



## Legal Implications of the Merger Policy of Bank Mandiri Syariah, Bni Syariah and Bri Syariah into Bank BSI

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### **Abstract**

The merger of Bank Syariah Indonesia (BSI), which resulted from the combination of three Islamic banks owned by Himbara, aims to strengthen the structure and improve efficiency in the Islamic banking system in Indonesia. However, this process brings legal challenges relating to contractual alignment, data protection, and compliance with sharia principles. This study aims to (1) assess the extent to which the BSI merger complies with applicable laws, (2) identify legal issues that arise during and after the merger process, and (3) formulate a legal approach to risk management. The methodology used in this research is a juridical-normative approach, through analysis of regulations and documents related to the merger. The results of the analysis show that harmonization of contracts based on DSN-MUI fatwa is very important, as well as the need for the establishment of a compliance unit that has cross-sector functions. Customer data integration requires a system capable of protecting data and regulating technology in accordance with the PDP Law and POJK 6/2022. Therefore, it can be concluded that the management of the BSI merger must be based on the principles of prudence, transparency, and strengthening integrated sharia governance to support stability in the Islamic financial system at the national level.

**Keywords:** *Banking Law; Bank Syariah Indonesia; Merger; Legal Implications; Consumer Protection*

### **Introduction**

#### **Background**

Bank Syariah Indonesia (BSI) is the product of the merger of three Islamic banks owned by the Association of State-Owned Banks (Himbara) consisting of BRI Syariah, BNI Syariah, and Bank Syariah Mandiri. One of the objectives of this merger is to strengthen the institutional structure and improve the operational efficiency of the national Islamic banking sector. BSI is projected to become the largest Islamic bank in Indonesia with the ability to compete regionally and internationally as a result of the consolidation of financial institutions (Hakimi, Maf'ula, & Gultom, 2024). However, this consolidation may raise many complex legal issues, especially with regard to contract reconciliation, internal legal system adjustments, and the protection of customers' personal data. According to Shoimah and Susanti

(2022), combining data from all three banks into one post-merger big data system may pose challenges to the consumer legal protection system that requires adherence to prudential principles and information transparency.

When reviewing from the aspect of the law, in general, it is regulated in several laws such as Law Number 21 of 2008 concerning Islamic Banking, which aims to build a banking system that follows the principles of Islamic sharia. This system will regulate various business activities of Islamic banks, prudential principles and protection of customer rights, and the integrity of the Islamic financial system. Then, Law No. 40 of 2007 on Limited Liability Companies aims to serve as a basic standard in the corporate merger process to ensure that mergers are conducted transparently, fairly, and with the approval of corporate bodies such as the GMS, while considering the interests of creditors, shareholders, and other related parties. Then, Government Regulation No. 28/1999 on Bank Mergers, Consolidations, and Acquisitions influenced the BSI merger with the main objective of ensuring the stability of the banking system and protecting the interests of the public who use bank services. In addition, technical regulations of the Financial Services Authority (OJK), such as OJK Regulation Number 6/POJK.07/2022 on Consumer and Community Protection in the Financial Services Sector serve as regulations that emphasize the obligation of financial services institutions including the merged bank to convey information correctly, fairly, and ensure access to consumer complaint mechanisms.

Although there are regulations governing the bank merger process, the reality is that there are still many legal issues due to the different legal structures, operational systems, and organizational cultures of each merged bank. The President Director of BSI admitted that these differences hindered integration (Pikahulan, Andini, & Pradana, 2022). This suggests that the legal risk management element of the merger has not been fully taken care of. In addition, according to Anika, Chairunnisa, and Saputro (2021), other bank mergers are still postponed due to technical constraints and compliance with Bank Indonesia and OJK regulations. This shows that mergers of financial institutions, especially banks, are not just a matter of business or marketing plans, but also involve legal compliance, conformity of procedures, and protection of customer rights.

Therefore, juridical-normative research is important to see how compliance with Islamic bank merger regulations is applied and how legal problems can be found and avoided. The objectives of this study are as follows: (1) evaluate whether the BSI merger complied with the applicable laws and regulations; (2) evaluate the legal issues that arose during and after the merger process; and (3) develop a legal approach to manage the risk of Islamic banking mergers so as to support a healthy and strong national financial system.

## ***Theory Review***

### **1. Overview of Banking**

Banks are a service industry that provides services to the public and is a financial institution or agency whose main task is to collect money from third parties as an intermediary to channel credit demand and supply at a specified time. According to G.M.Verryn Stuart in Sobana, H, B, A (2016), a bank is an entity whose main business is to create credit aimed at satisfying credit needs, either by means of its own payment or with money obtained from others or by circulating new means of exchange in the form of chiral money.

