

THE EXISTENCE OF BANK INDONESIA ON CONSTITUTIONAL STRUCTURE IN INDONESIA

Sugiaryo¹ and Pujiyono²

¹ Slamet Riyadi University, Indonesia

² Universitas Sebelas Maret, Indonesia, E-mail: pujijbuns@gmail.com

Abstract: Indonesian Constitution governs at a glance the central bank, but does mention Bank Indonesia. The predicate of Bank of Indonesia is found on Bank of Indonesia's law deriving from the Constitution. The Bank of Indonesia's objective is fairly heavy, ie to maintain the stability of rupiah. That objective is implemented by maintaining monetary stability and payment system smoothness. Bank Indonesia is an independent state institution, the position of which is not as same as that of State's High Institution just like political superstructure, and different from that of department under executive. This unique position makes BI an autonomous state institution, not under President's or other state high institutions' authority. Those special status and position are needed to enable Bank of Indonesia undertaking its role and function as Monetary authority well. Although Bank of Indonesia serves as an independent and autonomous state institution, in undertaking its duty, it should establish cooperation and coordination with other high state institution and other political infrastructure institution.

Keywords: Bank of Indonesia, State Structure, Institutional

A. INTRODUCTION

Indonesia is a developing country resulting in many supporting factors in this development of state, including Bank. Bank has important function and role in national economy. Viewed from the present condition of community, very rarely people do not know and relate to the Bank. Nearly all people relate to financial institution (M. Jeffri Arlinandes, 2015: 25). The role of banking in business traffic can be considered as absolutely desirable to nearly all businesspersons (Metia Winati Muchda, Maryati Bachtiar and Dasrol, 2014: 75). The regulation about Indonesian banking has been governed in Law No.7 of 1992 juncto Law No.10 of 1998 about Banking. The provision of Article 1 number (1) of Law Number 10 of 1998 mentions that banking is everything pertaining to bank, involving institution, business activity, and method and process of undertaking its business activity. Number (2) of the article mentions that bank is an enterprise collecting fund from the people in the form of saving

and distributing it to the people in the form of loan (credit) or other forms in the attempt of improving many people's standard of life.

In Indonesia, there is one Central Bank, the duty of which has been governed in the Law. Indonesia's Central Bank is Bank Indonesia (BI), wich is in charge of establishing and implementing monetary policy, governing and maintaining the smoothness of payment system, and regulating and supervising the bank as specified in Article 8 of Law Number 23 of 1999 about Bank Indonesia. Generally, central bank is the one playing an important role in economy, particularly in monetary, financial, and banking fields. It can be seen from the central bank's function and objective not identical with the commercial bank, saving bank or other financial institutions'. Basically, central bank is established to achieve a certain social economic objective pertaining to national interest and public welfare, such as price stability and economic development (FX. Sugiyono and Ascarya, 2003, 1).

On the other hand, in a banking system, the absence of partial coordinator and regulator will disable the banks to undertake its operation efficiently. Considering the Article 8 of Bank Indonesia's Law, BI, as the central bank in the attempt of maintaining the stability of rupiah, has three duties: establishing monetary policy, governing and maintaining the smoothness of payment system, and regulating and supervising banking. After the enactment of Law No.21 of 2011 about Financial Service Authority (thereafter called OJK), the duty of governing and supervising bank was taken over by OJK. BI's duty no longer includes that of regulating and supervising banking. Its duties are to maintain the monetary stability and to govern the payment system. Furthermore, to do its duty of maintaining monetary stability and of maintaining payment system, Bank Indonesia as the central bank not only supervises the bank but can also supervise securities market and non-bank financial institution. This has never been done by Bank Indonesia before. This activity aims to make sure whether or not there is a risk of impaired financial system stability. As a central bank, Bank Indonesia also serves as the *lender of the last resort*. As the institution serving to maintain payment system and governing monetary policy, Bank Indonesia maintains the stability of rupiah value. One of instruments that BI uses is to determine BI rate, minimum compulsory clearing account, foreign exchange provision, and loan (credit) provision. As an autonomous and independent state institution, Article 4 clause (2) of Bank Indonesia's Law mentions clearly that "Bank Indonesia is an state institution undertaking its duty and authority independently, free of government's and/or other parties' intervention, unless it is governed firmly by this law".

