

## Bank Indonesia Independence after the Existing of Law Number 4 of 2023



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**ABSTRACT:** This study aims to find the juridical consequences of enacting Law No. 4 of 2023 on Bank Indonesia's Independence. This research is normative juridical research. Secondary data is used in this study. Secondary data divides of primary and secondary legal materials. Data analysis uses qualitative analysis, which is regulative and conceptual. This study aims to determine the position of Bank Indonesia's Independence as a juridical consequence of the enactment of Law No. 4 of 2023. This research is limited to a study based on secondary, not primary data

**KEYWORDS:** Data, Financial, Law, Primary, Secondary

### I. INTRODUCTION

In practice, there are problems in the financial sector, namely the uneven proportion of assets, which is still dominant in the banking sector for short-term sources of financing. Meanwhile, as a source of long-term financing, the non-bank financial sector still plays a minor role. The banking sector also has some fundamental issues. There are challenges to the entry of high-risk financial instruments and regulatory situations that have yet to be fully able to maintain the financial system's stability. Challenges in the financial sector also come from outside Indonesia, such as technological disruptions and the emergence of new financial risks related to climate change and the geopolitical situation. Based on these problems and challenges, it is necessary to reform the financial sector. This reform is expected to deepen and increase the efficiency of Indonesia's financial sector through efforts to broaden the reach, products, and investor base, promote long-term investment, increase competition to support efficiency, strengthen risk mitigation, and increase investor and consumer protection. Law No. 4 of 2023 concerning the Development and Strengthening of the Financial Services Sector (from now on referred to as the PPSK Law) was formed, which has consequences for regulations related to the financial services sector. The Bank Indonesia Law is one of the laws that changed with the issuance of the PPSK Law. One of the changes is regarding Bank Indonesia's Independence. This paper will discuss and analyze whether Bank Indonesia still has an independent position with the PPSK Law. In other words, this paper discusses the juridical consequences of enacting the PPSK Law on the Independence of Bank Indonesia. Financial Services Authority and Bank Indonesia must relate to Law No. 4 of 2023. Other studies discuss central banking institutions and the Financial Services Authority, which are studied from the perspective of regulations in other countries. This research includes research conducted by Monnet, E (2023), Lars P Feld, Volker Wieland (2021), Thomas F Huertas (2022), Istrefi, K. & Piloiu, A (2020), Jones, E. and Knaack, P. (2019). In Indonesia, there is particular research regarding Independence conducted by Inda Fresti Puspitasari (2023), Kusumawati (2023), Dinata AW (2017), and Achmad Fauzi (2023). This study discusses the Independence of Bank Indonesia from a legal aspect before the PPSK Law and an economic aspect. This research analyzes Bank Indonesia and the Independence of Bank Indonesia but has not used the perspective of the PPSK Law. This research discusses the Central Bank from the perspective of other countries' regulations or regulations before forming the PPSK Law. The novelty of this research is compared to previous research in that it discusses the juridical consequences of enacting the PPSK Law on the Independence of Bank Indonesia, which previous researchers have never done. This study aims to analyse the juridical consequences of the enactment of Law No. 4 of 2023 concerning the Development and Strengthening of the Financial Sector on the Independence of Bank Indonesia. In the opinion of Gustav Radbruch, values of legal validity will be used as a philosophical basis in analyzing whether the enactment of the PPSK Law can already contain the values of legal validity, as stated by Gustav Radbruch.

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### **II. RESEARCH METHODS**

