
BANK FINANCIAL INSTITUTIONS IN INDONESIA AND THEIR SUPERVISION

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ABSTRACT

Almost all financial activities of people around the world cannot be separated from the role of financial institutions. This institution is the financial intermediary for the community, namely those who need funds and those who provide funds. Apart from acting as an intermediary, this institution also plays a major role in maintaining the stability of money circulation and the country's economy. Financial institutions in Indonesia are divided into two types, namely Bank Financial Institutions and Non-Bank Financial Institutions, both of which have important roles in the community's economic activities. This Financial Institution in carrying out its role requires supervision, which is intended so that the Financial Institution can continue to run according to its corridor. Furthermore, in this article, the author will specifically try to discuss about Bank Financial Institutions and their supervision, both before the birth of the OJK and after the birth of the OJK. The research method that the author uses is a normative research method, by read or analyze written materials or library materials, while the type of approach used in this paper is the statutory approach and the legal concept analysis approach.

Keywords : Financial Institutions, Banks, OJK

I. PRELIMINARY

Economic activity in today's society is not only centered on the desire to save money. In meeting their daily needs, sometimes people need funds by borrowing money. Over time, a financial institution emerged which functions to collect funds from the public and channel funds to people in need.

When we hear the term Financial Institution, what comes to our mind is Bank, whereas Financial Institutions in Indonesia are not only limited to Banks. There are two types of Financial Institutions, namely Bank Financial Institutions and Non-Bank Financial Institutions. Based on the Decree of the Minister of Finance of the Republic of Indonesia Number 792 of 1990, what is meant by Financial Institutions are all bodies or institutions whose main activity is in the financial sector, starting from collecting funds to distributing funds to the public. Financial institutions can also be interpreted as institutions that have assets in the form of finance and function to run a business in the financial services sector, either as a provider of funds to fund businesses, consumptive purposes, or as non-funding financial services. More simply, This institution can be in the form of a fund-raising agency only, a fund-distribution agency only, or both. By collecting

funds from the public and channeling these funds for financing purposes, this business entity can earn profits in the form of interest or percentage.¹⁷⁰

Bank financial institutions have an important role in the economy of a country, and are often the benchmark for a country. If in a country there are many troubled bank financial institutions, then it can reflect the economy or law enforcement in a country can be considered problematic. So that regulations (rules) and regulators (supervisors) are needed in the banking industry, these regulations are made to regulate the banking industry and bank relationships with customers so that the interests of each party can be protected. banking regulations also influence economic sector policies¹⁷¹

Every country in the world has a central bank, in Indonesia itself the role of the central bank lies with Bank Indonesia. The central bank is to regulate issues related to financial stability and monetary stability in a country. Bank supervision carried out by Bank Indonesia can be in the form of direct supervision and indirect supervision. In essence, direct supervision is inspection conducted by Bank Indonesia periodically at least once a year for each bank. In addition, inspections can be carried out at any time if deemed necessary, to ensure the results of indirect supervision. Self-indirect supervision onsurveillance actionand analysis based on regulatory reports submitted by the Bank, information in other forms of communication and information from other parties.

Lately, we often see the emergence of several cases in the banking world, both of which are detrimental to customers as service users and which are detrimental to the bank as a service provider. The perpetrators of these bank crimes can come from outside the bank or from within the bank itself. The Impact of the Monetary Crisis in the Asian Region in 1998 Indonesia itself was affected by the monetary crisis, because Indonesia's national economic structure was still weak to deal with the global crisis. The impact of the crisis had a huge impact on the economy in Indonesia. The capital market, business activities in the real sector and banking experienced a considerable decline, inflation continued to increase so that several financial institutions failed to pay, resulting in the level of public confidence in financial institutions decreasing, so it was deemed necessary to have a more advanced and "modern" bank supervisory institution.

The government through the House of Representatives on November 22, 2011 has ratified legislation No. 21 of 2011 concerning the Financial Services Authority (OJK) where this institution will only focus on supervision of financial institutions, so that Bank Indonesia can focus only on the country's monetary policy. Based on the above background, the authors are interested in studying more deeply about the separation of the supervisory agency of financial institutions from the Central Bank (BI) with the establishment of the Financial Services Authority (OJK) in this paper entitled "Bank Financial Institutions in Indonesia and Their Supervision".

