

## Supervision of Financial Planning Companies in Consumer Protection Efforts

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### ABSTRAK

Transaksi jual beli baik jasa maupun barang berkembang pesat seiring dengan perkembangan teknologi. Profesi perencana keuangan banyak diminati oleh masyarakat akhir-akhir ini, namun hal ini tidak terlepas dari adanya sengketa yang mengakibatkan kerugian bagi konsumen. Penyalahgunaan wewenang dan pelanggaran yang dilakukan oleh perusahaan perencana keuangan melanggar hak-hak konsumen. Otoritas Jasa Keuangan juga belum melakukan pengawasan karena perencana keuangan tidak termasuk dalam sektor keuangan. Penelitian ini mengkaji perlindungan hukum bagi konsumen perencana keuangan melalui pengawasan berdasarkan asas keamanan, kepastian, dan manfaat. Pendekatan perundang-undangan mendukung metode yuridis normatif dan menggunakan data sekunder. Hasil penelitian menunjukkan bahwa perlindungan hukum bagi konsumen perusahaan perencana keuangan didasarkan pada Pasal 10 huruf c Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen, Pasal 103 dan Pasal 104 Undang-Undang Nomor 8 Tahun 1995 tentang Pasar Modal, Pasal 28 Undang-Undang Nomor 19 Tahun 2016 tentang ITE, Pasal 378 dan Pasal 372 KUHP dan Pasal 1365 KUH Perdata.

Kata Kunci: Perlindungan, Konsumen, Perencana Keuangan, Pengawasan

### ABSTRACT

Buying and selling transactions, both services and goods, are growing rapidly along with technological developments. The profession of financial planning has been in great demand by the public in recent times, but this is inseparable from the existence of disputes which result in losses for consumers. Misappropriation of authority and violations committed by financial planning companies violate consumer rights. The Financial Services Authority has also yet to supervise because financial planners are not included in the financial sector. This research examined legal protection for financial planning consumers through supervision based on safety, certainty, and benefit principles. A statutory approach supports the normative juridical method and uses secondary data. The results of the study show that legal protection for consumers of financial planning companies is based on Article 10 letter c of Law Number 8 of 1999 on Consumer Protection, Articles 103 and Article 104 of Law Number 8 of 1995 on Capital Markets, Article 28 of Law Number 19 of 2016 on ITE, Article 378 and Article 372 of the Criminal Code and Article 1365 of the Civil Code.

## I. INTRODUCTION

Legal protection is needed to perfect a perspective related to law enforcement in a country that is given to its people so that stability is created, especially in the economic and legal fields [\(Rachmadini, 2019\)](#). It cannot be denied that buying and selling transactions, be it goods and/or services, have developed rapidly. This then influences the development of strong relationships between consumers and business actors with the support of powerful information technology [\(Masruroh, 2019\)](#). Consumers as someone who are met with business actors who, in this case, have great power because of sufficient capital ownership so that the consumer's bargaining position becomes lower [\(Fibrianti, 2015\)](#). In this era of globalization, increasingly widespread business competition causes changes in mindset and behavior, creating unfair business competition. This is solely so that the interests of individuals at odds can remain protected. Therefore, efforts to protect consumers are urgently needed. This can be created by enacting laws that aim to protect consumers' needs and expectations and can be appropriately realized [\(Njatrijani, 2017\)](#).

The consumer protection legal instruments implemented are not intended solely to hinder the business being carried out by business actors. However, the law is needed to act as a driving force for a healthy business activity atmosphere. It is hoped that business actors can realize how vital consumer protection is. Thus, business actors can be more assertive in undergoing competition while still providing definite consumer protection [\(Rusli, 2014\)](#). Current economic developments have resulted in a paradigm shift in producer and consumer relationships. This is the beginning of legal reconstruction.

