

PREVENTING BANK PROBLEMS : BANKING SUPERVISION SYSTEM SUED IN INDONESIA

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Abstract— That if there is a bank having problems in operational flying businesses is actually the fact that reasonable , because the bank's business is full of risks , hence , the supervision of the bank's business to be done , if not fraudulent " fraud " banks will continue to update their modus operandi , Case example : Century Bank robbed by the owner himself (2008) , and made fictitious Credit Bank Syariah Mandiri Branch Head Bogor (2013) , where lies the crucial a bank should be monitored internally and externally . Bank supervision practices BI refers to best practice prevailing in many developed countries . There are two things that made the Bank Supervisory control is based on compliance (compliance based supervision / CBS) and supervision based on risk (risk-based supervision / RBS) . In fact there are still troubled banks from fraudulent behavior actions (fraud) even berunsur criminal and corrupt practices by banks bersatus failed . The main substance of troubled banks is not just a question of more serious NPL is the issue of governance (corporate governance) are not going well to the detriment of the bank , when the bank issues only NPL , bank supervisors wearing only status ; banks under intensive supervision , when the issue more serious such as a liquidity crisis , default or any governance until potentially the bank crime then the supervisor will put the bank under special surveillance or closed with a license has been revoked . With the enactment of Law No. 21 Year 2011 About Financial Services Authority , is expected to reform the unified and integrated supervisory system and can provide legal certainty for banks in Indonesia .

Keywords : Indonesian , Problem Bank , Bank Supervision , Bank . Indonesia (BI) Financial Services Authority (FSA)

1 INTRODUCTION

risis , banking fraud and crimes are the dreaded world and Cnational banking industry , because it can lead to troubled banks , not out of our memory when the crisis of 1997 destroyed almost the entire joint Indonesian economy , the monetary crisis (financial crisis) began in Thailand in July . This crisis had an impact on the exchange rate , stock market and other asset prices in several Asian countries . At that time Indonesia's economic fundamentals are strong enough and sturdy , low inflation , trade surplus reached more than USD900 million , huge foreign exchange reserves , more than \$ 20 billion , and the banking sector showed excellent performance , less likely to be affected by the crisis , but who thought in fact , many banks began overwritten losses, especially banks that have foreign currency loans and hedging (hedging) for the loan .

1. Added on BSMR Workbook, Level I - Year 2013

Exchange rate volatility is coupled with a worsening cash flow of banks - banks causing bank liquidity problem . Bank liquidity problems cause people to lose confidence so crowded - crowded withdraw money on a large - scale of the bank (rush) , a result of 16 banks to be closed and its operations dbekukan to avoid the impact of systemic risk ; the risk of failure of a bank where a devastating effect on a large economy - and not just in the form of massive losses directly faced by employees , customers and shareholders , the domino effect

could mengakitatnya national economy collapse , the bank rescue efforts taken by the Bank to disburse bank Indonesia liquidity support funds (BLBI) and some provisions be relaxed to avoid a collapse of the financial and banking system , result , rush did not happen in 1997 , systemic effects can be avoided , but the effects are problematic in the liquidation of 16 banks , nearly 35,000 employees lost their jobs and to date government has debts of more than Rp.600 trillion of running BLBI is still repaid from the state budget , as a result of assets being sold not more than Rp . 20 trillion .

The global crisis has always made a shaky economic fundamentals Indonesia , in 2008 the failure of industrial property (sub -prime mortgage) in the United States triggered the downfall of the financial institution to drag the world into the global scale crisis , Indonesia can not be separated from the impact of the financial crisis in the U.S . , the symptoms begin looks from the psychological 10,000 exchange , foreign exchange reserves had disappeared almost Rp . 9 trillion in just an instant , other symptoms Indoneesia Stock Exchange had to stop (suspend) stock trading for two days , this is to avoid a more severe fall of the stock market index and removing the capital about 250 thousand local investors , because their share prices slumped almost 50 % . Banking conditions rather shaky public confidence slumped and breakdown of interbank money market (interbank) , banks - banks with excess liquidity did not dare to lend their funds to other banks for fear is not

returned, the situation is not all banks experiencing liquidity problems, only banks - banks play forex, it is especially critical as the Bank Century (BC), BC in fact saved (bailout) but until today as the BC rescue failed banks still pose a legal problem and could be a banking crime problem.

