

THE URGENCY OF ENHANCEMENT THE ROLE OF THE INDONESIA'S FINANCIAL SERVICES AUTHORITY (OTORITAS JASA KEUANGAN/OJK) IN SUPERVISING FINANCIAL CONGLOMERATION PRACTICES IN INDONESIA

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ABSTRACT

This research aims to define and examine clearly a whole of the phenomenon of financial conglomeration that occurs in the era of economic globalization, the impact of financial conglomeration practices on the financial system in Indonesia and why we need efforts to increase the role of the financial services authority (OJK) in supervising financial conglomerates which is realized in the form of policy actions to get legally adheres. The results of the analysis show that financial conglomeration in financial institutions is considered as a practice as a practice that is crucial in the financial system so that it should be examined properly and comprehensively to avoid systemic risks (domino effect) that occur. So that to balance the effort is needed enhancement of supervision by regulators, especially the Financial Services Authority (OJK) which plays a vital role in the regulatory function of supervising the financial system.

Key words: Financial Conglomeration, Systemic Risk, Supervision, Financial Services Authority

INTRODUCTION

To actualize a national economy that is capable of stable and sustainable growth in all economic sectors, the national economic development program must be implemented in a comprehensive, transparent, accountable manner and capable of driving economic activities that have a wide reach and touch all real sectors of the Indonesian economy. To achieve this goal, it must be supported by the role of a good government which continues to reform every component of the national economic system, especially the financial system and all financial service activities (**General Explanation of Law No. 21 of 2011 concerning the Financial Services Authority, 2011:2**).

Growth oriented adjustment program as an economic restructuring effort carried out to anticipate retarded economic growth, one of which was carried out with a series of financial and banking deregulation policies to increase efficiency in the financial sector (Arsjad, 1992, pp. 55). In the era of economic globalization, there is a demand to promote capital market development and further improve the effectiveness of monetary management. By promoting the concept of free trade, the banking and financial industry should also be freed from all forms of control and interference, regulation or supervision from any party (Makmur, et al., 2012, pp. 3). Hence, in this understanding the role of supervisors and regulators is not needed. However, considering the massive impact caused, the concept of creating balanced conditions between adopting the phenomenon of globalization of international finance with the existence of sufficient regulations to provide boundaries (Akhand, 2010, pp. 32-33).

In the modern era, economic development in Indonesia has also led to the emergence of polemics, especially regarding the financial system. Frequently, complex business activities that cannot be separated from disputes on the one hand can trigger economic growth but can also disrupt the current financial system (Kasmir, 2018, pp. 24-25). As a countries with high economic activity really need the role of financial authorities who must always be in a healthy and independent condition. Especially regarding the issue of **financial conglomeration** at this time, whereby Financial Conglomeration is a Financial Services Institution that is in one group or groups due to related ownership and/or control (**Financial Services Authority Regulation/POJK Number 45/POJK.03 of 2020, Article 1 Number 2**). This issue needs to be considered with the aim of to minimize the occurrence of domino effects, contagion effects, which are related to the spread of losses among banks as vital assets as the financial wheel in a country which is expeditious, deposit instability finance (where this aspect has a big impact on macroeconomic conditions, especially related to ineffective monetary policy transmission) to the loss of public confidence in the country's financial system which leads to the emergence of financial distress (Irham, 2015, pp. 12).

The impact of economic globalization has created a complex, dynamic and integrated financial system between financial sub-sectors (conglomerates) both in terms of products and institutions. Due to the intermediary role of financial institutions contributing significantly to the financing of economic development, the State seeks to establish an integrated and comprehensive regulatory and supervisory framework for the financial services sector (Lina, 2014, p. 105). The massive cross-sectoral problems in financial services institutions, such as *moral hazard actions*, which are consistent with economic theory, show that moral hazard is caused by the existence of asymmetric information. Asymmetric information causes two things, namely moral hazard and adverse selection (mistakenly choose). *Asymmetric information* is a condition where information is not spread properly between economic actors, the lack of consumer protection and disruption of financial system stability are factors that require a strong role for supervisory institutions in the integrated financial sector (Taswan & Ragimun, 2009, para.2). In the case of Indonesia, problems ranging from the globalization of the conglomerate financial system to the threat of a financial crisis are considered to be unable to be handled only by the central bank. Therefore, establishment of an independent financial system supervisory institution, namely the Financial Services Authority (OJK) through Law No. 21 of 2001 as a result of the letter of intent agenda agreed between Indonesia and the IMF on the issue of structuring the Central Bank (Makmur, et.al., 2012, pp. 12).

The OJK's role in the financial system is considered very important for all supervisor agencies. This institution as a regulator and supervisor is expected to maintain its independence and accountability considering the complexity of financial conglomerates. The level of complexity of financial conglomerates can occur in two directions, namely upstream and downstream. Upstream Conglomeration means that there is one holding company that has many subsidiaries, and one of them is a bank. Meanwhile, Downstream Conglomerates are banks that have subsidiaries such as insurance and multi-finance. In that mechanism

and the many business lines carried out in it and the involvement of many parties in financial service transactions by business entities, there is the potential for conflicts of interest (Kasmir, 2018, pp. 323). However, regarding this matter, it is considered quite difficult for an institution to become completely independent, if the process of institutional strengthening still involves political institutions, in this case the DPR (political intervention) (Julius, 2012, pp. 155).

