
THE SIGNIFICANCE OF THE FINANCIAL SERVICES AUTHORITY'S APPROVAL ON THE SALE AND PURCHASE OF A LIMITED LIABILITY RURAL BANK'S SHARES

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ABSTRACT:

This research will discuss the process of buying and selling shares of Rural Banks in the form of Limited Liability Companies According to applicable regulations and the significant of the Financial Services Authority's approval on the sale and purchase of shares of Rural Bank. The author uses the theory of law as a grand theory, banking law theory as a middle theory and certainty of law as applied theory in this thesis. The research method used is normative juridical supported by empirical, namely by examining the rules relating to the sale and purchase of shares of Rural Banks and field research in the form of interviews conducted at the Financial Services Authority.

The sale and purchase of shares of a Rural Bank conducted prior to the approval of new shareholders / new controlling shareholders, causes the new shareholders to transfer their shares and not obtain the rights as shareholders. The general meeting of shareholders that have been made to sell and determine the buyers of shares must be canceled if after going through the fit and proper test, the prospective new shareholders get the title of Unapproved. The approval of the Financial Services Authority has become significant in share sale and purchase transactions which has

caused new shareholders / new controlling shareholders.

KEYWORDS: Financial Services Authority, sale and purchase transactions

INTRODUCTION:

Banks are one of the financial institutions that have an important role in economic development. The existence of banks as institutions in the economic field has had various impacts on the smooth implementation of development from time to time, both nationally and internationally. The institution is intended as an intermediary for those who have excess funds (surplus of funds), with those who are deficient and in need of funds (lack of funds), so that the role of the actual financial institution, namely as a financial intermediary for the public (financial intermediary). Of the various banking institutions, one of them is a bank financial institution. (Muhammad Djumhana, 2000) Banks as financial institutions have two types of classification, namely Commercial Banks and Rural Credit Banks. Commercial Banks are banks that carry out business activities conventionally and / or based on Sharia Principles which in their activities provide services in payment traffic. Rural Credit Bank is a bank that conducts business activities conventionally or based on Sharia Principles which in its activities do not provide services in payment traffic.

Commercial banks and rural banks aim to support the implementation of national development in the context of increasing equity, economic growth, and national stability towards improving people's welfare. Expected economic growth is carried out equally, both for entrepreneurs who already have capital and entrepreneurs who are just starting a business, in urban and regional areas. The Rural Bank as part of the national banking industry has contributed significantly to the national economy. (Veithzal Rivai, Andria Permata Veithzal, Ferry N. Idroes, 2007). People's credit banks have supporting characteristics to carry out these development goals. This is because people's credit banks more often provide funds to small entrepreneurs, and are more active in the regions. Considering the function of banks that participate in upholding the implementation of national development, people's credit banks are governed by banking laws and other implementing regulations. Bank Perkreditan Rakyat can only be established and owned by Indonesian citizens, Indonesian legal entities that are all Indonesian citizens, local governments, or can be owned jointly among the three. People's Credit Banks in the form of Limited Liability Companies, are also subject to the rules regarding limited liability companies, as regulated in the Law of the Republic of Indonesia Number 40 of 2007 concerning Limited Liability Companies.

Limited Liability Company is a legal entity which is a capital alliance to support business activities with authorized capital which is entirely divided into shares. (Herlien Budiono, 2015)

Bank Perkreditan Rakyat shares are shares in name and can be sold to other parties as long as they do not violate the provisions issued by the authorized institution, in this case the Financial Services Authority. The Financial Services Authority, as an institution that oversees banks, will give its approval after

examining the fulfillment of the requirements of the parties who will buy shares of Bank Perkreditan Rakyat. Approval of the Financial Services Authority on the parties that will buy and sell shares of the Rural Bank is not a requirement, but approval of share ownership also determines whether or not the transfer of shares occurs due to the sale and purchase of these shares.