This very important role of BI has not been governed clearly concerning its position in state structure system in Indonesia. The position of BI is not found as the state institution just like House of Representative (DPR), Indonesian Supreme Audit Institution (BPK), Supreme Court (MA), Regional Representative Board (DPD), Judicial Commission, and Presidential Agencies. Its existence is mentioned at a glance in Republic of Indonesia's 1945 Constitution (thereafter called UUD 1945), in Chapter VIII of UUD 1945 entitled "Financial Matters" consisting of 5 (five) articles. Bank of Indonesia

is mentioned unclearly (implicitly rather than explicitly), in Article 23D reading "The state shall have a central bank, the structure, composition, authorities, responsibilities and independence of which shall be regulated by law". How is actually the Bank of Indonesia's position in state structure system of Indonesia will be analyzed in this article.

B. METHODOLOGY

This study was a normative law research, using statute approach. The law material source and type used consisted of primary one including legislation particularly related to Banking and Bank Indonesia and secondary one relevant to primary law material source including books and journal related to banking and central banking.

C. LITERATURE REVIEW

A state's economic activity is highly affected by the role of banking existing in the state. The banking plays a very important role in a state's economy. The role of banking is the parameter of a state's progress. The better the banking condition of a state, the better is the state's economic condition (Nur Mawaddah, 2015: 242). Banks have been able to act as a financial intermediary, the most important reason is the information asymmetry (Wang Ping, Zhang Wenjian, Liu Jiao, 2017:55).

Banking is governed in Law Number 7 of 1992 juncto Law No.10 of 1998 (Banking Law). The provision of Article 1 number (1) of Law No.10 of 1998, banking is everything pertaining to bank, involving institution, business activity, and method and process of undertaking its business activity. Number (2) of the article mentions that bank is an enterprise collecting fund from the people in the form of saving and distributing it to the people in the form of loan (credit) or other forms in the attempt of improving many people's standard of life.

The definition of banking is an abstract formulation including 3 (three) main aspects: Bank institution, bank business activity, method and process of implementing the bank's business activity (Kasmir, 2002: 37). There are three types of banks:

a) Central Bank

Central Bank is an institution responsible for maintaining the price or value of currency prevailing in the state, in this case called inflation or the increased prices meaning the decrease of money value (Dahlan Siamat, 1995: 28).

b) Commercial Bank

Commercial bank, according to Article 1 letter (3) of Law Number 10 of 1998, is defined as “the bank operating business activity conventionally or based on shariah principle that in its activity provides service in payment traffic”.

c) *Bank Perkreditan Rakyat* (Rural Bank)

Article 1 letter (4) of Law No.10 of 1998 mentions that rural bank is the bank operating its business activity conventionally or based on shariah principle that in its activity provides service in payment traffic.

Bank Indonesia consists of two words: Bank and Indonesia. Bank is generally conceived as the place where money is saved and borrowed. Kasmir says that Bank is defined as a financial institution, its business activity is to collect fund from people and redistribute it to the people and to provide other bank services (Kasmir, 2014: 3). Although some banks had a reasonable amount of legal independence the level of actual independence, particularly in developing countries, was usually lower than the one indicated in the law. Except for a few cases central banks did not possess instrument independence and the responsibility for price stability was, at least implicitly, located in the ministry of finance and other economic branches of government (Alex Cukierman, 2008).

Central Bank Independence can be defined full independence from the government in issuing paper money the authorities of the central bank should be commission members chosen by the votes of the parliament and there should be no any kind of relationship or communication between the cabinet of the ministers and members of the central bank commission. The state must be obliged to collect money in a legitimate way such as taxes. There is no way the government should be allowed to lend money from those who are responsible for the issuance of it (Husein Mohamed Irbad, 2016: 4). A country's central bank is

well qualified to assume macroprudential function for regulating and supervising financial stability from the point of view of its surveillance capacity and the policy tools at its disposal (Kawai and Morgan, 2012).