The independence of the regulator greatly influences the continuity of a stable and comprehensive financial system, to avoid crises which have an impact on high fiscal costs which are ultimately borne by the society (Julius, 2012, pp. 101). The complexity of financial conglomerates in Indonesia, which is in line with the concept of separating bank functions between commercial banks and investment banks, must also be in line with enhancement of supervision and regulation in the financial system in Indonesia. The increasing strength of financial conglomerates is still a matter of speculation, whether this is an opportunity or a threat. It is not surprising that regulators then pay great attention to monitoring the performance of conglomerates in Indonesia (Financial Services Authority (OJK) Report for Quarter III, 2016). Based on **the October 2020 OJK Report**, there were **45 groups that can be categorized as financial conglomeration with total group assets above 100 trillion Rupiah**. Based on that certain data, the number of financial conglomerates **decreased** because according to data from the OJK at the end of 2018, the number of financial conglomerates was 49 of which 36 groups were dominated by banking and contributing a total of 66.74% of its assets in the financial industry. Considering from a business and economic perspective, financial conglomerates create efficiency and synergy in running their business (Andar & Mohammad, 2022, p. 2189). However, this will be quite massive risks if it is not carried out with good risk management, because integration and the massive scale of the holding group in conglomeration will have the potential to increase systemic risk. Therefore, markets dominated by conglomerates absolutely undergo integrated supervision to facilitate systemic risk detection (Robert & Jean, 2001, pp. 262-263).

Director of Risk Management and Compliance PT. Bank Mandiri Tbk, Ahmad Siddik Badruddin stated that financial conglomerates have big challenges and massive risks in the continuity of the company's business. This can cause a contagion effect for infra group companies and can even be detrimental to the chief entity and cause a financial crisis if it is not decided through a very prudent and comprehensive analysis (Financial Service Authority (OJK), 2016). The massive and complex impact resulting from conglomeration in the financial sector which increases risk exposure requires integrated supervision between the **Banking, Non-Bank Financial Services Institutions (NBFIs) and Capital Market** sectors as cross-sectoral, comprehensive and effective (Makmur, et.al., 2012, pp. 23). As yet, the regulations as a legal basis for the practice of financial conglomerates, OJK has issued 3 main regulations, including **Financial Services Authority Regulation/POJK Number.45/POJK.3/2020 concerning Financial Conglomerates, Financial Services Authority Regulation/POJK Number 17/POJK .03/2014 concerning the Implementation of Integrated Risk Management for Financial Conglomerates and Financial Services Authority Regulation/POJK Number 18 /POJK .03/2014 concerning the Implementation of Integrated Governance for Financial Conglomerates**. Even though formally there are regulations that can become the legal basis for the practice of financial conglomerates, the World Bank considers that practically these regulations do not yet cover the whole aspect of conglomeration, especially the practical mechanism aspects of financial conglomerates. Considering that the related business lines are vital aspects of the financial system such as banks, insurance, financing and securities, each of which has different specifications. In a report entitled "*Global Economic Risk and Implications for Indonesia*" in September 2019, The World Bank said that one thing that authorities should pay attention to is the supervision of financial conglomerates. Considering that currently financial conglomerates represent 88% of banking assets, world banks assess that OJK's integrated supervision is hampered by governance arrangements in the institution's own rules (Agustiyani, 2019). Apart from that, this is also in line with the opinion of the *International Monetary Fund (IMF) Technical Assistance* which states that the OJK needs to review the current definition of Financial Conglomeration, by considering the materiality aspect of the Financial Conglomeration and applying thresholds based on certain criteria (Financial Services Authority (OJK), Banking, 2020).

It is very unfortunate that the aspects of supervision and regulation of financial conglomerates in Indonesia do not have a broad enough reach to all related aspects. Regulation of financial conglomerates is only centralized and strengthened in the banking sector, while regulations for other subsectors within financial conglomerates are still weak especially in securities sector. This is quite worrying considering that each business line within the scope of the financial conglomerate's holding has different specifications. This will also especially affect the control mechanism. So this still raises the potential for concerns about a domino effect from the collapse of financial conglomerates caused by systemic risks due to the massive impact. Hence, based on this concerning issue which the author has described above, the legal problem that the author will discuss is :

1. How to define and explain the financial conglomeration model used in financial system practice in Indonesia as well as the impact it has on the financial system
2. Why is it necessary to enhancement the role of the Financial Services Authority (Otoritas Jasa Keuangan/OJK) in supervising financial conglomerates based on factual data from conditions and impacts of financial conglomeration practices

As of that legal issues raised by the author, it is expected that the results of this research will provide insight for academics, practitioners and readers to understand how financial conglomeration practices are carried out in Indonesia, what impacts they have from a legal perspective and build critical thinking on the impacts so that there is a need to increase supervision of financial conglomeration practices by the Financial Service Authority (OJK) as one of the main subjects, a government agency, which plays a role in supervision and law enforcement in the financial sector.

RESEARCH METHODS

The research method used is normative legal research. Normative legal research is often referred to as doctrinal research which is research based on studies that are in accordance with established legal theories, regulation and positive laws related to the issue (Erica, 2021, p.5). This normative research also functions to provide juridical arguments when there is a legal vacuum, ambiguity and conflict of norms. In normative legal research, the legal materials used are primary legal materials, secondary legal materials and tertiary legal materials (Peter Marzuki, 2011, pp. 34). To find out and discuss a problem, an approach with certain methods is needed. The approaches used are legislation (*statue approach*) and *conceptual approach*. Based on that description, through

normative legal research carried out by reviewing existing legal data, both those derived from laws and regulation and those from various legal literature to examine and explain the ideal concept of the role of the Indonesia's Financial Services Authority (Otoritas Jasa Keuangan/OJK) in supervising financial conglomerations in Indonesia and why this is a need for improvement which indirectly does not yet have specific and comprehensive regulations. The legal material on this research, used to consider this issue is the one that makes it possible to explain important laws, such as draft laws, survey results, or expert opinions related to the ideal concept of the role of the Indonesia's Financial Services Authority (Otoritas Jasa Keuangan/OJK) in supervising financial conglomerations. Data analysis is an activity in research in the form of conducting studies on data processing. As for the data analysis technique used in this normative research, it is descriptive analytic characteristic, namely that the author in the analysis wishes to provide an overview or explanation of the subject of the research object as per the results of the research carried out by the author. Through this technique which has the aim of getting a complete conception of the prevailing legal situation by focusing on certain legal events that occur in society and then analyzing them using legal theories in order to obtain answers to existing problems (Mukti & Yulianto, 2013, pp. 192).