This research is normative juridical research. Secondary data is used in this study. Secondary data in this research consists of primary and secondary legal materials. The data used is secondary, which does not focus on field data. The secondary data used are primary legal materials and secondary legal materials. (Lego K, Said G, Zaidah N, I Gusti A., Abdul K.J., Willy N H, 2020) Secondary data is the same as library data or legal materials. Legal materials consist of secondary and primarily legal materials. Secondary legal materials consist of legal opinions obtained through books, magazines, the internet, journals, papers, research results, opinions of legal practitioners and legal experts, the Indonesian dictionary, and the legal dictionary. Searching for the expected findings in searching for truth is done by searching for legal truth in juridical studies (Andika PP, Muhamad Z. 2019) normative/ doctrinal. The search for truth to obtain an expected finding in the normative realm is finding legal rules, principles, and doctrines to answer legal issues. Methods of Data Collection Data collection is used to search for truth in Law. All the data will be analyzed using qualitative analysis (Mustapha Z et al., 2021). In data analysis, several approaches are assisted: statutory regulatory and conceptual approaches. The statutory approach is to find legal and legal ratios—the ontological basis of each article and the Law. The conceptual approach explains legal concepts related to efforts to find the expected findings. The approach from the aspect of the role of Law in economic activity is essential, although not in detail, and is still used in the analysis, as stated by Grachev (2019), to be instrumental in the research law. After presenting the data findings' results and analyzing and approaching them using the methods described previously, the next stage is concluding, which answers the legal issues raised. Conclusions are drawn from general matters to specific or deductive matters.

### **III. RESULTS AND DISCUSSION**

#### **III.1. Values in The Validity Of Law according to Gustav Radbruch.**

They were related to the previous description of Gustav Radbruch's legal validity (Alexy, Robert, 2021). recognize a law above positive Law, which applies as a norm of the legal system. According to Radbruch (Fernando Manullang, 2022), legal validity is part of the concept of legal certainty. Therefore, before discussing legal validity, it is necessary to reflect on Radbruch's ideas regarding the purpose of Law, one of which is legal certainty. In this context, the Law is determined positively. Because through positive Law, differences will be crushed. The three ideas in the value of Law have an antinomy between justice, legal certainty, and usefulness. The antinomy Radbruch puts the justice and usefulness of the antinomy with legal certainty. Validity becomes an essential part of legal certainty. Positive legal norms are created to realize ideal values that lead to good for society. These values are the value of legal certainty, the value of benefits, and the value of justice. Law No. 4 of 2023 Concerning the Development and Strengthening of the Financial Sector (UU PPSK) was made and enacted to realize the value of legal certainty, the value of benefits, and the value of justice for society.

#### **III.2 Criteria for Independence of Bank Indonesia.**

There have been dynamics in the regulation of Bank Indonesia since its inception until now. Current Bank Indonesia regulations are contained in Law No. 23 of 1999 concerning Bank Indonesia as amended by Law No. The year 2004. That Government Regulation in place of Law No. 2 of 2008 concerning the Second Amendment to Law Number 23 of 1999 ; Law of the Republic of Indonesia Number 6 of 2009 concerning the Stipulation of Government Regulations instead of Law Number 2 of 2008 concerning the Second Amendment to Law Number 23 of 1999 concerning Bank Indonesia to Become Law. The contents of the Law mentioned above have changed with the issuance of Law No. 4 of 2023. The central bank's Independence can also be seen from several criteria (Zainal Azikin, 1997, p. 16): a. Appointment of the governor/director. The position of the Central Bank is said to be independent if the Appointment of the governor must go through parliamentary approval. In this way, the legal Independence of the central bank can be more guaranteed. b. Liability issues. The Central Bank is not being independent if it is not subject to a particular department. An independent central bank is usually accountable to Parliament rather than the President. c. An independent central bank usually has the power to determine monetary policy. If the Government determines monetary policy while the central bank is only the implementer, it can be said that it is not independent.

#### **III.3. Bank Indonesia Independence After Existing of the PPSK Law**

The position of Bank Indonesia's Independence is strictly regulated in Article 4, paragraph 2 (amendments to the PPSK Law), which states that Bank Indonesia is an independent institution in carrying out its duties and authorities. It will be free from interference from the Government and/or other parties, except for matters certain matters which this Law expressly regulates. The definition of Independence under the PPSK Law is that Bank Indonesia is free from interference from any party except as specified in the Law in carrying out its duties. In this regard, Tasks a. determine and implement Bank Indonesia's monetary policy sustainably, consistently, and transparently; b. organize and maintain the smooth running of the Payment System, and c. establish and implement macroprudential policies. Bank Indonesia's objective is to achieve stability in the rupiah value, maintain

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Payment System stability, and contribute to maintaining Financial System Stability to support sustainable economic growth. It shows that the PPSK Law clearly states an independent position. Below, we will analyse whether the changes to the Bank Indonesia Law contained in part five of the PPSK Law stipulate the Independence of Bank Indonesia.