D. ANALYSIS AND DISCUSSION

Bank Indonesia's legal status and position, as an independent and autonomous state institution, are mentioned firmly in Article 4 clause (2) of Law Number 23 of 1999 jo Law 4 of 2005 about Bank Indonesia reading “bank of Indonesia is a state institution undertaking its duty and authority independently, free of government's and/or other parties' intervention, unless it is governed firmly by this law”. Bank Indonesia is an independent state institution. Therefore, Bank of Indonesia has full autonomy in formulating and undertaking its duty and authority as specified by the law. Thus, no one can intervene with the implementation of Bank of Indonesia's duty, and Bank of Indonesia is entitled to refuse or to ignore any intervention from any party. As an independent state institution, Bank Indonesia's position is not equal to other high state institutions. In addition, its position is not equal to departments' as Bank Indonesia's position is beyond the Government. Special status and position is desirable to Bank Indonesia in order to undertake its role and function efficiently and effectively as the monetary authority.

The position of Bank Indonesia as an independent state institution is not equal to other high state institutions such as House of Representative (DPR), Indonesian Supreme Audit Institution (BPK), and Supreme Court (MA). Its position is also unequal to Department's as the position of Bank Indonesia is beyond the government. These status and position is desirable to Bank Indonesia in order to undertake well its role and function as monetary authority. Although Bank of Indonesia serves as an independent and autonomous state institution, in undertaking its duty, it should establish good cooperation and coordination with DPR, BPK, government and other parties related to state structuring system. As an independent state institution, BI is required to have independency, particularly in 4 (four) matters: institutional, functional, financial, and organizational.

Each of independencies can be elaborated as follows (Ahmad Solahudin, 2015: 111):

(a) Institutional Independency

Institutional independency is defined as BI's status institutionally separated from executive and legislative powers. BI is authorized to establish monetary policy independently and free of government's intervention, as mentioned firmly in Article 4 clause (2) of BI's Law. Structurally, the position of BI is not under or in the Government Cabinet, but it is equal to Government Cabinet.

(b) Functional Independency

As mentioned in Article 8 letter (a) of BI's Law, BI is authorized to establish and to implement monetary policy, to govern and to maintain the smoothness of payment system, and to regulate and to supervise the bank. This authority cannot be intervened with by Government. It is also specified in Article 9 clause (1) of BI's Law about Functional Independency.

(c) Financial Independency

BI's Law governs that BI's budget is independent separated from government. The word *separated* is defined as "free at all" of its main. Government does not budget the BI's financial need. Therefore, Article 60 of BI's law states that "BI's budget is determined Governor Council, needs no DPR's approval, but should be informed to DPR, as a form of indirect control.

(d) Organizational Independency

Organizational independency is desirable to BI, as it is very closely related to the composition of BI legal entity organ and recruitment and firing system of BI employees as Central Bank. Other parties are prohibited from intervening with the implementation of BI's duty; otherwise, BI obligatorily declines and or ignores any form of outsider's intervention. Any intervening party will be imposed with firm sanction. It can be seen from the provision of Article 67 *jo* Article 9 of BI's Law.

Corresponding to the provision of Article 20 of Law Number 23 of 1999 about Bank Indonesia in Indonesian state structure, Bank Indonesia has very strategic role and function as the holder of governmental cash and as

the bank controlling money circulation. Bank of Indonesia, on behalf of Indonesia Government, can receive foreign loan, can administer and government's financial billing and liability to foreign party. Even Bank Indonesia is the only institution authorized to issue and to circulate rupiah money, and to withdraw, to retract, and to remove the money from circulation.

The Bank Indonesia's position is specified firmly in the provision of Article 4 of Bank of Indonesia's Law reading:

- (1) Bank Indonesia is Republic of Indonesia's central bank
- (2) Bank Indonesia is an independent state institution, free of government's and/or other parties' intervention, unless it is governed firmly by this law.
- (3) Bank Indonesia is a legal entity based on this law.