The sale and purchase of shares as a civil relationship between the seller and the buyer occurs when there is an agreement on the price and the number of shares to be traded, which is usually set forth in an authentic deed. The sale and purchase of shares of a Rural Bank in the form of a Limited Liability Company which was carried out prior to the approval of the Financial Services Authority for new shareholders, is often a problem in terms of bank management. This is due to de facto bank shares have been transferred to new shareholders while de yure , old shareholders are still recognized as shareholders according to shareholder data.

LITERATURE REVIEW:

The rule of law was first put forward by Plato and then this thought was confirmed by Aristotle. (Ni'matul Huda, 2005) Aristotle put forward three elements of constitutional government which are the ideals of the rule of law, namely: first, the government is carried out in the public interest. Second, governance is carried out according to laws which are based on general non-legal provisions made arbitrarily that override conventions and constitutions. Third, constitutional government carried out at the will of the people. Another element of the rule of law theory presented by FJ. Thall is that the government is organized based on the law. The government which in English is called government , while in the Dutch language it is called heersen is the process or all affairs carried out by the state in carrying out the welfare of society and the interests of the

state. The government is carried out according to the law established by the competent institution. State administrative justice tasked with handling cases of unlawful acts by the government (onrechmatige Overheidsdaad)

Provisions that Indonesia is a constitutional state cannot be separated from the Preamble of the 1945 Constitution as the ideal of the rule of law, then determined in the body and explanation of the 1945 Constitution (before being amended). Paragraph I of the Preamble of the 1945 Constitution contains the word justice; in paragraph II there is the word fair; in paragraph II there is the word Indonesia; in paragraph IV there is the word social justice and the word fair humanity. All of these terms refer to the rule of law, because one of the objectives of the rule of law is to achieve justice. (Dahlan Thaib, 1996)

Padmo Wahjono examined the Pancasila legal state by starting from the family principle stated in the 1945 Constitution, which prioritized the principle of kinship as the people at large and the dignity and respect of human dignity. (Padmo Wahjono, 1982). The rule of law is inseparable from the law itself. Law is a collection of rules and methods that have general and normative contents, general because they apply to everyone and normative because they determine what should be done, what should not be done or must be done and determine how to implement compliance with the methods. (Sudikno Mertokusumo, 2010). In terms of nature, the structure of the rule of law can be distinguished from imperatus law (law forcing or *dwingend recht*) and facultative law (governing law or supplementary law (*regelend recht* or *annullend recht*) this distinction is based on the strength of the sanction. cannot be ruled out (set aside by an agreement (contract) made by both parties themselves. In other words, the law must under any circumstances be adhered to, the law which has absolute coercion (absolute). The law regulates is the law

which in a concrete state can set aside by an agreement made by both parties (Djoni S. Gazali, Rachmadi Usman, 2012)

The nature of banking law is a compelling law, meaning that banks in carrying out business activities must comply and comply with the rules stipulated in the law. If the banking regulations are violated, the Indonesian bank is authorized to act against the bank concerned by imposing administrative sanctions, such as revoking its business license.

Banking law is a set of regulations governing bank finances and regulated life is all aspects of banking. Scope: Banking principles, banking agents, rules or regulations that govern, organizational structure, safeguard paper, and banking business objectives. (Muhammad Djumhana, 1993)

The doctrine of the ideals of the law (*idee des Recht*) mentions that there are three elements of the ideals of law which must exist proportionally, namely legal certainty (*rechtsicherheit*), justice (*gerechtigkeid*) and expediency (*zweckmasigkeit*). If it is related to law enforcement theory as stated by Gustav Radbruch in the *idee des Recht*, that is law enforcement must fulfill the three principles. (Tata Wijayanta, 2014). Gustav Radbruch stated 4 (four) basic things related to the meaning of legal certainty, namely: First, that the law is positive, meaning that positive law is legislation. Second, that the law is based on facts, the meaning is based on reality. Third, that facts must be formulated in a clear manner so as to avoid errors in meaning, as well as being easy to implement. Fourth, positive law cannot be easily changed.

One meaning of legal certainty according to Gustav Radbruch is that the law is positive and is contained in legislation. According to article 1 number 2 of Law Number 12 of 2011 concerning the Formation of Legislation, statutory regulations are written regulations that contain generally binding legal norms and

are formed or established by state institutions or authorized officials through the procedures stipulated in the regulations legislation.

