**PAPER SUBMISSION**

**THE IMPLEMENTATION OF THE COORDINATION AMONG FINANCIAL SERVICES AUTHORITY, DEPOSIT INSURANCE CORPORATION AND BANK OF INDONESIA TO HELP THE TROUBLED BANK IN INDONESIA**

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Financed by Dana DIPA FH Unila budget year 2016

Contract number: 494/UN26/8/LPPM/2016

**LEGAL PART OF REQUIREMENTS
FACULTY OF LAW UNIVERSITY OF LAMPUNG
2017**

**Implementation of Coordination of Financial Services Authority and Deposit Insurance Agency (LPS) and Bank Indonesia to the Troubled Bank**

**PROGRAM OF BUSSINESS ECONOMY**

**Abstract**

Based on Law No.21 Year 2011 concerning Financial Services Authority of Indonesia (Financial Service Authorithy/FSA) in order toregulate and control banking institutions in Indonesia, it is necessary for restructuring the more integrated supervision in performing oversight of the banking industry and for building an effective coordination mechanism.The importance of the coordination between FSA and Bank of Indonesia/BI is to supervise an oversight of the troubled so that it could guarantee in creating a sound bank.In fact there were several actions that was deviated from the applicable provisions by the banking institutions.

This study is aimed to analyze the coordination of the FSA and BI to the troubled banking institutions, the subject matter of the coordination of the FSA and BI, as well as coordination mechanisms of FSA and BI to the troubled banking institutions according to the laws.This research is a normative legal research with normative juridical approach. The data were analyzed qualitatively, comprehensively, and completely which describes the contents of data quality in a regular sentence, cascading, logical.

The results showed that the result of the coordinationof FSA and BI is supervisory regulation product that related to the minimum capital adequacy of banks, banking products as well as banking information system that is formed in an integrated manner.Coordination mechanisms FSA and BI to the troubled banking institutions, if the results of surveillancehealth of banks could be saved.Completion of liquidated banks as much as possible is avoided.The impact is detrimental to the banking system and depositors, as the bank's assets are not sufficient.

Keywords: Bank Indonesia, Banking Regulation, Banking Regulation Supervision, Coordination, Financial Services Authority, Problem Banking Institution

**PRELIMINARY**

Based on Law no. No. 21 of 2011 on FSA, for the regulation and supervision of banking institutions in Indonesia, a more integrated supervisory structure on the banking industry and effective coordination mechanisms is needed. The importance of the coordination of FSA and BI is purposed to do the supervision of problem banks in order to create a healthy bank. In fact there are still bank actions deviating from the prevailing provisions.

Based on the background description of the problem, the authors formulate the main issues as follows:

1. How does the coordination form between FSA and BI with the problem bank institutions?
2. How does the coordination mechanism between FSA and BI with troubled banking institutions?

BI pursuant to Act Number 23 of 1999 concerning Bank Indonesia (the BI Law) is a central bank of the Republic of Indonesia. BI is an independent state institution, free from the intervention of the Government. The task of BI to regulate and supervise the bank, has been transferred to FSA according to FSA Law. The task of BI for establishing and implementing monetary policy is being done through controlling the circulation of amount of moneyand controlling the interest rates. The effectiveness of task execution requires the support of an efficient, fast, secure, and reliable payment system that is the goal of implementing the task of organizing and maintaining the smoothness of the payment system. An efficient, fast, secure, and reliable payment system requires a sound payment system that is the goal of managing and overseeing the bank. The link between the implementation of these three tasks is mutually supportive, then the achievement of BI goals will work well¹.

Outsiders are not allowed to interfere with the performance of BI's duties, and BI is also obliged to refuse or ignore any intervention from any party. To further ensure such independence, the BI Law provides a special position to BI in the constitutional structure of the Republic of Indonesia. As an independent state institution the position of BI is not parallel to the State High Institution. The position of BI is also not the same as the Department, because the position of BI is outside the Government.

Neni Sri Emaniyati, *Pengantar Hukum Perbankan Indonesia*, PT Refika Aditama, Bandung, 2010, page. 70.

