

LEGAL POSITION OF THE MERGER IN THE DISCUSSION OF PT BANK SYARIAH INDONESIA (BSI) BASED ON THE NATIONAL BANKING LAW OF THE REPUBLIC OF INDONESIA

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ABSTRACT

The development of Islamic banking in Indonesia is a very positive phenomenon that occurred in the midst of an economic storm caused by the Global Covid 19 Pandemic. With the positive trend in Islamic finance, Indonesia as a country with the most followers of the Islamic religion in the world cannot remain silent and is left behind in terms of market capitalization. Islamic banking is increasingly gaining demand. From the results of the research, the authors conclude that in terms of implementing the merger of PT Bank Syariah Indonesia, which originates from three HIMBARA banks or the Association of State-Owned Banks, namely PT Bank BRI Syariah, PT Bank BNI Syariah and PT Bank Syariah Mandiri, it can be used Article 122 Law No. 40 of 2007 concerning Limited Liability Companies, and also using Law No. 21 of 2008 concerning Islamic Banking. Based on the two laws and regulations, the Decree of the Financial Services Authority Regulation No. SR-3/PB.1/2021 and the Decision of the Board of Commissioners No. 4/KDK.03/2021 concerning the Granting of Permits for the Merger of PT Bank Syariah Mandiri and PT Bank BNI Syariah into PT Bank BRI Syariah Tbk, becoming a new business license, namely PT Bank Syariah Indonesia Tbk as the bank resulting from the merger. from this merger or merger can have a broad impact on many parties, such as bank employees or employees, bank customers, shareholders, investors, to the wider community. However, the author narrows the problem to aspects of employees and customers which in the Financial Services Authority Regulation No. 41/POJK.03/2019 which contains "legal acts of merger must pay attention to the interests of the Bank, the Community, Fair competition in carrying out business and guarantees that the rights of shareholders and employees are still fulfilled in accordance with the laws and regulations.

Keywords: Merger or Merger, Islamic Banking, Protection of Customers and Bank Employees

INTRODUCTION

The Qur'an is the first and foremost source of Islamic law for adherents of the teachings of Islam. The Qur'an is considered as a guide that covers all things and elements in human life in everyday life that are both general and specific.

In an effort to understand the legal provisions contained in the texts, both from the Qur'an and al-Sunnah, al-Usul experts have formulated several concepts, one of which is regarding Islamic financial institutions, (Syihanbudin 2005)

In Indonesia, financial institutions have a mission and function as agents of development, namely as institutions that aim to support the implementation of national development in order to increase equity, economic growth and national stability towards improving the welfare of the people at large.

The birth of Islamic banking in Indonesia began with the establishment of Bank Muamalat Indonesia (BMI) in 1991. Previously in Indonesia, non-bank banking institutions have also been established which in their activities implement a sharia economic system. The government then made further rules for the implementation of Islamic banking activities with the promulgation of Law no. 7 of 1992 concerning Banking

Three state-owned Islamic banks that have signed the "Conditional Merger Agreement" (CMA) are Bank BRI Syariah, Bank BNI Syariah, and Bank Syariah Mandiri. CMA is the initial part of the merger process, for information, BRI Syariah assets in the second quarter of 2020 amounted to Rp 49.6 trillion, BNI Syariah Rp 50.78 trillion, and Bank Syariah Mandiri Rp 114.4 trillion.

Merger or merger in this case bank merger is regulated in Government Regulation no. 28 of 1999, Law no. 40 of 2007 concerning the Company and Law no. 21 of 2008 concerning Islamic Banking.

RESEARCH METHOD

This type of research uses a normative juridical problem approach, which is an approach that is carried out on the main legal material and examines theoretical matters concerning legal principles, conceptions, views, legal doctrine, legal regulations, and the legal system relating to this issue, (Muhammad 2004)

The normative juridical approach to the problem is intended to gain an understanding of a clear subject matter regarding the phenomena and objects being studied which are theoretical in nature based on the literature and literature related to the issues to be discussed.

DISCUSSION

Merger Of PT Bank Syariah Indonesia

PT Bank BRISyariah Tbk ("Bank) domiciled in Jakarta, Indonesia, was originally established under the name PT Bank Jasa Arta (BJA) based on the Deed of Establishment No. 4 dated April 3, 1969 drawn up before Liem Toeng Kie, S.H., Notary in Jakarta. This deed of establishment was ratified by the Minister of Justice of the Republic of Indonesia in Decree No. J.A5/70/4 dated May 28, 1970 and has been announced in the State Gazette of the Republic of Indonesia No. 43 dated 28 May 1971.

