

## Impact and Effort of Legal Protection for Stakeholders Due to Merger Activities Islamic Banks in Indonesia

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### **Abstrak**

*Mekanisme penggabungan 3 (tiga) bank BUMN, PT. BRI.Syariah, PT. BNI.Syariah dan Bank Syariah Mandiri menjadi Bank Syariah Indonesia melibatkan banyak pihak berkepentingan (stakeholder). Langkah preventif perlu dilaksanakan agar tidak melanggar peraturan hukum dan prinsip tata kelola perusahaan dan merugikan stakeholder. Penelitian ini bertujuan mengetahui langkah-langkah kegiatan merger terhadap ketiga bank syariah milik negara dan memberikan informasi tentang dampak yang dihadapi oleh stakeholder serta perlindungan hukum utamanya adalah pemegang saham minoritas, pegawai bank syariah serta nasabah. Penelitian ini merupakan penelitian yuridis sosiologis yang dilaksanakan melalui wawancara dan library research. Hasil penelitian ini yaitu dalam rangka mengoptimalkan perlindungan hukum bagi stakeholder di bidang perbankan terdapat hal-hal yang perlu direalisasikan, antara lain adalah penyusunan guideline perihal merger bank syariah yang dibuat oleh OJK dan Dewan Syariah Nasional agar terjadi keseragaman sesuai prinsip syariah. Diperlukannya skema migrasi data agar tidak terjadi error system serta pentingnya harmonisasi kinerja pegawai dengan bank hasil merger.*

**Kata Kunci:** keputusan perusahaan, hukum merger, perbankan syariah

### **Abstract**

Mechanism of the merger of 3 (three) state-owned banks, PT. BRI Syariah, PT. BNI Syariah and Bank Syariah Mandiri became Bank Syariah Indonesia involving many stakeholders. Preventive measures need to be implemented to avoid violating the rules of Law and principles of corporate governance and harming stakeholders. This research aims to know the steps of merger activities against the three state-owned Islamic banks and provide information about the impact faced by stakeholders and legal protection of interested parties, especially on minority shareholders, employees/employees of Islamic banks, and customers/business partners. This research is a sociological juridical study using qualitative descriptive methods. The conclusion is to optimize legal protection for interested parties for merger activities in the banking field. Some things need to be realized. Some of these include the preparation of guidelines about sharia bank mergers made by the Financial Services Authority and the National Sharia Council for uniformity under sharia principles. The need for data migration schemes so that customers are not harmed due to system errors due to data integration and the need to harmonize employee performance with bank merger results.

**Keywords:** corporate action, legal merger, islamic banking.

## Introduction

Banks play an essential role in boosting the entire economy of a country. Economic progress is one of the roles of the existence of banks. Islamic bank reform in the form of a merger can be implemented. In addition to preventing difficulties that may occur in the future, reforming Islamic banks is an event to boost the economy to compete nationally and globally.<sup>1</sup> A merger can be said to be an effort to make a combination of two or more companies, in this case, it can be a business entity or Islamic Bank joining a company where 1 (one) company remains and the merged company will merge into one entity so that it will lose their previous company.<sup>2</sup>

In 2021, minister Erick Thohir will merge state-owned Islamic banks in Indonesia. Three (three) state-owned Islamic banks are the object of mergers or mergers, including PT. BRI Syariah, BNI. Sharia and Bank Syariah Mandiri. A merger, in the view of Floyd A. Beams, John A. Brozovsky, and Craig D. Shoulders, is a union of business entities that were previously independent or separate.<sup>3</sup>

The government has big goals for the development of the Islamic banking world in Indonesia, one of which is through mergers. Combining Bank BNI, BRI and Mandiri Syariah is a way to strengthen the position of

Islamic banks and open wide opportunities so that they can be competent and have high competitiveness in the world. Not only to hook local investors, but also abroad.

The merger is part of the steps taken in order to make a wider reach to develop the business, strengthen and also increase capital injections and make business development strategies through synergy between banks.<sup>4</sup> If successful, Bank Syariah Indonesia will succeed and reap profits by attracting investors.<sup>5</sup> Indonesia has regulated it in Law No. 40 of 2007 concerning PT and Law No. 21 of 2008 concerning Sharia Banking and its implementing regulations. The Encyclopedia of Banking & Finance defines a "merger as a combination of two or more corporations in which the dominant unit absorbs a passive unit, which previously operated usually under the same name."<sup>6</sup>

The merger of 3 (three) Islamic banks owned by state-owned enterprises is a long wait in forming the largest Islamic bank in Indonesia, even globally. Large capital can make Islamic banks become one of the 10 Islamic banks in the world.<sup>7</sup>

Based on data taken from The State of Global Islamic Economy Report 2019-2020 Indonesia is ranked 5 (five) out of 73 (seventy-three) countries that have the largest Islamic economic market in the world. This then makes

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<sup>1</sup> Nur Aqilah Basri and Ashar Sinilele, "Status Hukum Nasabah BNI Syariah Setelah Merger Menjadi Bank Syariah Indonesia," *Iqtisbaduna: Jurnal Ilmiah Mahasiswa Hukum Ekonomi Syari'ah*, 2022, 294–301.

