

Supervision of Banking Institutions in Achieve Sound Banking in Indonesia

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Abstract

The transfer of Bank Indonesia's authority of banking institutions supervision to the Financial Services Authority (FSA) carried out due to the financial reform during the crisis well in 1997/1998 and 2008 is limited to short-term desire to be able to survive so that some doubt to eliminate the impact of the crisis in all sectors Financial particularly banks at the time. Hybrid product development and the emergence of a business conglomerate banking and financial institutions in Indonesia into sociological factors needed an independent agency engaged in microprudential and regardless of microprudential held by the Indonesian Central Bank. Legally emergence FSA Act number 21 Year 2011 is the mandate of article 34 Act no. 23 of 1999 concerning Bank Indonesia as amended by Act No. 3 of 2004, which indirectly weaken the independence of Bank Indonesia. This causes the need for an integrated regulation replaces regulation in the field of supervision of financial institutions, especially for banks. Construction of the development model regulation and supervision of banking institutions in Indonesia is formed through comparison with control models in other countries, analyzing the typology of banking institutions in Indonesia that are highly regulated, perform mapping regulatory rules regarding banking supervision by taking into account the implications of the theoretical and practical implications in accordance with the principles of good corporate governance.

Keywords : Supervision, Bank, Microprudential

1. Introduction

In the modern society, the role of a banking institutions very huge in encouraging economic growth and financial stability of a country. Almost all sectors of business and individuals today and the future will not be separated from the banking sector even become the need in carrying out financial activities in supporting efforts. Ismail said that financial institutions in particular play an important role in supporting a healthy financial system, on the grounds, among others: (1) the unique banking characteristics that are vulnerable to the invasion of the community of interest massive funds (bank runs) that could potentially harm the depositors and creditors of banks, (2) the spread losses among banks very quickly through contagion effect and thus potentially cause system problems, (3) the process of resolving troubled banks need funds in the amount of not less, (4) the loss of public trust as an intermediary institution would lead to pressures in the financial sector (financial distress), and (5) the instability of the financial sector will impact on macroeconomic conditions, particularly associated with the ineffectiveness of monetary policy transmission. The development of institutional structures in the field of supervision of banking institutions has become a necessity optimal primer. This was due to the increasing complexity of the development of the financial conglomerate in the field both in terms of product (hybrid products), information technology (IT) to services. Institutional structure will determine the performance in the field of supervision of banking institutions. Institutional structures in the field of supervision of banking institutions is important, because the structure will affect the effectiveness of the achievement of the objectives of monitoring activities itself, the structure will also describe the clarity of responsibility and monitoring purposes. Will reflect the structure of the different targets and different responsibilities and also describes the structure of costs arising from the surveillance activities (www.bi.go.id).

Given the importance of the role of banks in Indonesia, then public confidence in the banking institutions must be maintained. Therefore, pursuant to Article 29 of Act No. 7 of 1992 concerning Banking as amended by Act No. 10 of 1998 (hereinafter referred to as the Banking Act), banks are required to maintain the soundness of the bank in accordance with the capital adequacy, asset quality, management quality, liquidity, profitability, solvency, and other aspects related to the business of the bank, and shall conduct business activities in accordance with the principle of prudence (Sulistiyandari : 2012). The existence of banking institutions influenced and dependent on public trust. So that the community trust and a sense of security can be maintained, and the objective of economic development can proceed smoothly, required an agency / institution / body builder and supervise banking institutions, the Banking Supervisory Authority.

In Indonesia before the formation of Act Number 21 Year 2011 on the Financial Services Authority (hereinafter referred to as OJK Act), has two supervisory authorities in the financial sector, first, the supervision of banking institutions (LKB) is under the Central Bank, second, supervision for institutions non-bank financial (NBFIs) under the Ministry of Finance through the Capital Market Supervisory Agency and Financial Institution

(hereinafter referred to as Bapepam-LK). The central bank is the State agency that has the authority to issue legal tender of a country, to formulate and implement monetary policy, regulate and supervise the banking system, and perform the function as the lender of last resort (Sulistiyandari : 2012).

Act No. 23 of 1999 concerning Bank Indonesia as amended by Act No. 3 of 2004 as amended by Act No. 6 of 2009 consist of two important aspects of the role and position of Bank Indonesia or Indonesian Central Bank (hereinafter referred to as BI). BI notch defined in Article 4 of the Act:

"BI is an independent state agency in carrying out its duties and authorities, free from interference by government and / or other parties, except for matters expressly set forth in this law".

This Act provides greater opportunity for BI to perform their duties professionally. With the "given" independence to the central bank, meaning it has to guarantee that the professionalism of BI can be more focused on the objectives desired by the Act without interference by other parties, including the central government. With the establishment of Act about BI and The amendments that revoke Act No. 13 of 1968 concerning the Central Bank, the other parties are prohibited from any form of interference in the implementation of the all BI task.

