

## **LEGAL RESEARCH METHODS IN EFFORTS TO APPROACH SETTLEMENT LAW OF BIRTH INCONSISTENCY FINANCIAL SERVICES AUTHORITY**

Dr Theresia Anita Christiani. & Maria Hutapea, SH.M.Hum  
Faculty Of Law  
University of Atma Jaya Yogyakarta, Indonesia  
Email: thanita@mail.uajy.ac.id Tel: + 62- 08112503192

### **ABSTRACT**

FSA Act was enacted on November 22 since mandated by Article 34 of Act No. 23 of 1999 concerning Bank Indonesia showed the tug where the Financial Services Authority which will serve to organize system of regulation and supervision of integrated financial services sector. In the development of Act 23 of 1999 amended by the enactment of Act No. 3 of 2004 is a consequence provisions relating to the supervision of financial services institutions are experiencing changes. There are some inconsistencies between the provisions of law underlying the establishment of the FSA, and the provisions contained in the FSA itself. Basic setting is the 1945 establishment of the FSA and the Bank Indonesia Act. This becomes a problem due to the formation of a juridical FSA will greatly affect the duties of Bank Indonesia, which will ultimately have an impact on the objective of Bank Indonesia to maintain and stabilize the rupiah. Research goal is to find the issue of legal inconsistencies emergence FSA Act. This phase is done by finding the ratio legis and the basic ontological settings associated with the emergence of the FSA Act. The research method is used, among others, that this study is a kind of normative research using secondary data and information sources as material to analyze the problems. The method of data analysis used is qualitative data analysis methods. Legal inconsistencies genesis of FSA Act can be concluded from Constitution of 1945 and The Bank Indonesia Act. This phase is done by finding the ratio legis and the basic ontological settings as sociated with the birth of the FSA from Constitution of 1945 and the Bank Indonesia Act . Legal inconsistencies between Constitution of 1945 and FSA Act can be concluded from the 1945 Constitution that give independence of Bank Indonesia , in the other side FSA Act obscures the meaning of Bank Indonesia independence . Legal inconsistencies between the Bank Indonesia Act and the FSA Act is also apparent from the mandate of the Bank Indonesia Act only divert the supervisory duties of Bank Indonesia while the FSA Act gives authority to FSA itself not only supervising but also making regulation.

Key words: philosophical, the Financial Services Authority, inconsistencies

### **I. INTRODUCTION**

At first the legal basis for the establishment of a financial services supervisory agency hereinafter in Act No. 21 of 2011 referred to the Financial Services Authority (FSA) is explicitly stated in Article 34 of Act No. 23 of 1999 and its account of Bank Indonesia. In developing of Act No. 23 of 1999 amended by the enactment of Act No. 3 of 2004. Bank Indonesia consequences provisions relating to the supervision of financial services institutions are experiencing changes. Changes in the provisions contained in Act No. 3 of 2004 is compared to Article 34 of Act No. 23, 1999, the period of the establishment of the Financial Services Supervisory Authority. The provisions of Article 34 Act No. 23 of 1999 specifies that the financial services supervisory agency will be set up no later than December 31, 2002. In the new provision is in Article 34 of Act No. 3 , 2004, the provisions regarding the establishment of the Financial Services Supervisory Authority established no later than December 31, 2010. The postponement of the deadline for establishment in Act No. 3 of 2004 was due to the readiness of the human resources and infrastructure of these institutions to accept transfer of bank supervision from Bank Indonesia.

In fact there are legal inconsistencies from birth of FSA .Legal inconsistencies can be sees from Constitution of 1945 and the Bank Indonesia Act . inconsistency of legal form of philosophical clashes between 1945 and FSA Act, and between the Bank Indonesia Act with the FSA Act would interfere implementation tasks and objectives set forth in the Act of FSA. Urgency of this research is legal inconsistencies in the appearance of the FSA Act from 1945 Constitution and the Act of Bank Indonesia . It can not achieve the goal of the birth of the Financial Services Authority. A special purpose of this research is to find a method most appropriate approach to be able to understand and address the issue of legal inconsistencies in the appearance of the FSA Act. The findings were targeted in this study is

the first phase is to find the issue of legal inconsistencies genesis of FSA Act . This phase is done by finding the ratio legis and the basic ontological settings associated with the birth of the FSA that the 1945 Constitution and the Act Bank Indonesia

## II LITERATURE REVIEW

### II.1. Basic Law of the Financial Services Authority

At first the legal basis for the establishment of a financial services supervisory agency (LPJK) hereinafter in the Act No. 21 of 2011 referred to the Financial Services Authority (FSA) is explicitly stated in Article 34 of the Act No. 23 of 1999 and a description of Bank Indonesia, which reads as follows:

- (1) The task of overseeing the Bank will be carried out by the regulator for the financial services sector that is independent and established by law.
- (2) The establishment of supervisory board referred to in paragraph (1) shall be implemented no later than December 31, 2002.