1.1. Destination

¹⁷⁰ Website rangkulteman.id. Artikel Mengenal Lembaga Keuangan, Fungsi dan Jenisnya..

¹⁷¹ Anton Purba. Otoritas Pengawas Bank. Buletin Hukum Perbankan dan Kebansentralan Volume 7 Nomor 2 Mei 2009.

The purpose of writing this article is to explain a little about bank financial institutions and their supervision before the existence of the Financial Services Authority and after the existence of the OJK.

1.2. Writing method

In writing this article, it uses normative legal research where the material will be obtained from reading or analyzing written materials or library materials. Meanwhile, the type of approach used in this paper is the statutory approach and the legal concept analysis approach.

II. Bank Financial Institution

According to Kasmir, Banks are financial institutions that offer savings, loan (credit) services or other financial services that can be served by Commercial Banks (commercial) and Rural Banks (BPR). The Bank provides various financial products, both in the form of deposits (accounts), loans (credit), foreign exchange, and other financial services.¹⁷²

Meanwhile, the definition of Bank according to Article 1 number (2) of Law Number 10 of 1998, amendments to Act Number 7 of 1992 concerning Bankings is a business entity that collects funds from the public in the form of savings and distributes them to the public in the form of credit and or other forms in order to improve the standard of living of the community.¹⁷³

This financial institution consists of 3 (three) types of banks, namely:

1.1. Central Bank

The Central Bank is an institution or national business entity that functions to maintain the stability of the currency value prevailing in a country. In Indonesia, it is Bank Indonesia (BI) in the form of a legal entity that carries out its role as the Central Bank. This Central Bank is an independent state institution, meaning that the institution is free to carry out all its duties and authorities without any interference from the government or other parties. Bank Indonesia as the Central Bank has a major role in maintaining the country's economy, namely so that the value of the Rupiah remains stable, both for goods, services, and the exchange rate (vide Article 4 paragraph (1), paragraph (2) and paragraph (3) of Law Number 23 of 1999 concerning Bank Indonesia).¹⁷⁴

In addition to playing a role in maintaining currency stability, the Central Bank also plays a role in maintaining the stability of the currency has other roles, including: maintaining a stable financial system, issuing and monitoring regulations for all banks operating in Indonesia, keeping the value of the Rupiah stable against foreign currencies, determining and implementing monetary policy, carrying out research and supervision,

¹⁷² DR Kasmir, Bank dan Lembaga keuangan lainnya edisi revisi 2014.

¹⁷³ Undang Undang Nomor 10 Tahun 1998 Jo. Undang Undang Nomor 7 Tahun 1992 tentang Perbankan.

¹⁷⁴ Undang-Undang Nomor 23 Tahun 1999 tentang Bank Indonesia.

regulating and ensure the payment system runs smoothly, save the State treasury and provide financial assistance to conventional banks in Indonesia that are facing a crisis.¹⁷⁵

1.2. Commercial banks

Commercial banks according to Article 1 number 3 of Law Number 10 of 1998 concerning amendments to Law Number 7 of 1992 concerning Banking, area bank that carries out business activities, both conventionally and or based on sharia principles, which in its activities provides services in payment traffic.

In simpler terms, this Commercial Bank acts as an intermediary between the party providing funds and the party requiring funds. Activities that are usually carried out by Commercial Banks include raising funds in the form of savings or deposits, providing loans or credits, storing letters and valuables, and making and issuing debt statements. However, the main task of this Commercial Bank is to assist the community in improving their standard of living.

There are 2 (two) types of Commercial Banks, namely Foreign Exchange Banks and Non-Foreign Exchange Banks, which are described as follows:

a. Foreign Exchange Bank

Foreign Exchange Bank is a bank that has been approved or appointed by Bank Indonesia as the central bank to carry out banking business activities in foreign currencies (foreign exchange).