Such a special status and position are required so that BB can exercise its role and function as a monetary authority more effectively and efficiently.2

BI's objectives are set to achieve and maintain the stability of the rupiah. The stability of the rupiah means the stability of the value of rupiah towards the goods and services and towards the currency of other countries. In order to maintain the stability of the rupiah, BI must consider and coordinate with the government to ensure that policies are aligned and mutually supportive with other fiscal and economic policies.3

In order to implement and establish monetary policy, BI is authorized to:

1. Establishing monetary targets with regard to inflation rate objectives;
2. Conduct monetary control by means of means including but not limited to:
3. Open market operations in both rupiah and foreign currency markets;
4. Determination of the discount rate;
5. Establishment of mandatory minimum reserves;

In order to regulate and supervise the bank, this BI assignment has been transferred to OJK in accordance with the enactment of FSA Law. Implementation of the above tasks have a linkage and therefore must be done mutually support for the achievement of BI goals effectively and efficiently. The task of determining and implementing monetary policy is carried out by BI, among others, through controlling the amount of money in circulation and interest rates. The effectiveness of task execution requires the support of an efficient, fast, secure, and reliable payment system that is the goal of implementing the task of organizing and maintaining the smoothness of the payment system. An efficient, fast, secure, and reliable payment system requires a sound payment system that is the goal of managing and overseeing the bank. The link between the implementation of these three tasks is mutually supportive, then the achievement of BI goals will work well.³

²Didik J. Rachbini dan Suwidi Tono, Bank Indonesia Menuju Independensi Bank Sentral, PT. Mardi Mulyo, Jakarta, 2000, pages. 179-180.

³Sri Emaniyati, *Ibid.,* page. 71.

A bank can also be said to be problematic if the bank is experiencing difficulties that may endanger the continuity of its business, such as the deteriorating business conditions of banks with marked decline in capital, asset quality, liquidity, and others. The occurrence of these things due to lack of implementation in accordance with the principles of prudence and the implementation of a healthy banking.4

Meanwhile, based on the provisions of Article 1 point 5 of the Regulation of Deposit Insurance Agency Number 4 / PLPS / 2006 concerning the settlement of failed banks that have no systemic impact, states that problem banks are banks based on the assessment of the Banking Supervisory Agency (LPP) experiencing difficulties that endanger the continuity of its business and Placed under special surveillance by the LPP.

The problematic structural bank criterion is that if all aspects of CAMEL'S have been classified as unhealthy, and the condition of the bank in general has been classified as severe, such as low and low capital, liquidity has endangered the bank's business continuity. The condition of such banks occurs because of the large burden of non-performing loans and can not be resolved properly, so the difficulty ultimately affects the conditions of profitability, solvency and liquidity. This is sometimes exacerbated by the lack of good faith from the owners and management of the bank to make a settlement. Therefore, a comprehensive and time-consuming rescue effort is required, especially since bank owners and managers are no longer able to resolve bank problems.5

4 Rachmadi Usman, *Aspek-Aspek Hukum Perbankan di* Indonesia, Jakarta: PT Gramedia Pustaka Utama, 2001, Page. 143.

5Zulfi Diane Zaini, *Op.cit.,* Page. 264.

**DISCUSSION**

After the establishment of FSA, the tasks and responsibilities of BI have been reduced, the task of regulating the supervision of the financial services sector has shifted to FSA, while the monetary policy, the payment system is still implemented by BI as the central bank. The function of bank supervision that has been transferred is expected to improve the focus of BI in exercising its authority as a monetary authority and payment system by using its instru- ments.

FSA as an institution established under RI Law no. 21 Year 2011 on FSA Law, to conduct supervision on the financial services industry in an integrated manner. Under the provisions of Article 1 Sub-Article 1 of the FSA Law, it is formulated that FSA is an independent institution and free from interference by other parties, and it has the functions, duties and authority for doing the regulation, supervision, examination and investigation. Coordination of FSA and BI in formulated supervisory regulations in the banking sector e.g. the obligation to fulfill the minimum capital of banks, integrated banking information system, foreign fund receiving policy, receipt of foreign currency and commercial loans of LN, banking products, derivative transactions, other business activities of the bank, the determination of a bank institution that belongs to the systemically important bank category and other data exempted from the provisions concerning the confidentiality of the information of this law.