RESEARCH METHODS:

The method of approach used in this study is a normative juridical approach, which is an approach that refers to the applicable laws and regulations. (Roni Hanitjo Soemitro, 1982)

The normative juridical approach emphasizes secondary data by studying and reviewing positive legal principles derived from literature data and legal comparisons, as well as elements or factors related to research objects as part of field research. Ahmad Muliadi (et.al), 2017)

Approach to the Law as Peter Mahmud Marzuki, called the normative juridical approach. The statute approach is carried out by examining all laws and regulations that are related to the legal issues being addressed. (Peter Mahmud Marzuki, 2016)

Normative juridical research in this study was conducted by examining library materials or secondary materials such as statutory regulations in the field of Limited Liability Companies, banking and notarial legislation, as well as books and articles that have a correlation with the sale and purchase transactions of Bank Perkreditan Rakyat shares limited liability company without the approval of the Financial Services Authority.

This research in addition to using a juridical approach, is also supported by an empirical juridical approach, where the author will conduct an interview with the Financial Services Authority to obtain data relating to this writing.

Guidelines for library research, carried out with a literature study in order to obtain secondary data in the form of primary legal material in the form of regulations relating to the sale and purchase of shares of credit banks

and interviews with the Financial Services Authority to obtain additional data.

Secondary data in the form of primary legal materials that have been obtained will be reviewed and analyzed, namely by selecting the articles containing the legal rules governing the sale and purchase of shares of limited liability company Bank Perkreditan Rakyat.

The results of the selection of these articles will become guidelines for making a systematic article that will be presented in the form of a description that explains the relationship between the various types of data (primary legal materials, secondary legal materials, and tertiary legal materials), and processed qualitatively so that they can describe and disclose descriptive research results that ultimately can answer the formulation of the problem in this paper.

The author conducts research on the Significance of Approval of the Financial Services Authority for the Sale and Purchase of Shares of Rural Credit Banks in the Form of Limited Liability Companies in one of the Rural Credit Banks in the Special Region of Yogyakarta, the Financial Services Authority of the Special Region of Yogyakarta, the Jayabaya University library, and other University libraries that support this research.

RESULTS AND DISCUSSION:

A. Execution of the Sale and Purchase of Shares of Limited Liability Companies Rural Credit Banks in the Form of Limited Liability Companies according to Applicable Conditions

Rural Credit Bank is a bank that conducts business activities conventionally or based on Sharia principles in which its activities do not provide services in payment traffic. Bank Perkreditan Rakyat can only be established and owned by Indonesian citizens, based on Indonesian law that all owners are Indonesian citizens, regional governments or can be jointly

owned above all three. The legal form of a Rural Credit Bank is regulated in article 21 paragraph (2) of the Banking Act, which is a regional company, cooperative, limited liability Company, and other forms determined by government regulations. Rural Credit Banks in the form of Limited Liability Companies are subject to banking regulations regulated in Act Number 10 of 1998 concerning Banking and also subject to Limited Liability Companies rules stipulated in Act Number 40 of 2007 concerning Limited Liability Companies.

Limited Liability Company is a capital alliance, so capital divided into shares is a fundamental characteristic of a Limited Liability Company. (Man S. Sastrawidjaja, 2005) Rural Credit Banks in the form of Limited Liability Companies have capital which is divided into shares. Shares in People's Credit Banks are shares in the name and must be listed in the Register of shares made by the Directors. Shares as proof of participation in a limited liability company, show the rights and obligations as well as the legal relationship between the owner and the limited liability company. Shareholders have the right to determine the direction of company policy through the General Meeting of Shareholders and shareholders are entitled to receive dividends distributed by the company.

One way to be able to have a Rural Credit Bank is through a stock buying and selling mechanism. Buying and selling shares of Rural Credit Banks is regulated in Act Number 10 of 1998 concerning Banking, Financial Services Authority Regulation Number 20 / POJK.03 / 2014 concerning Rural Credit Banks, Financial Services Authority Regulation Number 27 / POJK.03 / 2016 concerning Capability Assessment and Decency for Main Parties of Financial Services Institutions, and Circular of Financial Services Authority Number 39 / SEOJK.03 / 2016 concerning Assessment of Capability and Compliance for Prospective Controlling Shareholders, Prospective Members

of the Board of Directors, and Prospective Members of the Board of Commissioners of the Bank.