Foreign exchange banks have the advantage of being able to offer products or services related to foreign currencies, for example making money transfers abroad, buying and selling foreign exchange (forex), as well as export-import transactions.

b. Non-Foreign Exchange Bank

Non-Foreign Exchange Bank is a type of bank that does not have a license to carry out transactions as a foreign exchange bank, so it is limited in the scope of its transactions. Products or services from non-Foreign Exchange Banks cannot be related to foreign countries, or in other words, customers cannot carry out export-import transactions, transfer money abroad, buying and selling foreign exchange (forex), and services as performed by the Bank. Foreign exchange.

1.3. rural banks

According to Article 1 point 3 of Law Number 7 of 1992 concerning Banking, what is meant by Rural Banks are banks that accept deposits only in the form of time deposits, savings and/or other equivalent forms.¹⁷⁶

In the provisions of Article 13 of Law Number 7 of 1992 concerning Banking, it is stated that the businesses that may be carried out by Rural Banks are:

¹⁷⁵ Website ocbcnisp.com. Redaksi OCBC NISP. Ini Fungsi dan Peran Bank Sentral sebagai Bank Sirkulasi. 26 Januari 2022.

¹⁷⁶ Undang undang Nomor 7 Tahun 1992 tentang Perbankan.

1. Collecting funds from the public in the form of deposits in the form of time deposits, savings, and/or other equivalent forms.
2. Give credit.
3. Provide financing for customers based on the principle of interest rate/profit sharing in accordance with the provisions stipulated in Government Regulations.
4. Placing the funds in the form of [Bank Indonesia Certificate](#) (SBI), time deposits, certificates of deposit, and/or savings at other banks. SBI is a certificate offered by Bank Indonesia to a BPR if the BPR experiences over-liquidity or excess [liquidity](#).

This Rural Bank in carrying out its business can be conventionally or based on sharia principles, which in its activities do not provide services in payment traffic. The activities of BPRs are much narrower than those of commercial banks because BPRs are prohibited from accepting demand deposits, foreign exchange activities, insurance, making capital investments, and conducting other business activities outside the business activities as referred to in Article 13 Law Number 7 of 1992 concerning Banking.

BPR status is given to Village Bank, Village Bank, Market Bank, Employee Bank, White Bank Nagari (LPN), Village Credit Institution (LPD), Village Credit Agency (BKD), District Credit Agency (BKK), Small People's Business Credit (KURK), District Credit Institutions (LPK), Village Production Work Banks (BKPD), and/or other equivalent institutions based on Banking Law Number 7 of 1992 by meeting the requirements of procedures stipulated by Government Regulations.¹⁷⁷

III. Supervision before the OJK

The supervision of the financial system in Indonesia prior to the establishment of OJK was carried out by various authorities, namely the Ministry of Finance, Bapepam-LK, and Bank Indonesia. Prior to the promulgation of Law Number 7 of 1992 concerning Banking, the Ministry of Finance had the authority to grant permits to open banks and bank branch offices, after hearing considerations from Bank Indonesia. Thus, licensing for the opening of banks and bank branch offices is carried out by the Ministry of Finance, but the regulation and supervision of the banking industry is carried out by Bank Indonesia.

Furthermore, banking supervision is fully carried out by Bank Indonesia through amendments to Law Number 7 of 1992, namely Law Number 10 of 1998 which was ratified on November 10, 1998. Banking, so that permits to open commercial banks and rural banks are under the authority of Bank Indonesia.¹⁷⁸

Based on Presidential Decree Number 52 of 1976 concerning Capital Market Article 9, the Capital Market Implementing Agency (Bapepam) is an agency that is directly under and responsible to the Minister of Finance. Based on this decision, the duties of Bapepam are:

1. Conducting an assessment of companies that will sell their shares through the capital market whether they have met the specified conditions and are healthy and good

¹⁷⁷ Wikipedia, Bank Perkreditan Rakyat, 21 September 2021.

¹⁷⁸ Buku 1 OJK dan Pengawasan mikroprudensial,.