To measure the literacy and financial indexes of the Indonesian people, the Financial Services Authority (OJK) is again holding the 2022 National Financial Literacy and Inclusion Survey (SNLIK) from July to September 2022 in 34 provinces covering 76 cities/districts. The 2022 SNLIK results show that the Indonesian people's financial literacy index is 49.68%, an increase from 2019 which was only 38.03%. While financial inclusion in 2022 will reach 85.10%, an increase compared to the previous SNLIK period [\(OJK, 2022\)](#). Today, there is a new field in great demand by people in Indonesia, namely personal financial planning. This field has also received academic recognition as corporate finance and investment. Moreover, this field has become a specific central and economic research needed in the modern era. Financial planning is an effort to design finances to realize happiness and prosperity in the future. Financial planning is an activity to estimate income and expenses so that what is expected of the financial condition, especially for the future, can be carried out. This is done by keeping records of all income and expenses [\(Khoirudin, Ramadhona, & Lubis, 2021\)](#). Financial planning company (financial planning) is a profession that makes it easy for a company or individual to plan an economic program that aims to meet the financial needs of service users for a long time. Individual financial planning can be interpreted as a strategy that can help achieve future goals [\(Anismadiyah, Febriana, Irnawati, Rismanty, & Suryanto, 2021\)](#).

The existence of information technology support in the current era has an impact on the proliferation of applications that move in line with the field of financial planners or regulators. In Indonesia, a free financial management application is needed for people with difficulty managing monthly finances. It is no longer a strange thing. The salary or income you just got often runs out quickly, but you need better financial records and planning for use. Some examples of financial regulatory applications that can be downloaded for free by the people of Indonesia include Moneyfy, Money Lover, Wallet, Money Manager Expense & Budget, FinansialKu, Mint, MoneyWiz, Financisto, and Daily Financial Records.

FinansialKu, as a financial regulatory application, is the work of Indonesian children and is claimed as personal finance assistance by its users. FinansialKu has excellent features as a financial planner for various needs, such as education funds, housing purchases, funds for marriage, pension funds, or other funds needed by each individual. Users only need to fill in data such as price and product purchase period, then FinansialKu will calculate the required costs and record the savings progress. Apart from functioning to manage personal cash flow, users can also calculate the profit from their investments using this application. FinansialKu also has another reliable feature: an online consulting service with a CFP (Certified Financial Planner) certified financial planner. So that through this service, users can ask questions directly if they experience financial management difficulties.

Currently, the financial planner profession still needs to have regulations, including its activities in the capital market sector, which also has a vital role in this sector. This is intended as a basis for implementing company operational supervision to minimize acts of abuse by companies/financial planners. A company must adhere to the principles of Good Corporate Governance (GCG) in which there is an important principle, namely the principle of accountability or what is known as the principle of responsibility. The Capital Market Law must guide companies engaged in the capital market sector, the Financial Services Authority Law, and the Financial Services Authority Regulations. Specifically, regulations regarding financial planning companies have yet to be regulated. Still, currently, the implementation refers to the Regulation of the Center for Financial Transaction Reports and Analysis Number 6 of 2017 on the Application of the Principle of Recognizing Service Users for Financial Planners [\(Arzy & Sumiyati, 2021\)](#).

In 2020 there are financial planning companies that not only carry out activities providing education regarding finance/investment, planning a strategy and financial/investment goals, helping to achieve financial or investment objectives that are currently needed by consumers, investment consulting, and providing solutions to consumer financial problems as well issuing investment programs, trading portfolio transactions, participating in managing and placing consumer funds in specific investment instruments: the company, namely PT. Jouska Financial Indonesia (Jouska) is a financial planning company that commits acts of deviation from the aims and objectives of the company, which was initially a financial planning company to act as an investment manager. Due to

these irregularities, Jouska's consumers suffered losses as a result of Jouska placing consumer funds haphazardly [\(Arzy & Sumiyati, 2021\)](#)

There needs to be an emphasis on regulation related to financial planning companies in the financial services sector. Formulating arrangements for financial planning activities is vital in this case so that financial planning activities are consistent with other financial service activities that have stood alone [\(Davin, 2021\)](#). Although financial planning companies are categorized as companies engaged in the service sector, no regulations govern non-construction services. This legal vacuum causes financial planning companies to appear to have no legal boundaries, resulting in arbitrary actions.