Bank Indonesia is Indonesia's central bank and an independent institution free of any form of government's intervention as long as there is no stipulation about this matter in the corresponding law. Similarly, its legal status is a legal entity, the regulation of which is specified in Law Number 23 of 1999 about Bank Indonesia. In addition, Bank Indonesia acts as the holder of monetary authority, so that it is called Central Bank. Bank Indonesia is called central bank because a central bank is a public institution whose authority includes managing the value of local currency, controlling the amount of money supply, and maintaining interest rate. The existence of Bank Indonesia as Central Bank is guaranteed by Article 23D of 1945 Constitution, stating that "State has a central bank the arrangement, position, authority, responsibility and independency of which is governed by law". However, although the 1945 Constitution has stated it explicitly, it does not mean that the position of Bank of Indonesia institution is not equal to other State's High Institutions such as BPK. Bank Indonesia's status and position as the state institution has been mentioned firmly in Article 4 clause (2) of Law Number 23 of 1999 *jo* Law 4 of 2005 about Bank of Indonesia reading "Bank Indonesia is a state institution undertaking its duty and authority independently, free of government's and/or

other parties' intervention, unless it is governed firmly by this law".

As a legal entity, Bank Indonesia's status as either public or civil legal entity is specified by the law. As a public legal entity, Bank of Indonesia is authorized to develop law regulation constituting the implementation of law binding all people corresponding to its duty and authority. As a civil legal entity, Bank Indonesia can act for and on behalf of itself both in and out of the court (Didik J. Rachbini and Suwidi Tono, 2000: 181). In relation to President and DPR, BI delivers written information on the evaluation of monetary policy implementation and future planning in the beginning of year. Particularly to DPR, the implementation of duty and authority is done quarterly and at any time when DPR asks for it. In addition, BI delivers plan and realization of annual budget to Government and DPR. In relation to BPK, BI obligatorily delivers annual financial statement to BPK (Bank of Indonesia's website).

In relation to Government, Bank Indonesia helps publish and allocate the government papers to finance State Income and Expenditure Budget (*Anggaran Pendapatan dan Belanja Negara*, thereafter called APBN) without being allowed to buy them itself (BPK) (Bank of Indonesia). Bank Indonesia also acts as governmental cashier administering the government account in Bank Indonesia, and on Government's request, can receive foreign loan for and on behalf of Indonesia Government (BPK, Bank of Indonesia's Website). Nevertheless, for the implementation of Bank of Indonesia's duties to be focused actually and to maintain the effectiveness of monetary control, loan distribution to government to cope with deficit spending – conducted so far by Bank Indonesia based on the old law – can no longer be conducted by Bank Indonesia (BPK, Bank Indonesia's Website). Although Bank of Indonesia is an independent state institution, consultative coordination with Government remains to be desirable, as Bank Indonesia's duties are an integral part of overall national economic policies (BPK, Bank of Indonesia's website).

Coordination between Bank Indonesia and Government is required in cabinet session discussing economic, banking and financial problems related to Bank Indonesia's duties. In the cabinet session, Government can

ask for Bank Indonesia's opinion. Additionally, Bank Indonesia can also give input, opinion, and deliberation to Government concerning draft APBN and other policies related to its duty and authority. On the other hand, Government can also attend Bank Indonesia Governor Board's meeting with right of speech but without voting right. Therefore, the implementation of independency is highly affected by the steadiness of proportional work relation between Bank of Indonesia on the one hand and government and other related institutions on the other hand, based on duty and authority distribution.

Recalling the importance of many parties' support to its successful duties, BI always cooperates and coordinates with many state institutions and other community elements. Some of this cooperation is included in Memorandum of Understanding (MoU), joint decision and covenants, intended to create synergy and clarity of duty distribution between institutions and to support law enforcement more effectively. Some of cooperation intended is conducted with the following parties (Bank of Indonesia's Website):

1. Financial Department (MoU about the Goal Setting Mechanism, Monitoring, and Inflation Control in Indonesia, MoU about BI as the Process Agent in government's foreign loan and grant division, Joint Decision about the Administration of Government Paper Publication in the attempt of making the banking healthy.
2. Attorney General & State Police Officer: Joint Decision about the cooperation in coping with crime in banking sector.
3. RI's Police Officer and State Intelligent Agency: MoU about counterfeit money eradication.
4. People Welfare Coordinating Ministry, Cooperatives and SME Ministry: MoU in SMEs empowerment and development area.
5. SUN Sellers Society (*Himdasun*): MoU about the Development of Master Repurchase Agreement (MRA).
6. Joint Decision of Financial Minister and Bank of Indonesia's Governor about State Money Management Coordination.