Article 34 of the Act no. 23 of 1999 and an explanation of the wills that the Financial Services Supervisory Authority is the desired supervisory institution located outside the government that is both independent and accountable to Financial Supervisor intitution and the House of Representatives and remove provisions relating to the implementation of bank supervision tasks in coordination with Bank Indonesia and ask for an explanation and information from the Indonesian bank. Bank Indonesia will conduct macro affairs of supervisory. Financial Services Supervisory Authority carried out no later than December 31, 2002. In the developing of the Act 23 of 1999 amended by the enactment of Law No. 3 Year 2004. Applicability consequences provisions relating to the supervision of financial services institutions are experiencing changes. Changes in the provisions contained in Law No. 3 2004 compared to Article 34 of the Act No. 23 of 1999. The period of the establishment of the Financial Services Supervisory Authority. The provisions of Article 34 from the Act No. 23 of 1999 specifies that the financial services supervisory agency will be set up no later than December 31, 2002. In the new provision is in Article 34 from the Act No. 3 of 2004, the provisions regarding the establishment of the Financial Services Supervisory Authority established no later than December 31, 2010. The postponement of the deadline for establishment in the Act No. 3 of 2004 was due to the readiness of the human resources and infrastructure of these institutions to accept transfer of bank supervision from Bank Indonesia.

### II.2. Legal Inconsistencies genesis of the Act of FSA

#### II.2.1 Legal inconsistencies between 1945 Contitution and the Act of FSA

The annual session of the People's Consultative Assembly has produced the 1945 Constitution and its amendments. This means that the 1945 Constitution that now there are 1945 who experienced changes that are tailored to the development of community life. 1945 Constitution that there had been used as a norm which is the basis underlying legislation. This means that the regulations under the Contitution of 1945 is not allowed to conflict with laws and regulations thereon. Amendments that occurred in the 1945 Constitution, resulted in changes associated with the presence of the Central Bank stated in Article 23 D of 1945 Constitution and its amendment. The article mentions among other things that the State has the composition of the Central Bank and the position, authority and responsibility Bank Indonesia and independence regulated by law. The provisions of Article 23 D of 1945 Constitution and its amendment is basically want the presence of an independent central bank intervention regardless of any party in carrying out its duties and getting its purpose. The consequences of the provision for an independent central bank which is outlined in the amendment of the 1945 Constitution and that regulations under the 1945 Constitution and the amendment shall not contradict or should refer to the provisions of the 1945 Constitution and its amendment (Muhammad Nurliff, 2001). Right now in Indonesia there are law that regulates banks, namely the Act No. 10 of 1998 and the Act No. 23 of 1999 concerning Bank Indonesia last by Act No. 6 of 2009 concerning Government Regulation in Act No. 2 of 2008 concerning the Second Amendment Act No. 23 of 1999 concerning Bank Indonesia to become law.

Based on the above can be assessed that the inclusion of an independent central bank that carry out functions in the field of monetary policy is very relevant for the set in the constitution. It is also based on that role and position of the central bank that perform various functions including a function issue and circulate the currency, monetary policy function, the function of regulation and supervision of the banking sector and the smooth functioning of payment systems, must have, or based on a firm foundation. Position the

central bank is so strong in the constitution is based on the idea that the role of the Central Bank is very important in the system of administration of the state, therefore it is considered to be very precisely locates the position of an independent central bank in a state constitutional amendment in Indonesia. It is intended that the central bank has a strong foundation in carrying out tasks and objectives for the implementation of the tasks and the achievement of Indonesian bank then of course it brings an enormous influence on the economic fundamentals in Indonesia.

The problems that arise with regard to the inclusion of an independent position of the central bank in 1945 Constitution which has the consequence that the amended regulations governing banks should refer to the 1945 Constitution or the constitution. In other words, whether the legislation in the field of banking today already provide independent position in its provisions. Settings Indonesian bank independence in the 1945 Constitution as amended, of course, gives extraordinary powers to the Bank Indonesia in implementing the tasks and objectives, on the other hand large enough authority, of course, give so great a responsibility as well to Bank Indonesia in its implementation.

Based on the above description it can be seen that the mandate of Article 34 the Act of Bank Indonesia concerning Bank Indonesia becomes law mandates that the task of supervising the banks will be carried out by the supervisory board for the financial services sector would potentially cause problems for the independence of the central bank is given to the effect that Indonesian banks will be able to achieve its objectives.