The purpose of creating a sound banking system is to maintain the interests of the community that couldbe develop fairly, in the sense that on one hand pay attention to risk factors such as capabilities, both from the system, financial, and human resources. Microprudential surveillance is focused on the health of individual banks by conducting bank balance sheets analysis, particularly related to capital adequacy in the face of business cycles. The purpose of microprudential surveillance is to protect customers and to reduce the threat of infectious bankruptcy effects of banks on the economy, asset quality, liquidity, and others.

Article 69 Clause (1) Sub-Clause (a) of Law Number 21 Year 2011 states that BI's task in regulating and supervising banks is transferred to FSA related to microprudential, while BI still has macroprudential-related banking regulation. It means that the task of banking arrangement is not fully implemented independently by FSA. Microprudential and macroprudential task settings are closely related. Coordination of policy is very important because to exchange information, to maintain confidence that the financial condition of the bank is maintained.

FSA oversees the microprudential aspect and BI monitors the macroprudential aspects well. FSA supervision on bank soundness, banks are also required to conduct bank soundness checks using a risk-based bank rating either individually or consolidatively.6 Indicators for banks to examine / investigate bank soundness through an individual risk approach through several factors, including:

1. Risk Profile

Assessment of the risk profile factor is an assessment of the inherent risk and quality of risk management implementation in the bank's operations against various risks.

1. Good Corporate Governance (GCG)

Assessment of GCG factors is an assessment of bank management on the implementation of GCG principles.

1. Profitability (earnings)

Assessment of earnings factors include an assessment of earnings performance, earnings sources, and sustainability earnings bank.

1. Capital (capital)
2. Assessment of capital factors includes an assessment of the level of capital adequacy and capital management of banks.7

The success or failure of a bank depends on the existence of an effective bank supervisory system. If the monitoring system is not good, it will affect the performance of banks that are not good anyway. If the monitoring system is good, it will encourage the bank to continue to improve its performance so that it affects the condition of a healthy and credible bank. Because in general the objective of the bank supervision system to ensure that banks are management and Good Corporate Governance and comply with applicable laws and regulations.

Bank statements related to the health and performance of banks, debtor information systems, credit testing, and bank accounting standards, regulation and supervision on the prudential aspects of banks, including: risk management, bank governance, principles of customers and anti Money laundering, prevention of terrorism financing and banking crime, and bank checks.managed in a healthy and careful manner in accordance with the principles of risk

6Article 2 Bank Regulation of IndonesiaNumber 13/1/PBI/2011about Assessment of the soundness of commercial banks

7Article 7 Bank Regulation of of Indonesia Number 13/1/PBI/2011

The obligation to convey information related to the business activities of a bank to FSA is necessary considering the need to monitor the state of a bank. Monitoring the state of the bank is done to protect public funds and maintain the existence of banking institutions in good health. Therefore, in order to obtain the truth of the report submitted by the bank, FSA is authorized to examine the books and files contained in the bank.
Bank Report submitted to FSA such as balance sheet and annual profit and loss statement and explanation, as well as other periodic reports, in the time and form stipulated by FSA. The balance sheet and annual profit and loss calculation must first be audited by a public accountant.

FSA in determining the status of troubled banks still adopt or refer to FSA Rules in conducting supervision and regulation of bank soundness assisted by bank with bank health report every three months or month of March, June, September, and December. In addition, FSA is also required to prepare financial statements consisting of semi-annual, annual and monthly, quarterly and annual reports from January 1 to December 31.8

FSA does some kind of supervision in order to carry out its duties. Several types of FSA supervision based on an analysis of the condition of a particular bank, namely:

* 1. Normal Control (routine)
	2. Intensive Supervision

In the framework of intensive supervision, the steps that can be performed by FSA are:

1) Ask the bank to report certain matters to FSA;

2) Increase the frequency of updating and appraisal of the business plan with adjustments to the targets to be achieved;

3) Requesting the bank to prepare action plan according to the problems faced;

4) Put on-site supervisory and / or on-site supervisory presence, if necessary.