<sup>2</sup> Christopher O. Anderibom, Asauten Samuila., Obute, "The Effects of Mergers and Acquisitions on The Performance of Commercial Banks in Nigeria: Evidenced from United Bank for Africa (UBA) Plc BY Obute, Christopher O. Ph. D Economics Department, Benue State University, Makurdi-Nigeria Email: Coobute@," *International Journal of Education and Research*, 3.4 (2015), 93–112.

<sup>3</sup> A Floyd, "Beams., Joseps H. Anthony., Robin P. Clement., & Suzanne H. Lowensohn.(2009)," *Akuntansi Lanjutan*.

<sup>4</sup> Y Rantemangiling, "Analisis Yuridis Mengenai Merger Bank Syariah Mandiri, Bri Syariah, Dan Bni Syariah Menjadi Bank Syariah Indonesia (Bsi)," *Lex Crimen*, September, 2022.

<sup>5</sup> Rantemangiling.

<sup>6</sup> Glen G MUNN, "Encyclopaedia of Banking and Finance, Éd. FL Garcia" (Boston, Bankers Publishing Co, 1962).

<sup>7</sup> Ika Atikah, Maimunah Maimunah, and Fuad Zainuddin, "Penguatan Merger Bank Syariah BUMN Dan Dampaknya Dalam Stabilitas Perekonomian Negara," *SALAM: Jurnal Sosial Dan Budaya Syar-I*, 8.2 (2021), 515–32.

Indonesia more optimistic in conducting merger. This is in<sup>8</sup> accordance with several theories that say that after the merger as the company progresses the company continues to grow largely because everything that covers assets, liabilities and equity is incorporated in a company.

The merger process was carried out after the shareholders of PT. BRI Syariah Tbk held an Extraordinary General Meeting of Shareholders (EGMS). The result of the merger makes the bank have total assets of Rp. 214.6 trillion. The shareholders in the merged Bank are PT Bank Mandiri (Persero) Tbk. (BMRI) 51.2%, PT Bank Negara Indonesia (Persero) Tbk. (BNI) 25.0%, PT Bank Rakyat Indonesia (Persero) Tbk. (BBRI) 17.4%, DPLK BRI - Sharia Shares 2%, and the public 4.4%. This wealth will provide opportunities and potential investors to enter Bank Syariah Indonesia.<sup>9</sup>

According to Kyriazopoulos & Petropoulos (2010), there are advantages of the merger mechanism which include:

1. The increase in the size of the company and the synergies of companies conducting mergers and acquisitions can have an impact on the efficiency of the company's business management;
2. The impact of mergers and acquisitions can increase product differentiation and portfolios owned by the companies resulting from the mergers and acquisitions;

3. Improve the competitiveness and reputation of companies resulting from mergers and acquisitions.<sup>10</sup>

In line with Rizky Maulida's research, it is stated that the merger carried out on Islamic banks owned by SOEs runs effectively and efficiently, which increases the level of stability compared to when it was still running alone.<sup>11</sup>

The merger process involves many stakeholders, so it must look at all related elements internally and externally. Employees are parties who feel the direct impact of the legal action of the company merger. It is necessary to think about a way out in terms of institutional development, the role of the Indonesian government, socialization and promotion to increase community literacy and increase human resources.<sup>12</sup>

The losses resulting from this merger are more felt by the parties who are classified as weak/small and whose position becomes risky, for example, parties who are vulnerable due to structure, parties who are weak due to financing, parties who are weak due to localization, and also because of the implementation of Appraisal Rights.<sup>13</sup> However, stakeholders need to have a high level of literacy so as not to be harmed by mergers. At least by knowing the products they take. Because the level of Islamic financial and banking literacy based on research by Ananda

<sup>8</sup> Atikah, Maimunah, And Zainuddin.

<sup>9</sup> Agus Munandar, Intani Dwita Risanti, And Shidky Dan Aygarini, "Peluang Dan Ancaman Penggabungan Bank Syariah Dalam Meningkatkan Perekonomian Indonesia Di Masa Pandemi Covid-19," *FINANSIA: Jurnal Akuntansi Dan Perbankan Syariah*, 5.1 (2022).

<sup>10</sup> Citra Sukmadilaga And Lucky Nugroho, "Urgensitas, Keadilan dan Maqasid Syariah Pada Merger Bank Syariah," *HUMAN FALAH: Jurnal Studi Ekonomi Dan Bisnis Islam*, 8.2 (2021).

<sup>11</sup> Rizky Maulida, Misbahuddin Misbahuddin, And Abdul Gafur, "Apakah Bank Syariah Indonesia Semakin Efisien Dan Stabil Setelah Merger?," *INOVASI*, 18.1 (2022), 1–16.

<sup>12</sup> Pulun Pradana Putra And Nurullia Febriati, "Peluang Dan Tantangan Perbankan Syariah Di Indonesia Pasca Merger," *ASAS*, 13.2 (2021), 80–94.

<sup>13</sup> Rizki Tri Anugrah Bhakti, "Kedudukan Pihak Yang Lemah Pada Perusahaan Yang Melakukan Merger Dengan Memberikan Perlindungan Hukum Terhadapnya," *Jurnal Cahaya Keadilan*, 3.1 (2015), 66–82.