The change of name and business activities based on sharia principles from BJA to PT Bank Syariah BRI (BSBRI) is based on the Statement of Joint Approval of All Shareholders of BJA Limited Liability Company, in accordance with Deed No. 45 dated 22 April 2008 drawn up before Fathiah Helmi, S.H., Notary in Jakarta.

BJA obtained a business license to operate as a commercial bank from the Minister of Finance of the Republic of Indonesia No. D.15.1-4-40 dated July 3, 1969. Since October 16, 2008, BJA has obtained a license to change the business activities of a bank from conventional to a commercial bank that conducts business activities based on sharia principles from Bank Indonesia.

In 2009, PT Bank Syariah BRI changed its name to PT Bank BRISyariah in accordance with the Deed of Joint Agreement of All Shareholders of PT Bank Syariah BRI No.18 dated April 14, 2009 made before Notary Fathiah Helmi, S. H., which was subsequently amended by Deed of Joint Approval of All Shareholders of PT Bank Syariah BRI No. 20 dated 17 September 2009, drawn up before a notary Fathiah Helmi, S.H., which has received approval from the Minister of Law and Human Rights of the Republic of Indonesia in Decree No.AHU-53631.AH.01.02.TH2009 dated 5 November 2009 which has been announced in the Newspaper. Republic of Indonesia No. 96 dated December 1, 2009, Supplement No. 27908 and the Decree of the Governor of Bank Indonesia No. 11/63/KEP.GBI/DpG/2009 dated 15 December 2009.

On December 27, 2013, the Bank obtained a license as a foreign exchange bank based on the Decree of the Governor of Bank Indonesia No. 15/139/KEP.GBI/DpG/2013.

Based on the Financial Services Authority (OJK) Letter No. S.37/D.04/2018 dated 30 April 2018 regarding the notification of the effective registration statement of PT Bank BRISyariah Tb for the initial public offering of shares in accordance with the letter submitted to OJK No. S.B.082-PDR/02-2018 dated 22 February 2018 and the last letter submitted to OJK No. S.B.147-PDR/04-2018 dated 24 April 2018, OJK did not indicate any additional information and further responses so that the registration statement became effective.

Subsequently amended by the Deed of Statement of Meeting Resolutions on the Amendment to the Articles of Association of PT Bank BRISyariah Tbk No. 101 dated December 16, 2020 made before Notary Jose Dima Satria, S.H., M.Kn., Notary in Jakarta regarding changes to the increase in the Company's issued/paid-up capital originating from the addition of new shares of the Company as a result of the MESOP option exercise. This amendment was accepted and recorded by the Minister of Law and Human Rights of the Republic of Indonesia No. AHU-AH.01.02-0424817 dated December 28, 2020.

The latest amendment to the Bank's Articles of Association is stated in the Deed of Statement of Meeting Resolutions on the Amendment to the Articles of Association Change of Name of PT Bank BRISyariah Tbk No. 38 dated January 14, 2021, drawn up before Notary Jose Dima Satria S.H., M.Kn. Notary in Jakarta regarding the approval of changes and adjustments to all articles of the Company's Articles of Association in connection with the approval of the merger of PT Bank Syariah Mandiri and PT Bank BNI Syariah with PT Bank BRISyariah Tbk to become PT Bank Syariah Indonesia Tbk, increasing the Company's Authorized Capital, increasing the Company's Paid-Up and Issued Capital. This amendment has been accepted and recorded by the Minister of Law and Human Rights of the Republic of Indonesia No. AHU-AH.01.03.0061498 dated February 1, 2021 and has obtained the Approval of the Minister of Law and Human Rights of the Republic of Indonesia No. AHU-0006268.AH.01.02 Year 2021 dated February 1, 2021.

The merger of PT Bank Syariah Mandiri and PT bank BNI Syariah with PT Bank BRISyariah Tbk has received approval from the OJK Board of Commissioners Number 4/KDK.03/2021 dated January 27, 2021 concerning the Granting of Permits for the Merger of PT Bank Syariah Mandiri and PT Bank BNI Syariah into PT Bank BRISyariah Tbk and the Business License of PT Bank BRISyariah Tbk become the Business License on behalf of PT Bank Syariah Indonesia Tbk as the Merged Bank.