RESULTS AND DISCUSSION

1. The Impact of Financial Conglomeration Practices on the Financial System in Indonesia

The bank is a mediating institution that seeks to create monetary stability in a country. Anticipating all risks that occurred, a banking mediation bureau was formed whose task was to resolve bank disputes with customers (Irham, 2015, pp. 197). However, this innovation is considered to only cover narrow issues, personal issues and is only limited to the scope of individual transactions, whereas all transactions involved in financial conglomerates have a much more massive impact both in terms of quality and quantity. Hence, customers are the ones who suffer the most from the emergence of a crisis in the financial system caused by the domino effect of financial conglomerates.

Downstream conglomeration is clearly visible when a bank not only carries out business activities in the banking sector but also has subsidiary companies or sister companies in the insurance sector, financing companies and securities companies (Indonesia.Lembaga Pengembangan Perbankan Indonesia (LPPI), 2019). This practice is considered quite crucial in the financial system considering that financial institutions have a *financial intermediary* function (Julius, 2012, pp. 91-92). There is a need for comprehensive management in the financial conglomeration circle mechanism so that when one of the subsectors, be it a subsidiary group or its chief entity, falls, it will avoid the emergence of systemic risks which are quite dangerous for the stability of the financial system, namely the occurrence of a crisis. Considering the high probability of risks occurring, regulations related to financial conglomerates have been tightened, such as increasing the minimum threshold for the asset value of financial services entities that fall into the conglomerate category to above IDR.2 trillion. This is intended to limit and minimize the spread of financial conglomeration practices. However, this limit is massively low compared to the European Union which classifies a company as a conglomerate if it has total assets of IDR 95 trillion (Lalu Rahadian, 2019). However, based on this data **in fact, it can be considered quite good** regarding the level of awareness of third countries in dealing with financial conglomeration risk mitigation, because by setting a fairly low threshold for a holding to be categorized as a financial conglomerate, it will minimize the avoidance of individuals who avoid carrying out their obligations and enter regulatory supervision as a financial conglomerate holding.

World Bank and the IMF recommends deregulation of the financial sector to face economic globalization. This action due to balance the dynamic economy and overcome possible risks that may occur (Akhand, 2010, pp. 16-17). Regarding this recommendation, even if the Indonesian government is deemed necessary to deregulate financial conglomeration policies, one of which is by increasing the threshold for the total assets of a holding to be considered a financial conglomerate, then it would be a good idea to add regulations to cover holding companies in the financial sector that are not included in the scope of conglomerates. Considering that the business line is in a country's vital sector, this is still taken into account to finalize the risk mitigation mechanism. Therefore, in order to harmonize economic development, Indonesia needs to strengthen regulations and tighten supervision in order to minimize massive risks in future. However, regarding the politics of deregulation, the financial sector is also experiencing a dilemma. Because on the other hand, the emergence of financial conglomerates as a response to the global economy will also result in market monopoly practices which will cause an imbalance in market mechanisms (Arsjad, 1992, pp. 73-74). This is clearly visible when there is a combination of large companies that carry out business in the financial sector in order to obtain maximum profits. This creates a concentration of power and authority which has the potential to create a monopoly in the market (becoming a price leader) (Arsjad, 1992, pp. 78). As a result, a situation like this will create unhealthy market dynamics.

The emergence of the impact of the crisis due to unanticipated systemic risks from financial conglomerates led to economic collapses such as the financial crisis in the United States in 2007 (Fan Liao, 2011, p. 267). Based on the **Financial Services Authority (OJK) Report for the Third Quarter of 2016**, there are 102 financial conglomerates in Indonesia. Of that number, 44 of them are under integrated supervision. The assets of the 44 financial conglomerates reached IDR 5,446 trillion, equivalent to 84.2% of the total assets of the banking industry (Financial Services Authority (OJK) Report for Quarter III, 2016). However, this number has increased from year to year until in 2019 control of banking assets by financial conglomerates reached 88%. In fact, state-owned banks contribute the largest assets to the financial system because they have quite complete business lines. The rise of conglomeration that occurs requires efforts to maintain the country's financial stability to avoid a financial crisis. State financial stability is one means of assessing, identifying and managing financial risks such as those caused by cross-border integration which results in increasingly integrated systems in financial conglomerates. Apart from that, it also provides resilience for the financial system against economic collapse so that the intermediation and risk spreading functions continue to function properly (Julius, 2012, pp. 97-100).

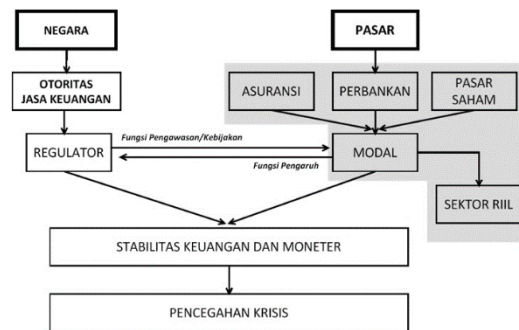
This phenomenon is in line with the *hybrid* idea related to the practice of banks running securities business lines in the context of moving towards a universal banking system. BI revealed that it would allow banks to trade shares on the capital market because of the low loan to deposit ratio in the banking industry. By allowing banks to trade shares, funds that banks cannot channel in the form of credit (idle money) can be utilized (Zulkarnain, 2007). Conglomeration in the banking sector had a serious impact on the

Indonesian economy in 1997 during the monetary crisis. This cannot be separated from the banking policy in 1992 where one of the government banks **was permitted to list** on the stock exchange after the government issued a policy that made it easier for the establishment of securities banks (Bank Indonesia, Author Team, 2011, p. 151). This is motivated by the fact that the concept of investment banks (securities) in the conglomerate system is considered to have the potential to improve the Indonesian financial system because of its long term characteristic so that it does not only concentrate on commercial banks as a source of short term funding. However, regarding this innovation, what are the legal consequences of allowing banks to carry out securities business lines? Considering that this has not been regulated specifically and comprehensively, it could give rise to legal loopholes or enabling clauses. The universal banking system does not separate bank business activities from business activities in the capital market. Even banks are also allowed to carry out insurance business activities. This concept is the root of the **foundation for the formation of holding companies** in the financial sector which are called financial conglomerates.

