

THE IMPACTS OF OJK (INDONESIAN FINANCIAL SERVICES AUTHORITY) FOR INDONESIAN CENTRAL BANK

Dr Theresia Anita Christiani
Faculty Of Law
University of Atma Jaya,
Yogyakarta , Indonesia
Email: thanita@mail.uajy.ac.id

ABSTRACT

Financial Services Authority is an institution that is authorized to perform the task of regulation and supervision of all financial institutions in Indonesia. The legal basis is Article 34 of the Law of OJK BI .Before presence OJK Law, the regulation and supervision of any financial institution that is given to different institutions. For example, the banking institutions given the authority to regulate and supervise are Bank Indonesia, while the capital market given the task of regulation and supervision is the cause of weak supervision Bapepam. That situation performed due to hybridization products of financial institutions that exist. It became one of the reason of the existence of the OJK. The birth FSA also had an impact in various aspects to financial institutions in the form of a bank (bank) and financial institutions that are not shaped bank (capital markets, insurance, etc.). Before the Financial Services Authority appears there is some arguments whether or FSA. When this argument is irrelevant whether or not to become again to talk about but can be taken into consideration and input to make the FSA to address many concerns and doubts of the existence of the OJK. The impact of the establishment of the OJK which will cause potential problems in the future, more attention should among other things there are still some issues that need to be resolved after the Act was enacted and applicable FSA among others, the consistency between the mandate of Article 34 of the Law of BI and the OJK Regulation . Bank Indonesia problems are about independence and Human Resources issues. This needs attention so that FSA can perform the task well in order to achieve the goal. For Bank Indonesia most noticeable impact is the shift supervision and regulation tasks that were once in Bank Indonesia now turn to the FSA and how the status of the independence of Bank Indonesia after the formation of the OJK Regulation.

Keywords: FSA, Regulation. Independence.

Introduction

OJK Law was enacted on November 22 since mandated by Article 34 of Law No. 23 of 1999 concerning Bank Indonesia indicates the existence of a tug Financial Services Authority, which will serve to organize system of regulation and supervision of integrated financial services sector. This paper focuses on the influence of the existence wants FSA to the independence of the central bank. At first the establishment of the legal basis of financial services supervisory agency (LPJK) hereinafter in the law No. 21 of 2011 referred to the Financial Services Authority (FSA) is explicitly stated in Article 34 of Law No. 23 of 1999 concerning Bank Indonesia and the explanation which reads as follows:

- (1) The task of overseeing the Bank will be carried out by the regulator for the financial services sector that is independent and established by law.
- (2) The establishment of supervisory agencies referred to in paragraph (1) will be implemented no later than December 31, 2002.

The philosophy of the provisions of Article 34 can be found in the explanation of Article 34, which reads:

(1) financial services supervisory board to be set up to supervise the banks and corporations other financial services, including insurance companies, pension funds, securities, venture capital and other financing companies, and other entities operating in the management of public funds. These institutions are independent in carrying out their duties and positions are outside the government and required to report to the Board of Finance inspectors and House of Representatives. In implementing this institution (Supervisory Board) coordination and cooperation with the Central Bank to be regulated in the Act is the establishment of Oversight Institutions. The supervisory board may issue regulations relating to the execution of duties by the coordination of bank supervision by Bank Indonesia and asked for an explanation of Indonesian banks, information and functions. There is macro data set will still be implemented by Bank Indonesia.

Article 34 of Law No. 23 of 1999 and an explanation that requires that the Financial Services Supervisory Authority is the desired regulatory agency that is outside of government that is both independent and accountable to Parliament and the CPC and remove provisions relating to the duties of bank supervision and coordination of Bank Indonesia ask for an explanation of Indonesian banks, information and functions diperlukan. Adapun macro data set will still be implemented by Bank Indonesia. . Financial Services Supervisory Authority held no later than December 31, 2002. In the development of Law 23 of 1999 amended by the enactment of Law No. 3 Year 2004 Applicability consequences provisions relating to the supervision of financial services institutions are changing. Changes in the provisions contained in Law No. 3 2004 compared to Article 34 of Law No. 23 of 1999 which is the period of the establishment of the Financial Services Supervisory Authority. The provisions of Article 34 of Law No. 23 of 1999 determines that the financial services supervisory agency will be established no later than 31 December 2002 In the new provisions in Article 34 of Law No. 3 In 2004, the provisions regarding the establishment of the Financial Services

Supervisory Authority established no later than December 31, 2010 deadline resignation formation in Law 3 of 2004 was due to the readiness of human resources and infrastructure in the receiving institution's transfer of bank supervision of Bank Indonesia.

