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### Judicial Review Efforts against Capital Provisions as a Form of Legal Protection for the Community and Rural Banks

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#### Abstract

This article addresses two legal issues, namely 1) the reasons behind the government's establishment of high capital requirements for Rural Banks, and 2) the possibility of amending through judicial review. The research method uses normative legal research with a legislative approach. It collects data through a literature and provision review, related to community and rural banks' capitalization, and interviews with officials of the bank. It demonstrates that the reasons for issuing provision, namely POJK No.

62/POJK.03/2020 are: 1) to promote sustainable economic growth, 2) to strengthen BPR capitalization, and 3) to accommodate the enhancement of BPR competitiveness. However, the provisions of this POJK are still overly burdensome for the establishment of BPR and are contrary to the principles of economic democracy in Law No. 7 of 1992 concerning Banking as Amended by Law No. 10 of 1998. Therefore, a judicial review legal action is needed to challenge these provisions.

**Keywords:** Capital, Community and Rural bank, Judicial Review, Legal Protection

#### Background

Rural's Credit Banks (BPR) as regulated in Article 1 number 4 of Law No. 7 of 1992 are banks that conduct business activities conventionally or based on Sharia principles and do not provide payment services in their activities. As a financial institution, BPR only accepts deposits in the form of time deposits, savings, or other similar forms and channels funds as part of its business operations. The establishment of BPR aims to assist small-scale individuals (such as farmers, employees, and laborers) in accessing business capital and other financial products, while freeing them from the clutches of moneylenders who offer high-interest loans.

There are several rules to strengthen the Financial Services Industry. In the other hand, some rules hinder the growth of Rural Banks (BPR), such as regulations governing capital as mentioned in the Financial Services Authority Regulation (POJK) No. 62/POJK.03/2020. Article 6 of POJK requires the initial capital for establishing BPR in zone 1 to be IDR 100,000,000,000 (one hundred billion Indonesian Rupiah), in zone 2 to be IDR 50,000,000,000.00 (fifty billion Indonesian Rupiah), and IDR 25,000,000,000.00 (twenty-five billion Indonesian Rupiah) in zone 3. These rules impose a burden on microfinance institutions or private parties wishing to establish BPR, as BPRs generally have small capital. In the end, small communities do not have the same opportunity to engage in banking business. The reduced business opportunities can negatively impact the local economy because BPRs are usually established at the regional level.

Article 2 of Law No. 7 of 1992 concerning of Banking, as amended by Law No. 10 of 1998 (referred to as Banking Law), states, 'Indonesian banking, in conducting its business, is based on economic democracy using the principle of prudence.' The capital requirements for establishing Rural Banks (BPR) as mentioned in Article 6 of POJK No. 62/POJK.03/2020, which reduce the opportunities for small capital owners to establish banking businesses, do not support the realization of economic democracy in the banking industry because only the upper class (large investors) can afford to establish BPRs. The objective of Indonesian banking to support the implementation of national development towards promoting equity, economic growth, and national stability for the betterment of the general public, as referred to in Article 4 of Law No. 7/1992, will be hindered.

The existence of Article 6 of POJK No. 62/POJK.03/2020 has created legal uncertainty. Which one should be the reference for society, POJK or the Banking Law based on economic democracy, as they are contradictory? Through the judicial review theory (Jimly Asshiddiqie. 2006: 57-58) <sup>[7]</sup>, this research may resolve that issue. First, this research will explore the reasons behind the government setting relatively high capital requirements for Rural Banks (BPR) as stipulated in Article 6 of POJK

No. 62/POJK.03/2020. Furthermore, based on the theory of judicial review, these reasons will be evaluated to determine if they are in conflict with higher-level regulations. If they are found to be in conflict, according to the theory of judicial review, the lower-level POJK provisions should not be applicable.

### Methods

To address the legal issue, normative legal research is conducted (Marzuki in Susanti and Efendi, 2018: 110), by examining the reasons behind the government's issuance of POJK. In addition to primary legal materials, the researchers also qualitatively analyze secondary legal materials obtained from interviews with experts who have been involved in and have experience in the financial services business in Rural Banks (BPR).