Based on Indonesian banking statistics data released by the OJK, total assets of commercial banks reached IDR 8,243 trillion as of June 2019. This means that around IDR 7,254 trillion of these assets are controlled by financial conglomerates. One can take the example of PT Bank Rakyat Indonesia (Persero) Tbk, whose total assets were IDR 1,288 trillion in the first semester of 2019. Its subsidiaries include BRI Syariah, BRI Agroniaga, BRI Multifinance, BRI Life, Danareksa Sekuritas, BRI Ventura Investama, and BRI Remittance Co Limited (Hong Kong) (Sorta Tobing, 2019). Activities that are quite speculative as a new business line carried out by banks but are not accompanied by adequate regulations will be very dangerous, because this is related to the form of risk mitigation that will occur, especially if it is carried out in a holding company system. There will be concerns about the emergence of a monetary crisis (Harinowo & Cyrillus, 2004, pp.62). Learn from the tragedy of the 1997 monetary crisis where many conglomerate companies used their holding companies to fund projects that were not feasible enough in sister companies without being balanced with adequate banking liquidity. This can be seen from the **Century Bank case**, until in the end the government decided to save it because it saw the conditions at that time when there was a global crisis which had the potential for a fairly massive domino effect on the banking system (Indonesia. The Central Bank of the Republic of Indonesia, 2017).

If studied thoroughly, the financial conglomeration mechanism can have quite effective potential from the aspect of expanding the financial sector as a vital line of business for a country. If the regulation and supervision of the mechanisms and forms of risk mitigation are comprehensive enough, it will minimize systemic risks which are quite crucial to the continuity of the country's financial stability system as well as the potential for financial business monopolies to emerge by several groups (Indonesia.Lembaga Pengembangan Perbankan Indonesia (LPPI), 2019). Market monopoly along with the concentration of quality human resources in only one group of business entities causes an imbalance in market mechanisms and equal distribution of resources. OJK, which acts as a regulator and supervisor, also needs to pay further attention. **In the concept of financial conglomeration does not contain clear product differentiation and market segmentation.** Because market segmentation and product differentiation are important to avoid the *domino effect* or *contagion effect* of a crisis in the financial market. Failures in the banking sector can cascade to the capital markets and insurance sectors due to the influence of system integration (the system can be seen in the picture below, and the gray part is a process where there is the potential for financial conglomeration to occur).

Image 1: Analysis Model of Interaction Patterns Between Indonesian Financial System



A large conglomerate may have hundreds of licensed entities spread across many sectors and many countries. The general model of financial conglomeration in Indonesia is **universal banking (German Model)** like the systematics that the author embedded in **image 1** (Dewa Ayu Putu Eva Wishanti, 2016) which the **part shaded gray of that image** is a process where there is the potential for financial conglomeration to occur. This kind of banking model in principle refers to the understanding that banks can automatically be involved in banking and non-banking financial activities without having to establish a separate legal entity (Bima Baskara Sakti, 2017). OJK as a regulator and supervisor if it does not implement a comprehensive supervision mechanism will become "**boomerang**" in the practice of financial conglomerates. Wibowo and Ham's 2016 research on 54 banks in 5 countries in ASEAN where the risk of bank default significantly increases systemic risk, especially in countries with a highly concentrated industrial structure (Wibowo et al., 2016, p. 63-74). The scope of the financial business controlled by one holding can have an impact on decreasing corporate risk and governance because business management is in one command center, so this is what is called a domino effect of systemic risk. Hence, ideally financial conglomerates will be quite effective and comprehensive for the country's economy if they have integrated risk management in one business group and are supervised by the authorities in an integrated actions between every financial sector (Indonesia.Lembaga Pengembangan Perbankan Indonesia (LPPI), 2019). There are 3 strength of this model, **the coverage that is reached for profit is very wide because the business line offered can be numerous and varied profit (economic of scale), easy to cross-selling products and maintaining customer loyalty through**

provide all services in one place. However, the main weakness of this model which appeared in practical is **mostly that management is very complex because it has to coordinate so many business area whereby all that kind of sector has a crucial character** (Andar & Mohammad, 2022, p. 2189).

An integrated financial sector monitoring survey by the World Bank covering 12 countries shows the market share of financial conglomerates operating in the banking, securities and insurance industries is rapidly increasing. Interconnected financial networks have diversified corporate risk exposure and spread through means of transmission (Bima Baskara Sakti, 2017). The impact of conglomerated banks can increase or conversely reduce systemic risk depending on the quality of control. However, in conglomerate practice, systemic risks are greater because these banks, generally in a massive scale, are very vulnerable to being exposed to the impact of that risk. The linkages between these subsectors have the potential to spread uncontrolled risks if not managed adequately. Especially considering that the concept of the financial conglomeration system triggers a monopoly with the concentration of all alternative business lines in only a few large groups.