LPJK also greatly affect the formation of Bank Indonesia as a function of regulatory and supervisory agencies as stipulated in Law No. 23 of 1999 and Act No. 7 of 1992 as amended by Act No. 10 of 1998. These issues include the establishment of the Financial Services watchdog is related to functions that had been done by Bank Indonesia will be taken over by the Financial Services Supervisory Authority. Formation of this FSA indicates a serious problem in banking practice when FSA formed the duties of Bank Indonesia in achieving and maintaining stability in the rupiah.

Research design

OJK or Not

Theoretically there are two streams (school of thought) in the supervision of financial institutions. The flow of the first to say that the financial industry oversight should be performed by a single institution. Others argue that the flow of the financial industry more precise control when done by several agencies. The fundamental reason this classification system is the suitability of the respective banking systems and how the convergence in the financial industry that caused the problems in the regulatory and supervisory authority issues.

Those who argue that the banking industry is more precise control when it is not left to the sole authority can be shown, among others, a survey conducted Central Banking Publications (1999) showed that of the 123 countries surveyed, three-quarters of the banking industry provide oversight authority to the central bank. It is more prevalent in countries emerging. Especially for developing countries is the reason for the problem of human resources and funds. The notion that banking supervision submitted to the central bank, stressed that the model of supervision that separates the supervision of the central bank has made the regulatory authorities are too focused on the institution by institution with a focus on a single risk. While the central bank is too focused on monetary policy narrowly, ie achieving the inflation target. As a result, all reports on the condition of the financial system and the potential for systemic risk never give the whole picture of risk. Even the IMF report recognizes that the Global Financial Stability in real terms they misjudged the situation. Therefore it is suggested that the central bank and the authority to integrate macroeconomic analysis with macro-prudential analysis and integrate step sole discretion prior to the crisis. This suggests that the need for coordination and integration are quick to decide that macro issues. Rapid and precise decisions under certain conditions can only be done if the micro data held by the central bank. In Indonesia, the decision to create an autonomous institution which separates the task of bank supervision and regulation will affect the Bank's ability to maintain and achieve stability in the rupiah. The financial crisis that might occur can only be dealt with quickly by Bank Indonesia if Indonesian banks have complete information about the micro data of bank supervision.

Those who argue that a more precise control of the banking industry if left to the sole authority based on the view that the purpose of maintaining the stability of the rupiah to the task of supervision of banks can lead to a conflict of interest. Based on these ideas, the task of bank supervision must be separated from the bank. It is also intended to prevent conflicts of interest (conflict of interest) between the task of maintaining monetary stability and banking supervision tasks. For example, for the benefit of the bank rescue is often necessary liquidity support that is not always in line with efforts to maintain monetary stability.

Some Notes about OJK

1. Inconsistency mandate of Article 34 of the Law of BI with OJK Law

Article 34 paragraph 1 says that the task of overseeing the bank will be conducted by the regulator for the financial services sector, independent, and established by law. Explanation of Article 34 reads tasks will oversee the bank by the regulator for the financial services sector, in carrying out their duties this institution (Supervisory Board) coordination and cooperation with the Central Bank to be regulated in the Act. The supervisory board may issue regulations relating to the execution of duties by the coordination of bank supervision by Bank Indonesia and asked for an explanation of Indonesian banks, information and data necessary macro. The function set will still be implemented by Bank Indonesia. Means that the task is transferred from BI to LPJK is the task of watching while the set remains on BI. On the other hand OJK Law Article 6 and Article 7 mandates that the task is transferred from the central bank regulation and supervision duties. Inconsistency can also be studied from the explanation of article 34 of Law BI said that LPJK have an obligation to report to the CPC and the House of Representatives. On the other hand, Article 36 paragraph 6 of the Act reads FSA annual activity report to the President and Parliament.