The data obtained is then qualitatively analyzed through interpretative methods to determine whether the reasons for the establishment of a relatively large capital requirement for Rural Banks (BPR) are in conflict with the Banking Law using the judicial review theory (Jimly Asshiddiqie, 2006: 57-58) [7]. The conclusion drawn in this research utilizes deductive reasoning, which is a process of reasoning that starts from general premises, namely the judicial review theory, to be applied to specific premises, namely the compatibility of the capital requirements for BPR in POJK with the principle of economic democracy in the Banking Law.

### Literature Review

#### Legal Protection for Banks with Small Capital

Legal protection is protection provided to legal subjects, both in a preventive and repressive manner, whether written or unwritten, to ensure justice, order, certainty, benefit, and peace (Serlika Aprita, 2019: 37). Legal subjects here are not limited to natural persons (natuurlijke person) but also legal entities or rechts persons (H. ISHAQ, 2018: 57), including Rural Banks (BPR). According to Satjipto Rahardjo, legal protection is an effort to provide safeguarding for human rights, including the right to equal opportunities, in order to enjoy all rights granted by the law (Satjipto Rahardjo, 2000: 53).

BPR is a bank with small capital, in the form of money or other forms in its operational activities. The sources of BPR's capital come from both internal and external sources. Internal capital sources are derived from the capital contributed by BPR's shareholders, while external capital sources come from the public, commonly referred to as Third-Party Funds, in the form of savings and time deposits. External capital sources can also come from loans from other parties or temporary entrusted funds, from pending transactions that are still outstanding (Wangsit Supeno, 2017:121).

#### *Judicial Review as a Tool to Protect against Laws that are Less Favorable to the Weak*

Judicial review is an examination of legal regulations, consisting of substantive (material) and procedural (formal) reviews. Its authority lies within the judicial institutions, namely the Constitutional Court and the Supreme Court. Article 24a paragraph (1) of the 1945 Constitution stipulates that the Supreme Court has the authority to adjudicate at the cassation level, review legal regulations below the law against the law, and possess other authorities granted by the Law. Legal regulations below the law are the subject of

examination in the Supreme Court. Meanwhile, the Constitutional Court has the authority to review the constitutionality of a law (Laica Marzuki, 2004: 1-2)." Based on the concept of judicial review, the existence of Article 6 of POJK No. 62/POJK.03/2020, which regulates the requirements regarding capital for banks that are considered burdensome for BPR owners, can be examined to determine whether it is in conflict with higher-level regulations, namely Article 2 of the Banking Law, which states, 'Indonesian banking, in conducting its business, is based on economic democracy using the principle of prudence,' or not. If it is in conflict, then the provisions of Article 6 of POJK No. 62/POJK.03/2020 cannot be enforced, and this will provide protection for banks with small capital, such as BPR.

### Result and Discussion

#### *The Reasons for the Capital Policy of POJK No. 62/POJK.03/2020*

To assess whether Article 6 of POJK No. 62/POJK.03/2020 is in conflict with Article 2 of the Banking Law, it is necessary to present the reasons for POJK to establish such capital policy. Based on the research findings, several provisions were found that either support or weaken the banking industry, as outlined below.

#### 1. enhancing Sustainable Economic Growth

Sustainable economic growth is the growth of an economic sector that takes into account meeting the economic needs of a country in the present while also preparing for the needs of future generations and involving social and environmental aspects. So, in sustainable economic growth, the focus is not only on economic aspects but also on other influential aspects, namely social and environmental aspects (Niken Pratiwi *et al.* 2017: 1-2). One of the considerations for the Government in issuing POJK No. 62/POJK.03/2020 is to maintain economic growth while also taking into account the sustainability aspect of Rural Banks (BPR). However, not all articles contained in this POJK provide benefits and are acceptable to BPR. The results of interviews conducted by the researcher with three BPRs, namely PT. BPR Shinta Bakti Wedi, Profitdana Paramitha, and Panca Artha Monjali, revealed that Article 6 of POJK No. 62/POJK.03/2020 is very burdensome, especially for BPR founders. Article 6 requires a minimum paid-up capital of Rp. 100,000,000,000 (one hundred billion rupiah) for BPRs established in zone 1, Rp. 50,000,000,000.00 (fifty billion rupiah) for zone 2, and Rp. 25,000,000,000.00 (twenty-five billion rupiah) for BPRs established in zone 3.