The sale and purchase of shares of Bank Perkreditan Rakyat is based on the General Meeting of Shareholders held with the agenda of the sale of shares. The sale and purchase of shares of Bank Perkreditan Rakyat can occur between the shareholders themselves or the shareholders with other parties as prospective new shareholders.

1. The sale and purchase of shares that occur among existing shareholders and does not result in changes in controlling shareholders. The process of buying and selling shares that occurs:
 - a. Limited company holds a General Meeting of Shareholders with the agenda of buying and selling shares.
 - b. The Directors report the Minutes of the General Meeting of Shareholders to the Financial Services Authority. The amendment report must be submitted to the Financial Services Authority no later than 10 (ten) days after the General Meeting of Shareholders is held, enclosing the Minutes of the General Meeting of Shareholders and ownership data in the form of: a list of shareholders along with details of the amount of each share ownership.
 - c. Bank Perkreditan Rakyat also reports changes in shareholders which are changes in the articles of association of the Bank Perkreditan Rakyat to the Minister of Law and Human Rights as an institution that administers changes to the articles of association of a limited liability company.
 - d. Letter of receipt of notification of changes to the articles of association of the Rural Credit Bank from the Ministry of Law and Human Rights, reported to the Financial Services Authority within a

period of no later than 10 (ten) working days to the Financial Services Authority.

2. Buying and selling shares that cause new shareholders or changes in controlling shareholders.

The process carried out in the sale and purchase of shares of Rural Credit Bank in the form of a Limited Liability Company:

- a. Bank Perkreditan Rakyat submits application for approval of new prospective shareholders (controllers) to the Financial Services Authority, by attaching administrative documents.
- b. Follow the fit and proper test as a shareholder. Regulation of the Financial Services Authority Number 20 / POJK.03 / 2014 Concerning Rural Credit Banks, article 19 states that parties can become owners of Rural Credit Banks. Controlling shareholders who own shares of Rural Credit Banks at 25% (twenty-five percent) or more than are required to meet these requirements, are also required to fulfill financial eligibility requirements in accordance with the provisions regarding the ability and proper test of Rural Credit Banks, which are regulated in Article 6 and Article 7 of the Financial Services Authority Regulation Number 27 / POJK.03 / 2016 concerning the Assessment of Capability and Compliance for the Main Parties of Financial Services Institutions. Financial feasibility that must be fulfilled by controlling shareholders, namely: having a financial reputation (does not have bad credit and / or financing and has never been declared bankrupt and / or has never been a shareholder, or controllers who are not shareholders, members of the Board of Directors, or members The Board of Commissioners who was found guilty of causing a company to go bankrupt in the last 5 (five) years), has the financial

capacity to support the business development of Rural Credit Banks, and has a commitment to make the necessary efforts if the Rural Credit Bank faces financial difficulties.

- c. After the letter of the fit and proper test results is received by the Rural Credit Bank with the results: approved, then the Rural Credit Bank within a maximum of 60 (sixty) days must make a General Meeting of Shareholders. If during this period there is no General Meeting of Shareholders, then the approval is considered null and void.
- d. Bank Perkreditan Rakyat must report to the Financial Services Authority that a General Meeting of Shareholders has been held accompanied by evidence of capital deposits, Minutes of the General Meeting of Shareholders, a statement from the shareholders stating that the capital deposit did not originate from a loan and did not originate from and for money laundering, and ownership data in the form of a list of shareholders and details of each share ownership.
- e. Amendments to the Articles of Association of Rural Credit Banks in the form of Limited Liability Companies regarding changes in shareholders are reported or filed for approval to the Minister of Law and Human Rights.
- f. The letter of acceptance of amendments to the articles of association or authorization from the Minister of Law and Human Rights is reported to the Financial Services Authority no later than 10 (ten) working days accompanied by changes to the articles of association of the Rural Credit Bank.