2. Independence Of Bank Indonesia

Duties and powers set out in the FSA article 6 and article 7 of the Law of OJK will reduce the task of Bank Indonesia in the field of supervision and regulation. Means bank regulation and supervision duties as one of the instruments to achieve and maintain rupiah stability will be lost, this could potentially interfere with the performance of BI. Legally described below will independence BI regulatory issues with the enactment of the Law of OJK

Independence status is not the reason banks and Indonesia can not execute its duties and powers by either giving rise to the will to change the Law No. 13 In 1968, efforts were taken is providing independence status in law as stipulated in Law No. 23 of 1999.

The reason given is because in Law 13, 1968 there is lack of sharpness duties and responsibilities of Bank Indonesia, the central bank in relation to the function of maintaining the stability of the rupiah and the limited authority of Bank Indonesia

in setting monetary policy, the different patterns of functions and responsibilities of central banks in general. This is one of the reasons of the lack of effective monetary control. Therefore, the provisions contained in Law No. 23 of 1999 that gives the status of the independence of the Bank of Indonesia.

Law No. 23 of 1999 concerning Bank Indonesia last by Act No. 6 of 2009 concerning Stipulation of Government Regulation in Lieu of Law No. 2 of 2008 concerning the Second Amendment Act No. 23 of 1999 concerning Bank Indonesia became law providing for the independence of the position of Bank Indonesia. Providing for the independence of Bank Indonesia may be known what exactly is meant by the independence of Bank Indonesia.

The article, among others, Article 4 paragraph (2) of Law No. 23 of 1999 which provides: "Bank Indonesia is an independent state agency, free from government interference and or other parties except for the explicitly prescribed by the law".

The provisions of Article gives the sense that Bank Indonesia is an independent institution, the other party is forbidden to intervene in the determination of policies under the authority of Bank Indonesia. Furthermore, Article 8 says: To achieve the objectives referred to in Article 7, Bank Indonesia has the following tasks:

- a. formulate and implement monetary policy;
- b. arranging and maintaining the smoothness of the payment system;
- c. supervising banks.

Article 9 also gives more information about the independence of Bank Indonesia, the article reads as follows:

(1) The other party is prohibited from any form of interference in the implementation of the tasks of Bank Indonesia as referred to in Article 8.

(2) Bank Indonesia shall refuse or ignore any form of interference from any party within the framework of the implementation of its tasks.

Provisions of these Articles is to say that the notion of independence of Bank Indonesia Bank Indonesia was granted independence in carrying out the objectives and duties, other parties including the government is forbidden to carry out any form of interference with the execution of the tasks of Bank Indonesia.

The purpose of the grant of the independence nature of the Indonesian Bank expressly shown in chapters 8 and 9 that Bank Indonesia in carrying out its duties (Article 8) can be protected from interference by other parties so as to achieve the goal to achieve and maintain rupiah stability. That is because ketidakmandirian Bank Indonesia made by previous legislation has become one of the causes of the banking crisis. Changes in the nature of the independence of Bank Indonesia can not be separated from the mandate of the 1945 Constitution Here will be described the background to the inclusion of BI as the Central Bank

The annual session of the People's Consultative Assembly has produced the 1945 Constitution and its amendments. This means that there is now the 1945 is 1945 which experienced changes that are tailored to the development of people's lives. 1945 there has been used as the norm on which to base legislation below. This means that the rules and regulations under the Act of 1945 is not allowed to conflict with legislation thereon. Amendment that occurred in the 1945, resulting in changes related to the existence of the central bank listed in Article 23 D of the 1945 Constitution and its amendment. The article mentions that the State has a central bank that is the arrangement and position, authority and responsibility and independence regulated by law.

The provisions of Article 23 D of the 1945 Constitution and the Amendment essentially want the presence of an independent central bank intervention regardless of any party in carrying out its duties and mencapi purpose. Previous existence of the central bank is not found in the body of the 1945 Constitution, a new central bank after diamandenen existence affirmed in Article 23 D of the 1945 Constitution and the amendments thereto.

The consequences of the existence of an independent central bank that is set forth in the Amendment of the 1945 Constitution and the rule of law under the 1945 Constitution and its amendment shall not be inconsistent or should refer to the provisions of the 1945 Constitution and its amendment. Now this is in Indonesia there is law that regulates the banks, namely Law No. 10 of 1998 dan UU No. 23 of 1999 concerning Bank Indonesia last by Act No. 6 of 2009 concerning Stipulation of Government Regulation in Lieu of Law No. 2 of 2008 concerning the Second Amendment Act No. 23 of 1999 concerning Bank Indonesia to become law.

