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THE IMPLEMENTATION OF COMMODITY FUTURES TRADING LAW AND THE AUTHORITY OF THE COMMODITY FUTURES TRADING SUPERVISORY AGENCY (BAPPEBTI)

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ABSTRACT

The provision of the prohibition of granting full power of attorney from customers to brokers still cannot be fully implemented by stock futures brokerage companies in Indonesia. This then becomes a problem for brokerage companies in the future, especially for customers who give full authority over their accounts, because if customers experience losses, they cannot sue the company for giving full authority to them knowingly. If the customer agrees to conduct futures trading transactions through the facilities provided by the brokerage company, the customer must follow the procedures regulated by the Commodity Futures Trading Supervisory Agency (BAPPEBTI), where the customer must fill out the agreement book whose contents also been regulated in BAPPEBTI regulation number 8 of 2019 concerning technical provisions on futures brokerage behavior.

KEY WORDS

BAPPEBTI, broker, customer, commodity.

The presence of futures trading companies in Indonesia as a place to trade Commodity Futures Contracts is a market instrument that is widely known in developed countries. Law number 32 of 1997 as amended into law number 10 of 2011 concerning commodity futures trading is the main legal protection for customers and futures companies under the Commodity Futures Trading Supervisory Agency (BAPPEBTI). But in reality, although the government has issued laws and several implementing regulations related to futures trading, there are still many customers who feel harmed by the irresponsible actions of futures brokerage companies. Many customers feel cheated by futures brokers resulting in high losses, which can even reach billions of Rupiah.

As a trade that has a high-risk nature, it is appropriate that commodity futures trading has clear legal protection and can provide certainty for all market participants. To accommodate the needs of market participants, the government has issued legislation on futures trading. But in reality, there are still many customers who feel aggrieved by the actions of the futures broker representatives. For example, when a customer asks for the promised rights, the company will issue many excuses and can even blame the customer when they cannot fulfill the promises they have made to the customer. For this reason, there is a need for legal protection for customers, due to problems arising from violations committed by futures brokers, especially violations in terms of technical provisions of futures brokerage behavior. In response to this, the author would like to discuss an overview of commodity futures trading and the authority of BAPPEBTI.

METHODS OF RESEARCH

This research is sociological legal research and uses a positive law enforcement approach to the community. The purpose of sociological legal research is to find out how the law is implemented, including the law enforcement process. This is because sociological legal research can reveal the problems behind the implementation and enforcement of the law.



RESULTS AND DISCUSSION

Article 1 of Indonesian law number 10 of 2011 concerning commodity futures trading, hereinafter referred to as futures trading, is everything related to the sale of commodities with the withdrawal of margins and subsequent settlement based on futures contracts, Sharia derivative contracts, and/or other derivative contracts. For commodities are goods, services, rights, and interests, as well as any derivatives of each commodity that can be traded and can be the subject of futures trading, Sharia derivative contracts, and/or other derivative contracts, all of which are regulated by the Commodity Futures Trading Regulatory Agency (BAPPEBTI).

If the analysis has been carried out thoroughly and by applicable regulations, then investment in futures trading has the potential to provide good results. An indication of the potential of futures trading as an attractive investment alternative can be seen from the increase in the number of lots sold at PT Bursa Berjangka Jakarta (BBJ) and PT Bursa Komoditi Derivatif Indonesia (BKDI), from year to year the average trading transaction has grown very significantly. Futures contract traders, Sharia derivative contracts, and/or other derivative contracts, hereinafter referred to as futures traders are members of the futures market who are entitled to carry out futures contract transactions, Sharia derivative contracts, and/or other derivative contracts on the futures exchange. the market for himself or his business group.

There is a difference between contracts in ordinary trading and contracts in futures trading. A futures contract is a standardized contract and its delivery time is predetermined, due to its standardized form, the only thing that can be negotiated is the price. The 'fulfillment' of the futures contract as specified in the contract is guaranteed by the futures clearing house.

Commodity prices in the futures market are transparent and reflect the true strength of supply and demand. Transactions in the futures market are conducted by futures market members consisting of futures brokers and futures traders by open outcry or electronically. Furthermore, the prices formed are recorded based on the month of delivery of each futures contract and are widely announced to the public. In recent years, especially in new futures markets, the trading system is generally conducted electronically using computers that have access to the master computer in the futures market office.