### **A. Criteria for Appointing Governors.**

This criterion requires that the position of the Central Bank be considered independent if Parliament must approve the governor's Appointment. The PPSK Law stipulates changes to Article 41 (1), which stipulates that the Governor, Senior Deputy Governor, and Deputy Governor are proposed and appointed by the President with the approval of the House of Representatives. This provision stipulates that the amendment to article 41 in the PPSK Law requires the approval of the House of Representatives (Parliament) in the Governor of Bank Indonesia Appointment.

### **B. Bank Indonesia Accountability**

The Central Bank is independent if the central bank is not subject to a particular department. An independent central bank is usually accountable to Parliament, not the President.

Article 58 stipulates that Bank Indonesia must submit written and quarterly reports to the House of Representatives. The reports submitted are annual reports and quarterly reports. The report is evaluated by the DPR and used as material for an annual assessment of the performance of the Board of Governors, members of the Board of Governors, and Bank Indonesia. Bank Indonesia is obliged to announce Bank Indonesia's annual financial reports, which have been examined by the Supervisory Financial Institution in Indonesia, to the public through the mass media.

### **C. Determination of Monetary Policy**

An independent central bank usually has the power to determine monetary policy. If the Government determines monetary policy while the central bank is only the implementer, it can be said that it is not independent.

## **III.4. Requirements and Prohibitions for Members of the Board of Governors to Become Management and/or Members of Political Parties**

As is known, the prohibition on being an administrator and/or member of a political party was a provision that was removed in the Bank Indonesia Law before the PPSK Law came into existence. This provision was deleted in Law No. 3 of 2004. This deletion could provide potential interests for certain political parties in carrying out Bank Indonesia's duties. The requirements and prohibitions for members of the board of governors who are not administrators/and/or members of political parties at the time of nomination are re-established in the PPSK Law (amendments to articles 40 and 47 of the fifth part of the PPSK Law). The PPSK Law amends Article 40 and Article 47 of the PPSK Law to be as follows: Article 40 To be appointed as a member of the Board of Governors, the candidate concerned must meet the requirements: a. Indonesian citizens; b. have high integrity, character and morals; c. have expertise and experience in the fields of economics, finance, banking, or Law; and D. not an administrator and/or member of a political party at the time of nomination. The provisions of Article 47 of the BI Law were amended to read as follows: Members of the Board of Governors, either individually or collectively, are prohibited from having direct or indirect interests in any company; holding concurrent positions in other institutions unless due to his/her position, he is obliged to hold that position; and become an administrator and member of a political party. In the event that a member of the Board of Governors carries out 1 (one) or more prohibitions as intended, the member of the Board of Governors is obliged to resign from his position. These provisions are established to guarantee Bank Indonesia's independent position in carrying out its duties to achieve Bank Indonesia's objectives. This change will provide justice for society because Bank Indonesia will avoid being used for the interests of certain political parties. This change also implements the value of legal certainty because establishing a constitutionally independent position in the form of Law will provide a sense of legal certainty for those parties who implement the Law. These changes will provide more incredible benefits for society.

From the perspective of the values that must exist in the Law, namely the value of justice, the value of legal certainty, and the value of the usefulness of these changes, these values have been realized in the Law as stated by Gustaf Radbruch.

## **IV. CONCLUSIONS**

From the discussion above, the juridical consequences of enacting Law No. 4 of 2023 on Bank Indonesia's Independence are that the PPSK Law stipulates an independent position. Bank Indonesia has an independent position based on three criteria. The first of these criteria is the Appointment of the governor/director, which requires the approval of the House of Representatives. Criteria for accountability of the Central Bank, which is responsible to Parliament. The three criteria for Bank Indonesia's power in determining monetary policy. Apart from these three criteria, the PPSK Law stipulates changes to the requirements and prohibitions for members of the board of governors who are not administrators/and/or members of political parties at the time of nomination to be re-established in the PPSK Law (changes in articles 40 and 47 of the fifth part of the PPSK Law), as an effort

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to give them more status. strong and independent Bank Indonesia. From the perspective of the values that must exist in the Law, namely the value of justice, legal certainty, and the value of the usefulness of these changes, these values have been realized in the Law as expressed by Gustaf Radbruch.

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