According to Sobana, H, B, A (2016), explains the function of banks, as follows:

1. Gold or silver depository services.

2. Perform currency exchange transactions (money exchanger) one country with the currency of another country in accordance with the request of traders, which is recorded on the liabilities side (credited), which is in the form of liabilities in the current account, meaning that the account can be added to new deposits and can be withdrawn at any time (by debiting the account) by the account owner.
3. Cashier or cash holder of the account holder.
4. Manage money deposited by customers.
5. Lender. In the beginning, the money lent was in the form of gold or silver coins that came from the account holders' deposits.

The types of offices are divided into 4 types according to Sobana, H,B, A (2016), namely:

1. In terms of function, for example, commercial banks and rural banks.
2. In terms of ownership, for example, government-owned banks, national private banks, cooperative-owned banks, foreign-owned banks, and mixed-owned banks.
3. In terms of status, for example, foreign exchange banks and non-foreign exchange banks.
4. In terms of how to determine prices, for example banks based on conventional (Western) principles and banks based on sharia (Islamic) principles.

## **2. Definition of Islamic Banking**

Islamic banks or Islamic banks are financial institutions whose main purpose is to provide financing and additional services in the payment and circulation of money, and their operations are carried out in accordance with Islamic sharia principles (Rusby, Z, 2017). In carrying out its operations, Islamic banks do not use interest in every transaction because it is considered ribawi and choose to use other mechanisms that are in accordance with Islamic law (Hakim, L, 2021). In addition, the principles and values used in Islamic banks are based on Islamic law by fulfilling its philosophical basis according to Hakim, L (2021), namely: productivity, fairness, and ethical business morality.

According to Hakim, L (2021), explains the operations of Islamic banks as follows:

1. Islamic banks collect funds from the public in the form of deposits and investments (participation), this is realized in the form of savings products, current accounts and deposits.
2. Islamic banks channel funds to people who need funds from banks in the form of products with the principles of profit sharing, buying and selling or renting.
3. Islamic banks provide services in the form of services, and earn fees, such as money transfers, bank guarantees, factoring (hiwalah) and so on.

Islamic banks have several kinds of banks based on their activities. According to Hakim, L (2021), Islamic banks can be divided into Sharia UMUM Banks which in their activities provide services in payment traffic, Sharia Business Units which are offices or units that carry out business activities based on Sharia Principles, or work units at branch offices of a Bank domiciled abroad that carry out business activities conventionally which function as the parent office of sharia sub-branch offices and / or sharia units, and Islamic People's Financing Banks (BPRS) are Islamic Banks which in their activities do not provide services in payment traffic.

### 3. Definition of Merger

Merger is the process of merging two companies with one of them continuing to stand with its company name, while the other is included in the company that continues to stand (Untung, H, B, 2019). According to Untung, H, B (2020), the types of mergers can be divided into 4, namely: horizontal mergers, vertical mergers, con-generic mergers, and conglomerate mergers. Based on the Government Regulation of the Republic of Indonesia Number 28 of 1999 concerning Bank Mergers, Consolidations, and Acquisitions, the President of the Republic of Indonesia considers the following matters:

- A. That in order to create a banking system that is healthy, efficient, resilient and able to compete in the era of globalization and free trade, efforts are needed to encourage Banks to strengthen themselves through Mergers, Consolidations and Acquisitions;
- B. Whereas considering that a Bank is a business entity whose main activity is to collect and distribute public funds, the provisions of Bank Mergers, Consolidations and Acquisitions need to be specifically regulated in a Government Regulation.

### 4. Definition of Consumer Protection

Consumers according to Az. Nasution in Indradewi, A, A, S, N (2020), is everyone who gets goods for use and not for trading or trading again. The principles of consumer protection based on (Consumer Protection Law) UUPK article 2 in Kusumadewi, Y and Sharon, G (2022) explain that there are 5 principles underlying the implementation of consumer protection, namely: benefits, justice, balance, consumer security and safety, health, environmental insight, and legal certainty. Then, the objectives of legal protection are contained in Article 3 of GCPL in Kusumadewi, Y and Sharon, G (2022), as follows:

1. Increase consumer awareness, ability, and independence to protect themselves;
2. Raising the dignity of consumers by preventing them from negative access to the use of goods/services;
3. Increase consumer empowerment in choosing, determining, and demanding their rights as consumers;
4. Create a consumer protection system that contains elements of legal certainty and information disclosure and access to information;
5. Raising awareness of business actors about the importance of consumer protection so that an honest and responsible attitude in business grows;
6. Improve the quality of goods/services that ensure the continuity of the business of producing goods and/or services, health, comfort, security, and safety of consumers.

According to Shidarta in Indradewi, A, A, S, N (2020), consumer rights can be sorted systematically as follows: the right of consumers to obtain security, the right to obtain correct information, the right to be heard, the right to choose, the right to obtain goods and / or services in accordance with the exchange value given, the right to obtain compensation, the right to obtain legal remedies, the right to obtain a good and healthy living environment, the right to be protected from the negative consequences of fraudulent competition, and the right to obtain consumer education.