Based on the Deed of Merger contained in the Deed No. 103 made by Notary Jose Dima Satria S.H, M.Kn on December 16, 2020 it was agreed that:

- All operations, businesses, activities, activities, facility permits, licenses, approvals, utilization and assets and liabilities of each BSM and BNIS are transferred by law to BRIS.
- If BRIS cannot or does not have the aforementioned permits, facilities, licenses, approvals and registration receipts, while BRIS should have carried out operations, businesses and activities previously carried out by BNIS and BSM, BRIS will look for the best alternative until the operations, businesses and activities of each BSM and BNIS that switched to BRIS did not experience termination or delay.
- All costs that directly or indirectly arise due to the transfer of business operations and activities, as well as permits, approvals and others from each BNIS and BSM will be considered as obligations of BRIS.
- The legal entity status of BSM and BNIS will end without the need for liquidation.
- On the effective date of the merger, the employment relationship between BNIS and BSM employees who join BRIS will be transferred by law to BRIS.

PT Bank BRI syariah became a business license from PT Bank Syariah Indonesia Tbk (“BSI”) as the result of the merger. Furthermore, a letter from the Ministry of Law and Human Rights No. AHU-AH.01.10-0011384 dated January 28, 2021 regarding receipt of notification of the merger of BNIS and BSM into BRIS related to the announcement of the merger of BNIS and BSM into BRIS. The merger is effective on February 1, 2021.

Impact Of The Merger Of Pt Bank Syariah Indonesia On Customers And Employees

In practice, the merger of several state-owned Islamic banks into Bank Syariah Indonesia (BSI) will have a broad impact on various parties, both directly and indirectly affected. The impacts arising from the merger of Bank Syariah Indonesia BSI are as follows:

1. With respect to the company's total capital, it means that the merger of state-owned Islamic banks into Bank Syariah Indonesia (BSI), BSI's capital will become larger
2. The portion or percentage of capital ownership, state-owned Islamic banks becoming Bank Syariah Indonesia (BSI) will certainly increase BSI's capital, this is because shares owned by Islamic banks previously became BSI's capital
3. Organizational structure, a state-owned Islamic bank becomes Bank Syariah Indonesia (BSI), of course a new organizational structure is formed which eliminates many positions that existed in previous state-owned Islamic banks, both directors, branch heads, managers and other positions.
4. The existence of rationalization, meaning that a BUMN Islamic bank becomes an Indonesian Sharia Bank (BSI) will result in termination of employment either voluntarily or determined by the new BSI management. Termination of employment is done to those who are considered less productive or have almost reached retirement age or those who leave for various reasons.
5. The company's assets have increased, the state-owned Islamic bank became Bank Syariah Indonesia (BSI), has added to the assets of BSI, this is due to the assets of the state-owned Islamic bank which are combined into assets or assets of Bank Syariah Indonesia (BSI). Artinta all assets or assets of BUMN sharia banks will become assets or assets of Bank Syariah Indonesia (BSI)
6. Increased corporate debt, meaning that the state-owned Islamic bank becomes Bank Syariah Indonesia (BSI) will cause new debt as a result of the accumulation of existing debts. All debts owned by state-owned Islamic banks become debts of Bank Syariah Indonesia (BSI); etc

From research, through studies from various sources, it shows that each time the merger causes various impacts, it has implications for various parties. Both directly and indirectly involved.

The parties that are directly involved are, for example, the owners of the capital that carry out the merger. There is a change in the percentage of ownership of the shares owned. What was previously the majority, can turn into the majority, and vice versa. Other directly affected parties are management, both leaders and employees.

For management, it is clear that there has been a significant change, especially for those who previously held certain positions, with the merger, they will lose their positions or step down. What is even worse is that those who have positions will be subject to rationalization, because the positions that are in the results of the merger are not as many as at the time of the merger, so many leaders will leave by themselves or be asked to leave by the new management.

The next implication in general for employees is that it is not much different from the top leadership, it's just that there is a high possibility that there are employees who get promotions, job rotations and work areas and the occurrence of rationalization or reduction of employees. As a result of downsizing the number of branches that were previously many became fewer. The legal implication is

that there is a change in the work agreement between the leader and the old employee and the company resulting from the merger

The merger of three state-owned Islamic banks into Bank Syariah Indonesia has an impact on customer accounts. Head of Corporate Communication of PT Bank Syariah Indonesia Tbk, Eko Nopiansyah explained that this migration is a unification of the system from the previous 3 legacy bank system to the BSI system. during the transition period, Banks Syariah Indonesia started the integration process in stages. One of the processes carried out is the migration of the customer's account from the bank of origin to the account of Bank Syariah Indonesia. The integration period is gradually from February 15, 2021 to October 30, 2021.