Dwi Cahya and Tuti Anggraini is only around 21.84%.<sup>14</sup>

This research will discuss the Juridical Perspective of Merger. PT. Bank.BRI Syariah Tbk, PT. BNI Syariah and PT. Bank Syariah Mandiri to Protect The Law For Stakeholders. The formulation of the problems in this study is: 1) How to implement the merger of PT. BRI Syariah, PT. Bank BNI-Syariah and PT. Bank.Syariah Mandiri became PT. Bank Syariah Indonesia, 2) How is the impact and legal protection for stakeholders with corporate action in the form of mergers on PT. Bank BRI Syariah Tbk, PT. BNI. Sharia and PT. Bank Syariah Mandiri became PT. Bank Syariah Indonesia?

Previous research conducted by Kindy Miftah and Hendro Wibowo. with the title Merger and Industrial Acceleration: Study at Indonesia Islamic Banking Industry.<sup>15</sup>

This research examines alternative mergers between Islamic banks to provide optimal contribution to the Islamic banking in Indonesia. The result of this study is need to consider internal aspects, such as the tendency of shareholders and the condition of Islamic banks to be merged, The similarity with the research in this article is that they both discuss stakeholders' interests in mergers, but the researcher's research more specifically discusses the stages of mergers and the impact on stakeholders, and how stakeholders can take legal remedies if their rights are harmed.

Research entitled The Geostrategy of Sharia Banking Merger in Indonesia by Agus Hartanto.<sup>16</sup> The study results show that the merger of Islamic banks has a strategic role in realizing Indonesia's vision as the center of Islamic finance in the world. Indonesia is the only country in Southeast Asia that is a member of the G-20 with substantial Islamic economic capital, AEC Integration 2020, demographics of Islamic bank employees, low level of financing penetration, and support for increasing public literacy.

Third, signs of sharia commercial bank merger law towards the principle of good corporate governance (GCG) research from Indra Rahmatullah<sup>17</sup> focuses research on the implementation of GCG in the implementation of mergers, one of which is a review of ongoing contracts. In contrast to the research of researchers who confirmed one of the stakeholders of the merged Islamic Bank to find out how to implement the work contract between employees and Islamic banks.

The originality of this research compared to previous research is 1) this research begins by explaining in sequence how the process of implementing the merger of the three state-owned Islamic banks, namely PT. Bank.BRI Syariah Tbk, PT. Bank.BNI Syariah and PT. Bank Syariah.Mandiri became PT. Bank Syariah Indonesia, Tbk is reviewed from a legal point of view whether it is under applicable legal regulations in Indonesia or not, and 2) This research is aimed at determining the impact of

<sup>14</sup> Ananda Dwi Cahya And Tuti Anggraini, "Analisis Problematika Bank Syariah Indonesia Setelah Merger Studi Kasus Bank Syariah Indonesia (BSI)," *Syntax Literate; Jurnal Ilmiah Indonesia*, 7.12 (2022), 17230–41.

<sup>15</sup> Kindy Miftah And Hendro Wibowo, "Merger And Industrial Acceleration: Study At Indonesian Islamic Banking Industry," *Signifikan: Jurnal Ilmu Ekonomi*, 6.1 (2017), 29–48 <<https://doi.org/10.15408/Sjie.V6i1.4728>>.

<sup>16</sup> Agus Hartanto And Nur Fatwa, "The Geostrategy Of Sharia Banking Merger In Indonesia," *Scientific Research Journal*, 8.12 (2020), 60–66 <<https://doi.org/10.31364/Scirj/V8.I12.2020.P1220829>>.

<sup>17</sup> Indra Rahmatullah, "Rambu-Rambu Hukum Merger Bank Bum Syariah Menuju Prinsip Good Corporate Governance (GCG)," *SALAM: Jurnal Sosial Dan Budaya Syar-I*, 8.2 (2021), 499–514 <<https://doi.org/10.15408/sjsbs.v8i2.20186>>.

the merger of PT. Bank BRI Syariah Tbk, PT. Bank BNI Syariah and PT. BSM towards stakeholders, along with an analysis of legal protection that can be carried out for stakeholders, especially for minority shareholders, customers, or business partners of Islamic banks and employees in case of violations.

The author uses the sociological juridical research method by conducting interviews with Islamic banks resulting from the merger. Interview with Customer Service Bank Syariah Indonesia an. Raiza Purwo Fachruzi, Personal Interview, Thursday, August 12, 2021. The issues discussed are related to legal protection for Islamic bank employees and their position as employees. One of the reasons the informants were chosen was because they were employees who were affected by the merger process from BRI Syariah to BSI, and the informants were part of the stakeholders who had an impact on the bank merger process.

The data analysis technique used is descriptive qualitative, by explaining the process of implementing a merger at PT. Bank BRI Syariah Tbk, BNI Syariah, and BSM while analysis of primary legal materials in the form of laws and regulations on Limited Liability Companies, SOEs for Merger Implementation, Consumer Protection which is processed, then connecting from secondary legal materials where the legal materials are obtained from literature research, to get an in-depth understanding of the stages of mergers and the impact on stakeholders and legal protection efforts that can be carried out.