2. Efforts to Enhancement the Role of the Financial Services Authority (Otoritas Jasa Keuangan/OJK) in Supervising Financial Conglomerates Realized Through Policy and Regulation

One of the supporting factors for financial system stability is increasing the effective supervisory function of financial institutions, this is stated in **the 2004 Indonesian Banking Architecture Program (API)**. However, because the API has ended in 2013, the OJK is currently preparing an Indonesian Banking master plan for 2014-2023. The preparation of the master plan takes into account the dynamics that occur both globally, nationally and in the banking industry itself (Julius, 2012, pp. 450-452). The idea of further increasing and tightening supervision of financial conglomeration practices is not intended to restrain financial institutions' business expansion enterprise. On the other hand, improving governance and risk management through integrated supervision will have an impact on increasing investment confidence and certainty (*market confidence*), thereby facilitating efforts to deepen financial markets (Apri Sya'bani, 2019). In principle, with this integrated supervision mechanism, all regulators, including the OJK, are integrated with each other and work together to prevent systemic risks from conglomerates. Hence, an independent institution overseeing the financial industry was formed. Because this is considered incapable if it is only handled by the central bank itself (Zulkarnain, 2007). However, due to the dualism of the concept of supervision between BI and OJK, it is considered that this will create coordination problems because supervision of all aspects such as regulations, audits, imposition of sanctions and granting/revoking business permits should be in one hand. So, it can be said that BI's domain is more focused on substantially regulating banking systematics, while OJK will have all the supervisory functions.

Viewed from another perspective, the OJK as a new institution in supervision still needs to be looked at further regarding political intervention. It is felt that this will be difficult because the process of strengthening institutions still involves political institutions. This is because the quality of OJK's independence influences the realization of transparency and achievement of financial stability goals (Firman Kusbianto, 2013). Institutionally, the OJK is outside the government itself and politics means that the OJK is not part of the executive and legislative branches or even the judiciary. However, it cannot be denied its connection with other fiscal and monetary authorities. Hence, in order to maintain financial sector stability, the OJK is obliged to coordinate with Bank Indonesia, the Ministry of Finance and the Deposit Insurance Corporation. Coordination between these institutions is of course to support and realize a stable and sustainable financial sector system (Zulfi, 2013, p. 376). To be able to analyze financial conglomerates further, apart from having quite massive risks, if this mechanism reviewed properly, this practice is considered quite effective. Through financial conglomerates, they can increase competitiveness, economic scale and business volume, increase efficiency through developing infrastructure, *delivery channels*, optimizing product and service portfolios through promotion and strengthening branding, cross selling and distribution channels as well as strengthening business through LJK integration and increasing *fee based income*. Meanwhile, the negative impacts of financial conglomeration include increasing financial sector risks through *contagion effects*, conflicts of interest, abuse of economic power and increasing infrastructure transactions which have the potential to become the grassroot of the *domino effect* problem if not managed properly (Financial Service Authority (OJK), 2016). What is worrying about the concentration of power by the Financial Conglomerate in Indonesia is, among other things, what was stated by Alfred Chandler, **where giant companies have replaced competition in the market which is regulated by the "invisible hand" with real hand planning (visible hand of planning) which becomes the consolidation of planners economics and finance but with the sole motive of seeking profit, not for the public interest, so that phenomena like this will later lead to an imbalance in the market mechanism** (Arsjad, 1992, pp. 75). The legal question that arises is what legal consequences arise from allowing banks to trade shares towards a universal banking system (*German Model*). Is it necessary to amend **Act of The Republic Of Indonesia Number 10 of 1998 concerning Banking** or **Act of The Republic Indonesia Number 8 of 1995 concerning Capital Markets** which currently acts as the main legal basis. The Banking Law and the Capital Markets Law do not explicitly prohibit banks from trading shares. However, the business activities that banks can carry out are regulated **as a limited in Articles 6 and 7 of Act of The Republic Of Indonesia Number 10 of 1998 concerning Banking**. Although **Article 6 letter (n)** provides a few legal loopholes that can be used to provide justification for banks carrying out share trading activities. Article 6 letter (n) allows banks to carry out business activities that are normally carried out by banks. The need for amendments to the Act of The Republic Of Indonesia Number 10 of 1998 concerning Banking may even require the creation of a new regulation in Banking realm. This is due to the need for limits on the two financial systems (securities and banking) and even if the two types of industry can be combined, further more comprehensive regulations are needed to provide limits on the boundaries to which banks can carry out business activities in the securities sector and vice versa.

The mirror of financial conglomerates in Indonesia is based on the experience of the United States. Separation between commercial banking and investment banking (securities companies) business activities. However, the US has taken countermeasures against the wave of bank bankruptcies that hit the country which was caused by economic stagnation which ultimately resulted in **Gramm-Leach-Bliley Act (GLBA)** as a replacement of the **Glass-Steagall Act** on 12th November 1999. GLBA only allows financial holding companies (FHC), a part of a bank holding company that carries out new financial activities including merchant banking (Zulkarnain, 2007). Supervision of financial conglomerates is one of the World Bank's highlights regarding the resilience of the financial system in Indonesia. OJK as the referee is considered to have limitations in supervising

financial conglomerates due to the institution's governance regulations. This was contained in the **World Bank's presentation entitled Global Economic Risk and Implications for Indonesia** in September 2019. However, it is very unfortunate that regarding this criticism, the OJK was unable to provide a further opinion and justification because the World Bank had not previously discussed this matter with the OJK (Indonesia, Financial Service Authority (OJK), 2015). Based on criticism from the World Bank, if you look at it thoroughly, the OJK Regulations cannot yet cover the entire mechanism of the financial conglomeration system. There are several things that are deemed necessary to be reviewed, such as **determining risk supervision of financial conglomerates into one team, eliminating the responsibility of internal commissioners for each sector and including the holding company system** (which is not identified as a financial conglomerate) into the OJK regulatory space. Hence, this can prevent the emergence of quite crucial legal loopholes in the financial conglomeration system. Regarding financial conglomeration practices in Indonesia, OJK in principle needs to increase integrated supervision. This is based on the provisions of **Article 5 of the Law of the Republic of Indonesia Number 21 of 2011 on Financial Services Authority** where the OJK functions to organize an integrated regulatory and supervisory system for all activities in the financial services sector. This integration-based supervision is aimed at consolidated supervision of financial conglomerates. In order to support integrated risk-based supervision, financial conglomerates are required to implement integrated governance. Specific arrangements related to this matter are contained in the provisions of **POJK Number 17/ POJK.03/2014 concerning Integrated Risk Management and POJK Number 18/POJK.03/2014 concerning Integrated Governance**. Meanwhile, specifically, the latest POJK has recently been issued regarding financial conglomerates which are included in the provisions of **POJK Number 45/POJK.03/2020 concerning Financial Conglomerates**.