## II. METHOD

This study uses normative juridical research methods, which are carried out by none other than conducting a review of literature or secondary data. The research that will be appointed chooses a problem approach, namely using a statutory approach by reviewing the entirety of existing regulations and having a relationship with the legal issues being discussed [\(Marzuki, 2019\)](#). Sources of primary legal material in this study include Law Number 8 of 1999 concerning Consumer Protection, Law Number 8 of 1995 concerning Capital Markets, Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE), the Criminal Code, the Civil Code and several related laws and regulations including those of the Financial Services Authority. Secondary legal material is a source that can support and reinforce primary legal material by providing an overview related to existing primary legal material so that an in-depth analysis can be carried out. Secondary legal materials used in this research include scientific articles published in national and international journals related to the theme or issue of this research. The legal issues raised in this study are problems regarding consumers and financial planning companies, which are undoubtedly inseparable from buying and selling transactions, especially in services that already have laws that regulate them, so normative research with a statutory approach is an approach that uses legislation and regulations.

## III. RESULT AND DISCUSSION

### 3.1. Financial Planning Company

A financial planning company provides a plan for consumers, where the project is aligned with the desires or goals to be achieved by these consumers. The scope of a financial planning company is limited to financial planning for its customers. A financial planning company is not authorized to carry out transactions on behalf of its customers because it is not included in its scope. The financial planning companies themselves are categorized as non-financial service companies. In their implementation, financial planning companies often involve cross-sectoral products because of their strong linkages with other sectors, such as the capital market and insurance sectors.

The financial planning company is a company in the form of a limited liability company, which in its establishment, must go through several stages. Establishing a limited liability company based on the deed of establishment of a limited liability company and signing in front of a notary is the first step the founder must take. Of course, the deed must also state the articles of association of the limited liability company concerned. Furthermore, the establishment act must go through ratification by the Ministry of Law and Human Rights. When a letter of approval has been received, the PT is registered with the deed of establishment in the Company Register at the Company Registration Office where the PT is domiciled to obtain a Company Registration Certificate, and the establishment deed is announced in the Supplement to the State Gazette. Furthermore, before financial planning companies can carry out financial planning, they must at least have certification, including:

1) Certified Financial Planner (CFP)

Certified Financial Planner (CFP) is a formal designation of disciplines in financial planning, taxes, insurance, estate planning, and pensions. In terms of wanting to get the financial planner certification, 4 (four) fields must be fulfilled by candidates, including:

- a. formal education;
- b. Performance on the CFP exam;
- c. Relevant work experience; and
- d. Demonstrate professional ethics.

2) Registered Financial Planner (RFP)

The Registered Financial Planner (RFP) was created so that financial planners who wish to obtain financial certification have yet to meet the requirements. CFP certification has yet to be received. To get RFP certification, the conditions must be met and are not too much different from those of CFP. The difference is that the candidate for this certification requires 1 (one) year of professional experience in a financial manager position.

Problems regarding the financial planning profession currently rife in Indonesia must be followed up. The loss that consumers get because of a financial planning problem is something that deserves to be questioned. The reason that can cause a loss to arise is due to people's need to understand the tasks that a financial planner should carry out. This is because this directly relates to investment management. Therefore, society as a consumer must be able to know the difference between the two so that the risk of losses incurred can be minimized because of the knowledge they already have.

There is a prohibition on a financial planner from exercising the capacity of an investment manager or even having an association with certain investment managers. Quoting from the Financial Planning Standards Board Indonesia, we can see that financial planning is a way that can be used to achieve what is realized by someone by managing their finances in a coherent and structured manner. A person's life goals become more planned with this profession where education funds specifically for children can be adequately prepared, old

age funds for himself and his partner, funds for a dream residence, funds for leaving an inheritance to his beloved family, funds for performing the pilgrimage, and others. Financial planning is usually carried out by involving service users with service providers in the form of cooperation to explicitly determine and achieve the life goals of service users (clients).