### **Steps in Merger Activities at PT. Bank BRI Syariah, PT. Bank Syariah Mandiri and PT. BNI Syariah**

Company mergers can be divided into two categories, including<sup>18</sup> 1) Mothership Merger, which is a merger of companies where it has one dominant or almost the same business pattern. 2) Merger platform, namely the merger of a company in maintaining the pattern of business activities which is the superior product of each company where the superior product will later be adopted by the company.

The positive impacts of merging banks include:<sup>19</sup> 1) Increasing the Bank's financial assets and strength, 2) Knowledge transfer, management improvement, and improved technology support. 3) Build a better image, 4) Increase bank efficiency .

The negative impact of the merger of the merger include<sup>20</sup> 1) The occurrence of internal friction due to unsuccessful efforts to unite a vision and work habits, 2) The selling price of the company's shares will fall below the market price due to the financial crisis, 3) The possibility of a reduction in the number of administrators and employees, 4) Customer transfers because customers prefer to do business with other bank, 5) It takes a long time to present a new company to the public and industry. Through legal action in the form of a merger, the company carries out a merger and distributes its human resources to arrive at what the merged company aspires to do together. The shareholders of the merged company often still have the position of co-owner of a merged

<sup>18</sup> dkk Iswi Hariyani, Serfianto, *Merger, Konsolidasi, Akuisisi, & Pemisahan Perusahaan Cara Cerdas Mengembangkan Dan Memajukan Perusahaan* (Jakarta: Visi Media, 2006).

<sup>19</sup> Yudha Ramelan and Dwinanto Prakoso, "Peranan Lembaga Merger Sebagai Instrumen Resolusi Bank (Konsep Dan Implikasinya Pada Bank Dalam

Penyelamatan)," *Jurnal Bina Mulia Hukum*, 4.2 (2020), 326 <<https://doi.org/10.23920/jbmh.v4i2.270>>.

<sup>20</sup> Hanif Pradipta and Bryan Zaharias, "Penaksiran Dampak Merger Dan Akuisisi Terhadap Efisiensi Perbankan, Analisis Sebelum Dan Setelah Merger Dan Akuisisi," *Jurnal Ekonomi Dan Pembangunan*, 24.2 (2016), 85–95.

company.<sup>21</sup> However, stakeholders need to have a high level of literacy so as not to be harmed by mergers. At least by knowing the products they take. Because the level of Islamic financial and banking literacy based on research by Ananda Dwi Cahya and Tuti Angraini is only around 21.84%.<sup>22</sup>

Bank BNI Syariah, Mandiri Syariah and BRI Syariah which carry out a merger where BRI Syariah is the recipient of the merger is an appropriate process. This merger process falls into the category of product similarity because they both offer financial services.<sup>23</sup>

On February 1 2021, it became a milestone when Indonesia first merged with the three Islamic banks at the government's behest, which in this case was represented by the Minister of SOEs. The merger makes Indonesia the largest Islamic Bank in Indonesia under the name Bank Syariah Indonesia (BSI).<sup>24</sup> The implementation of mergers was carried out base on PP No. 27 of 1998 concerning Mergers, Amalgamations, and Transfers of Limited Liability Companies. However, if the limited liability company that carries out the merger a bank, then the procedures in addition to these provisions also apply to PP No.28 of 1999, dated May 7, 1999, concerning Mergers, Consolidations, and Acquisitions of Banks. in addition to the provisions of Government Regulation No. 27 of 1998 concerning Merger, Amalgamation, and Transfer of Limited Liability Companies and Government

Regulation No.28 of 1999, Law No. 27 of 2009 concerning Limited Liability Companies and Law Number 8 of 1995 concerning the Capital Market and its implementing regulations also apply. The regulatory accommodation aims to increase the value of shareholders and other stakeholders, such as Islamic banks, MSMEs, Education and so on.<sup>25</sup>

The EGMS of the board of directors of PT. BRI Syariah, which will merge and accept the merger, must prepare a merger plan that at least contains: (1) The name and domicile of each PT that will be merged, (2) Plan for the continuation or termination of business activities of the bank to be merged (3) Procedures for the valuation and conversion of shares of a merged PT against the shares of the PT that accepts the merger; (4) Draft amendments to the articles of association of the LLC that accept the merger; (5) Financial statements covering the last 3 financial years of each PT that will merge; (6) The plan for the continuation or termination of the business activities of the PT that will be merged; (7) The proforma balance sheet of the PT that accepts the merger in accordance with accepted accounting principles in Indonesia; (8) How to resolve the status, rights and obligations of members of the Board of Directors, Board of Commissioners, and employees of the PT that will merged; (9) The manner of settlement of the rights and obligations of the LLC that will merge against a third party; (10) How to settle

<sup>21</sup> Adrian Sutedi, *Constructivism in International Relations* Hukum Perbankan Suatu Tinjauan Pencucian Uang, Merger, Likuidasi Dan Kepaillitan: (Jakarta, Sinar Grafika, 2016).

<sup>22</sup> Tuti Angraini Ananda Dwi Cahya, "Analisis Problematika Bank Syariah Indonesia Setelah Merger Studi Kasus Bank Syariah Indonesia (BSI)," 7.12 (2022).

<sup>23</sup> Fahmy Akbar Idries, Anwarul Sholihin, and Ibi Satibi, "The Challenge of Merger Result Bank during the Global Economic Recession Due to the Covid-19 Pandemic: Case Study of Indonesian Islamic Banks,"

*Global Review of Islamic Economics and Business*, 9.2 (2021), 001 <<https://doi.org/10.14421/grieb.2021.092-01>>.