BI has the authority to regulate and supervise the activities of banks located in Indonesia. Bank regulation and supervision geared to optimize the Indonesian banking functions as an institution of public trust in relation to a collector and distributor agency funds (intermediary function), implementing monetary policy and institutions that played a role in helping economic growth and equity to create a sound banking system, both the banking system as a whole or individually, and able to maintain the interest of the public, especially with the good bank customers, develop reasonable and beneficial to the stability of the national economy.

To achieve these objectives based on article 2 Indonesian Banking Act, the approach taken by the Bank is to implement them through policies provide flexibility sought (deregulation); policy application of the principle of prudence bank (prudential banking); and bank supervisory authorities as to encourage banks to consistently implement internal regulations of banks that they form their own (self regulatory banking) in carrying out its operations with reference to the principles of economic democracy and the principle of prudence. Precautionary Principle or prudential principle stipulated in Article 2 of Act No. 7 of 1992 concerning Banking. The purpose of the enactment of this principle, according to sutan playing is not just because of the bank's liabilities so as not to harm the interests of customers, but also because of the special position of banks in society as part of the monetary system involving all community interests not only on depositors in the bank alone. According Rachmadi Usman, the application of the precautionary principle is intended to maintain public confidence and at the same time creating a sound banking system.

In order to carry out the task to regulate and supervise the banking, based BI Act granted authority with independence to set rules (Regulate), grant and revoke permission for institutional or certain business activities of the bank (license), with oversight of the bank (control), and impose sanctions on banks in accordance with the statutory provisions in force (Article 26 of Law No. 23 of 1999 concerning Bank Indonesia). In the implementation of this task, BI is authorized to enact the provisions of banking by upholding the principle of prudence.

The crisis that began in Thailand since the year 1997/1998, causing political and economic crisis multidimensional crisis in Indonesia. The crisis resulted in the lack of financial stability in Indonesia. The emergence of several cases of banks to have to liquidate dozens of banks, led to the emergence of bad judgment on the lack of supervision of BI against banking institutions in Indonesia. It continued with the advent case of Bank Indonesia Liquidity Assistance (hereinafter referred to as BLBI) until the end of 2004 closed with a scandal Bank Global Tbk. Board and owner of the bank's conduct inappropriate practices carried out by a banker and is a criminal act, among others; not willing to provide documents and did not want to give information to supervisors, seeks to destroy documents, as well as issuing fictitious securities, Global Bank consequently suspended and revoked business licenses per January 13, 2005.

Unfinished handling cases of Bank Global emerging cases of Bank Asiatic and Bank Dagang Bali which according to the BI also perform similar actions that ultimately license has been revoked. In addition there is also the burglary Bank BNI through infringement procedures and falsification of documents Letter of Credit (L / C) which resulted in state losses of Rp. 1.7 Trillion. In the Image Bank carried out by directors and trustees, where bank-owned funds are used for the benefit of privately owned companies concerned. Bobolnya Bank BRI Senen Triangle Branch, Bank BII Senen Triangle Branch, Bank Danamon Branch Medan, as well as other bank fraud that was never revealed shows the weakness of the banking supervision system and the application of good corporate governance principles by the Bank as the bank supervisory authority at the time.

Another case which led to BI increasingly losing its legitimacy is the case of Bank Century (now called Bank Mutiara) regarding the provision of disbursement of BI in the form of Short Term Funding Facility (FPJP) to Bank Century in 2008 and the advent of BI decision by the Board of Governors establishes the Bank Century as failed bank with systemic impact (Tempo Interactive, Flow Chronology Rp. 6.7 Trillion to Bank Century, November 14, 2009). BI as the central bank and banking supervisory authorities charged with the responsibility

for such cases. At the time of the change will be Act No. 23 of 1999 concerning Bank Indonesia, appeared a lot of pressure and input that BI must surrender its authority in the case of bank supervision in the field of microprudential to other agencies. Shades of political economy to a conflict of interest from the Letter of Intent (LoI) International Monetary Fund (IMF) to the input of the former Governor of the Central Bank of Germany (the Deutsche Bundesbank) urged the central bank as banking supervisory authority handed to the Financial Services Supervisory Authority (LPJK). It appears in Article 34 paragraph (1) of Law No. 3 of 2004 on the amendment of Law No. 23 of 1999 concerning Bank Indonesia, which states:

"The task of overseeing the Bank will be the financial services sector supervisory agency independent, and established by Act.

Paragraph (2), the establishment of supervisory board referred to in paragraph (1), will be implemented no later than December 31, 2010".

With the mandated functions of banking supervision transferred to the Financial Services Supervisory Authority (hereinafter referred to LPJK) formed as an independent body that oversees financial institutions, both banks and non-banks such as securities firms, factoring, leasing, venture capital, corporate finance, mutual funds, insurance and pension funds and other institutions that collect public funds, the central bank's role as banking supervisor and the central bank shifted the focus LPJK as an authority on monetary affairs, whereas monetary stability is closely related to the stability of the financial system. This LPJK that in Act No. 21 Year 2011 on the Financial Services Authority referred to the Financial Services Authority (OJK).