The rule of prohibition giving full power of attorney from customers to brokers still cannot be fully implemented by stock futures brokerage companies in Indonesia. This then becomes a problem for brokerage companies in the future, especially for customers who give the full power of attorney on behalf of their accounts, because if customers experience losses, they cannot sue the company for giving full power to them knowingly. If the customer agrees to conduct futures trading transactions through the facilities provided by the brokerage company, then the customer must follow the procedures regulated by BAPPEBTI, where the customer must fill out an agreement book whose contents are also regulated in BAPPEBTI regulation number 8 of 2019 concerning technical provisions on futures brokerage behavior.

The agreement made is by the provisions of article 1320 of the Civil Code, but often due to the length of the contents in the agreement book, prospective customers do not read carefully the contents of the agreement, so when problems occur with the agreement. transactions that cost customers their money, they feel they have never been informed about the risks of futures trading. A futures broker is a business entity that conducts futures trading transactions according to the mandate of its customers by withdrawing a certain amount of money and/or securities owned by its customers as a margin to guarantee the transaction. In attracting prospective customers, futures brokers are required to follow the code of ethics mentioned and regulated in law number 10 of 2011 concerning commodity futures trading and regulations stipulated and issued by BAPPEBTI, then in article 50 of law number 10 of 2011 concerning commodity futures trading, requires that stock brokers in carrying out their business and when dealing with customers / prospective customers must know the



background, financial status, and knowledge of futures trading of their customers / prospective customers.

Article 4 paragraph 1 states that futures broker representatives who conduct their business activities are prohibited from:

1. Accepting a prospective customer if it is known that the prospective customer:
 - Declared bankrupt by the court;
 - Declared to have violated the provisions of the law, judiciary, or BAPPEBTI;
 - Officials or employees of: BAPPEBTI, futures market, futures clearing house, and; Treasury of institutions that serve the public interest, unless the person concerned is authorized by the institution.
2. Directly or indirectly influencing and providing misleading information to customers for futures contract transactions, Sharia derivative contracts, and/or other derivative contracts, such as offering fixed income or profit sharing;
3. Offering futures contracts, Sharia derivative contracts, and/or other derivative contracts that are not approved by BAPPEBTI;
4. Accepting customers whose source of funds comes from several people in a pooling account or from a legal arrangement;
5. Receive funds from customers in cash;
6. Receiving funds from customers before signing risk disclosure documents and mandate contract documents;
7. Receiving, requesting, or borrowing transaction access codes from customers (personal access passwords);
8. Make agreements in any form with prospective customers, except agreements permitted by BAPPEBTI;
9. Receive a mandate from a customer to carry out transactions on behalf of the customer concerned. Or fill out an electronic customer acceptance application on behalf of the prospective customer.

Then in Article 4 paragraph 2, broker representatives are prohibited from receiving customer funds in cash, either given by themselves or transferred to a separate account owned by futures brokers.

The principle of knowing the customer in the field of futures trading is regulated in BAPPEBTI regulation number 2 of 2016 concerning the application of the principle of knowing the customer which requires every futures brokerage company to apply the principle of knowing the customer to minimize the risks associated with money laundering and used as a tool for terrorism funds, so efforts are needed to apply the principle of knowing the customer. Article 10 of BAPPEBTI regulation number 2 of 2019, concerning Know Your Customer Principles, requires Futures Brokers to have guidelines that contain written policies and procedures that at least include:

- An Identification and verification;
- Beneficial owner;
- Risk management;
- High-risk areas;
- Monitoring of accounts, customer transactions, and updating of customer data;
- Document administration;
- Reporting.

In Article 11, the guidelines for the implementation of the know-your-customer principle by futures brokers should also refer to the regulations of the head of BAPPEBTI, laws, and regulations related to the prevention and eradication of criminal acts of money laundering or terrorism financing. These guidelines must also be implemented consistently and continuously. In article 1 point 9 of BAPPEBTI regulation number 2 of 2016, regarding the principle of knowing the customer, some principles must be applied by futures brokers, to:

- Know the background and identity of the customer;
- Monitor customer accounts and transactions;



- Report suspicious financial transactions, according to the provisions of laws and regulations in the field of futures trading and laws and regulations related to the prevention and eradication of criminal acts of money laundering and/or terrorism financing.