<sup>24</sup> Mohammad Ghozali, Norazzah Binti Kamri, and M. Ali Zi Khafid, "The Merger of Indonesian Islamic Banks: Impact on the Islamic Economy Development," *Al-Iktisab: Journal of Islamic Economic Law*, 6.1 (2022), 23 <<https://doi.org/10.21111/al-iktisab.v6i1.7551>>.

<sup>25</sup> Nadiatul Hanifah and Dey Aji Suseno, "Analysis Efficiency of BUMN Sharia Banks After the Merger," 15.2 (2022), 354–67.

the rights of shareholders who do not agree to the merger of the LLC; (11) The names of the members of the Board of Directors and the Board of Commissioners as well as the salaries, honorariums and allowances for members of the Board of Directors and Board of Commissioners of the PT who accept the merger; (12) The estimated timeframe for the implementation of the merger; (13) Reports on the circumstances, developments, and results achieved from each PT that will merged; (14) The main activity of each PT which merged and changes that occur during the current financial year; (15) Details of issues arising during the ongoing financial year affecting the activities of the LLC that was to be merged. (16) the draft merger seeks approval from the Board of Commissioners of each incorporated company.

An important result in the minutes of the EGMS was the fourth letter (a) which stated, "Change the Name of the company to PT. Bank Syariah Indonesia Tbk." The bank that accepted the merger became PT. Bank Syariah Indonesia is PT. Bank BRI Syariah. Therefore, it can be understood that the change of the name of the BRI Syariah Company to Bank Syariah Indonesia was carried out before the moment of the merger of several other Islamic banks, so it is clear that the name of Bank Syariah Indonesia is not a new name as a result of the merger. Therefore it is appropriate if the nomenclature is "merger", not "amalgamation", as referred to in the provisions of the Company Law and the Sharia Banking Law.

The deed of incorporation shall be made before a notary in Indonesian, and a copy of the deed of incorporation shall be attached to (1) The submission of an application for the approval of the minister if there is a change in particular articles of association, as stipulated in Article 21 paragraph (1) of the Constitution; or (2) Submission of notice of incorporation to

the minister of amendment of the articles of association, as referred to in Article 21 paragraph (3) of the Tax Law.

Based on the provisions mentioned above, it was then followed up by the signing of the deed of Merger No. 37 dated January 14, 2021, which was made before Jose Dima Satria, S.H., M.Kn, Notary in Jakarta by PT. Bank BRI Syariah Tbk, PT BNI Syariah and PT. Bank Syariah Mandiri was then followed up by applying a copy of the deed of the merger of the three Islamic banks to the Ministry of Law and Human Rights. The rest of Article 123, paragraph (4) of Law Number 40 of 2007, states that obtaining approval from the relevant agencies is necessary to carry out merger activities.

The relevant agency in the event of this sharia bank merger is the Financial Services Authority, where with the issuance of the Decree of the OJK Board of Commissioners No. 4 / KDK.03 / 2021 dated January 27, 2021, the decision to merge the three state-owned Islamic banks has received official approval from the OJK. After obtaining approval from the Minister of Law and Human Rights based on Decree No. AHU-0006268. AH.01.02. In the year 2021, dated February 1, 2021, it can be known that the effective date of the merger of PT. Bank Syariah Mandiri and PT. Bank BNI Syariah into PT. Bank BRI Syariah Tbk is effective on February 1, 2021, which has been mutually agreed upon by changing its name to PT. Bank Syariah Indonesia as stipulated in the explanation of Article 133 of Law Number 40 of 2007 and Article 14 paragraph (1) of PP Number 27 of 1988. Since obtaining approval from the Minister of Law and Human Rights the Board of Directors of PT who accepts the merger must announce the results of the merger in 1 newspaper or more a maximum of 30 days

from the date. This announcement is intended so interested third parties know that a merger has been carried out on the three state-owned Islamic banks, namely PT. Bank Syariah Mandiri and PT. BNI Syariah into PT. BRISyariah Tbk has now changed its name to PT. Bank Syariah Indonesia Tbk.

### **Impact and Legal Protection for Stakeholders with the Existence of Corporate Action in The Form of Mergers Against PT. Bank Bri Syariah Tbk, PT. BNI Syariah and PT. Bank Syariah Mandiri Became PT. Bank Syariah Indonesia**

The purpose of this legal protection is, among others, prevention of the emergence of settlement disputes if disputes arise.<sup>26</sup> There are important elements in the word protection, namely: there is a legal subject that is required to protect, there is an object that needs to be protected, and there are tools, facilities, instruments, and businesses used to achieve legal protection.<sup>27</sup> This needs to be done so that there is no monopoly that results in future unfair business competition between legal subjects, legal objects and other business actors.<sup>28 29</sup>

The customer's position as a consumer needs to be protected by their rights and obligations through Law No.8 of 1999 related

to consumer protection.<sup>30</sup> Based on the opinion of Satjipto Rahardjo, the legal protection provided to customers has the meaning of the existence of Law as the means to protect the interests of the community through efforts to allocate power in acting on an interest.<sup>31</sup> Legal Signs of Sharia Commercial Bank Merger Towards the Principles of Good Corporate Governance (GCG).<sup>32</sup>

The condition that must be met so that a company can merge the first condition, according to the explanation of article 126 paragraph 1 of Law Number 40 of 2007 concerning Limited Liability Companies, is that the merger cannot be carried out if it detrimental to stakeholder. In this case, the company's interests, minority shareholders, bank employees, customers, the interests of the community, and fair competition in conducting business.