PROBLEM FORMULATION

After looking at the facts - the facts above law of bank supervision by Bank Indonesia and internal bank has not effectively prevent banks becoming problematic, even efforts have actually pose legal risks have not got a solution to the legal certainty it is very disturbing operational and reputation risk banks, the above happens because of weak law enforcement (law enforcement) by Lawrence Meir Friedman: there are three (3) factors of law enforcement; substantive law and legal culture and legal structure. so that public confidence is lost and the banks lose money and cap, the effects of the troubled banks will lead to systemic risk and hamper national economic development, national development in the field of economy, modernization and reform is carried out of, by, and for the people executed in all aspects of national life.

2. Johni Najwan, Materials Lecture Philosophy of Law, (Jambi, Doctoral Program of Legal Studies, University of Jambi, 2013).
3. Rustian Kamaluddin, Some Aspects of National and Regional Development, (Jakarta: PT. Ghalia Indonesia, Printing VI, 2012), hlm.16
4. Rahmat Saleh, Role of Banks in Economic Development Fair, (New York: LPPI, 2013), page.8

provide a favorable climate for business, so that financial institutions both banking and non-banking and business operators in the field are able to utilize and implement policies and accomplish their business activities smoothly, which in turn can accelerate economic development.

Prevent troubled banks is Bank Indonesia's authority in overseeing the bank - a bank that is located in Indonesia, the banking supervisory function under Article 8 letter c Law - Law No. 3 of 2004 on the Amendment of Law No. 23 of 1999 concerning Bank Indonesia, which further called Law - Law of Bank Indonesia.

Regarding the task of bank supervision, in line with the mandate of Article 34 of Law - Law of Bank Indonesia is the establishment of the Financial Services Supervisory Authority with the enactment - Law No. 21 Year 2011 About Financial Services Authority (FSA). With the birth of the FSA and the Bank's role as a bank supervisor will switch to the Date of January 1, 2014 and the central bank regulators focus on monetary and macro-prudential, task shifting banks did not cause the BI off entirely for the supervision of the Bank, but there is coordination between the FSA in implementing BI the task.

If in view of the above facts or the sequence of events due to the crisis that hit the bank fraud cause of problem banks and the law do not get quick legal certainty, there is nothing wrong in the supervision of banks during both internally and

externally, bank supervisors are not able to prevent the bank being healthy though bank supervisors were able to avoid systemic risk, but the impact of the troubled bank then legally, the case of 16 banks incur losses likudiasi country is still a burden on the state budget debt and the Bank Century case (BC) five years sDH unfinished victims are customers. Bank supervisors are always late anticipate and regulate the prevention impressed so late and already troubled banks. Surveillance system conducted by Bank Indonesia has not been able to meet and ensure fairness and (ensuring justice), and have not been able to generate trust and respect of society and provide security of public funds in the Bank, According to Roscoe Pound, good law is in accordance with the laws of life in society, law is a tool of social engineering (law as a social institution or law as a tool for building community).

The problem in this paper is how the existence of the Financial Services Authority in the conduct of Bank Supervision Indonesia in the future and How intermingling between Bank Indonesia and the Financial Services Authority under the supervision of the Bank after the birth of Law. 21 Year 2011 About Financial Services Authority.

This journal entitled: "Preventing Problem Bank: Banking Supervision System Sued In Indonesia", intends to answer these questions, the discussion focused on the corner of supervision, especially at a time of external supervision by Bank Indonesia, the Internal monitoring and supervision carried out by the Financial Services Authority (FSA) fore and after the system integration undertaken Act No. 21 of 2011 enacted.

5. Article 8 Clause (C) of Act No. 3 of 2004 on the Amendment of Law - Law No. 23 Year 1999 on Bank Indonesia
6. Article 39 of the Law - Law No. 21 Year 2011 About Financial Services Authority.

DISCUSSION

EXTERNAL MONITORING

The task of the bank supervisor is to ensure that all the banking rules have been duly executed, while seeking and maintaining order in the governance of banks being healthy is the duty of the bank board, the Board of Directors and Board of Commissioners, "said former Governor of Bank Indonesia Nasution. Mandate Act two - Act (Act) BI task of bank supervision. Act 7 of 1992 were revised to Act 10 of 1998 Section 29 states "the task of the guidance and supervision of banks do BI." And dikuatkan by Law No.23 of 1999 on the revised Bank Act No.3 of 2004, that The central bank's task is to regulate and supervise banks.