### **3.2. Consumer Protection through Supervision of Financial Planning Companies**

The legal basis for implementing consumer protection in Indonesia is regulated in Law Number 8 of 1999 concerning Consumer Protection. This legal protection is something that is done to be able to guarantee and ensure that consumer rights have been fulfilled (Suparto, 2016). In this case, the certainty referred to is related to all efforts and efforts to ensure consumer empowerment so that they can obtain and be able to ensure that they also enforce or defend their rights if consumers experience a loss for the behavior or actions carried out by business actors as the provider of community needs (Helmi, 2015). This partiality towards consumers also aims to create a high level of concern for consumers (wise consumerism).

Consumer protection means protecting the whole society because everyone is a customer. Since consumers are considered legal subjects in this scenario, their interests and safety must be protected by law, and competent authorities must supervise the protection process (Himawan & Hutabarat, 2020). In essence, the instrument for legal protection for consumers in trade transactions is implemented in 2 (two) forms of arrangement: legal protection based on agreements or agreements reached only between the people involved. This agreement can be tangible in terms of the contents of the contract or its substance between the parties. Consumers and producers, such as dispute settlement methods, provisions for compensation, time limits for making claims, and others by what is specified in the contract agreement. The other is legal protection in the form of a specific law (Gultom, 2009).

When reviewed further, of the two forms of legal protection previously mentioned, legal protection previously mentioned, legal protection based on statutory provisions is the most effective means or tool to be used because statutory provisions remain to become the basis for making agreements carried out by consumers and producers, as well as the formation of the law itself or through government regulations (Sitepu, 2020).

Consumers often encounter problems whose rights still need to be fulfilled. One of them is related to financial planners. Many ordinary people need advice and consultation with a more expert. However, sometimes it is not good advice and consultation. Some people take advantage of consumers' need for more understanding so that consumers feel disadvantaged. This has resulted in the objective of legal protection for consumers, as stipulated in Article 3, needing to be realized. Within financial planning companies, business actors often deny responsibility for losses consumers suffer. The reason is that financial planning companies only provide advice, so the consumer determines the

decision entirely. However, in giving existing advice, there is inaccurate information and the potential for fraud to be committed.

Law Number 8 of 1999 concerning Consumer Protection aims to balance the protection of the interests of consumers and business actors to create a healthy economy. The law regulates the definitions of consumers and business actors, the rights and obligations of consumers and business actors, and the principles of consumer protection. A financial company is a service business actor in the financial management sector, while its customers are clients who need financial planning to achieve specific financial goals. Therefore, the Consumer Protection Act applies in the financial planning business sector and creates a legal relationship between the two.

Although consumers of financial planners can use several types of regulations to obtain legal protection, financial companies can easily circumvent them. This is due to the absence of oversight and legal rules that regulate this financial planning company, even in the Regulation of the Center for Financial Transaction Reports and Analysis Number 6 of 2017 concerning the Application of the Principle of Recognizing Service Users for Financial Planners, it does not clearly explain the authority and limits, even responsibility of a financial planning company. This provision only discusses the relationship between PPATK and financial planners to trace consumer money. So because there are no definite rules regarding the scope and responsibilities, financial planning companies can easily dismiss any lawsuits directed at them. Agreements made by business actors and consumers also cannot fully guarantee legal protection for consumers because not all business actors explain the company's responsibility if consumers lose money as a result of the actions of business actors.

Existing agreements cannot protect consumers with certainty because financial planners as business actors always blame consumers when they experience losses on the pretext that investments are only sometimes profitable. Also, financial planning companies only provide advice, and consumers agree to carry out or not the suggestions that have been submitted. This is due to legal loopholes, where business actors can act freely because there are no existing rules and supervision. In this case, many business actors take actions that can harm consumers intentionally or unintentionally, such as by not providing inaccurate information or being affiliated with companies where financial planning companies direct their consumers to invest in certain companies regardless of developments. The company. In this regard, financial planning companies can obtain fees from every consumer who invests in the company. Financial planning companies can affiliate with other companies, but this must be informed to consumers to ensure clear and definite transparency.