Through that regulation above, there are provisions that are quite interesting to discuss regarding the Company Charter where OJK has the purpose to make this **Corporate Charter as a detailed monitoring tool or instrument as one of the preventive action**. Basically, in Indonesia the existence of Corporate Charter is not common in practical, because its legal position is only as **a form of work guide document to fulfil the practice of implementing Good Corporate Governance (GCG) or can be said to be a mere bureaucratic document**. Theoretically, related to corporation realm, *Corporate Charter is a contract between the state and the corporation, between the corporation itself, between the stakeholder and the corporation, and also the stakeholder and the state itself*. Hence, corporate charter that's mean not an agreement in privat sector realtionship but **a form of legal document for the establishment of corporation**. To make it easier to understand this matter, such as in US and Canada, the position of charter in corporation realm is more commonly known as the Deed of Establishment or Article of Association. According to POJK Number 45/POJK.03/2020 concerning Financial Conglomerates, *a corporate charter is an agreement between the main entity and its members of the financial conglomerates*, on one side based on OJK version the meaning of corporate charter is related to meaning by Blacklaw Dictionary is *corporate contract* (Black, Henry Campbell, 1986). Hence, based on the explanation above, it can be understood that the legal characteristic of this corporate charter is **an agreement**, so that in the context of private law must fulfil the principle of agreement or contract that are regulated in the Civil Code (KUHPer) according to Article 1320. In the context of a financial conglomerates practice, where there is an ownership and control relationship between the main entity and member entities, control through a corporate charter in the form of an agreement makes the subsidiary's position balanced and its position is equal to that of the main entity, ideally, between the parties voluntary agree according to their balanced rights and obligations.

Specifically, the purpose of a corporate charter is not explained clearly in POJK Number 45/POJK.03/2020, but as indirectly we can capture the implicit purpose of using **a corporate charter** from reading all the rules of POJK Number 45/POJK.03/2020. The function of corporate charter for financial conglomerates, theoretically, is to mitigate the impact of its weakness and promote its advantages of financial conglomeration mechanism, so that it is **to enhancement the efficiency and effectiveness of risk based supervision**. Based on that contidition its necessary to first analysis about the existing financial conglomerates model. As explained in section analysis before, Indonesia basically adopt unicersal banking model (*german model*). However, this is only analyzed based on practice and not formally stated in regulations, so that it is necessary to carry out regulatory specifications starting from the inclusion of financial conglomeration models and terminology legal. This is input from the Technical Assistance of the IMF and the World Bank which explains that OJK needs to review the current definition of a Financial Conglomerate. Beside on that theoretical reasons, this recommendation arises considering that the number of financial conglomerates in Indonesia is very large and has a high disparity. Hence, **the existing conglomerate management provisions are deemed insufficient to supervise effectively and efficiently**. In addition, according to the chairman of the OJK Board of Commissioners, Wimboh Santoso, he said that OJK regulates financial conglomerates in order to be able to analysis in more detail the condition of conglomerates companies, which if problem arises can pose potential risks to to the financial services sector, especially those that can cause spill over to the financial sector, either through the transmission of insurance companies, bank and capital markets (Indonesian, Financial Service Authority, 2017). The crucial factors why financial conglomerates, need strict supervision from OJK, describe by Ryan Kiryanto (an OJK Expert Staff) as follows :

1. The financial sector has a significant role in the development of the national economy
2. The Importance of the role of financial conglomerates in the country
3. Current financial conglomerates tend to carry out excessive risk-taking product
4. Financial products/services from conglomerates occur across sectors, of course becoming very complex and dynamic and has the potential to increase risk exposure
5. The source of crisis vulnerability in the financial sector are absolutely very diverse, so supervision is needed to prevent the emergence of systemic risks in the financial sector

The position of the Corporate Charter as a crucial legal document in the financial conglomeration mechanism is based on the premise that several aspects regulated in this document help simplify and clarify the supervisory mechanism for financial conglomerates by the authorities. Therefore, regarding to **article 5 paragraph (2) POJK Number 45/POJK.03/2020**, it states that the corporate chartee shall at least contain :

1. The purpose, the basis for preparation and the scope
2. The structure of Financial Conglomerate
3. The duties and responsibilities of the Main Entity directors and directors of LJK members of financial conglomerate

Furthermore the crucial aspect to regulate is the scope of duties and responsibilities of managing the financial conglomerate whereby that aspect should be adjusted substantially with the characteristic of each financial conglomerates models. However, what is unfortunate about the separate entity concept is that the implementation of corporate charters as an important component in assisting the supervision of financial conglomerates by the authorities is limited by the limited liability company concept regarding **The Law Of The Republic Of Indonesia Number 40 Of 2007 concerning Limited Liability Company**. Hence, corporate charter cannot be a whole used as a supervisory tool. OJK needs to optimizing the concept of financial conglomerate's corporate charter as a comprehensive and detailed supervisory tool. As a financial conglomerate, which is automatically a complex organization, control is one of the main ways for the main entity to ensure that strategic objectives can be achieved together with all LJK member entities. The crucial aspect of controlling, which takes from the concept of **organizational management** is the process of evaluating to find out how well an organization is achieving its goals and taking corrective action to enhancement performance. Strategically, needs to carry out detailed supervision of financial conglomerate that involves individual entities to ensure that the conglomerate will not disrupt the national financial system (Andar & Mohammad, 2022, p. 2190-2195). Therefore, in the legal concept of a *limited liability company*, to obtain comprehensive supervision of the business activities of the subsidiary by the main entity, the duties and responsibilities of *Board of Director (BoD)*, *the Board of Commisioners (BoC)*, and *the GMS* of the LJK entities that are members of conglomerates also need to be regulated in line with the vision and mission of the main entity in the corporate charter.