In article 14 of BAPPEBTI regulation number 2 of 2016, regarding the principle of knowing the customer, futures brokerage companies in Indonesia registered by BAPPEBTI as futures brokerage companies carrying out business as intermediaries between buyers (customers and prospective customers) and commodity producers, must ask several things, related to the principle of knowing the customer, these things are:

- Ask the name of the prospective customer;
- Ask the age of the prospective customer;
- Ask the prospective customer's profession;
- Ask about the status of prospective customers;
- Ask the number of children the prospect has;
- Ask about the prospective customer's place of residence;
- Ask about the status of their residence.

The application of the know your customer principle that is not by the standard will very likely lead to money laundering, and the more money laundering occurs in futures brokerage companies, especially in Indonesia, will increase the risk of systemic economic impact in Indonesia. Therefore, the role of the government as a regulator becomes more important to ensure the implementation of the know-your-customer principle is applied by all futures brokerage companies. Monitoring of customer accounts, transactions, and updating of information as stipulated in article 31 of BAPPEBTI regulation number 2 of 2016, concerning the principle of knowing the customer, as follows:

- Futures Brokers must monitor customer data continuously to ensure that transactions made by customers are by their profile, character, and/or habitual transaction patterns.
- In carrying out monitoring as referred to in paragraph (1), futures brokers must have a monitoring system that can: identify, analyze, monitor, and report effectively on the profile, character, and habitual pattern of customer transactions; and trace each transaction made by the customer, if necessary, including tracing the customer's identity, transaction form, transaction date, and transaction denomination, as well as the source of funds for the transaction;
- Futures Brokers are required to monitor customer accounts and transactions including analyzing the possibility of criminal acts of origin or terrorism financing;
- Futures Brokers may request further data and information from customers about transactions that are not by their profile, character, or habitual transaction patterns;
- Futures Brokers must evaluate the results of monitoring customer accounts and transactions as referred to in paragraph (3) to ensure there are no suspicious transactions;
- If there is a similarity in the name or other information of the customer with the name and information listed in the list of suspected terrorists and terrorist organizations established by the government or other countries in other jurisdictions, the futures broker is obliged to report the customer in the suspicious transaction report;
- If the data and/or information submitted by the customer do not provide a convincing explanation, the futures broker is obliged to report the suspicious financial transaction to the Financial Transaction Reports and Analysis Centre (PPATK).

The principle of knowing the customer in futures trading is also regulated in several regulations, namely, Law Number 15 of 2002 concerning the Crime of Money Laundering, Law Number 25 of 2003 concerning the Assessment of Law Number 15 of 2002 concerning the Crime of Money Laundering, Law Number 8 of 2010 concerning Prevention and eradication of money laundering and other regulations by the head of PPATK.

This risk disclosure document is submitted to customers by article 50 paragraph (2) of law number 10 of 2011 concerning commodity futures trading, the purpose of this document



is to inform the possibility of loss or profit in trading derivative contracts in alternative trading systems can reach very large, so customers must be careful in deciding to make transactions, risk disclosure documents include:

- Trading derivative contracts in an alternative trading system may not be suitable for every investor;
- Trading derivative contracts in the alternative trading system have risks and possible losses that are even greater than the amount of margin deposit to futures brokers;
- Be careful with statements that customers will get large profits in trading derivative contracts in alternative trading systems;
- Due to the leverage mechanism and the nature of derivative contract transactions in alternative trading systems, customers can feel the impact of losses in a short period;
- Under certain conditions in the market, customers may find it difficult or impossible to liquidate their assets;
- Under certain conditions in the market, customers may find it difficult or impossible to manage the risk on open positions in derivative contracts in alternative trading systems by opening positions of the same value but opposite positions in different month contracts;
- customers may suffer huge losses caused by information system failures;
- Every derivative contract in the alternative trading system carries risks, and no trading strategy will eliminate those risks;
- Day trading strategies in derivative contracts in alternative trading systems have their risks;
- To determine the conditional mandate, the derivative contract in the alternative trading system will be liquidated under certain conditions to stop the loss;
- You should carefully read and understand the agreement to provide customer mandate to futures brokers before entering into derivative contract transactions in the alternative trading system;
- This brief statement cannot detail all the risks or other important aspects of futures trading. Therefore, customers should study futures trading activities carefully before deciding to make transactions;
- This risk disclosure document is made in the Indonesian language.