Technically, there are two approaches undertaken supervision, supervision by adherence (compliance based supervision / CBS) and supervision based on risk (risk-based supervision / RBS). CBS is a compliance-based model of supervision of banks to carry signs - signs that set of BI and the precautionary principle related to the operation and management of the bank

Examples CBS surveillance, bank supervisors utilize dikrimkan report by the bank, contains the implementation of the signs - signs that have been set by BI. For example, Bank Report (LBU), Report of Good Corporate Governance (GCG), and other reports. If found any anomaly or anomalies or violations of violations of signs - signs, the Act gives the mandate and the mandate to BI to take action - action. For example, the Bank Century case, the bank merged (fused) three banks (Bank CIC, Danpac Bank, and Bank Pikko), the level of non-performing loans or NPLs (non performing loans) above 5%, the central bank asked for in the BC to create an action plan the NPL settlement and immediately establish loss reserves, additional reserves memberikkan consequences of the controlling shareholder (PSP) and its shareholders (PS) to deposit additional capital.

While working principle of supervision by the supervisory function approach RBS is looking forward (forward looking). This monitoring approach focused on the inherent risks (inherent risk) on the functional activity of the bank as well as risk control system (risk control system). Essentially all of the potential risks will be monitored from market risk, liquidity risk, operational risk and legal and other risks. Examples of BI inspectors discovered the existence of a bank does not have a rating in the credit rating and potential future problems under the supervision of the RBS system, then the bank will ask the bank to immediately create a rating and ranking plan ahead in handling problem loans.

Follow up any findings of the inspection and supervision of banks in the field, BI has steps - steps to restructure the bank as a frame of reference, to bring forward the rescue efforts of public funds and retain the role of the bank as an institution of trust. If public confidence has been collapsed to one bank alone, is likely to bring a domino effect (contagion effect) to the banking system, even if to do a bank or a business license revocation followed by closure of the bank, this is the last step, when the added capital, merger or acquisition the bank was not running.

7. Johni Najwan, Lecture Materials Flisafat Law, (Edinburgh, Doctoral Program of Law, University of Edinburgh, 2013).
8. Nasution, Global Crisis and Rescue Indonesian Banking System, (New York, Bank Indonesia, 2013), p.19.

ASSIGNMENT OF BANK SUPERVISION

Bank supervisory duties in accordance with the mandate of the Banking Law and the Law of BI is indirect supervision (supervision offside) and directly through bank checks (on-side supervision). Indirect supervision begins by analyzing a number of periodic reports submitted by banks to the central bank. This report is used to diagnose the condition of the bank, the data related to capital, asset quality, management, profit and loss, liquidity,

market risk, from all the above processes, resulting risk profile will be further reference control measures, in line with the

risk-based supervision supervisor did simulation of bank resilience (stress-testing) to changes in economic factors, the results of the stress test is an indication of BI recommendation, if a bank is too expansive then asked to review the bank's expansion plans. Direct supervision of the central bank will conduct a direct examination of the supervised bank (on-site supervision) at least once a year. The purpose of this examination is a direct confirmation of the truth and akuarasi reports submitted by the bank based on the identification of risk. Examination methods based on risk allows supervisors to work more effectively, efficiently utilizing energy and time, the results of the investigation will eventually be reused as material for updating the risk profile and strategy of bank supervision.

BI's supervisory system did not seem to be effective in preventing the troubled bank, to sniff out the existence of an act of fraud in banks, bank supervisors look slow and fast acting example in the case of Century Bank Tantular is a central figure in the operational control of Bank Century, no formal judicial No official document name in the bank and the central bank, but is concerned very actively and directly involved in making important decisions in the bank Century after century bank clearing and fall losing new BI investigative examination results are followed up to the police, the arrest of Robert Tantular can only be done after former Vice President Jusuf Kala ordered him to police chief. Tantular eventually sentenced to 5 (five) years of imprisonment by the Supreme Court.