2. Organizing an effective and efficient capital market exchange;
3. Constantly following the development of companies that sell their shares through the capital market.¹⁷⁹

Through Presidential Decree No. 41 of 1988, Bapepam's duties were expanded to provide guidance and supervision to stock exchanges held by Private Limited Liability Companies. Since 1991, Bapepam has been transformed into a capital market regulatory and supervisory agency that no longer conducts stock exchange activities. The duties and authorities of Bapepam are further strengthened in Article 3 of Law Number 8 of 1995 concerning the Capital Market which assigns the task of the Capital Market Supervisory Agency (Bapepam) to provide guidance, regulation, and supervision of capital market activities and is under and responsible to the Minister. Finance. The guidance, regulation and supervision as referred to in Article 3 is carried out by Bapepam with the aim of creating an orderly, fair and efficient Capital Market activity as well as protecting the interests of investors and the public.¹⁸⁰

In accordance with the mandate of the Banking Law Number 23 of 1998 Article 33 paragraph 1, it is explained that banking supervision will be carried out by an independent financial services sector supervisory agency and a law is formed which is the beginning of the formation of the Financial Services Authority.¹⁸¹

Financial institutions in Indonesia are generally divided into two, namely bank financial institutions and non-bank financial institutions. Bank financial institutions include commercial banks, Islamic banks, and rural banks. Non-bank financial institutions include insurance, capital markets, pawnshops, pension funds, cooperatives, and corporate guarantee and financing institutions that can be categorized as financing institutions, including leasing companies, consumer finance companies, and venture capital companies.¹⁸² Prior to the existence of OJK, financial institutions were handled by different supervisory institutions, where bank financial institutions were regulated and supervised by Bank Indonesia (BI), while non-bank financial institutions were entirely supervised by Bapepam-LK.

The task of Bank Indonesia as bank to bank is to regulate, coordinate, supervise and provide action to banks. Bank Indonesia also manages funds collected from the public so that they are channeled back to the community in a truly effective manner in accordance with development goals. Then in addition to managing banking funds, Bank Indonesia also regulates and supervises banking activities as a whole¹⁸³.

Bank supervision carried out by Bank Indonesia includes direct supervision and indirect supervision. In essence, direct supervision is inspection conducted by Bank Indonesia periodically at least once a year for each bank. In addition, inspections can be carried out at any time if deemed necessary, to ensure the results of indirect supervision and if there are

¹⁷⁹ Inda Rahadiyan, *Hukum Pasar Modal di Indonesia*, UII Pers, 2018.

¹⁸⁰ Undang Undang Nomor 8 Tahun 1995 tentang Pasar Modal.

¹⁸¹ Undang undang Nomor 23 Tahun 1998 tentang Perbankan.

¹⁸² Sunaryo, *Hukum Lembaga Pembiayaan*, Jakarta : Sinar Grafika, 2008,

¹⁸³ Kasmir. 2004. *Dasar-Dasar Perbankan*. Jakarta : Raja Grafindo, hal : 206

indications of deviations from sound banking practices. Indirect supervision is mainly in the form of early supervision through research, analysis and evaluation of Bank reports and direct supervision in the form of inspections followed by corrective actions.¹⁸⁴

IV. The Birth of the Financial Services Authority (OJK)

After the enactment of Law Number 21 of 2011 concerning the Financial Services Authority (hereinafter abbreviated as OJK) which was promulgated on November 22, 2011, the regulation and supervision of the banking and capital market sectors which were originally under Bank Indonesia and Bapepam LK was transferred to the OJK as an independent and independent institution. free from interference from other parties, who have the functions, duties, and authorities of regulation, supervision, examination, and investigation as referred to in the Law on the Financial Services Authority¹⁸⁵.

The enactment of Law Number 21 of 2011 concerning the Financial Services Authority (OJK) can actually be said to be late, because:in Article 34 of Law no. 23 of 1999 concerning Bank Indonesia, it is stated that the task of Bank Indonesia (BI) as a banking supervisor was only until 2002, after which the task of supervising banks would be carried out by an independent LPJK (Financial Services Supervisory Agency) and was enacted by law. Therefore, before the term of office of Bank Indonesia ended in 2002, the government and the House of Representatives issued legislation as the legal basis for the new bank supervisory agency.

Several countries such as the UK, Japan and Germany have carried out reforms in the financial system to emerge from the country's economic crisis. Japan, for example, to maintain the stability of its financial system, the Japanese government established an institution called the Financial Services Agency (FSA) which is responsible for overcoming and regulating banking, capital markets, and insurance. The FSA is an independent institution by a commissioner and is responsible to the Minister of Finance.