If the bank placed under intensive supervision requires supervision or further remedial measures, it can be carried out to the next stage of surveillance or special surveillance.9

a. Special surveillance

Special surveillance is supervision conducted on banks assessed experiencing difficulties that endanger the continuity of his business. Banks which is assessed experiencing difficulties that endanger their business continuity are banks that meet 1 or more of the

8 Article 38 of Law Number 21 Year 2011 about Financial Service Authorithy.

9Article 2 Bank Regulation of IndonesiaNumber 6/9/PBI/2004.

following criteria:

1. Ratio of Minimum Capital Adequacy Ratio is less than 8%;
2. The Statutory Reserves Ratio in rupiah is less than the ratio set for the Bank's Minimum Reserve Requirement, with deteriorating developments in a short period of time or based on BI's assessment of fundamental liquidity issues.

Once doing its authority to conduct special inspection toward a particular bank, BI shall submit written notification in advance to FSA. The examination can not provide an assessment of the soundness of a bank.10

In the framework of special supervision, BI can perform several actions, among others:

1. Ordering bank and / or bank shareholders to submit a capital restoration plan in writing to BI;
2. Ordering the bank to fulfill mandatory supervisory action obligations; and
3. Ordering the bank and / or shareholders of the bank to take action, among others, to replace the Board of Commissioners and / or Board of Directors of Banks, write off credit or financing based on sharia principles classified as loss and take into account losses of banks with bank capital, merge or consolidate with other banks , sell the bank to buyers willing to take over all bank liabilities,hand over the management of all or part of the bank's activities to other parties, and suspend certain business activities of the bank.11

The period of bank with special supervisory status is a maximum of 3 months for a bank not listed on the capital market or 6 months for a bank listed on the capital market (listed banks). Duration can be extended and renewal can be given a maximum of 1 time and a maximum of 3 months. The extension considerations, especially those related to the necessary legal process, include amendment of the articles of association, transfer of ownership rights, licensing process, and due diligence process by new investors.

If in the process of supervision and examination turned out the state of the condition of the bank getting worse, Then the bank can be categorized as a Bank Fail (failing bank) and submitted to LPS.12

10 Article39, 40 of Law Number 21 Year 2011 about OJK

11Article 5 and Article 7Bank Regulation of Indonesia Number 6/9/PBI/2004.

12Article 8 Bank Regulation of Indonesia Number 6/9/PBI/2004.

FSA also coordinates with LPS against a problem bank that is in the effort of restraint by FSA. Form of coordination conducted between FSA with LPS is in the form of information based on the assessment conducted FSA. LPS may also conduct check on banks related to their priority tasks, functions and authority in coordination with FSA.13

In addition, FSA also coordinates with:

(1) BI and LPS to conduct joint monitoring in order to support the duties and authorities of each institution, and to build and maintain an integrated information exchange facility to support such activities and to monitor and evaluate the stability of the financial system;

(2) Law enforcers and other agencies, institutions and / or other parties that has jurisdiction in the field of law enforcement;

(3) Minister of Finance, BI and LPS to prevent and handle crisis conditions based on legislation on financial system safety nets;

(4) The Supervisory Authority of the Banking, Capital Market of other countries and other international organizations or institutions.14

OJK has the coordination with Government, BI, LPS. Protocols are regulated in the form of FKSSK whose membership consists of Ministry of Finance, BI, OJK, LPS. FSSK is required to monitor the evaluation of financial stability. Monitoring is conducted once in 3 months to prepare recommendations to each member to maintain financial stability and to exchange of information. FSA and BI require the formulation of legislation related to the coordination of 4 institutions incorporated in the Financial System Stability Coordination Forum (here in after referred to as FKSSK).

Integrated supervision involves one-stop supervision is conducted by OJK in coordination with BI, LPS and Finance Minister. This activity is carried out through FKSSK. Coordination by OJK through FKSSK in order to support the task and authority of each institution.

13Article 41, 42 of Law Number 21 Tahun 2011 about Financial Services Authority (FSA)

 14Academic Paper of the Establishment of Financial Services Authority (OJK) contained in

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**CONCLUSION**

Coordination of FSA and BI cooperation and LPS in handling of problem banks must run proactively in accordance with the prevailing laws and regulations in order to keep the stability of the national financial system. FKSSK is a tangible form of the seriousness of a coordinating system in handling problem banks and also plays an important role in assisting the stability of the national financial system.

Investigation of problem banking institutions in accordance with prevailing regulations. If the results of bank health surveillance can be saved, the liquidated bank settlement is maximally avoided. Because the impact is detrimental to the banking system as well as depositors of funds, because bank assets are inadequate.

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