TROUBLED BANK

the time the bank declared a failed bank and into the systemic impact bank schemes that need to be saved, will ask the public accountability of Bank Indonesia as the bank supervisor externally, ironically accused Bank Indonesia is the most responsible and the Board of Directors of the bank. The blame is not going to lead because this issue is not only in regards to bank supervisors but is closely related to bank ownership, managers, law enforcement and the entire device kelembagaanya, of provisions of law to law enforcement lembaga.

BI's regulation on bank shareholding and PBI No.14/24/PBI/2012 Circular No.15/2/DPNP, actually strengthens the position of the Controlling Shareholders in managing and controlling banks, especially foreigners still dominate justified by bank shares 90%, dibebarepa state shareholding banks, both individuals and institutions have very limited long, in the U.S. system of corporate management is done by a professional bank, this system occurs due to the spread of share ownership in a bank, in the U.S. is almost entirely public company and only partially have a small stake in the controlling shareholder.

9. Compass, Joseph Kala Commission examined the case of Bank Century, (New York, November 23, 2013), p.1
10. Pradjoto, Prevent Bankruptcy Nations, (Jakarta, the Indonesian Transparency Society, mold 2, 2010), p. 329.

agement of the bank . Basel 3 is immediately enforced focuses capital and shareholding issues become the focus in the management and control of the bank .

Good quality report Corporate Governance (GCG) submitted to BI banks have not been able to apply the principle - the principle of openness (transparency) , Accountability (accountability) , accountability (responsibility) , Independensi (independency) , and fairness (fairness) proof the case of fictitious loans Islamic Bank independent Bogor Branch Leader burglarized by the subsidiary . GCG is a pattern of relationships between management and stakeholders , the management board of commissioners and an ethics -based management , corporate culture and corporate values are supported by a system , processes , guidelines and organizations working to achieve optimum work , a lot of troubled banks as the Board of commissioners and the Board of Directors of the bank is only a puppet controlling shareholder of the Bank Century case , or many of the Board of Commissioners on Regional Development Bank (BPD) understand not only the extension of the bank as the Local Government controlling shareholders , consequently BPD - BPD is not yet a public company into a bank lot problematic .

Fore there are two major challenges facing the bank supervision . First , the development of financial transaction relatively quickly with the integration of banks with other financial institutions , . Second , the rapid growth of the banking industry , both in terms of volume , type of product and the variation between the complexity of transactions has caused money market transactions and capital markets . Bank supervisors would be difficult and could no longer see a banking transaction from a bank , but the future of banking crimes closely related to the capital market , insurance or financial markets is the fact that in the face of complex bank supervisors , failure in the stock market or money market systemic impact on bank performance . Banking requires legal certainty to the law - laws that exist today , it is necessary to conception as a means of renewal in pengaruh by philosophical approaches , cultural and policy approaches (Ass Well and Mc . Dougal) .

Under conditions of banks become integral to the capital market , money market and global insurance , it is difficult to conduct bank supervision , to dismantle indications of fraud committed board of directors , the bank or a third party manajemen difficult for inspectors to know the general course of the audit , only through investigations and audits integrated information system rot was discovered .

Although the model of banking supervision BI already refer to the predominance (best practice) prevailing in banks - central banks in other countries , at any time it appears the bank - the troubled banks , it further confirms that the Bank failed in the supervision of the Bank - Bank in Indonesia , because BI is too large a task in addition charge of maintaining monetary stability (macro -prudential) also serves to supervise banks (micro -prudential) supervisory still preoccupied with the task - other tasks are still preoccupied with the opening

and closing of the bank office network , the product license , appointment and dismissal of the head of the bank , supervisors also perform a fit and proper test of candidate head of the bank , bank supervisors and prospective owners of the bank .

With the enactment of Law - No. 21 of 2011 on the Financial Services Authority (FSA) , the task of micro -prudential supervision of banks would be supervised by the FSA , in accordance with Article 5 of Law 21 of 2011; FSA serves organize the regulatory and supervisory systems are integrated to the overall activity in the financial services sector is based on the principle - the principle that financial reform Independence , integrated , and avoid conflicts of interest .