#### 2. Strengthening Banking Capitalization

The government does not want Rural Banks (BPRs) to face capital difficulties, especially during their early establishment, because strong capitalization can enhance the role of banking industries like BPRs in society while also helping the government address economic issues during and/or after the COVID-19 pandemic. So far, the primary strength of a BPR has been its capital because it is through this capital strength that a BPR can conduct its business and fund its operations. As a financial intermediary institution tasked with collecting funds from the public and then channeling them back to the public in the form of loans, a strong capital base is certainly required. Moreover, when the public has entrusted their funds to a BPR, that trust must be maintained for the financial health of the BPR (Amalia Hidayah Chaniago. 2018: 2).

### 3. Accommodating the Enhancement of Competitiveness

The government's reason for issuing POJK No. 62/POJK.03/2020 is to accommodate the enhancement of the competitiveness of Rural Banks (BPRs). As mentioned earlier, BPRs are not the only institutions in the banking business, as there are many banks that have been operating and are well-known in the community. If BPRs do not have sufficient competitiveness, it can be ensured that they will not survive for long in the banking business. Competition usually occurs between BPRs and commercial banks, as well as other non-bank financial institutions that have proliferated in the community, including loan sharks.

On one hand, the government's desire to enhance the competitiveness and capitalization of the banking sector, including Rural Banks (BPRs), is certainly acceptable to BPRs. On the other hand, the opportunity for small investors to enter the banking business is reduced because they may not be able to meet the substantial initial capital requirements considered necessary for them.

#### *Possibility of Policy Change through Judicial Review*

Judicial review is one of the legal remedies that can be used to challenge the capital requirement policy as regulated in POJK No. 62/POJK.03/2020. This legal remedy is a right of every citizen as guaranteed by the Constitution of Indonesia. This can be seen in Article 28C paragraph (2) of the 1945 Constitution of the Unitary State of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution), which states that 'Every person has the right to advance oneself in advocating their rights collectively to build society, the nation, and the state. Similarly, Sundari (2015: 4) states that filing a lawsuit is the right of every Indonesian citizen. So, the possibility of BPR taking legal action through judicial review against the capitalization provisions regulated in POJK No. 62/POJK.03/2020 is justified, as it seeks to assert the collective right of BPRs to have an equal opportunity, just like large capital owners, to establish banking businesses and jointly contribute to the nation's economy. The statement below provides several arguments for submitting a judicial review against POJK No. 62/POJK.03/2020 to the Supreme Court.

The fourth amendment to the 1945 Constitution has established a new authority for the Supreme Court of the Republic of Indonesia (hereinafter referred to as the MA), which is to review regulation under the legislation. Achmad Taufan Efendi (2017: 6) refers to this authority as a power. This authority of the MA is mandated by Article 24A of the 1945 Constitution, which is further regulated in Law No. 14 of 1985 concerning the Supreme Court, as amended for the second time by Law No. 3 of 2009. Furthermore, the authority of the MA is also regulated in Law No. 48 of 2009 concerning the Judicial Authority. Therefore, Rural Banks (BPR) can submit a judicial review against POJK No. 62/POJK.03/2020, as it is a regulation under the law or legislation, to the Supreme Court.

Based on Article 31A, paragraphs (1) and (2) of Law No. 14 of 1985 regarding the Supreme Court as amended by Law No. 3 of 2009, it is stated that (1) requests for the judicial review of regulations under the law against the law shall be submitted directly by the applicant or their representative to the Supreme Court and shall be made in writing in the Indonesian language; (2) requests as referred to in paragraph (1) can only be made by parties who believe that their rights have been harmed by the enactment of regulations under the

law. According to these provisions, a Rural Credit Bank (BPR) that feels its rights have been harmed by the enactment of capital requirements stipulated in Regulation No. 62/POJK.03/2020 can file a judicial review request with the Supreme Court.