The transfer of supervision of banking institutions from BI to the Financial Services Authority (hereinafter referred to as the OJK), legally have some problems it interesting that is currently associated banking supervision still requires the convergence of regulatory disharmony and need for improvement the adoption of the Basel Core Principles for effective banking supervision in the banking supervision regulations as international regulations established by the Basel Committee on Banking Supervision as a blueprint for banking supervision in all countries internationally. The Basel Committee on Banking Supervision is a committee of banking supervisory authorities established by the Governor of the Central Bank of Nations Group of Ten (G-10) in 1974. The institute is usually meets at the Bank for International Settlements in Basel-Switzerland every 3 (three) months. This institution was established for the purpose of cooperation and harmonization in international banking supervision. Basel Core Principles for effective banking supervision are the principles of effective supervision of banks comprising 25 items were prepared by an oversight committee called The Basel Committee on Banking Supervision. This is a minimum requirement that must be met for the supervision of banks and implemented by all bank supervisory authorities in all countries internationally.

Another problematic that arises is the disparity of banking supervision between the supervisory authority that will supervise micro prudential and macro prudential, where both have relevance both in terms of regulation, systems, and managerial which can cause problems when separated; otherwise it could pose a threat and losses due to the conflict between the accountability of the regulatory agencies that hinder the embodiment of economic stability, whereas the transition period of the new institute is a time of crisis that require intensive treatment and the absence of policies that govern the format of the monitoring system based on a comprehensive rule of law, integrative, effective, efficient, accountable and transparent in supporting good corporate governance of banking.

2. Philosophical and Legal Aspects Diversion of Microprudential Supervision Authorities

The central bank is the State agency that controls monetary policy . Until the end of the 20th century, there are still many economists who argue about whether the existence of a central bank. This debate is linked to the need for a monetary policy in an effort to stabilize the economy in a country. Departing from the tradition of thought a few economic thinkers requiring that natural limits to the growth of the money supply, that a purely monetary policy should be accompanied by a set of strict rules in order to really be able to achieve price stability without disrupting economic growth. But there are also opinions about whether a central bank that acts as a specialized institution that handles the monetary policy (Laidler : 2005).

The development of expert opinion in the field of economics a debate in some countries in taking policy in the field of economy. Indonesia tried to accommodate both the school of using two policies, namely fiscal policy and monetary policy adapted to the conditions of the State. With the birth of the monetary policy put forward by the flow of Neoclassical Economics, takes the role of the State to intervene in regulating the economy. For the classical school of which suggests "forbid" the role of the State, the State is likely to adhere to the school does not need to establish a central bank to supervise the banking and monetary system. They embrace the free banking system or free bank.

The emergence of the philosophy of central banks as the banking authority is influenced by several modern economic theory suggested by experts in the field of economic theory. At the beginning, Adam Smith in his book *The Wealth of Nations* to write about freedom for every individual and private institutions to pursue their own interests independently called natural freedom (a system of natural liberty). Hence, according to Adam Smith, self-interest is the driving force of the economy that is driven by the invisible hand (invisible hands). In

practice after the theory put forward in case of problems which the private sector tend to seek additional advantage for their own interests, causing financial depression massively called malaise. Then was born the Keynesian school of (Keynesian Economics) where, according to Keynes different from the classical school of Adam Smith and David Ricardo that "forbid" government intervention in the economy, introducing the government's economic policy is called fiscal policy. The government must undertake massive spending in order to open a business and new jobs. In the development of emerging thinking New Classical Economics flow (Neoclassical Economics). This flow found in case of problems in the economy, let the economy fix itself. Fiscal policies introduced by Keynes still they proclaim "unclean" for allowing government interference in the economy. They propose wearing monetary policy. With this monetary policy, they suggested that if economic problems arise, then simply held adjustments in the monetary field, such as adjusting the money supply and interest rates, so they called the monetarism.

Friedman (1959) does not see the importance of the central bank as its responsibility precisely control the various financial contacts that should be free from state interference. Where in some countries like the United States in practice is caused by too frequent occurrence of failed banks. In contrast to Hayek in Laidler, 2003, where more emphasis on the importance of free competition in the ownership and management of money by commercial banks are competing with each other. He believes that a monetary system that consists of many money managers, the money generated will be of better quality, in terms of value for money will be more stable over time. If the population of a country is possible to freely select the manager of money, then the private money managers according to Hayek will have the strength and purchasing power that is stronger than any central bank. In a monetary system like this, it is clearly not necessary anymore for the central bank.

The existence of a competitive commercial banking (any possible bank and manage their own to save the gold reserves) is a natural system, also preferred the idea and theory of "free banking" (ie, banks actually released completely from the hands of the central bank). He even worried about the existence of the central bank itself (although it follows a specific set of rules) will become a source of "game" of power, because the monetary authority reserves the right to change any rules even include a replacing for its currency. A system of "free banking" is inherently more stable and certainly would function more effectively, because the existence of a central bank in a free market economy (ASEAN Economic Community in 2015, for example) are contradictory in view of the central bank intervention would be a source of various problems of the banking industry as monetary authority once the banking supervisory authority.