Based on the above description can be assessed that the inclusion of an independent central bank that implements the functions in the field of monetary policy is very relevant to regulated in the constitution. It is also based on that role and position of the central bank that perform various functions such as the function of issuing and circulating currency, the function of monetary policy, banking supervision and regulation functions as well as the smooth functioning of the payment system, should have, or based on a firm foundation. Position the central bank is so strong in the constitution based on the idea that the Central Bank's role is very important in the administration of the state system, therefore it is considered to be very precise placing position independent central bank in the state constitutional amendment in Indonesia. It is intended that the central bank has a strong grounding in the line of duty and purpose for the implementation of tasks and achievement of Indonesian banks then of course it brings an enormous influence on the joints in the Indonesian economy.

The problems that arise with regard to the inclusion of the independent position of the central bank in the 1945 Constitution as amended is a consequence that the legislation governing banking should refer to the 1945 Constitution or the constitution. In other words, whether in banking laws now this has given an independent position in its provisions. Indonesian bank's independence in setting 1945 as amended is of course gives extraordinary powers to Bank Indonesia in implementing the tasks and objectives, on the other hand significant level of authority is of course providing such great responsibility also to Bank Indonesia in its implementation.

Based on the description above it can be seen that the presence of the mandate of Article 34 of Law No. 23 of 1999 concerning Bank Indonesia last by Act No. 6 of 2009 concerning Stipulation of Government Regulation in Lieu of Law No. 2 of 2008

concerning the Second Amendment Act No. 23 of 1999 concerning Bank Indonesia into law mandates that the task of overseeing the bank will be carried out by the supervisory board for the financial services sector will potentially cause problems to the independence of the central bank is given with the aim that Indonesian banks will be able to achieve its objectives.

The provisions on the duties and authority of the FSA will affect the position of Indonesian bank independence as stipulated in the Banking Act No. 10 of 1998 and Act No. 23 of 1999 concerning Bank Indonesia last by Act No. 6 of 2009 concerning Stipulation of Government Regulation in Lieu of Law No. 2 of 2008 on the Amendment Both of the above Act No. 23 of 1999 concerning Bank Indonesia to become law. The fact that the case of Bank Indonesia unimportant factors become one of the triggers of the banking crisis that continues in the 1997 economic crisis. Unimportant when it appears that Bank Indonesia does not have the authority to authorize the establishment of the bank and also does not have the authority to impose sanctions for banks. Unimportant sparked many banks unhealthy triggering the economic crisis. Unimportant of BI be one factor contributing to Bank Indonesia can not perform his duties properly, so aim to maintain rupiah stability becomes Bank Indonesia granted independence given to the banking law and the Law on Bank Indonesia. Viewed from understanding the independence of Bank Indonesia, which basically gives independence in performing its tasks, the presence of the OJK Law which authorizes the FSA to conduct regulation and supervision of the banking sector, this implementation will certainly reduce the authority of the central bank in the sector regulation and supervision of banks is an important instrument in achieving the objectives of BI to maintain and achieve stability in the rupiah. Be a lot of questions when the mandate to form the FSA is also mandated by the law that gives independence of Bank Indonesia. With the reduction in the duty BI regulation and supervision are transferred to the OJK will cause problems. While a bank under the supervision of the central bank policy allows coordination between the monetary and banking sector more smoothly. Likewise, the information access banking conditions before deciding on the central bank's monetary policy. Of the payment system, the payment system will improve reliability because BI is also the organizer of the national payment system. Associated with the liquidity crisis, the presence of BI as a supervisor will ensure the availability of liquidity for banks in the event of a liquidity shortage that is expected to reduce systemic risk because of the speed of decision-making (crisis prevention). But for developing countries where banks are the main financial institutions in the financial system, monitoring the efficiency benefits are not likely to be obtained.