The formation of legislation must fulfill both material and formal requirements. If it fails to do so, it can undergo a review of the legislation. Formal testing aims to determine whether legislation is created in accordance with the correct and proper mechanisms, by authorized institutions, and through appropriate procedures. Article 1, number 11 of Law No. 21 of 2011 regarding the Financial Services Authority (hereinafter referred to as the FSA Law) stipulates that FSA regulations are written regulations established by the Board of Commissioners of the FSA. Based on this provision, the process of making POJK No. 62/POJK.03/2020 is in accordance with formal procedures as regulated in the FSA Law, and therefore, formal testing is not necessary. However, POJK No. 62/POJK.03/2020 can still undergo material testing, which emphasizes its substantive aspects, not the procedures of its making.

Regulation No. 62/POJK.03/2020 can be examined to determine if its substance contradicts higher-level regulations or legal principles. Article 33, paragraph (1) of the 1945 Constitution stipulates that the economy is organized as a collective effort based on the principle of kinship. This means that economic activities should foster a sense of brotherhood or family-like relationships, mutual care, and mutual benefit. If a brother is facing difficulties, it is obligatory to help them become self-sufficient. In its application in the business realm, for example, individualistic and monopolistic economic competition should ideally be avoided because the goal is to achieve collective profit and well-being within the framework of a family. (See Arif Firmansyah, 2012:34).

Furthermore, in Article 4 of the 1945 Constitution, it is mentioned that the national economy is organized based on economic democracy with the principles of togetherness, efficiency with justice, sustainability, environmental awareness, self-reliance, and by maintaining the balance of progress and national economic unity. In accordance with the principle of economic democracy, all economic activities, including financial service businesses, must adhere to these principles, and therefore, legislation regarding the capitalization of Rural Credit Banks (BPR) should not deviate from these principles. Economic democracy aims for the overall prosperity of the people, where the people have the right to equal economic opportunities and direct involvement in the production process as well as enjoying its results (B. Hestu Cipto Handoyo, 2003: 98-99). The requirement for a substantial paid-up capital as stipulated in Article 6 of POJK No. 62/POJK.03/2020 has the potential to limit the participation of the general public in financial services because only the upper-class (large-scale entrepreneurs) will be able to meet the specified paid-up capital requirements. Ultimately, this narrows the opportunities for small and medium-sized businesses to thrive. Such facts clearly contradict the principle of economic democracy. Dengan demikian, ketentuan Article 6 of POJK No. 62/POJK.03/2020 secara substansi dapat diinterpretasikan bertentangan dengan Article 4 of the 1945 Constitution, sehingga dapat diajukan hak uji materiil.

Furthermore, in accordance with Law No. 7 of 1992 on Banking as Amended by Law No. 10 of 1998 (the Banking Law), in the preamble, it is determined that (a) national development is a continuous effort aimed at realizing a just and prosperous Indonesian society based on Pancasila and the 1945 Constitution; (b) that in the face of the constantly fast-moving, competitive, and integrated development of the national economy, along with increasingly complex challenges and a more advanced financial system, policy adjustments in the economic field, including banking, are necessary." This preamble provides a concrete illustration of the presence of banking businesses (including Rural Credit Banks, BPR) not solely for the sake of business interests but, more importantly, to make a tangible contribution to national development. This contribution is, of course, guided by the principles of the constitution as mentioned in the 1945 Constitution.

Article 2 of the Banking Law regulates that Indonesian Banking operates based on economic democracy principles using prudence as a guiding principle. The concept of economic democracy mentioned above emphasizes that society is given the opportunity to directly engage in economic activities, including in the banking business. In relation to banking, economic democracy must be the primary principle for banks in conducting financial services business. Through the requirement of a very substantial core capital deposit as stipulated in Article 6 of Regulation No. 62/POJK.03/2020, the opportunities for the lower and middle-income segments of society to engage in banking business are directly and systematically restricted. Because it can be interpreted as contradicting the higher regulations, in this case, Article 2 of the Banking Law, Article 6 of Regulation No. 62/POJK.03/2020 can be subjected to a material review.

In Article 4 of the Banking Law, it is regulated that Indonesian Banking aims to support the implementation of national development towards enhancing equality, economic growth, and national stability for the betterment of the people. The requirement for a high core capital deposit as stipulated in Article 6 of Regulation No. 62/POJK.03/2020 can potentially slow down the implementation of national development. At the same time, there won't be equal distribution, economic growth will decelerate, and only the upper class (big business owners) will prosper. Similar to the previous argument, Article 6 of Regulation No. 62/POJK.03/2020 contradicts the higher regulation, which is Article 4 of the Banking Law in substance, and therefore, it can be subjected to a material review.