In this case, the banking system is free (free banking) is in line with the mechanism of free trade. In line with the traditional school of thought in international economics which states that free trade and competition are not limited to be the best thing for an economy, it is also stated that the banking industry should also be exempt from any form of control and interference, regulation or supervision of any party. Therefore, in a free banking system, it can be concluded that the central bank does not need to exist. From the political side of the law, free banking system more starts from mistrust of the ability of the government (Ministry of Finance and the Monetary Board) in managing the monetary system. Historically, the central bank recently formed in the 17th century and 18 and only have the authority to help provide subsidized credit to meet government programs (so called Government Treasury Office). As "reciprocation", the government handed over the authority to print money to the central bank (Laidler : 2005).

The main concern in a flat monetary system (based on banknotes and coins which are intrinsically worthless), then theoretically central banks will do the engineering deflation, or the opposite of inflation, or even create a favorable business cycle specific own interests. On the other hand, arguments against the existence of free banking system also departed from the same reason, namely the banks could deliberately manipulate the sake inflation erodes the real value of their debts to the public. This argument was rejected proponents of free banking system. They believe that the central banks alone, because of his position as a government agency, which has the incentive and the opportunity to conduct such a fraudulent act. Laidler stated that free banking system that is completely developed, will surely go forward creating price stability, not because there is an institution that merely ordered so, but because each participating bank that is interested to operate in a competitive environment because in such a system that they will achieve maximum profit.

Free banking system was just beautiful in concept and theoretical because no policy makers in developed and developing countries would dare to try. Central banks are generally formed when these countries in a state of military emergency. There are several reasons. First, the gold standard collapsed after the First World War, so that the world economy is increasingly in need of money flat. Secondly, the role of monetary policy is not merely maintain price stability, but could be expanded to participate managing output and absorption of factors of production (employment).

Based on the theoretical development of the concept and above, according to the authors "the central bank" has developed signification influenced by the development of economic theory and the state of the country at that time. The current economic theory emerging free-market development and "want" to eliminate the role of the State in the economy and price stability, it appears the system of "free banking" which negates a body called

the central bank. The central bank is considered a "pest" that instead would disrupt financial stability, whereas when the State began to emerge roles (preceded the birth of the theory of the Welfare State or Welfare State) are allowed to intervene.

The first and primary function of central banks is the issuance of currency, which is a key component in the debt or liability in the balance sheet the central bank. Currency is a key component of the monetary base or high power money is money that applies solely because of the power, not because of its own value like gold. This money is a liquid asset that is used for various purposes of the transaction. Cash and subsequent deposits also serves as a store of value, given the purchasing power of money is relatively stable in inflation-free economy. Money management functions are then overshadowed by the two central banks that function as the government's banker. As a banker governments, central banks shall manage all deposits owned by the government and manage all his debts. The central bank also are acting as guardians and managers of foreign reserves (foreign exchange reserves) belong to the State.

Most central banks are also burdened with the additional task of finance most of the government budget deficit by accepting debt securities issued by the government. It often causes the position of the central bank as an institution is not so impressed state authority in the public eye. If further central bank powerless against the demands of the government's budget deficit financing continuous basis, then it is the same as the government has taken over the powers of central bank liquidity and it is this which often resulted in the issuance of new money berlebiihan, at least in the short term. Where it can lead to a surge in inflation, which in turn erodes the function of money itself as a store of value. Until now it is a matter for the central bank's most controversial, particularly in developing countries. Even less so in many developing countries, central banks it misused source of revenue for the government.

The third function of a modern central bank is as banker for commercial banks, especially in his capacity as the provider of last loan (lender of last resort). Provides a common central bank liquidity support for commercial banks in order to maintain financial stability or the smooth operation of payment settlement system (clearing) nationwide. In line with the growing opening of the economy in many countries in recent years and increased competition among banks, the commercial banks in each country actually increasingly vulnerable to a variety of domestic and external disturbances. In such a situation, the central bank is required to address the emergency needs of commercial banks or other financial institutions. By helping the operation of banking and financial institutions adequately, then the central bank participated strive to create the overall stability of the financial system (Axilrod : 2009).

The central bank is the guardian of a modern financial system. Pegawai and supervision of the financial system was subsequently emerged as a field next task for modern central bank. Central banks and / or other regulatory authority to supervise the overall opetrasi commercial banks and non-bank financial institutions to ensure that savers and investors still have confidence in the financial system is concerned. For the sake of maintaining financial stability, the central bank should bear the responsibility for overseeing the operation and development of the clearing system or settlement payment (financial settlement).