Furthermore, BSI Corporate Secretary & Communication Group Rosalina Dewi said, only BNI Syariah and BRI Syariah account holders need to migrate. Meanwhile, Mandiri Syariah account holders do not need to do this because the IT platform used by BSI is BSM's IT platform, so it is different from BRI Syariah and BNI Syariah customers who have to migrate, so for BSM customers there is no need to migrate and there are no consequences for customers. BSM that does not migrate accounts.

For BSM account holders, customers will only be asked to arrange for replacement of ATM cards and savings books. During this period, customers are gradually contacted to migrate to Bank Syariah Indonesia in accordance with the integration in branch operations, services, and products.

The merger of several state-owned Islamic banks into Bank Syariah Indonesia (BSI) has legal implications for various parties. This, of course, must be immediately anticipated by BSI bank management, so that there is no conflict between parties with an interest in the change in the old bank due to the merger.

In the Financial Services Authority Regulation Number 41/POJK.03/2019 and Articles also in the Company Law which requires that the legal actions of Mergers, Consolidations and Acquisitions must pay attention to the interests of the Company's employees, both those who are the target. not paying attention to the interests of the company's employees and as a result the injured employee can give the injured employee the right to sue the company based on Article 1365 of the Civil Code which regulates unlawful acts.

The merger of limited liability companies has an impact on shareholders, which is regulated in Article 122 paragraph (3) letter b of Law No. 40 of 2007 concerning Limited Liability Companies, which reads "The shareholders of the companies that merge by law become shareholders of the companies that receive the merger. .

Protection for minority shareholders and investors can be in the form of:

1. The necessity of openness
2. The application of the Suer Majority principle for the GMS approving the merger.
3. The right of minority shareholders to sell their shares at a reasonable price.
4. GMS of independent shareholders in the event of a conflict of interest, for example against a merger in a bank group.
5. If the merger occurs with participation by a public bank, the shares and assets of the target bank must be audited and assessed in a professional manner by an independent appraiser.
6. The act of merger must be announced to the public.

If the minority shareholders do not agree with the merger, but the GMS with a majority vote has decided to conduct the merger, the party that lost votes by law is given a special right called Appraisal Rights or Appraisal Remedy from the shareholders of the company that will take over.

Appraisal Rights or Appraisal Remedy is the right of the minority shareholder who does not agree with the merger (but he lost the vote) or against other company actions, to sell the shares held to the company concerned, where the company's parties issue the shares. is obliged to give back its shares at an appropriate price.

CONCLUSION

1. The occurrence of a merger or merger of PT Bank Syariah Mandiri, PT Bank BNI Syariah and PT Bank BRI Syariah as the surviving entity which later changed its name to PT Bank Syariah Indonesia as a merged company is part of the mandate of the legislation in Indonesia. In addition, the establishment of the Indonesian Islamic Bank is also a form of recognition that in Indonesia the Islamic banking system is also recognized in addition to the conventional banking system. This system is known as the dual banking system as mandated in Law no. 10 of 1998 concerning Banking.
2. From the customer's point of view, it seems that there is no significant risk from this merger, because as explained in the previous chapter, it can be seen that in terms of service and protection of customer data, there has been careful preparation, namely the existence of an IT Platform which has become an umbrella for customers. customers from the three Merger Banks to be able to use their Accounts, besides just waiting for the grace period to be effective.

In the Financial Services Authority Regulation Number 41/POJK.03/2019 and Articles also in the Company Law which requires that the legal actions of Mergers, Consolidations and Acquisitions must pay attention to the interests of the Company's employees, both those who are the target. not paying attention to the interests of the company's employees and as a result the injured employee can give the injured employee the right to sue the company based on Article 1365 of the Civil Code which regulates unlawful acts

SUGGESTION

1. According to the author, the steps taken by the parties carrying out the merger have followed the mandate of the applicable laws and complementary regulations, the author hopes that this smooth merger process can be imitated by companies or companies in the future. Because the initial purpose of implementing the merger itself is to depart from the intention to be able to develop together, which should be carried out in a good and correct manner in accordance with applicable laws and regulations.
2. Based on the research above, the authors are still optimistic about the legal protection that arises from the implementation of the merger of the three state-owned Islamic banks, because of the conveniences received by customers, as well as the existence of legal protection for bank employees or employees, reflecting that the Islamic banking system has mature enough in Indonesia and can compete even with the conventional banking system.

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