## **Research Methods**

The qualitative, juridical-normative research method focuses on literature research and analysis of laws and regulations and official documents relating to Islamic banking mergers in Indonesia. This research mainly focuses on analyzing the legal aspects of the merger of three Islamic banks owned by Himbara into Bank Syariah Indonesia (BSI) based on applicable legal regulations such as the Islamic Banking Law No. 21 of 2008, Limited Liability Company Law No. 40 of 2007, Government Regulation No. 28 of 1999 on Bank Mergers, Consolidations, and Acquisitions, as well as Fatwa DSN-MUI and OJK regulations are the primary and secondary data sources of this research. The analytical methods used in this research include statute approach to interpret written legal provisions; comparative legal analysis to compare conventional and sharia merger regulations; and content analysis to assess the conformity between merger practices and legal standards.

## **Results and Discussion**

Based on the Syariah Banking Law No. 21/2008, prudential principles and information disclosure should have been the basis for BSI's operations after the merger. However, differences in internal legal systems and cultures between the merged banks pose challenges in harmonizing financing contracts, which could lead to legal uncertainty for customers. As such, BSI should develop guidelines for harmonizing contracts based on DSN-MUI fatwas and establish a dedicated compliance unit that can perform cross-functional tasks to conduct a systematic review of all contracts. This initiative will not only fulfill the provisions of Article 22 of Law 21/2008 regarding transparency of sharia products, but will also strengthen the protection of customer rights through an integrated internal audit system. In addition, referring to Law No. 40/2007 on Limited Liability Companies, particularly regarding the General Meeting of Shareholders and protection for creditors, BSI is required to ensure that the approval process for the merger as well as the share conversion option are properly informed to minority shareholders and creditors. Lack of good communication practices can lead to corporate disputes that often slow down the implementation of another bank merger (Anika, Chairunnisa & Saputro, 2021). Thus, the implementation of the General Meeting of Shareholders after the merger process should be accompanied by a notary and an independent legal team to check the suitability of documents and support the right of interpellation of interested parties.

Another issue related to combining customer data in one big data system presents the issue of compliance with personal data protection regulations. Referring to the theory of customer protection in accordance with GCPL Article 2, BSI is required to develop a cybersecurity structure that includes comprehensive encryption and a minimal data retention policy based on the principle of "data minimization". In addition, there should be an obligation to conduct periodic privacy impact assessment audits for all IT systems in order to maintain the principles of benefit and fairness. In this way, customers' rights to access accurate information and data protection can be guaranteed, while reducing the risk of administrative sanctions from OJK. Then, BSI can also strengthen information technology risk governance based on Fatwa DSN-MUI and POJK No.6.POJK.07/2022 as the foundation for implementing the Sharia IT Governance framework. This foundation involves the introduction of specific information technology risks related to Islamic banking activities, such as the risk of sharia non-compliance in smart contracts to the establishment of controls based on sharia principles. Then, to improve institutional stability and efficiency in operations as stipulated in Government Regulation No. 28/1999, BSI had to design an integrated governance model by adopting best practices from sharia good corporate governance principles. The use of regulatory approach and comparative legal analysis shows that it is important to integrate the structure of the Shariah Supervisory Board with the committees in charge of risk management, audit and remuneration. A concrete suggestion is the establishment of a "Shariah Integration Office" at the center of BSI that serves as a hub for policy setting, training, and compliance monitoring. In this way, BSI can ensure that all technological innovations are in line with

Islamic values and comply with national legal regulations, and enhance its competitiveness and image as an Islamic bank.

## Conclusion

The results show that the implementation of prudential principles and transparency based on Law No. 21/2008 is critical to the success of BSI after the merger. This requires harmonization of financing contracts through guidelines based on DSN-MUI fatwas and the establishment of a cross-functional compliance unit to ensure transparency and legal certainty for customers. To protect the rights of minority shareholders and creditors and ensure a smooth merger approval process, Law No. 40/2007 on Limited Liability Companies requires a post-merger GMS designed with the assistance of an independent legal team and notary. On the technology side, the Sharia IT governance framework in accordance with POJK 6/2022 and PDP Law No. 27/2022 must support the integration of customer big data with end-to-end encryption, data retention minimization policies, and periodic impact assessment audits to maintain the security and equitable protection of customer data. Finally, in accordance with PP No. 28/1999, BSI should adopt good sharia corporate governance practices, including the alignment of the Sharia Supervisory Board with the risk management, audit, and remuneration committees. This also includes the establishment of an "Office of Syariah Integration" for policy coordination, training and compliance monitoring. Thus, BSI's innovation and growth will be in line with Islamic values and national regulations.

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