Real experience of financial crises that occurred recently (which occurred in the late 1990s in Asia and the housing mortgage crisis in the United States since 2008) shows a lot of problems regarding the payment risk in the financial system less adequately supervised. Traditionally, central banks need to help commercial banks to operate in the payment settlement system which is clean and smooth. The main drawback of this system is its complexity is so high that the various forms of inter-bank payment settlement risk is often poorly managed and not detected adequately. If there is only one financial institution in difficulties, then the problem could spread so quickly to other financial institutions which in turn can lead to failure bayar.jadi crisis, the central bank's role in payment settlement system is essential for the maintenance of financial stability. Consequently central banks become so involved in a variety of prevention and management of various risks and financial crisis that can not be eliminated in any financial system that have been deregulated, especially in developing countries.

BI's history as an independent Central Bank begins when a new act, Act No. 23/1999 on BI, was declared effective on May 17, 1999. This Act provides status and position as a state institution that is independent and free from interference by government or other parties. As an independent state institution, BI has full independence in formulating and executing each task and authority as stipulated in the law. Outsiders are not allowed to interfere with the implementation of tasks of BI, and BI is also obliged to reject or ignore any intervention from any party. As an independent state institutions BI position is not aligned with the State Agency. In addition, BI is also not the same position with the Department, because the position of BI is outside the Government. Special status and position is necessary in order for BI to implement its role and function as monetary authority more effectively and efficiently. BI good status as a legal entity of public or private legal entities established by law. BI as a public entity authorized to determine the rules of law which is the implementation of laws that bind all the public in accordance with the duties and authority. As a civil legal entity, BI can act for and on behalf of themselves in and out of court.

In all of the Basic Law applies in Indonesia ever since the proclamation of independence of the central

bank's position has always explicitly recognized its existence, although with a different title. In Article 23, paragraph 4 of the 1945 Constitution stated, "It finances the next state governed by law", while in the explanation of Article 23, paragraphs 1,2, 3 and 4 of paragraph 7 (seven) for example, stated, "In connection with that, the position of BI which will issue and regulate the circulation of banknotes, established by law".

In the Constitution of the Republic of Indonesia (RIS) in 1950, stated in Article 164 paragraph 4 and Article 165. Article 164 paragraph 4 states, "Spending tools legal tender made by or on behalf of the Republic of Indonesia States or by Bank Circulation". Article 165 paragraph (1) "For there is one Bank Indonesia Circulation; (2) Appointment as Circulation Bank and settings and power settings is done by the Federal law". As in the Provisional Constitution of 1950 (hereinafter referred to UUDS 1950) it is stipulated in Article 109 paragraph 4, "Spending tools legal tender made by or on behalf of the Government of the Republic of Indonesia or BI", while Article 110 (1). For there is a Bank Indonesia Circulation; paragraph (2). Designation as a Bank Circulation and settings and power settings performed by Law". Whereas in 1945 after the fourth amendment to Article 23 D stated, "The state has a central bank that the structure, status, authority, responsibility, and independence regulated by law".

State authorities in the supervision of financial institutions are separated from the central bank, the authority will become part of the authorities who have to perform under the coordination of the finance minister. To achieve the targets in preventing and resolving crises, the sharing of information between authorities is indispensable both in normal and crisis conditions. In terms of financial sector issues regarding bank operations by multinational coordination will involve authorities between countries with different legal frameworks differ. As happened to Lehman Brothers in 2008, the authorities in some countries complacent coordination for assessing the impact of the closure of Lehman Brothers against other financial institutions and financial markets in other countries.

The general view in the meantime, the authority in a country is only responsible for the supervision of banks established with legal entities in the country, while banks were established in a Contracting State with a legal basis in other countries (ie. Office of foreign bank branches), the oversight responsibilities in home supervisory authorities. This problem arises when there is a bank operating in multinational and experienced problems at its headquarters so it should be closed, then legally all branch offices should be closed. Global coordination in the prevention and resolution of banking crisis is still not formally established. G20 is currently trying to define a form of coordination of prevention and settlement of crises in multinational banks operating, but there are still many legal obstacles faced by considering each country has a different legal basis.

Other problems also arise regarding the operation very large bank with offices throughout the world both in the form of branches and subsidiaries that number could reach about 8000, with this condition will be very difficult for headquarters to monitor the country of origin and the central bank is also experiencing problems to conduct an assessment of the impact of the problem on the possibility of a crisis in other countries.

In the event that the bank must do rescue, problems arise who will be responsible for the rescue. Guarantee of customer funds is also very diverse forms delivered state, so reordering the global financial system needs to be done immediately so that the problems can be prevented earlier crisis and crisis resolution can be done well. If based on the mandate of Article 34 UUBI actual or FSA is expected to be formed by the end of 2002. It means that the Act FSA had to be born in 2002 is. But in fact until recently the FSA Act also go there yet. Then the expected end of 2010 the FSA Act is expected to be approved and ratified by the Parliament together with the Government. With the presence of the FSA, the financial institution Bank and non-Bank will be supervised by the FSA. However, there are still many people who question whether the presence of the FSA is actually already a requirement under one roof to supervise financial institutions and non-bank banks, including capital market and insurance. Currently many people it is also alarming presence of the FSA will not be able to take over the supervisory function, if the current euphoria fact does not reflect the readiness of adequate human resources to support the presence of the FSA.