Clarity of information must still be carried out by financial planning companies, which are not only viewed from the perspective of the financial planning company's profits but also uphold justice and transparency to consumers. Financial planning companies can freely deceive consumers by not explaining the actual risk threat and only explaining the advantages. Many consumers use these services because they need help understanding and expert opinion, so they cannot assess the validity of the information submitted by

financial companies. In addition, financial planning companies are very closely related to the capital market. Still, the Financial Services Authority considers that these companies are not engaged in the financial sector, so the Financial Services Authority needs to have the authority to supervise these financial planning companies. Compared to other countries, financial planning companies must have supervisors and regulations. For example, the UK and Singapore have regulated institutions that oversee financial planning companies, and there are also rules governing financial planning companies [\(Secomb, 2021\)](#).

Several laws and regulations related to financial planning companies in Indonesia can be studied further as follows:

a. Law Number 8 of 1999 concerning Consumer Protection

Referring to Article 10 letter c, which states that business actors offering goods and/or services intended for trading are prohibited from providing, promoting, advertising, or making statements that are untrue or misleading regarding conditions, guarantees, rights, or compensation for an item and/or services traded (Masri, 2020). The financial planning company providing the information must be transparent so that consumers can know the condition of the advice given by the financial planning company. This is in line with Article 7 letter b, which requires that they, as business actors, must be able to present data or information accurately, clearly, and honestly.

b. Law Number 8 of 1995 concerning Capital Markets

Financial planning companies can also be recognized by Article 103 of this Law, whereby financial planning companies cross the line by taking actions to participate in their client's capital market activities even though this is not part of the financial planning authority. In the capital market environment, violations of laws and regulations are prone to occur and are committed by those with a place in the capital market. Violations in the field of capital markets themselves are technical-administrative violations (Londa & Baftim, 2021). Apart from that, Article 104 related to insider trading can also be imposed on a company that discloses trade secrets on the stock exchange.

c. Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE)

Article 28 Paragraph (1) explains that everyone intentionally and without rights spreads false and misleading news that results in consumer losses in Electronic Transactions. In Article 28, Paragraph (1), there is the sentence "fake news," so it is not too detailed to explain what is meant by the verdict. Still, there are similar provisions in Article 390 of the Criminal Code. Although there is a slight difference in the phrase "spreading fake news" (Sanusi, 2010). In this case, the financial planning company may be subject to this article because it has provided misleading, false information, resulting in losses for its consumers in conducting electronic transactions in the capital market.

d. The Criminal Code

Article 378 of the Criminal Code can also be imposed on financial companies, and someone who commits fraud can be threatened with criminal sanctions. Fraud itself is a crime that is classified as a crime against people's property, in which the perpetrator, in this case, the financial planning company, uses actions or words that are deceptive or contain deception (Putra, Putra, & Rahmadani, 2021).



Financial planning companies can be said to have committed fraud because they provided information that was not true in giving advice, and the advice they gave ended in losses for consumers. In addition to fraud, financial planning companies may be subject to the criminal element of fraud as stipulated in Article 372 of the Criminal Code, which reads: whoever intentionally and unlawfully owns something which is wholly or partly owned by another person, but which is in his power not because of a crime is threatened because embezzlement, with a maximum imprisonment of four years or a maximum fine of nine hundred rupiahs.

e. Code of Civil law

There is also Article 1365 of the Civil Code concerning Unlawful Acts (PMH), namely an act that is carried out or by not doing something where it harms or reduces the legally protected rights of other people, where because of this, compensation can be requested from that person. In this case, consumers can ask for payment from financial planning companies for actions that are against the law, resulting in suffering for consumers.