The mandate contract is the key that regulates the relationship between customers and futures brokers, but in practice futures brokers often do not comply with the rules, both rules and clauses in the contract, which can harm customers. Legal protection for customers before the mandate contract is signed or in its implementation has been regulated in the technical provisions of futures brokerage behavior which in detail refers to BAPPEBTI regulation number 8 of 2019 which contains matters that must be obeyed and prohibitions that may not be carried out by brokers.

Legal protection for customers is also contained in several clauses regarding the mandate contract. The implementation of the mandate contract in the field according to data obtained by BAPPEBTI is not by the applicable provisions. Obstacles that cause the implementation of the contract not by the law, originate from futures brokers in the form of dishonest and fraudulent actions, customers' lack of knowledge about futures trading, lazy reading of various documents, and great trust in futures brokers.

Legal remedies that can be taken by customers if they feel cheated by the actions of their futures brokers are by non-litigation channels, namely through discussions through settlement facilities available at BBJ, BKDI, or with BAPPEBTI and litigation through legal channels in the district court. Trust agreements that are often not by the law advise customers to be careful in choosing futures brokers so as not to feel cheated later, and for futures brokers must cooperate with their customers with an honest attitude, BAPPEBTI as a supervisory body must further enhance customer protection by taking preventive or repressive action.

The Indonesian Commodity Futures Trading Regulatory Agency is a supporting element in the Ministry of Trade of the Republic of Indonesia which is under and responsible



to the Ministry of Trade of the Republic of Indonesia and has a relationship with Bank Indonesia and legal institutions including POLRI. Futures brokerage companies that have not or do not have a license from BAPPEBTI will be declared as illegal brokerage companies. Customers who make transactions with these illegal brokerage companies, then BAPPEBTI is not responsible for losses suffered by customers caused by these illegal brokerage companies. BAPPEBTI has the task of issuing regulations and supervising futures trading activities in futures markets and physical markets and services. In detail, BAPPEBTI's duties are as follows:

- Issuing a business license;
- Issuing rules and regulations;
- Conducting inspections of license holders and parties suspected of committing offenses 4;
- Supervising promotional activities, so that there is no misleading advertising in futures trading;
- Facilitate dispute resolution related to futures trading;
- Receive reports from customers if they experience problems with their broker.

The purpose of BAPPEBTI as a supervisory body based on Law Number 10 of 2011 concerning Commodity Futures Trading which has the authority to examine any party suspected of directly or indirectly committing violations and/or being involved in violations of laws and regulations in the field of commodity futures trading, as well as the duties, purposes, and authorities of BAPPEBTI above, every futures brokerage company that conducts business activities in Indonesia must have a permit issued by BAPPEBTI. To carry out its main tasks, BAPPEBTI has the authority, among others:

- Issuance of business licenses for futures markets, futures clearing houses, futures brokers, futures advisors, and futures fund managers; individual licenses to become deputy futures brokers, deputy futures advisors, deputy futures fund managers; certificates of registration for futures traders; as well as approvals for futures brokers to channel futures customer orders overseas and for banks to deposit funds related to futures trading;
- Ratify laws and regulations for futures markets and futures clearinghouses and futures contracts to be traded in futures markets;
- Ensure that futures markets and futures clearing houses conduct intensive supervision and impose strict sanctions on violators;
- Set the maximum number of open positions that can be held and limit the number of open positions that must be reported;
- Establish a list of overseas futures markets and futures contracts that can be the destination of local customers' mandate distribution;
- Examination of each party that has a license and order to conduct examination and investigation of parties suspected of violating the regulations in futures trading;
- Requiring each party to stop or correct misleading advertisements or promotions in futures trading;
- Establish tools for dispute resolution for futures trading activities.