The process of globalization in the financial system and the rapid advances in information technology and financial innovation created a financial system that is very complex , dynamic and mutually inter - related sub-sectors in terms of both financial and institutional products . In addition , the existence of financial institutions have ownership in the various sub-sectors has added to the complexity of financial transactions and interactions among financial services institutions in the financial system . In carrying out its duties and authorities FSA was formed with the goal of keeping the overall activities of financial services in the financial services sector held on a regular basis , fair , transparent , and accountable , and able to realize the financial system as well as the sustained and stable growth , and capable of protecting the interests of consumers and society . Laws are not static and always move with the times and community dynamics is legal realism , known as the flow of legal Pragmatic realism , pioneered by John Chipman Gray and Oliver Wendell Holmes . With this purpose , the FSA is expected to support the national interests of the financial services sector , so as to enhance national competitiveness . FSA function is to organize the regulatory and supervisory systems are integrated to the overall activity in the financial services sector . FSA given the authority to carry out its duties as a regulator and supervisor of the banking sector , capital markets and insurance , pension funds , financial institutions , and other financial institutions .

With the shift of bank supervision function of BI to the FSA that began on January 1, 2014, in the hope that analysis of early warning systems (early warning analysis) should be more honest , open and independent in providing adequate information about the condition and vulnerability of the financial system and banking to take decisions aimed at preventing crises and firmly in law enforcement . Prevention of troubled banks conducted by bank supervisors in the domain of Bank Indonesia is not able to resolve the problem in a holistic , integral and legal certainty .

With dcantumkannya Article 49 of Law no. 21 of 2011 on the investigation , it would be very effective supervisory duties , because if found fraud that led to the bank fraud bank supervisors can immediately conduct an investigation .

11. Widigdo Sukarman, Bank Ownership Restrictions, paper presented at Training Pincab 174, Jakarta, LPPI, 2013, p.5

12. Koran Tempo, "Police Arrest Bogor Branch BSM" (New York, October 15, 2013), p. 1

The liberalization of the banking industry must be followed by the application of the principles of good governance of banks . To apply the legal principles to be applied firmly without discrimination . Optimal sanctions should be applied to anyone indiscriminately , one drawback is done liberalization in developing countries is less strict in the enforcement of law , legal culture factor is one of the requirements is consistently upholding the law , therefore the regulator (FSA) must firmly establish a culture implementation of the liberalization of the law as a counterweight . Any individual convicted of fraud (fraud) should be severely punished , if the bank violated banking regulations then not only ering banks in financial penalties but also as a personal organizer and when a violation has been entered in the banking fraud perpetrators are not only imprisoned but the entire property deprived of his wealth for the country , the support of prosecutors and judges also have the same intention and a deterrent effect and impoverishing white-collar criminals .

13. Johni Najwan, Materials Lecture Philosophy of Law, (Edinburgh, Doctoral Program of Law, University of Edinburgh, 2013).

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INTERNAL CONTROL

The ability of internal controls to detect fraud that involves people in very important , to increase the role of the compliance and governance creates a tiered supervision of servants elementary level up to senior manager and report the accounts and assets of each employee , and the Board of Directors on a regular basis , so if fraud in a comprehensive and easily overcome not hurt the bank .

COMMUNITY SUPERVISION

Enabling community supervision (market dicipline) by extending the principles of transparency , the fact was revealed that the market provide an excellent early warning of the presence of the troubled banks sample clearing consequently lost Century Bank Century Bank shares fall the lowest point it at the stock exchange , this shows the market has reacted bank supervisors first before taking the policy . Capital risk profile become essential for supervisors and market participants to assess how banks keep the level of health . Basel Committee on banking supervision has identified six (six) categories of information to help achieve a satisfactory level of transparency of banks , namely (a) financial performance ,(b) the financial position , (c) practice and risk management strategies , (d) Risk exposure ,(e) accounting policies and (f)

the basic business , corporate governance and management . In performing its duties , FSA coordination with Bank Indonesia in making regulatory supervision in banking :