The real issue or substantial issues related to the banking crisis has been caused partly because of the implementation of BI inadequate oversight function. If it later turns out the presence of the FSA would only move the SDM Bapepam-LK and Oversight Division BI to a new agency called the FSA, if not accompanied by adequate human resources, credible, have high integrity, firmly in independent oversight, independent, concerned that it will only create new problems in the future. The presence of the FSA which dimatkan by Article 34 BI Act such, only against the background by the attitude of a traumatic former Act at the time of the events of the past banking crisis that one of them is considered as the task of monitoring the implementation of BI to commercial banks in Indonesia are less effective (Fuady : 1999).

If this statement is true, then the presence of the FSA actually not necessarily reflect the precise arrangements and revamping solution duties and functions of banking supervision at this time. If the presence of the FSA was also only be filled by HR from Bapepam-LK and BI are dieksodus to the FSA and former officials / retired BI, then similar cases will occur also in the FSA, then it is still needs to be reexamined if the mandate of Article 34 BI Act has been fully accurate and true. Lest mandates only based or motivated by emotional attitudes

because of the trauma of the past. If this view is accepted, would not a more essential and substantial reform of human resources is not a question of institutional reform. In perhaps its institutional system is correct, it is right in the range of BI, but the key holder HR decision makers and / or policies in the field of monitoring tasks that must be reformed and not the system (www.bi.go.id). The presence of the FSA who took over the supervisory function BI Commercial Banks, will continue to grow or collide with BI regulation functions that are not directly in contact with the oversight function (macroprudential).

Article 34 of Law BI mandates the establishment of the Financial Sector Supervisory Authority (LPJK) no later than the year 2010. Article 34 of the Commission since the beginning of the preparation has to contain the controversy and debate. Pursuant to Article 34 of Law BI BI functions in supervising the banks transferred to LPJK. The transfer of bank supervision function of central banks in the countries financial industry is dominated by the banking industry would lead to debate and sparked controversy.

The central bank is given the responsibility to create stability in the rupiah would find it difficult to fulfill that responsibility if it does not have the authority to supervise banks. That's why laying the purpose BI BI Act in Article 7 that achieve and maintain rupiah stability and to achieve the goal of achieving and maintaining stability in the rupiah is Article 8 of BI Act BI set three tasks: (1) define and implement monetary policy; (2) set up and maintain the smooth operation of payment systems, as well; (3) regulate and supervise banks. Therefore, the implementation of the mandate of Article 34 has the potential to complicate the central bank in achieving the goals mandated by the Bank Act. Article 34 has been amputated important instruments owned by BI in achieving its objectives.

From the history of the formation of the BI Act is known that the presence of Article 34 filled with controversy. The article is based on a misconception about the institutions responsible for the financial crisis that occurred in 1997/98. BI deemed unable to carry out their duties effectively, causing a severe financial crisis. This view is not entirely unfounded. When examined the structure of banking supervision at that time it will be known that bank supervision carried out by the two institutions, namely Bank and Ministry of Finance. BI in charge of overseeing banks in the narrow sense (audit), while the task of organizing and give / revoke the business licenses of banks exist in the Ministry of Finance. Therefore it is not effective bank supervisory duties, triggering a crisis in 1997/1998 certainly is a shared responsibility of both institutions. Based on such a background that the application of Article 34 of BI Act needs to be re-examined in a comprehensive manner.

Theoretically, there are two thought in terms of supervision of financial institutions. On the one hand there is a stream which says that the financial industry oversight should be done by a single institution. On the other hand there is a stream which believes the financial industry supervision more appropriate if done by beberapa lembaga. In the UK for example, the financial industry is supervised by the Financial Supervisory Authority (FSA), whereas in the United States financial industry is supervised by several institutions. SEC instance supervised securities firms, while the banking industry is supervised by the central bank (the Fed), FDIC and OCC.

The basic reason behind this is the second stream conformance with the banking system adopted by the country. Also, how the convergence between financial institutions. From the point system, there are two prevailing banking system, namely commercial banking system and universal banking system. Commercial banking, as is the case in Indonesia and in the United States, prohibits banks in non-banking financial business activities such as insurance. This is in contrast to the universal banking, adopted by, among others, European countries and Japan that allow banks to non-bank financial business activities such as investment banking and insurance. In addition to the reasons applicable banking system which is also the basis for consideration is how the convergence has occurred in the financial industry. Convergence will lead to the emergence of problems in the regulatory authority. This happens because the products produced by financial institutions has been such a union so it is difficult to determine whether a particular financial product produced by the banking industry that is regulated by the central bank or a securities company's products and should be subject to the regulation of Bapepam. With the completion of the supervisory authority of the institution then issues the regulatory authorities will be solved.