Organizations in business management need to provide guarantees that the rights of each stakeholder are considered in a balanced manner to provide long-term prosperity can be realized.<sup>33</sup> Stakeholders are divided into two, namely primary (internal) stakeholders and secondary (external) stakeholders. Primary stakeholders have a direct relationship with contracts carried out by the company, while secondary stakeholders are legal actions carried

<sup>26</sup> Rizky Tri Anugrah Bhakti, "Jurnal Cahaya Keadilan . Vol 3. No. 1 ISSN: 2339-1693," *Cahaya Keadilan*, 3.1 (2015), 32–49; Raymond Dantes, "Peranan Fikih Muamalah Dalam Penyelesaian Sengketa Pada Lembaga Keuangan Syariah di Indonesia," *EKONOMIKA SYARIAH: Journal of Economic Studies*, 1.1 (2018).

<sup>27</sup> Wiji Nurastuti, *TEKNOLOGI PERBANKAN* (Yogyakarta: Graha Ilmu, 2011).

<sup>28</sup> Chandra Manungsa Alit and Yeti Sumiyati, "Relevansi Pengecualian Praktik Monopoli Terhadap Perusahaan Bumn Dalam Merger Tiga Bank Syariah Bumn," *Dialogia Iuridica: Jurnal Hukum Bisnis Dan Investasi*, 13.1 (2021), 33–46  
<<https://doi.org/10.28932/di.v13i1.3618>>.

<sup>29</sup> Rizki Tri Anugrah Bhakti.

<sup>30</sup> Neneng Nurhasanah, *Hukum Perbankan Syariah* (Jakarta: Sinar Grafika, 2017).

<sup>31</sup> Lukman Santoso Az, *Hak Dan Kewajiban Hukum Nasabah Bank* (Jakarta: Pustaka Yusticia, 2011).

<sup>32</sup> Rahmatullah.

<sup>33</sup> Siti Amarah, "Tanggung Jawab Sosial Bank Syariah Terhadap Stakeholder Dalam Perspektif Maqâshid Syari'ah," *AHKAM: Jurnal Ilmu Syariah*, 16.1 (2016); Ekarina Katmas and Evie Syalviana, "Tanggungjawab Sosial Bank Syariah Di Indonesia," *At-Thariqah: Jurnal Ekonomi*, 1.1 (2021), 98–108; Muhamad Fauzi and others, "Penerapan Tanggung Jawab Sosial Perbankan Syariah Milik Negara Dengan Indeks Islamic Social Reporting," *Jurnal Ilmiah Ekonomi Islam*, 6.3 (2020), 488–500.



out by the company that affects the interested parties. Indirectly even though not under contract, the parties remain affected. This influence is related to the balance of roles and relationships between stakeholders, where the company has a great responsibility to stakeholders if it wants its company to continue operating in the long term.<sup>34</sup>

Article 126 number 1 (one) of Law No. 40 of 2007 concerning PT states that when a company carries out corporate action in the form of a merger or merger, it is necessary to pay attention to several interests, including 1) The company, minority shareholders, company employees; 2) Creditors or customers and other business partners of the company; 3) People and business actors who compete healthily.

Shareholders, employees, and customers are parties who have a hand in providing commonwealth to the bank because they have a relationship with the bank based on the agreement. The agreement between the bank and the shareholders is a share sale and purchase agreement. For employees, an employment agreement applies, and for bank customers, a savings and financing agreement applies.

The step that needs to be done by each company is to appoint a public appraisal service to assess the fairness of the shares of each company to ensure that the rights of minority shareholders are fulfilled. Based on research, it is known that the percentage of the value of each shareholder when combined into a PT. BSI, Tbk. The following is the composition of BSI's shareholders: (1) PT. Bank Mandiri, the largest shareholder, is 51.2%, (2) PT. Bank Negara Indonesia 25%, (3) PT. Bank Rakyat

Indonesia at 17.4%, (4) DPLK BRI-Sharia Shares at 2%, (5) Public relations at 4.4%.

All shareholders in state-owned Islamic banks get a portion of shares as they should, so in this case, no shareholder feels aggrieved by the merger activities. Minority shareholders are one of the primary stakeholders who have a relationship of interest. In the event of merger, minority shareholders have still calculated the percentage of their shares and get a portion as a result of the services of a public appraiser.

If, in its implementation, the minority shareholders suffer losses, the way that can be taken by minority shareholders based on the reference to the Limited Liability Company Law are to file a direct suit. A direct suit or direct lawsuit can be filed based on several provisions: Article 61 of the Limited Liability Company Law and Article 1365 of the Civil Code. A direct lawsuit may be made for and on behalf of itself as a minority shareholder. This direct lawsuit can be made against anyone deemed to have caused losses to minority shareholders, including the company itself, the directors and/or commissioners, or even outside parties.