Institutionally, OJK is not in the government system of the Republic of Indonesia, with that it is hoped that this institution, both institutionally and its leadership, can maintain independence, work without pressure and interference from other parties. The supervisory system carried out by OJK is an integrated regulatory and supervisory system, which means that all financial service activities carried out by all financial institutions are subject to the OJK regulatory and supervisory system in accordance with Article 5 of Law Number 21 of 2011.

OJK was established with the aim that all financial service activities in the financial services sector are organized in an orderly, fair, transparent and accountable manner and are able to realize a financial system that grows in a sustainable and stable manner, and is able to protect the interests of consumers and the public.¹⁸⁶With this objective, OJK is expected to be able to support the interests of the national financial services sector so as to increase national

¹⁸⁴ Abdulkadir Muhammad, Rilda Murniati. 2000. Segi Hukum Lembaga Keuangan dan Pembiayaan. Bandung : PT Citra Aditya Bakti, hal 100-101

¹⁸⁵ Pasal 1 angka 1 Undang-Undang Nomor 21 Tahun 2011 tentang Otoritas Jasa Keuangan

¹⁸⁶ <http://www.ojk.go.id/tugas-dan-fungsi>

competitiveness. In addition, OJK must be able to safeguard national interests, including human resources, management, control, and ownership in the financial services sector, while taking into account the positive aspects of globalization.

In principle, the establishment of the OJK Law and the separation of authority for supervision of banking financial institutions between BI and OJK is broadly based on three foundations, namely the juridical basis. The following is a brief description of the three foundations in question, namely:

1. Juridical basis.

Juridically the formation of the OJK Law is based on the BI Law. This is explicitly regulated in the provisions of Article 34 of the BI Law which mandates the establishment of a supervisory agency for the financial services sector which includes banking, insurance, pension funds, securities, venture capital and financing companies as well as other agencies that manage public funds.

2. Sociological foundation.

Sociologically, it can be explained that the role of regulation and supervision carried out by the OJK must be directed towards soundness, consumer protection, and maintaining sound mechanisms. Regulation and supervision based on the principles of fairness and transparency must be applied in such a way as to create an orderly economic activity and transaction, with the protection of customers and the public.

3. Philosophical Foundation

The philosophical basis can be stated that OJK was formed with the aim that all financial services activities in the financial services sector can be carried out in an orderly, fair, transparent and accountable manner and can realize a financial system that grows in a sustainable and stable manner.¹⁸⁷

Based on Article 6 of Law Number 21 of 2011 concerning the Financial Services Authority, the main task of OJK is to regulate and supervise:

1. Financial services activities in the Banking sector
2. Financial services activities in the Capital Market sector;
3. Financial service activities in the insurance sector, pension funds, financing institutions, and other financial service institutions.

The authority of the OJK is regulated in Article 7 letter a, letter b, letter c and letter d of Law Number 21 of 2011 concerning the Financial Services Authority, specifically related to regulation and supervision of the banking sector which includes:

1. Regulation and supervision of bank institutions which include:
 - a. Licensing for the establishment of banks, opening of bank offices, articles of association, work plans, ownership, management and human resources, mergers, consolidations and acquisitions of banks, as well as revocation of bank business licenses; and

¹⁸⁷ Reza Fazlur Razman, Adi Sulistiyono, Analisis Pemisahan Wewenang Pengawasan Lembaga Keuangan Perbankan antara Bank Indonesia dengan Otoritas Jasa Keuangan, *Jurnal Privat Law Vol. V Nomor, Januari-Juni 2017*, halaman 12.

- b. Bank's business activities include sources of funds, provision of funds, hybridization products, and activities in the service sector.
2. Regulation and supervision of bank soundness which includes:
 - a. Liquidity, profitability, solvency, asset quality, minimum capital adequacy ratio, maximum credit limit, loan to deposit ratio and bank reserves;
 - b. Bank reports related to bank health and performance;
 - c. debtor information system;
 - d. Credit testing (credit testing); and
 - e. Bank accounting standards.
3. Regulation and supervision of the prudential aspects of banks, including:
 - a. Risk management;
 - b. Bank governance
 - c. Know-your-customer and anti-money laundering principles; and
 - d. Prevention of terrorism financing and banking crimes.
4. Bank check.