- a. Obligation Fulfillment Minimum Capital , the bank 's minimum capital requirement is a FSA task as micro- prudential , but because it involves the setting of Basel Core Principles and Bank Indonesia is a member of the BIS (Bank for International Settlements) , the minimum capital requirement of the micro parts that must be coordinated between Bank Indonesia and the FSA .
- b . Integrated Banking Information System , banking information system (SIP) is a media presentation of information at the macro level , the individual banks , as well as other information related to the business environment of the bank , presenting the information from the mass media , government institutions is different - different . Coordinate system is constructed as a means of coordination and joint policy , the system is to avoid the risk of a crisis arising from the failure to anticipate and miskoordinasi supervisory agencies .
- c .Admission Policies of Foreign Funds , Funds received foreign currency , and foreign loans, coordination becomes crucial in making regulations on receipt of funds from abroad , receipt of foreign exchange funds , and foreign commercial loans , as well as making its implementation procedures .
- d .Banking products , derivative transactions , and other business activities of banks , banking products in general are the various forms of bank deposits , loans , payment services provision and circulation of money and other forms of banking products services .Derivative Transaction is a payment contract or agreement whose value is derived from underlying instruments such as interest rates , exchange rates , commodities , equities and indices , other banking activities are credit cards , debit cards and internet banking .
- e .Another thing that must be coordinated is associated with Systemically Important Banks resulting in partial or complete failure of banks , both operationally and financially , if the bank is experiencing of-fending or failing . Other data are excluded from the provisions concerning the confidentiality of information . Secret means something according to laws – laws must be in secret

14. Article 5, Law 21, Year 2011, On the Financial Services Authority (FSA),

15. Johni Najwan, Materials Lecture Philosophy of Law, (Edinburgh, Doctoral Program of Law, University of Edinburgh, 2013).

CLOSING conclusion

With the shift of bank supervision to the Financial Services Authority (FSA) as mandated by the Act - Act 21 of 2011 , the supervisory authority of the larger banks because they were given the right to declare the start of the investigation when the element is found in examination fraud and bank fraud . FSA serves organize the regulatory and supervisory

systems are integrated to the overall activity in the financial services sector . FSA has a duty to implement the regulation and supervision of financial services activities in the sectors of Banking , Capital Markets , Insurance , Pension Funds , Financing Institutions and other financial services institutions , FSA establishes regulations - regulations in the financial services sector , establish rules regarding supervision and regulation establishes procedures perintahn written determination , field supervision and consumer protection in the banking sector , Capital Markets , Insurance , Pension Funds , grant or revoke the business license approval or determination of dissolution provide written instructions to the Institute of Financial Services and appoint business statutes and authorities to establish penalties administratif .

Community supervision becomes an important part in preventing troubled banks by opening information as possible to the public and is open in the practice of risk management , transparency about the capital market so as to memfasitasi discipline . Creating a bank rating agency rated the independent and widely publicized to the public . In the application of and adherence to the bank 's anksi , supervisors must firmly and consistently and not just the penalties charged to banks but to the owner of the bank . With the establishment of the FSA prevention and control are integral to the Bank , Capital Markets and Insurance , to prevent evil corporations and individuals , so that treatment can be prevented trasaksional crime , because inter-institutional connectivity data base can be placed on line . In the Bank's supervisory duties are coordination between Bank Indonesia and the FSA . Bank Indonesia kewenangannya in macroprudensial and FSA in the field microprudensial . FSA coordination with Bank Indonesia in making regulatory supervision in banking , among others ; minimum capital obligations , integrated banking information system , the policy receipt of funds from abroad , receipt of foreign currency funds , foreign commercial loans , banking products , derivative transactions , other banking operations , the determination of categories of banking institutions that enter systemically important banks , the data others are excluded from the provisions concerning confidentiality ingormasi . In carrying out checks directly to the bank by giving notice in writing to the FSA .

Suggestion

Law - Law Financial Services Authority should be able to provide legal certainty , improve the potential for strong and healthy banking by developing an effective system of banking supervision so as to overcome the crisis of public confidence in the banks ,

eral kepetingan , openness , professional , integrity , accountability , expected to comply with and obey not just a formality. FSA is new hope in the financial reform in Indonesia provide new insight in addressing the problem - the state 's financial problems and is able to enforce the law in truth . We recommend the enactment of Law no. 21 In 2011, the FSA to prepare legal instruments regarding the formal framework in order to support the task of bank supervision immediately made to set up monitoring mechanisms to be more effective a efficient compliance with standards and alignment direction conducive for banking regulation and strict rules regarding the alternatives to overcome financial crisis global systemic impact .

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16. Article 49, Law 21, Year 2011, On Financial Services Authority (FSA)

coordination between Bank Indonesia and the FSA should run well so that the function can be executed better intemediasi as the collector and distributor society funds . Running the FSA in its duties and functions based on the principle - which is discouraged ; independence , rule of law , gen-