BI's regulation is not mentioned specifically in Indonesian legislation's hierarchy, but it is positioned to be subordinate legislation implementing and getting delegation of rule-making power) from the law, so that it can be said that it is under the law. BI's rule is not included into national legislation hierarchy, because as an independent state institution, Bank Indonesia's regulation has distinctive hierarchy, from Bank Indonesia's Regulation, Governor Board's Regulation to other regulations issued by Bank Indonesia, so that it can be concluded that the legal product issued by BI as a state institution independent of government cannot be juxtaposed with legal product hierarchy developed by government, such as Government Regulation equally implementing the law.

Such the agencies or institutions can issue distinctive regulation, as long as the regulative authority is conferred by the law. If those institutions are given regulative authority, the name of regulative product yielded should be called regulation. As such, BI's Governor unnecessarily issues banking regulation named Circulars just like the one existing so far. It should be renamed into BI Governor's Regulation intended to do the command. Similarly Attorney General's Regulation, Police Head's Regulation, and others are intended to implement the higher regulation materials.

E. CONCLUSION

On Indonesian Constitutional structure, The existence of Bank Indonesia is an independent state institution, and the Bank Indonesia's position is not equal to other state's high institutions such as House of Representative (DPR), Indonesian Supreme Audit Institution (BPK), and Supreme Court (MA). Its position is also unequal to Department's as the position of Bank Indonesia is beyond the government. These status and position is desirable to Bank Indonesia in order to undertake well its role and function as monetary authority. Although Bank Indonesia serves as an independent and autonomous state institution, in undertaking its duty, it should establish good cooperation and coordination with DPR, BPK, government and other parties related to state structuring system.

REFERENCES

- Ahmad Solahudin, Separation of Authority of Bank Indonesia With Financial Services Authority In Bank Supervision, *Journal of IUS Legal and Justice Review* | Vol III | Number 7 | April 2015.
- Alex Cukierman, Central bank independence and monetary policymaking institutions Past, present and future, *European Journal of Political Economy*, 24 (2008) 722–736.
- Dahlan Siamat, (1995). Management of Financial Institutions, PT. Inter Media, Jakarta.
- Didik J. Rachbini and Suwidi Tono, (2000). Bank Indonesia Toward the Independence of the Central Bank, PT. Mardi Mulyo, Jakarta.
- FX. Sugiyo and Ascarya, (2003). Institutional Bank Indonesia, Jakarta: Center for Education and Studies Kebanksentralan (PPSK) Bank Indonesia.
- Husein Mohamed Irbad, The Credibility of the Somali Central Bank: Independence, Transparency, and Accountability, *Journal of Accounting & Marketing*, Volume 5 • Issue 1, 2016.
- Jimly Asshiddiqie, (2006). Constitution & Constitutionalism Indonesia, Jakarta: Secretariat General and Registrar of the Constitutional Court of the Republic of Indonesia.
- Cashmere, (2002). Bank and Other Financial Institutions, Ed. 6, PT Raja Grafindo Persada, Jakarta.
- _____, (2014). Banking Basics Revised Edition. Raja Grafindo: Jakarta.
- Kawai, M. and P. J. Morgan. (2012). Central Banking for Financial Stability in Asia. Asian Development Bank Institute (ADBI). *Working Paper* No. 377.
- M Jeffri Arlinandes Chandra. Authority of Bank Indonesia in Regulation and Banking Supervision after the issuance of Law No. 21 of 2011 on Financial Services Authority. *Journal of Law of Sehasen* Vol.1 No.1 Year 2015.
- Metia Winati Muchda, Maryati Bachtiar and Dasrol, Transfer of Assignment Tasks and Banking Supervision from Bank Indonesia to the Financial Services Authority Based on Law Number 21 of 2011 concerning the Financial Services Authority. *ECONOMIC JOURNAL*. Volume 22, Number 2 June 2014.
- Nur Mawaddah, Factors Affecting Profitability of Sharia Banks, *Ethical Journal* Vol. 14 No. October 2, 2015.
- Wang Ping, Zhang Wenjian, Liu Jiao, Analysis of the Impact of Internet Finance on Banking Industry Development, *International Journal of Finance and Banking Research*, 2017; 3(4) <http://www.bi.go.id/id/tentang-bi/hubungan-kelembagaan/negara/Contents/Default.aspx>