Based on Article 62 paragraph 1 of the Limited Liability Company Law, every minority shareholder regardless of how many percent of the shares he owns is entitled to file a lawsuit against the company in court, if this minority shareholder is harmed by unfair actions without reasonable reason due to merger activities in the company, be it from the actions of the board of directors, commissioners or GMS. The shareholder lawsuit can be carried out with 3 (three) targets, namely: 1) Termination of the merger: That such actions can prevent legal activities in the form of mergers, 2)

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<sup>34</sup> Archie B. Carroll, *Business & Society: Ethics & Stakeholder Management* (South Western: Publishing Company., 1989).

Enforcement of curative Actions: that with the enactment of such curative Actions is to take steps against merger actions that have already been carried out, including providing compensation to parties who have been harmed. 3) Enforcement of Preventive Measures: Preventive measures may prevent similar measures from arising.

Specifically, the PT Law does not yet provide legal protections for minority shareholders, such as personal rights, preemptive rights, appraisal rights, and derivative rights. This principle of minority protection is well-intentioned because what is sought is equilibrium stored in the majority rule and minority rights. The PT Law needs to be refined by providing an adequate mechanism for legal protection for minority shareholders. The total number of employees owned by the three state-owned banks is at least 18,734. The details of the number of employees are as follows: Bank Syariah Mandiri has 8,400 employees, BNI Syariah has 5,723 employees as of 2019, and BRI Syariah has 4611 employees. Based on information submitted by the President Director of Bank Syariah Indonesia, Hery Gunadi, employees who worked at the previous bank will not be terminated. (Financibisnis.com) It is in line with the statements of Islamic bank employees after the merger as when the author conducted direct interviews with bank employees at Islamic bank branches in Indonesia. The merger did not reduce the number of employees, even the number of employees increased to 27,950.<sup>35</sup>

The absence of termination of employment is none other than because the merger implementation was carried out, not because of problems with the three state-

owned banks. Based on the author's interview results with an employee of Bank Syariah Indonesia located at the sub-branch office of Ngaliyan District, Mr. Raiza Purwo Fachruzi said that there was no Termination of Employment between the bank and employees. The employees continued to work in the first year of the merger activities. The employment contract between the bank and the employee is still carried out and completed assigned. After the expiration of the employment contract, a new employment contract will be made to adjust to the new company, namely PT. Bank Syariah Indonesia, tbk. In line with what was conveyed by Mr. Raiza that the employment contract with Bank BRI Syariah expires this year, a new work contract will be re-created with PT. Bank Syariah Indonesia, tbk next year.

The impact on employees after the merger is the alignment of the classification of types of work with the HR policy of Employees of Islamic banks who were previously members were allowed to continue the contract. the Limited Liability Company Law does not provide special procedures for employees whose rights sometimes feel disadvantaged by merger. The way to deal with it is by referring to the provisions of the Civil Code or the Law on Manpower. Companies that have a legal relationship with their employees are domiciled as legal subjects, namely legal entities. Its status as a legal subject results in the company having obligations and rights that can be obtained. The rights and obligations referred to herein relate to their relationship with employees of the company who have a contract of employment under an employment agreement. The company should fulfill the obligations of its

<sup>35</sup> Mariyatul Qibtiyah and Fitra Wicaksono, "Analisis Merger Bank Syari'ah Indonesia (BSI) Dalam Perkembangan Perbankan Syari'ah Di Indonesia," *Jurnal*

*Justisia Ekonomika: Magister Hukum Ekonomi Syariah*, 6.2 (2022).

employees as stipulated in the employment contract.

Law Number 13 of 2003 concerning Manpower in providing legal protection for bank employees, among others, is contained in Article 61. It is stated that when carrying out the merger of companies, each employee who has rights according to their respective portions of the new responsibility belongs to the new company due to the merger. The merger of the company with the new management will cause a significant change in the company's culture and operations, so it needs a prudent settlement without harming the other party by renewing the employment contract after the period of service with the previous bank is completed.

The merger of banks impacted customer accounts. To avoid the occurrence of one-sided agreements by the bank, banks need to inform customers regarding merger activities and what needs to be prepared by customers. It is intended so that customers can take a stance to stay in the merged bank or withdraw the funds they have if they disagree. Islamic banking has a legal protection system for customers as an institution engaged in financial services.<sup>36</sup>

The legal protection system for customers can be viewed from the side of the customer's interests. These interests are a relationship that needs attention from the side of legal protection in the Law on consumer protection, namely Law No. 8 of 1999. Islamic bank customers have a position as consumers in this Law. This position legally affects the relationship of rights and obligations as a provision in Article 4 of Consumer Protection, one of which states that every consumer, in this case, the customer has the right to all accurate

information about the condition of the legal object transacted by both parties.

The steps were taken by the bank when the merger was appropriate. During the transition of Bank Syariah Indonesia, the bank provided information to customers to integrate customer data gradually. The integration process begins with migrating from the previous Bank to Bank Syariah Indonesia, which will be carried out on 15 (fifteen) February 2021 and the deadline of 30 (thirty) October 2021. Islamic bank customers get information from the original bank through a short message sent to their respective cellphone numbers according to the period of data integration at branch offices, service facilities, and banking products.