Empirically, the survey conducted by Central Banking Publications (1999) showed that of the 123 countries studied, three-quarters give the supervisory authority of the banking industry to the central bank. It is more prevalent in developing countries. Especially for developing countries is the reason for the problem of resources. The central bank is considered adequate in terms of resources (human and financial resources). Glasses of politics, the lifting of the supervisory authority of the central bank in line with the emergence of the tendency of granting independence to the central bank. There is concern that the independent central bank, if the central bank is also authorized to supervise the central banks will have such great authority. Bank of England, for example, in 1997 gained its independence, but two weeks later the bank supervisory authority was taken over from the central bank.

Regarding the appropriate time the operation of the FSA can be done by considering the three reasons above and pay attention to the following. First, the data shows that the financial industry we are 90% more of

them controlled by the banking industry. Has not occurred in the convergence between the financial industry. Even if there are hybrid products in financial services is still modest nature and the volume is not large so it can not be said to be a crucial problem that can cause systemic problems. Hybrid product is a product that is a combination of banking products, insurance or capital markets. In Indonesia, these products still constitute an insurance product or pure capital market so that in this case the bank only serves as the seller (agent) and earn a commission (fee) of these services. Take the example of a hybrid product that was unknown in Indonesia, namely bancassurance which has two meanings: First, a bank that can offer banking, insurance lending and investment products to customers, Second, a French term referring to the selling of insurance through a bank's established distribution channel. The European countries that embrace universal banking system has long been developing this product and is done in accordance with the understanding that the first bancassurance. In Indonesia, this product is still pure product insurance company offered or sold through the distribution channel (distribution channel) banking so that more precise with the understanding that the second bancassurance. This is consistent with banking laws that prohibit banks perform insurance activities. This prohibition also in line with the banking system adopted by Indonesia, namely commercial banking system. Bank profits selling hybrid products are in addition to receiving a commission also can simultaneously increase customer base and maintain customer loyalty. Second, establish new institutions and by the FSA authority certainly require substantial resources. At the time the country was "sick" as it is today must be more prudent if the resources are not a bit of it is used to improve infrastructure that is already severe. The main problem facing the financial industry today are not particularly banks have been increasingly merging with other financial industry, but the lack of implementation of good corporate governance. Good corporate governance problems will not be completed by the shift of supervisory authority. The wise man says do not change your jockey in the middle of the race otherwise you will lose the game. This is evident in Japan's experience in applying the FSA, FSA sort of an institution, during the Japanese banking industry for the better. It can be seen from the collapse of Long-Term Credit Bank and Nippon Credit Bank, two major banks that proved to manipulate the books. FSA with coordination problems between the central bank also appears for instance in the case of Ishikawa Bank and the problem of bad debts and fraud (fraud) still characterize the Japanese banking (Coleman : 1996).

If article 34 of BI Act implemented then the authority in supervising banks by the central bank will not exist anymore, but the authority to supervise banks by BI is the responsibility of creating a stable rupiah value. Next will lead to other changes to the substance of the provisions of the Act other BI which in turn may interfere with the function of BI in the field of monetary, payment systems and financial stability. Provision of bank supervision by BI before the provisions of article 34 UUBI is a provision that is in the legal system of BI. Therefore it can not be authorized by the bank supervisory authority BI BI separated by other.

Once the BI Law was amended by Act No. 3 In 2004, thinking the establishment of the FSA is still there. Under Article 34 stated the task of overseeing the bank will be carried out by the financial services sector supervisory agencies are independent and established by law. The supervisory agency no later than December 31, 2010. Previously based on Act 23 of 1999, the FSA was formed later than the end of 2004. But then the government together with the House of Representatives agreed to revise Law 23 of 1999 on BI into Act No. 3 Year 2004. In the world today there are four systems sebenarnya supervision of financial institutions that can be found in the world. First, surveillance systems institusional ie watchdog agency monitoring system which is based on the legal status of the institution. In general, the majority of these systems with the central bank as the watchdog dominates over 70%.

Secondly, a functional surveillance system, where the supervision of financial institutions conducted by various institutions differ according to the agency's business functions. Examples of insurance will be supervised insurance supervisory agency. If the bank running the insurance business, the bank will be supervised insurance supervisory agencies as well. Thus a financial institution will be supervised by many supervisors dependent business activities. Thirdly, the integrated control system that all financial institutions are supervised by a single supervisory agency with broad oversight coverage both for aspects mikprudensial, macroprudential and business practices. This concept is applied in the United Kingdom, Australia and the Netherlands. Models such supervision is what we are initiated by the FSA. Lastly, the twin peaks that surveillance systems based on destinations where there is a separation between the functions of supervision of safety and soundness on the one hand with a function on business practices. The fourth system is always has profit and loss. This means that if the separate supervision of financial institutions from the central bank or central banks are united in the origin of everything is functioning just as good and function properly (Hadad : 1999).

Table 1
 Institutional Structure of Supervision at the Bank and Other Financial Institutions

Mengawasi/oleh	Central Bank	Instead Central Bank	Amount
Bank	46	6	52
Banks and Securities	6	4	10
Bank dan Insurance	1	5	6
Bank, Insurance and Securities	1	6	7
Amount	54	21	75

Source : Muliaman Hadad, 1999, *Directory of Financial Regulatory Agencies*.