The sale and purchase of shares of Bank Perkreditan Rakyat in the form of Limited Liability Companies conducted by shareholders is often carried out with a sale and purchase

deed of shares, but the request for approval of the Financial Services Authority for prospective new shareholders has not been implemented. This causes the new shareholders to not be able to exercise their rights as shareholders until the new shareholders have the title: approved after going through the process of appropriateness and propriety. If the new shareholder is declared: disapproved after the fit and proper test, he must transfer his shares to another party who has received approval as a shareholder.

The sale and purchase of shares of rural banks which is an exercise of freedom of contract, does not necessarily make the sale and purchase can be carried out. According to Herlien Budiono, the "aspect of the contents of the contract" relates to the principle of freedom of contract. This is because each party has different needs for the object promised to be realized. Herlin Budiono stated that explicitly the scope of the principle of freedom of contract was limited by law, giving the possibility of being legitimate, null and void, or sometimes canceled. Based on Budiono's opinion, each party should have knowledge about the things that are permissible and which are not justified by the applicable laws and regulations and are based on Indonesian contract law in each contract making. (Meldawati Majid and Irwan Santosa, 2015)

B. Significance of Approval of Financial Services Authority for Buying and Selling Shares of Rural Credit Banks in the Form of Limited Liability Companies

Buying and selling of Bank Perkreditan Rakyat shares can occur among existing shareholders, as well as with the buyer of new shares. In addition, the sale and purchase of shares can cause a change in controlling shareholders, i.e. if the number of shares owned by shareholders becomes 25% (twenty-five percent) or more of the shares issued by banks.

The sale and purchase of shares of rural banks that occur among shareholders and do not change the control of the Bank and there are no new shareholders, the changes are reported within 10 (ten) working days to the Financial Services Authority. Buying and selling shares that cause the number of shares ownership 25% (twenty five percent) and above and change bank control or add / replace the Controlling Shareholder, the prospective shareholder must obtain prior approval from the Financial Services Authority.

The sale and purchase of shares of the Rural Bank is decided in the General Meeting of Shareholders. The General Meeting of Shareholders determines the share buyer and the number of shares that are the object of buying and selling. Minutes of the General Meeting of Shareholders drawn up in the Deed of the Decree of the Meeting Resolution in the form of a notarial deed, cannot be changed in the shareholders as long as the new shareholders have not received the approval of the Financial Services Authority. Notary deed is a deed made before and upfront of the authorized official for that. The authorized officials for this are the notary public, the sub-district head and the official land deed maker (PPAT), and others. This type of document is a perfect evidence for the parties concerned and third parties. (Salim HS, 2008)

There are three functions of notary deed (authentic deed), namely:

- a. As proof that the parties concerned have entered into certain agreements.
- b. As evidence for the parties that what is written in the agreement is the goal and desire of the parties.
- c. As proof to third parties that on certain dates, unless specified otherwise, the parties have entered into an agreement and that the contents of the agreement are in accordance with the wishes of the parties.

The sale and purchase of shares that occur among shareholders and cause changes or additions to the controlling shareholders but do not obtain the approval of the Financial Services Authority, the shareholders are obliged to transfer shares and do not exercise bank control and their rights as shareholders are restricted. The sale and purchase of shares of a Rural Bank in the form of a Limited Liability Company which is an implementation of freedom of contract, but in practice is limited by existing Laws. Act Number 10 of 1998 concerning Banking as a positive law in the banking sector requires a permit from Bank Indonesia. With Law Number 21 of 2011 concerning the Financial Services Authority, the duties and authorities of supervision and regulation of banking regulations become the authority of the Financial Services Authority. This is the basis for the Financial Services Authority regulating the sale and purchase of shares of the Rural Bank.

The Financial Services Authority as an institution that regulates and oversees banks, issues regulations relating to Rural Credit Banks including the rules of bank share ownership. The rules regarding bank shareholding cannot be distorted, given their forced nature (*dwingend recht*). The sale and purchase of shares of Rural Bank which is an agreement in the General Meeting of Shareholders cannot be carried out as long as there is no approval from the Financial Services Authority for new shareholders or new controlling shareholders. Thus the approval of the Financial Services Authority for new shareholders is very significant in the sale and purchase of shares of Bank Perkreditan Rakyat in the form of Limited Liability Companies.