Based on the analysis, it is apparent that the capital requirement stipulated in Article 6 of Regulation No. 62/POJK.03/2020, in substance, does not align with the existing legal provisions above it. Based on the principle of judicial review, such provisions can be subjected to material review. Furthermore, based on the principle of *lex superior derogate legi inferiori*, which determines that lower-ranking regulations must not contradict higher-ranking ones, POJK, which has a lower rank than the 1945 Constitution and the Banking Law, must not contradict them in substance.

## Conclusion

The reason the government established relatively high capital requirements for rural banks (BPR) as regulated in Regulation No. 62/POJK.03/2020 is to promote sustainable economic growth, strengthen the capitalization of rural

banks, and enhance their competitiveness. However, these capital requirement provisions, on the other hand, contradict the higher-ranking regulations, namely the principles of economic democracy as stipulated in the 1945 Constitution and the Banking Law. With these reasons in mind, a judicial review can be conducted to modify the capital requirement provisions as specified in Article 6 of Regulation No. 62/POJK.03/2020 in such a way that it still provides equal opportunities for small investors to establish businesses in the banking sector, such as rural banks (BPR).

## References

1. Amalia Hidayah Chaniago. Analisis Permodalan, Aset, Manajemen, Rentabilitas, Dan Likuiditas Pada Kinerja BPR Di Kota Samarinda, *Jurnal Manajemen Keuangan*, 2017.
2. Dedi Sunardi. *Hukum Perbankan dan Perbankan Syariah*. Penerbit A-Empat, Banten, 2021.
3. Sundari E. *Praktik Class Action di Indonesia*. Yogyakarta. Cahaya Atma Pustaka, 2015.
4. Sundari E, Endang Sumiarni. *Politik Hukum dan Tata Hukum Indonesia*". Yogyakarta, Cahaya Atma Pustaka, 2015.
5. HMA. Kuffal, Penerapan KUHAP Dalam Praktik Hukum, Malang. Universitas Muhammadiyah Malang Press, 2008.
6. Indria Widyastuti dan Dewi Yuliandari. Analisis Peran Bank Perkreditan Rakyat (Bpr) Terhadap Peningkatan Kinerja Usaha Mikro Kecil (Umk), 2016. (<https://ejournal.bsi.ac.id/ejurnal/index.php/cakrawala/article/view/1287>).
7. Jimly Asshiddiqie. *Hukum Acara Pengujian Undang-Undang*. Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi RI, 2006.
8. Jimly, Assiddiqie, *Konstitusi Ekonomi*, Jakarta, Kompas Media Nusantara, 2010.
9. Otoritas Jasa Keuangan. *Statistik Perbankan Indonesia*. Jakarta. 2017; 15(7).
10. Poernaningrum Sekar Wardhani dan Ismunawan. Impact Pandemi Covid-19 Terhadap Rentabilitas Bank Perkreditan Rakyat Konvensional Di Kabupaten Sukoharjo. *Jurnal Bisnis Dan Akuntansi*. 2021; 23(1).
11. Rachmadi Usman, *Aspek-aspek Hukum Perbankan Indonesia*, PT Gramedia, Pustaka Utama, Jakarta, 2003.
12. Rudy Bodewyn Mangasa Tua, Endang Nurita. Kualitas Profitabilitas BPR pada Masa COVID-19 sebagai Akibat Kualitas Kredit dan Penambahan Biaya Operasional. *Jurnal Buana Akuntansi*. 2021; 6(2).
13. Ruslina, Elli. *Dasar Perekonomian Indonesia dalam Penyimpangan Mandat Konstitusi UUD Negara Tahun 1945*, Total Media, Yogyakarta, 2013.
14. Sugianto, Fajar, *Economic Analysis of Law: Seri Analisis Ke-ekonomian Tentang Hukum*, Prenada Media, Jakarta, 2013.
15. Soedarto. *Manajemen Risiko untuk BPR*. Jakarta: Palembang, 2007.