V. Coordination between Bank Indonesia and the Financial Services Authority in the supervision of Banking Financial Institutions

Although the division of tasks and authorities in the supervision of Financial Institutions has been divided between Bank Indonesia and the Financial Services Authority, the two continue to coordinate and cooperate in carrying out their duties and authorities. This coordination and cooperation between Bank Indonesia and the Financial Services Authority is important so that there is no conflict between the two, facilitates solving crises, and maintains the stability of the State financial sector.

This coordination and cooperation between the two is in line with the provisions of Article 39 of Law Number 21 of 2011 concerning the Financial Services Authority, which reads: "In carrying out its duties, OJK coordinates with Bank Indonesia in making supervisory regulations in the banking sector, including:

- a. the obligation to fulfill the bank's minimum capital;
- b. an integrated banking information system;
- c. policies for receiving funds from abroad, receiving foreign currency funds, and foreign commercial loans;
- d. banking products, derivative transactions, other bank business activities;
- e. determination of bank institutions that are categorized as systemically important banks; and
- f. other data that is excluded from the provisions regarding the confidentiality of information."

In the Elucidation of Article 39 letter d, what is meant by "other bank business activities" include credit cards, debit cards, and internet banking. Whereas in the Elucidation of Article 39 letter e, what is meant by A "systemically important bank" is a bank which due to the size of its assets, capital and liabilities, network size, or the complexity of transactions for banking services and linkages with other financial sectors may result in the failure of other banks or the financial

services sector in part or in whole, either directly or indirectly. operational or financial, if the bank is disrupted or fails.

Further in the provisions of Article 40 Law Number 21 of 2011 concerning the Financial Services Authority, it is stated that:

- 1) In the event that Bank Indonesia in carrying out its functions, duties, and authorities requires a special examination of a certain bank, Bank Indonesia may conduct a direct examination of the bank by giving prior written notification to the OJK.
- 2) In carrying out the inspection activities as referred to in paragraph (1), Bank Indonesia cannot provide an assessment of the soundness of the Bank.
- 3) The report on the results of the bank examination as referred to in paragraph (1) shall be submitted to the OJK no later than 1 (one) month after the issuance of the report on the results of the examination.

Coordination between OJK and BI is expected to be carried out well, considering that banking services are one of the largest sectors in the Indonesian economy. A good coordination function will also create a healthy banking industry climate. The exchange of information between OJK and BI regarding the condition of a bank will facilitate banking supervision considering that BI was the institution that supervised banks prior to the formation of OJK.¹⁸⁸

VI. Closing

With the birth of OJK, the division of tasks and powers of supervision for Financial Institutions has become more focused and measurable. The role of Bank Indonesia is more focused on maintaining monetary stability in Indonesia, while the unification of regulation and supervision of all financial services sectors is in one institution, namely the OJK. The division of the roles of duties and authority, finally able to answer some of the things that had become a problem, namely:

1. First, further aligning the scope of and into all financial service sectors has so far been practiced in the financial services sector, including in the context of managing the conglomerate structure of the financial industry in Indonesia. This unification is intended to provide a more optimal space for regulatory and supervisory institutions to maintain, improve, and strengthen their policies, as well as to streamline law enforcement, to maintain market discipline and consumer protection in the financial services sector.
2. Second, to balance the application of regulations to all major sectors in the financial services industry, which is also a valuable opportunity to form a new culture for regulators to oversee the financial sector. Thus, OJK must be able and able to update the regulatory system for the financial services sector to be more consistent and more harmonious towards all financial services sectors.

¹⁸⁸ Reza Fazlur Razman, Adi Sulistiyono, Analisis Pemisahan Wewenang Pengawasan Lembaga Keuangan Perbankan antara Bank Indonesia dengan Otoritas Jasa Keuangan, Jurnal Privat Law Vol. V Nomor, Januari-Juni 2017, halaman 14.

3. Third, it is hoped that it will be possible to produce regulations and be consolidated in accordance with people's expectations, as an initial capital to regenerate public confidence in the financial system in Indonesia.¹⁸⁹

¹⁸⁹ Darmin Nasution, *Konsepsi Pemikiran Otoritas Jasa Keuangan*, <http://books.google.co.id>, diakses 2022

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