Settlement of civil disputes between parties in futures trading can now be resolved through the Commodity Futures Trading Arbitration Board (BAKTI). BAKTI is expected to be a competent body to resolve disputes between parties in futures trading, if mediation efforts through deliberation fail. The development of futures trading has recently shown enormous progress. This development goes hand in hand with the increasing number of problems that will later become disputes between market participants.

Four main things form the basis for the establishment of BAKTI, namely, the needs of stakeholders, support from the authorities, the existence of procedural law to process cases, and arbitrary. BAKTI will resolve disputes that occur between market participants in the field of futures trading quickly, cheaply, transparently, independently, efficiently, and effectively outside the general court. In article 1 point 1 of BAKTI regulation number: per-01/BAKTI/01.2009 on Arbitrary Procedures and Rules. Arbitrators are persons or more listed



in the list of BAKTI arbitrators chosen by the parties or appointed by the management according to the rules and procedures, to examine and provide decisions regarding certain disputes submitted for settlement through arbitration, either in the position of a single arbitrator or arbitration court. Then in article 1 point 3, it is stated that the BAKTI method is a way of resolving civil disputes carried out in writing by the parties to the dispute resolved according to these regulations and procedures, hereinafter referred to as 'arbitration'.

The scope of the arbitration procedure, based on Article 2, only regulates the settlement of disputes between the parties in a particular legal relationship after an arbitration agreement that expressly states that all disputes arising or which may arise from a legal relationship will be resolved through arbitration. The authority of BAKTI is regulated in Article 3 as follows:

- Disputes that can be resolved through arbitration are only disputes in commodity futures trading and regarding statutory rights that are fully controlled by the parties to the dispute;
- Disputes that according to the laws and regulations are irreconcilable, and cannot be resolved through arbitration.

In Article 4, the arbitration agreement states that:

- The parties, taking into account the provisions of Article 3 of the rules and procedures for arbitration, may agree that a dispute has occurred or will occur between the parties to be resolved through arbitration and express the agreement in the arbitration agreement;
- If the parties to an agreement or business transaction make an arbitration agreement appointing arbitration as a means of dispute resolution, then the dispute arising between the parties shall be resolved under the administration of BAKTI and negate the right of the parties to submit dispute resolution through the district court and/or other arbitration institutions;
- If the parties choose to settle the dispute through arbitration after the dispute has occurred, the agreement on the matter shall be made in a written agreement signed by the parties or in the form of a notarial deed.

The terms of BAKTI arbitration, as stipulated in Article 7, are as follows. Arbitration can only be implemented for the parties to the dispute if they fulfill the following conditions:

- The parties are bound by an arbitration agreement;
- The arbitration agreement explicitly states that the parties appoint arbitration as the dispute resolution forum;
- Submission of the application by the applicant to BAKTI by its rules and procedures;
- The parties, both individuals and groups have paid the necessary fees to conduct arbitration, by the rules and procedures;
- The arbitration hearing to examine whether a dispute has occurred.

If a dispute arises before filing the petition, the petitioner shall notify the respondent by registered mail, courier, facsimile, and/or email that the arbitration terms and conditions in the arbitration agreement are valid and enforceable. The letter of notification to enter into arbitration as referred to in point 2 shall contain:

- The names and addresses of the parties;
- Recommendations on the applicable arbitration agreement;
- The basis of the request and the amount requested, if any;
- The desired dispute resolution;
- Agreement on the number of arbitrators, or if there is no agreement, the applicant may submit a proposal on the number of arbitrators.

CONCLUSION

In article 1 point 1 of BAKTI regulation number: per-01/BAKTI/01.2009 concerning Arbitrary Procedures and Rules. Arbitrators are persons or more listed in the list of BAKTI arbitrators chosen by the parties or appointed by the management according to the rules and



procedures, to examine and provide decisions regarding certain disputes submitted for settlement through arbitration, both in the position of a single arbitrator and arbitration court. Then in article 1 point 3, it is stated that the BAKTI method is a way of resolving civil disputes carried out in writing by the parties to the dispute resolved according to these regulations and procedures, hereinafter referred to as 'arbitration'.

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