled in the dispute settlement. The weakness of the law enforcement, non-proactive of the OJK in protecting the financial services consumers, and the culture problem of the Indonesian society in obeying the law, have become the dominant factors that cause the Indonesian laws and regulations concerning with protection of the financial services consumers sometimes are not effective. It is not

³² Gerard Lemos, A Paper was delivered at the "Bank of Indonesia-OECD Regional Asian Seminar on Financial Literacy 'Towards a national strategy on financial education'", Jakarta, 27 June, 2011

good for financial services business transactions in Indonesia.

Enhancing the Indonesian law regulations on protection of the financial services consumers in Indonesia is very important for creating the fair and usefull financial business transactions. The financial business transaction is an important element in the Indonesia economic development toward Indonesia become a modern country. In the efforts of enhancing the effectiveness of the Indonesia law regulations on the protection of financial services consumers, there should be improvement of the law enforcement system and the system of sanction against any violation. Furthermore, the role of OJK in protecting the financial services consumer should be strengthened, and the law education is needed to improve the Indonesian culture in obeying law and regulation. Moreover, a "financial advisor institution" should be established in Indonesia to prevent the financial services consumers will suffer of economic losses, by giving informations and advice to the consumers.

References

- Adi Sulistiyono, *Sistem Peradilan Di Indonesia*, Reading Materials for the PhD Programs Student, Faculty of Law Sebelas Maret State University, Surakarta, 2012.
- Angelo Capuano and Ian Ramsay, *What Causes Suboptimal Financial Behaviour? An Exploration of Financial Literacy, Social Influences and Behavioural Economics*, Legal

- Studies Research Paper No. 540:* Melbourne Law School, 2011.
- Anthony Allott, The Effectiveness of Laws, *Valparaiso University Law Review*, Vol. 15, Number 2, Winter 1981
- Bernard L. Tanya, dkk, *Teori Hukum*, Genta Publishing, Yogyakarta, 2010.
- Departemen Pendidikan Dan Kebudayaan, *Kamus Besar Bahasa Indonesia*, Balai Pustaka, Jakarta, 1988.
- Jean d'Aspremont, "Effectivity" in *International Law: Self-Empowerment Against Epistemological Claustrophobia*, ASIL Proceedings, 2014.
- https://id.wikipedia.org/wiki/Jasa_keuangan?veaction=edit§ion=1, download 22 August 2018.
- [Http://www.definisi-pengertian.com>ilmuhukum](http://www.definisi-pengertian.com>ilmuhukum), *Efektivitas dan Kompleksitas Bekerjanya Hukum*, 5 August, 2015, download 15 January 2019.
- KONTAN.CO.ID, Jakarta, *Awas, ada 551 pegadaian illegal beroperasi di Indonesia*, in the <https://keuangan.kontan.co.id.news>, 01 Agustus, 2018, download 16 December 2018.
- Lemos, Gerard, Naskah Presentasi dalam "Bank of Indonesia-OECD Regional Asian Seminar on Financial Literacy 'Towards a national strategy on financial education'", di Jakarta 27 June 2011.
- Lyttle, Michell, "Consumer Access to Justice", makalah disampaikan pada *the Conference on Litigation Costs and Funding*, University of Oxford Faculty of Law, 6-7 Juli 2009
- Mardiasmo, *Kompas Newspaper*, 5 Juli 2018
- Merriem Webster Dictionary, in the <https://www.merriam-webster.com/dictionary/> transaction, download 22 August 2018.
- OECD-Directorate for Financial and Enterprise Affairs, *Recommendation on Principles and Good Practices for Financial Education and Awareness*, July 2005
- REPUBLICA.CO.ID, Bandung, OJK Blokir 400 Fintech P2P Illegal Lending, in the <https://republica.co.id/berita...>, 26 October 2018, download 16 December 2018.
- Satjipto Rahardjo, *Penegakan Hukum*, Genta Publishing, second edition, Yogyakarta, 2011.
- Soerjono Soekanto, *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum*, Rajawali Pers, Jakarta, 2000
- Tri Hendro dan Conny Tjandra, *Bank & Institusi Keuangan Non Bank di Indonesia*, Yogyakarta: UPP STIM YKPN, 2014.
- Tribunjogya.com, 6 Januari 2018.
- Triyana Yohanes, Cs., "Effectiveness And Justice In The World Trade Organization Adjudicatory Dispute Settlement System : The Indonesia Experiences As Developing Country", *International Journal on Humanities and Applied Social Sciences (IJHASS)*, Vol. 2, Issue 4,

April 2017, CPER – USA, in the
<http://IJHASS.COM.>, download 12
May 2017.

Theo Huijbers, *Filsafat Hukum Dalam
Lintasan Sejarah*, Kanisius
Publishing, Yogyakarta, 1988.

Zulham, *Hukum Perlindungan Konsumen*,
Kencana Publishing, Jakarta, 2013.