From the table above there are seven (7) countries to adopt approaches 'single agency', namely 1 (one) State in which the central bank supervise not only banks, but also insurance companies and other financial institutions., And 6 (six) State in which the regulatory agency not central banks supervise not only banks but also insurance and other financial institutions (securities companies). The remaining 69 (sixty nine) countries to adopt approaches 'mutiple agencies' with different variations between the role of the central bank with supervisory institutions is not the central bank.

Regardless of what institutions will oversee the banking industry are certainly no model is universal. Entirely is up to the political decision and of course the political decisions that are beyond the power of the central bank. However, the following factors may be food for thought in developing an institutional structure that is effective regulatory body. First, the agency must have a good reputation. Second, central banks still need access to information about bank supervision to be able to carry out their duties in the field of monetary and lender of last resort. Paul Volker former chairman of the Federal Reserve Bank said that the monetary and financial policy can not be done properly if the central bank loses its role in supervising the activities of the banking sector. Third, the division of tasks between the central bank, the FSA and the government must be firm and transparent. Lastly, there must be a form of formal cooperation governing the issue of coordination and cooperation that should be regulated by law.

Indonesia's banking system has developed since the enactment of Act No. 7 of 1992 concerning Banking which gives discretion in terms of capital and ownership of banking institutions as well as Act No. 23 of 1999 concerning Bank Indonesia, which provides for the independence of Bank Indonesia as the monetary authority apart from the influence government. In terms of banking supervision had been developed since the enactment of Law No. 21 Year 2011 on the Financial Services Authority which replaced the Bank Indonesia's role as supervisor of the mikroprudensial.

Regulatory developments in the banking sector can not be separated from efforts to overcome the crisis that occurred in Indonesia since the year 1997/1998 to 2008 are due to the widespread economic bubble though only affected by the crisis that occurred abroad. Institutions of international financial donors (World Bank, IMF, IBRD, etc.) to the Governor of the Central Bank of Germany was instrumental in providing input to the improvement of the financial condition of Indonesia. The emergence of the Financial Services Authority as supervision, strengthening of micro finance institutions and micro enterprises, to the emergence of Islamic system is the basis of the establishment of Islamic financial institutions in Indonesia is the real form of the influence of these institutions.

The development of Sharia Banking in Indonesia is a new results from the interaction of the economy in some communities which then becomes an issue of banking law in Indonesia. This related to the legal efforts through regulatory legislation in the form of legislation until implementing regulations, as well as the law enforcement community. Banking has be rendered by the majority of Indonesian Moslems as being contrary to the principles of Islamic law because it is very thick with the nature of capitalism in its operational principles.

At the beginning of the idea of the establishment of sharia banks have emerged in mid-1970, but there are several reasons that hinder the realization of this idea, namely the sharia banking operations which apply the principle of sharing has not been set because it is not in accordance with the Act number 14 of 1967 on Banking. The concept of sharia banks in terms of political ideological connotations too, is part of or related to the concept of the Islamic state that is not desired by the government at that time. Implementation of a desire to apply Islamic principles in the field of financial institutions in Indonesia began with the establishment of financial institutions with the status of Baitul-Tamwil Cooperative Law Firm in the 1980s. It is driven by the release of Banking Deregulation Package June (PAKJUN) Number 1 of year 1983 which opened the shackles of bank interest determination by the government.

In addition to political issues related to the establishment of law that occurred Sharia banks, in terms of fund raising methods that exist in conventional banks based on the theory expressed by Keynes who argued that people need money for three purposes, namely the function of transactions, reserves and investments. Therefore, fund raising products were adjusted with three functions, namely demand deposits, savings and time deposits.

In contrast to this, sharia banks do not do a single approach in providing fund raising products for its customers. Sharia methods can be the another method to increase the sound banking not only transferred the microprudential authority from central bank / or BI to FSA.

3. Conclusion

The transfered of Bank Indonesia's banking institutions supervision authority to the Financial Services Authority (OJK) carried out due to the financial reform during the crisis well in 1997/1998 and 2008 is limited to short-term desire to be able to survive so that some doubt to eliminate the impact of the crisis in all sectors Financial particularly banks at the time. Hybrid product development and the emergence of a business conglomerate banking and financial institutions in Indonesia into sociological factors needed an independent agency engaged in mikroprudensial and regardless of mikroprudensial held by the central bank, Bank Indonesia. Legally emergence FSA Act number 21 Year 2011 is the mandate of article 34 of Act no. 23 of 1999 concerning Bank Indonesia as amended by Act No. 3 of 2004, which indirectly weaken the independence of Bank Indonesia. This causes the need for an integrated regulation replaces regulation in the field of supervision of financial institutions, especially banks that have been there. So the transferred is the solution or will came out new problems in indonesian financial system after the new crisis coming.

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