The reason why financial conglomerates need to be supervised under the integrated supervision of the OJK is because financial conglomerates are characterized by the presence of *asymmetric information*, *agency problems*, *moral hazard*, etc., causing excessive risk taking behavior, procyclicality, contagion risk and systemic risk (Elisa Valenta Sari, 2014). The rapid development of interaction and linkages between financial institutions requires the existence of an integrated supervision pattern that is able to detect problems within conglomerates early, so that it does not spread to other financial institutions (Financial Service Authority (OJK), 2016). Supervision of Financial Conglomerates is especially important to avoid systemic risks. OJK will issue POJK concerning Financial Conglomerate Holding Companies (PIKK) which requires Financial Conglomerates (KK) to have a holding company through **RPOJK Number /POJK.03/2017 concerning Financial Conglomeration Holding Companies (PIKK)**. This is an effort to complement and strengthen integrated supervisory policies and system for financial conglomerates. Reviewing the scope of integrated supervision in financial conglomerates consists of 3 aspects, **the main entity, subsidiary companies and related companies** (*sister companies*). Authorities are required to identify ownership and control links with other financial institutions in determining Financial Conglomerates. This will later be related to the structure of the financial conglomerate (Financial Service Authority (OJK), 2019). **The Main Entity Concept** in integrated supervision has limitations, namely the EU **have no control towards other LJK's**, who are members of the Financial Conglomeration (KK), which can make it difficult to implement integrated risk management, governance and capital. The EU function which has been able to be carried out by one of the LJK's in the KK will later be carried out by the PIKK. With PIKK as a holding company, it is hoped that it will make it easier for Controlling Shareholders (PSP) or Final Controlling Shareholders (PSPT) to monitor the development of their financial services business (Suhaeradi, 2017). Hence, Coordination of Financial Conglomeration in implementing risk management, governance and capital in an integrated characteristic is easier when compared to the EU concept. The provisions of POJK Number 45/POJK.03/2020 concerning Financial Conglomerates regulate changes to the KK criteria from initially only considering the existence of ownership relationships by the same party, to also considering aspects of the diversity of the financial sector and total financial conglomeration's assets. Financial group is only declared a Financial Conglomeration (KK) if its business line is more than 1 sector and total assets are greater than or equal to 100 trillion. It is hoped that the POJK provisions can complement and strengthen integrated supervision policies, expand integrated supervision systems and methodologies, and strengthen the implementation of integrated supervision.

OJK claims that supervision of conglomerates keep going. The authority also routinely creates an **Integrated Risk Rating (IRR) to measure the health level of financial conglomerates every 6 months**. Every month OJK holds a deputy meeting and an integrated supervisory committee meeting to prepare the IRR (Lalu Rahadian, 2019). There are six stages of integrated supervision of financial conglomerates that have been carried out by OJK as preventive action, namely 1) Collecting various data and information related to financial conglomerates, 2) Creating a risk profile which is supervised by panelists and the control and quality supervision department, which is aimed at creating a health ranking of conglomerates, 3) Forming a supervisory plan, which is made after hearing the panelists' recommendations, 4) OJK carries out inspections based on the risk profile prepared, 5) Conducts field research before making IRR updates, 6) Monitoring and supervision. On the other hand, world banks consider that the integrated supervision mechanism of KK still has quite a lot of gaps and legal loopholes between regulation and supervision. One of the factors that gave rise to this assessment was that integrated supervision was not yet strong and did not include comprehensive holding supervision. Hence, deregulation of the *main subjective* aspects of regulation and the entire risk management mechanism along with integrated governance was needed which gave sole authority to the OJK. This is intended so that the authorities have the legitimacy to place integrated supervisors in one unit whose position is equal to and/or above the supervisors of each sub-sector of financial institutions, considering that each has a "**single umbrella**" in their respective domains. This is aimed at effective implementation of *supervisory plans*, *coordination*, *exchange of information*, *follow-up on conglomeration risk findings*, and *action plans* if at a certain point an increase in systemic risk to the financial system is detected.

Strengthening the supervisory function of the financial sector also needs to be supported by enhancement the concept of the authority mechanism which refers to **the Principles for the Supervision of Financial Conglomerates - Bank of International Settlements**, where the application of *non-operating holding companies* (NOHC) needs to be introduced as a new form of legal entity (Bank for International Settlements (BIS), Report on Supervisory Colleges for Financial Conglomerates, 2014). Through the existence of the NOHC, it can function as a supervisory arm in managing and supervising conglomerate groups by enforcing the group, including non-financial services conglomerate members, more effectively. The tendency to change the system towards a universal bank system in bank business activities which is the forerunner to the formation of financial conglomerates has also given rise to debate about the need to harmonize the supervisory system between bank supervisory institutions and supervision of non-bank financial institutions (**dualism of authority**). What still raises a big question is "**who will bear the burden of responsibility if a bank fails due to its business activities in the capital market**". Therefore, it is necessary to expand regulations

and supervision to cover these new activities (Zulkarnain, 2007). To overcome this, one alternative settlement is to bring the regulation and supervision of banks, securities sector and insurance sector under “**one roof**”, as was the approach taken by the UK by establishing the *Financial Services Authority* (FSA).