The conditions above indicate that a legal substance adapted to the community's needs will undoubtedly achieve legal certainty. So, absolute confidence fulfills the abovementioned requirements, namely, seeking a harmonious relationship between the government and the people in focusing on and studying existing legal practices (Hernawati & Suroso, 2020). So according to the author, the Financial Services Authority must supervise financial planning companies. Even though this company is not engaged in the financial sector, it can be said that the actions of this company are closely related to the financial industry (Agustiene & Haryanto, 2022). Then a supervisory mechanism is needed for financial planning companies by the OJK as a supervisory institution. Referring to a statement from the Indonesian Center of Indonesian Policy Studies (CIPS), Researcher Ira Aprilianti said that the Financial Services Authority, in this case, needs to make a regulation that regulates the financial planning profession more clearly. Recommendations that the Financial Services Authority can carry out in the context of supervising financial planning companies include:

- a. It is necessary to prepare Regulations under the Financial Services Authority and a Circular Letter of the Financial Services Authority regarding the financial planning profession, which explains the authorities and obligations as well as the limitations of the financial planning profession.
- b. The Financial Services Authority can choose one or more associations to provide an association authority in terms of approval so that its members can open financial planning services that the Financial Services Authority has proposed to carry out co-regulation. Coordination between the two will undoubtedly make it easier for associations and the Financial Services Authority to become supervisors and consolidate reports on consumers or service users to reduce a risk that will arise in the future.
- c. Users of financial planning services can take advantage of the complaint service when problems occur or suffer losses so that they can be followed up. Associations that have the authority in this matter can accept the report to be investigated later and given strict sanctions for those who have unprofessional behavior, are not skilled, and lack character. For financial planning companies that provide their

services by the regulated code of ethics, the government can protect their prestige in this case.

Legal certainty is needed, namely in the form of forming statutory regulations. In addition, it must regulate institutions for the supervision and licensing of financial planning companies to create a balance between business actors and consumers and create legal protection for disadvantaged consumers of financial planning companies.

Legal protection can be given if there is a definite rule as the theory of legal certainty, according to Gustav Radbruch [\(Julyano & Sulistyawan, 2019\)](#). He revealed that to realize the ideals of law, the rule of law must bring clarity to society to create justice, certainty, and benefit. However, there currently needs to be more explicit corporate financial planning guidelines, especially in powers, requirements, scope, accountability, and oversight. In this case, it results in the need for more community clarity and the failure to achieve justice, certainty, and benefit as legal objectives for the community. As a result, the concept of benefit, the principle of justice, the principle of balance, the focus on consumer security and safety, and the direction of legal certainty inherent in consumer protection have yet to be fulfilled. The guarantee that the law is carried out in society is the existence of legal certainty, where it is stated that by obtaining his rights, he is the one who, according to the law, has the right to receive them and where decisions can be carried out.

Legal certainty has a close bond with justice. However, in retrospect, legal certainty is not synonymous with justice. The nature of law is general and binds everyone to be considered equal, while fair according to everyone is different so that judge has a subjective character and individuality [\(Mertokusumo, 2007\)](#). So legal certainty is obtained, then justice and consumer rights will be addressed.

#### IV. CONCLUSION

Legal protection for consumers of financial planning companies who suffer losses due to the actions of financial planning companies certainly needs to be accommodated. Financial planning companies that harm consumers may be subject to sanctions by laws and regulations currently in effect in Indonesia, such as Article 10 letter c of Law Number 8 of 1999 concerning Consumer Protection, Articles 103 and Article 104 of Law Number 8 1995 concerning the Capital Market, Article 28 of Law Number 19 of 2016 concerning ITE, Articles 378 and Article 372 of the Criminal Code and Article 1365 of the Civil Code. However, it is felt that these regulations are still lacking in protecting consumers, especially the Regulation of the Center for Financial Transaction Reports and Analysis Number 6 of 2017 concerning the Application of the Principle of Recognizing Service Users for Financial Planners, which has explained little to financial planners. However, this only discusses the tracing of funds from users of financial planning services to prevent money laundering. There needs to be a specific explanation of the relationship between financial planning companies and their customers, especially concerning authority, obligations, scope, and responsibility. A financial planning company is not engaged in the financial sector, but its business activities are closely related to finance.

## Authors' Declaration

**Authors' contributions and responsibilities** - The authors made substantial contributions to the conception and design of the study. The authors took responsibility for data analysis, interpretation, and discussion of results. The authors read and approved the final manuscript.

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