CONCLUSION:

The sale and purchase of shares of Bank Perkreditan Rakyat in the form of a Limited Liability Company, preceded by an application for approval of prospective new shareholders

and prospective new controlling shareholders to the Financial Services Authority. The Financial Services Authority will approve if the prospective shareholder has conducted a Capability and Kapatutan Test covering integrity and financial feasibility with results: approved. General Meeting of Shareholders is held after the approval. Minutes of the General Meeting of Shareholders must be reported to the Financial Services Authority and a deed of amendment to the articles of association (notarial deed) is notified to the Minister of Law and Human Rights. Amendments to the Articles of Association of the People's Credit Bank which have been notified to the Minister and evidence of reporting changes to the articles of association are reported to the Financial Services Authority.

Approval of the Financial Services Authority upon the approval of shareholders becomes significant, even though the Financial Services Authority cannot cancel the decision of the General Meeting of Shareholders or the sale and purchase deed of shares of the Rural Bank that had been made by the old shareholders with prospective shareholders who received the predicate was not approved. The settlement of the cancellation of the sale and purchase of shares shall be settled in a civil case between the old shareholders and the prospective new shareholders or the prospective new controlling shareholders themselves. Approval of the Financial Services Authority is the main key in the sale and purchase transactions of shares of the Rural Bank, because with the approval of the Financial Services Authority for new shareholders, and the implementation of the General Meeting of Shareholders and reporting to the Minister of Justice and Human Rights, prospective shareholders have the right to become a shareholder.

REFERENCES:

- 1) Muhammad Djumhana, Banking Law in Indonesia , PT. Citra Adit ya Bakti, Bandung, 2000
- 2) Veithzal Rivai, Andria Permata Veithzal, Ferry N. Idroes, Bank and Financial Institution Management , PT. Rajagrafindo Persada, Jakarta, 2007
- 3) Herlien Budiono, Collection of Civil Law Posts in the Notary Publication of the Third Book, PT. Citra Adit ya Bakti, Bandung, 2015
- 4) Ni'matul Huda, Democratic Law and Judicial Review State , UUI Press, Yogyakarta, 2 005
- 5) Collection of Posts in the context of 70 years of Sri Soemantri Martosoewignjo , Media Pratama, Jakarta, 1996
- 6) Padmo Wahjono, Juridical Concept of the Republic of Indonesia Law , Rajawali, Jakarta, 1982
- 7) Sudikno Mertokusumo, Getting to Know the Law (An Introduction) , Liberty, Yogyakarta , 2010
- 8) Djoni S. Gazali, Rachmadi Usman, Banking law , Sinar Grafika, cet 2, 2012
- 9) Muhammad Djumhana, Indonesian Banking Law Principles , Bandung, Citra Aditya Bakti, 1993
- 10)Tata Wijayanta, "The Principle of Legal Certainty, Justice and Utilization in Relation to the Decision of Bankruptcy of the Commercial Court " , 14: 2, Journal of Legal Dynamics (2014)
- 11)Roni Hanitjo Soemitro, Legal and Jurimetry Research Methodology , Ghalia I Indonesia, Jakarta, 1982
- 12)Ahmad Muliadi (et.al), Academic Guide and Thesis Writing Guide , Notary Masters Program , Jayabaya University , Jakarta, 2017
- 13)Peter Mahmud Marzuki, Legal Research , 12th Revised Edition, Kencana, Jakarta, 2016
- 14)Man S.Sastrawidjaja, Anthology Commercial Law , PT.Alumni, Bandung, 2005
- 15)Meldawati Majid and Irwan Santosa, The role of the notary in increasing the legal knowledge of art workers. Kenota makeup journal nuance Vol 1 no 1, 2015
- 16)Salim HS, Introduction to Written Civil Law (BW), PT Sinar Grafika, Jakarta, 2008.