Apart from reviewing the supervisory mechanism, one thing that must be highlighted as a main principle is how companies that are members of a financial conglomerate can implement good corporate governance (GCG) in running their business which is within the scope of supervision. The chief/main company must guarantee that business activities within and outside the business group remain transparent, accountable, independent and carried out fairly (Indonesia.Lembaga Pengembangan Perbankan Indonesia (LPPPI), 2019). The method that is considered quite effective in risk mitigation and supervision in financial conglomerates is the active role of the chief/main entity and the sole authority in the financial conglomerate to consistently implement integrated risk management. Active supervision from external supervisors also needs to be increased, especially in relation to intra-business group transaction risks. The main/chief entity also needs to conduct periodic evaluations of its subsidiaries for early detection of potential or risks faced as preventive action by subsidiaries and affiliated companies (*sister companies*). The prospects for banks belonging to financial conglomerates are considered to have great potential for growth, especially if governance is maintained properly and professionally so that people can continue to trust in using the financial services offered by financial conglomerate groups. The large public's trust in large banks can also have an impact on the entire structure of the companies in the holding, starting from subsidiaries and sister companies. Therefore, many subsidiary companies still use the name of their main/chief entity. This condition indicates that the financial industry is closely related to public trust.

CONCLUSION

A financial conglomeration is a group of financial service institutions that are owned or controlled by the same party and carry out material activities in at least two different financial service sectors (Banking Industry, Capital Markets, or Non-Bank Financial Industry (NBFI)). Meanwhile, for a definition that further specifies the parameters of a financial conglomerate, legally it can be qualified if a financial group can be said to be a **financial conglomerate** if it includes the qualifications of running more than 1 financial business which is in one group and has related ownership and total assets of more than or equal to 100 trillion. . This is stated in POJK Number 45/POJK.03/2020 concerning Financial Conglomerates. The problems that arise due to the widespread practice of financial conglomerates are considered because financial institutions are a crucial aspect in a country's financial system. This is based on the fact that financial institutions are the foundation that determines whether a country's financial stability is strong or not. If it is not managed comprehensively, it will be vulnerable to causing a country's monetary crisis because as a result of the contagion effect in the country's financial system.

Based on the research analysis above, financial conglomeration practices must fundamentally and adequately be managed comprehensively and adequately considering their quite complex characteristic. On the other hand, if the financial conglomeration mechanism is applied in the financial system, this is considered to be massively effective for an entity to be able to develop a financial business and as a step to diversify the products to be managed. However, this is also in line with the risks that arise if this mechanism fails to be managed properly because this will give rise to systemic risks (**domino effect / contagion effect**) which will later result in a monetary crisis that threatens the stability of the country's financial system. The widespread implementation of financial conglomeration practices in Indonesia as the third country (*developing country*) is considered quite worrying considering the risks posed are quite massive. Therefore, efforts are needed to increase enhancement a vital role in having a supervisory regulatory function which is realized in making financial supervision policies. This is expected to be able to monitor all capital circulation mechanisms in the domestic market by 3 market actors, namely banking, stock exchange (securities) and insurance. In term of assisting against mitigating risks in quite complex financial conglomeration mechanisms, the corporate charter can indeed be an instrument or tool to supervise a financial conglomerate as the purpose of the issuance of POJK Number 45/POJK.03/2020 concerning financial conglomerates. This is based on the main function of that arrangement in the practical realm in the world, corporate charter is usually related to the implementation of Good Corporate Governance as a compliance duties of the company. But in Indonesia, the corporate chapter regarding POJK Number 45/POJK.03/2020 concerning financial conglomerates has not yet been fully used as an effective instrument to helping supervision against financial conglomeration by authority. This can be seen from the substance of that arrangement which does not require to include the control strategy of LJK member entities in the corporation.

Regarding supervision of financial conglomerates which must be carried out quite prudently and comprehensively, both in terms of mechanisms and policies, as described in the author's analysis above. This is in line with the World Bank's assessment where OJK regulations are deemed not to have reached financial conglomerates as a whole and are still very general. However, what needs to be paid attention to is that if the policy that is the comparative aspect is the financial policy of a superpower like the US, it needs to be studied more comprehensively and looked at from various aspects to review Indonesian policy considering that the financial conditions of the two countries are different. **Even though the fundamentals can be seen from the policy framework which is quite comprehensive and specific, the substantial aspects must still be adjusted to the conditions of the financial system of the country concerned.** Justification from the impact of financial conglomerates on other aspects such as market conditions, if you want to entrust market forces to advance the economy, don't let there be a monopoly in the market, which will cause market mechanisms to become inefficient and possibly result in systemic failure in the financial system. Even though the financial conglomeration (KK) already has regulations in the provisions of POJK Number 17/POJK.03/2014 concerning Integrated Risk Management and POJK Number 18/POJK.03/2014 concerning Integrated Governance as well as the most recent POJK namely POJK Number 45/POJK.45/ 2020 concerning Financial Conglomerates. However, these three regulations do not cover all aspects of financial conglomerates mechanism and further impact, even if they are seen as only regulating issues in technical aspects, considering that the substantive components of financial conglomerates are quite complex.

Regulations on financial conglomerates are also considered to have not even covered the basic aspects, namely how companies that are members of a financial conglomeration can implement good corporate governance (GCG) in running their business lines. Remembering these basic principles must be emphasized rigidly because when the basic principles can be firmly enforced then regulations in other aspects will also be able to better support other regulations. Regarding the Main Entity concept in financial

conglomerates, it also has many limitations, namely that the EU does not have control over other Financial Services Institutions (LJKs) that are members of the Financial Conglomeration (KK), so that it can make it difficult to implement integrated risk management, governance and capital. Hence, this concept is planned to be changed to a holding company concept specifically for the financial services sector. Therefore all KK activities can be consolidated and controlled by the Financial Conglomeration Holding Company (PIKK). This is stated in RPOJK Number /POJK.03/2017.

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