3..Issues Human Resources Financial Services Authority

Article 64 of Law No. 21 of 2011 had an impact because the employees of Bank Indonesia as of the transfer of the functions, duties and powers of the FSA to the Bank officials and / or employees of Bank Indonesia, which carry out the functions, duties, and powers of regulation and supervision of the banking sector to be transferred employed the FSA. This is reinforced by the provisions of Article 64 requiring OJK Law BI employees are given the duty to work in the FSA at least 3 years. This of course will greatly affect the integrity and credibility of BI employees who work in the OJK. On the other hand that the institutional reforms in the banking sector, this should be coupled with reform of human resources given the banking problems in the past that the cause of the OJK is not just a question but more to the issue of institutional integrity and credibility.

Other issues is the problem of members of the Board of Commissioners. Article 10 of the FSA FSA reads Comisioner led by the Council consisting of nine (9) members designated by the Presidential Decree which consists of a Chairman and member; a Vice Chairman as the Chairman of the Ethics Committee and member; a Chief Executive Officer and member of Banking Supervisors; a Chief Executive Officer and member Securities and Exchange Commission; a Chief Executive Supervisor of Insurance, Pension Funds, Financing Institutions, and Other Financial Services Institutions and member; a Chairman of the Board of Audit and member; a member in charge of education and consumer protection; Ex-officio a member of Bank Indonesia, which is a member of the Board of Governors of Bank Indonesia; and Ex-officio a member of the Ministry of Finance which is the first echelon officials of the Ministry of Finance. Candidate selection committee board of commissioners should start working, among others, determine the 21 names that will be submitted kepada president. The President will select seven names will be submitted to be selected by the House of Representatives. Election of the board of commissioners should really be able to put the best people who have no particular political interests, so that the existence of the FSA will be able to renew the spirit with the placement of surveillance tablespoons best, because FSA was created not just replace the control BI but regulate other non-bank financial institutions.

Closing

Applicability OJK Law will affect the independence of the central bank is primarily concerned with the task of doing BI in regulating and supervising the banking institutions. Differences regarding the presence or absence FSA needs (according to article 34 of Law called LPJK BI) can be used as input to the concerns over the presence of the OJK. In fact there are still some issues that need to be resolved after the Act was enacted and applicable FSA among others, the consistency between the mandate of Article 34 of the Law of BI and the OJK Law, keindependensian BI problems and issues of human resource development. All need attention so that FSA can perform the task well in order to achieve purpose.

References

- Bismar Nasution, (2010), Impementasi Article 34 of the Law on Bank Indonesia and Its Impact on the Role and Function of Bank Indonesia in the field of Monetary, Payment Systems and Financial System Stability, and Kebankcentralan Banking Law Bulletin, Vol 8, No. 3, September 2010.
- Bismar Nasution,(2009), Study Against the bill on the Financial Services Authority, and Kebankcentralan Banking Law Bulletin, Volume 8, No. 2, May 2010.
- Chiara Zilioli & Martin Selymayr. , (2001), The Law Of The European Central Bank, Hart Publishing, Oxford, USA
- Ec Abdul Mongid, (2010), Bank Indonesia: Independence of Bank Supervision and Financial Stability. Banking Law and Kebankcentralan Bulletin, Vol 8, No. 3, September 2010.
- Frederics Mishkin and Stanley G, Eakin, (2000)in his book Financial Markets and Institutions, Kompas December 23, 2000
- Marihot H. Tambunan, (2000) ,Behind The independence of the Central Bank of the United States, Kompas December 23, 2000
- Muhammad Nurliff, (2001)Urgency Setting Role and Status of Central Banks In Constitutional Amendment, paper presented at the seminar "The Role and Position settings Urgency Central Bank In Constitutional Amendment" Yogyakarta 30 April 2002.
- Rene Smits, (1997), The European Central Bank (Institutional Aspects), International Banking and Finance Law Series, Volume 5, Kluwer Law International, London,
- Official Minutes of the House of Representatives of the Republic of Indonesia, Talks Level I / Government Statement on theDraft Law on Bank Indonesia, (1999) 28th Plenary Meeting, Session Period III, January 13, 1999
- Official Minutes of the House of Representatives of the Republic of Indonesia, Talks Level II / Answer General view of thegovernment against Regarding Members Bill on Bank Indonesia, (1999) 34th Plenary Meeting, Period III trial, February 12, 1999.
- Suhartono and Orin Basuki, (2011), Institutional: New Institutions, Trustees Lama, Kompas. January 6, 2012
- Zainal Asikin, (1997), Banking Law, Mandar Maju, Jakarta