The implementation of customer data integration can be implemented directly at the Islamic Bank branch office, where the account is registered, or through the BSI Mobile application. In making it easier for its customers, the bank also provides alternative migrations through the Aisyah direct chat application, Whatsapp Business, and every nearby ATM. For Generation Z active internet users who follow the development of the industrial revolution 4.0 is not a difficult thing. But for parents, they will definitely have difficulties because of the limitations in absorbing and applying information from the merger must come directly to the bank.<sup>37</sup>

In line with this, during the merger process, the three banks, each of the customers of the merged bank could not withdraw and distribute money through the internet network.

<sup>36</sup> Bambang Hermanto, *Hukum Perbankan Syariah* (ogyakarta, Kaukaba, 2014); Winda Afriyenis and Dini Sabrina, "Pandangan Islam Terhadap Pengaruh Lembaga Bank dan Lembaga Non Bank Dalam Pembiayaan Usaha

Kecil Menengah di Kota Padang," *EKONOMIKA SYARIAH: Journal of Economic Studies*, 1.1 (2018).

<sup>37</sup> Yulfan Arif Nurohman and Rina Sari Qurniawati, "Persepsi Nasabah Generasi Z Pasca Pengumuman Merger Bank Syariah," *Among Makarti*, 14.2 (2022).

The solution is to use ATM Bersama, Prima and GPN.<sup>38</sup>

Especially for customers who deposit funds with deposit services at the previous bank, they can still be used until the maturity ends. For customers who take part in the Hajj program and have not received a portion for the hajj pilgrimage, then the account they have can be used to register through hajj savings at the branch of the account manager. The rest is for customers who have obtained the departure portion to perform the Hajj.

Electronic money can still be used. The balance amount, the balance has not changed. M-banking and i-banking used by customers can also still be used even though sometimes there are system errors due to the data integration process. According to researchers, the principle of prudence needed when Islamic banks want to merge. It must be implemented because, in legal action, the merger has the potential to cause losses to interested parties.

Legal protection for customers/business partners related to merger activities at PT. BRI Syariah against PT. BNI Syariah and PT. Bank Syariah Mandiri (BSM), which will become PT. BSI, Tbk, namely by providing an announcement in advance related to the merger activities. The announcement is intended so customers who feel objections can raise objections to the merger activities within 14 (fourteen) days after the announcement is officially announced.

Customers are given an alternative to withdrawing deposited funds or agreeing to a merger of the Islamic banks. Customers who still want to stay in Islamic banks have choice: (1) Remain a customer of a Sharia bank, where deposits must be converted to a new account with the same nominal value ; ((2) Stay in the

Islamic Bank beforehand, but only temporary, up to the transfer of PT. BRI Syariah against PT. BNI Syariah and PT. Bank Syariah Mandiri. to PT. Bank Syariah Indonesia. to PT. Bank Syariah Indonesia. Under the applicable provisions, asset transfers are carried out for the longest period of 12 (twelve) months since obtaining approval from the implementation of the merger. The account will be deactivated and unused if the customer does not take care of it. So until that deadline, the customer must immediately make a choice.

Thus, in the context of legal action in the form of a merger of the three state-owned Islamic banks into PT. BSI, Tbk resolved problems related to the transfer of customer data from the previous bank to pt. The result of the merger is that Bank Syariah Indonesia automatically has rights and obligations to be carried out through the new operations of PT. Bank Syariah Indonesia, Tbk. The depository customer is also given the right to withdraw all his deposits.

## Conclusion

The merger process was completed on time, as requested by the Minister of SOEs, on February 21, 2021, under the name PT. Bank Syariah Indonesia, based on Decree No. AHU-0006268. AH.01.02. The merger of PT. BRI Syariah, PT. BNI Syariah and PT. BSM is under Article 123 paragraph (4) of the Laws of The Republic of Indonesia Number 40 concerning Limited Liability Company which states that merger activities need to get the approval of relevant agencies in this case, namely the OJK through the Decree of the OJK Board of Commissioners No. 4 / KDK.03 / 2021 dated January 27, 2021. Based on the implementation of activities that have been running smoothly,

<sup>38</sup> Alif Ulfa, "Dampak Penggabungan Tiga Bank Syariah Di Indonesia," *Jurnal Ilmiah Ekonomi Islam*, 7.2

(2021),  
<<https://doi.org/10.29040/jiei.v7i2.2680>>.

the three state-owned Islamic banks are officially operating under a new name, PT. Bank Syariah Indonesia.

It is just that to merge Islamic banks. No law specifically regulates it, so it is necessary to make regulations in advance. Legal protection for minority shareholders is not a problem because the three state-owned banks agreed to the merger and have been divided according to a balanced percentage. The legal protection that can be taken in the event of a problem is by conducting a direct suit for and on behalf of yourself and or a derivative suit for and on behalf of the company. The impact on employees is the transfer of status to employees of Bank Syariah Indonesia. So that all employees in the previous bank continue to work at the merged bank, there will be a harmonization of work according to their respective fields in the future. However, if employees still feel aggrieved about their rights and cannot be pursued by peaceful means, they can file a lawsuit in the district court in the industrial relations court using article 1365 of the Civil Code. The initial impact on customers is the need to migrate data from the previous bank.

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