Provisions concerning the duties and authority of the FSA will affect the position of Indonesian bank independence as stipulated in the Banking Act. The fact that t unindependence is being factor for Bank Indonesia to be one of the triggers for the banking crisis which continued in the 1997 economic crisis. It appears that Bank Indonesia does not have the authority to authorize the establishment of the bank and also does not have the authority to impose sanctions for banks. It sparked many banks that are not healthy triggering the economic crisis. Unindependence of Bank Indonesia becomes one factor in the Bank Indonesia can not perform his duties properly, so aim to maintain rupiah stability becomes fail . Hence, Bank Indonesia was given independence given to the banking law and the law on Bank Indonesia. Seen from understanding the independence of Bank Indonesia, which basically gives independence in performing its tasks then the FSA Act which gives authority for the FSA to carry out the regulation and supervision of the banking sector, it is in its implementation will certainly reduce the authority of the central bank in the sector regulation and supervision of banks is an important instrument in achieving the goal of Bank Indonesia to maintain and achieve stability in the rupiah (Ec Abdul Mongid, 2010). Being a lot of questions when the mandate to form the FSA is also mandated by law that gives independence of Bank Indonesia. With the reduction in the duty of Bank Indonesia , regulation and supervision transferred to the FSA would create problems. While the bank under the supervision of the central bank allows policy coordination between the monetary and banking sector more smoothly. Accessing to information banking conditions before deciding on the central bank's monetary policy. In terms of payment systems, will increase the stability of the payment system because Bank Indonesia is also the organizer of the national payment system. Associated with the liquidity crisis, the presence of Bank Indonesia as a supervisor will ensure the availability of liquidity for banks in the event of a liquidity shortage that is expected to reduce systemic risk because of the speed of decision making (crisis prevention). But for developing countries where banks are the main financial institutions in the financial system, the benefits of the efficiency of supervision does not seem to be obtained.

### **II.2.2. Legal inconsistencies between the Act of Bank Indonesia and the Act of FSA .**

Article 34, paragraph 1 Act No.3 of 2004 says that the task of supervising the banks will be carried out by the regulator for the financial services sector that is independent, and is formed by legislation. Explanation Article 34 reads task of supervising the banks will be done by the regulator for the financial services sector, in carrying out its tasks, this (Supervisory Board) coordination and cooperation with the Central Bank that will be regulated under the Act. The supervisory agency may issue regulations relating to the implementation of bank supervision tasks in coordination with Bank Indonesia and demand an explanation from the Indonesian bank, information and data necessary macro. The function will be held on schedule set by Bank Indonesia. It means that the task is transferred from Bank Indonesia to FSA is the task of watching while the set remain on Bank Indonesia . On the other hand the FSA Act article 6 and article 7 mandates that task was transferred from the Central Bank regulation and supervision duties.

Inconsistencies can also be assessed from the explanation of Article 34 of the Bank Indonesia Act said that FSA has an obligation to report to the BPK and the Parliament. On the other hand, Article 36 paragraph 6 of the Act reads FSA's annual activity report to the President and Parliament.

### III. RESEARCH METHODS

#### a. Types of research

This research is the study of law in the realm of normative / doctrinal. Doctrinal legal research is an effort to inventory the positive law, the discovery of the basic principles and philosophy of positive law and efforts to find legal *in- concrito* (Soetandyo Wignyosoebroto, 1994). Normative legal research is a process of finding the rule of law, principles of law and the doctrine of legal doctrine in order to address the legal issues at hand. Legal issues that are found will be studied at the level of dogmatic law, legal theory and legal philosophy.

#### b. Approach

This research uses staut approach to seek the ratio legis and ontological basis of each chapter and the law. The historical approach (historical approach), in this study is used to seeing the development of thinking with regard to the rationale of each shaper Act

#### c. Concept

1. Inconsistency: not aligned.
2. The Financial Services Authority: an independent agency and free from interference by other parties, which has the functions, duties, and authority of regulation, supervision, inspection, and investigation as referred to in this Act (Article 1 Act of FSA)

#### d. The type of data

The type of data in this research is secondary data or literature data or legal material. Legal material consists of primary legal materials, secondary and tertiary.

#### e. Interviewers

Informant in this research is legal expert Banking and Financial Services Authority of the Party and the Party of Constitutional Law expert.

#### f. Data Collection Technique

Data collection techniques in this study conducted by literature study both the primary legal materials, secondary law, and tertiary legal materials and interviews with sources that will complement the secondary data.

#### g. Data analysis

Once the data is collected, the next step is to process and analyze the data. All existing legal materials obtained from the research needed to address the problems. All the data in the form of legal theory, social theory, materials related to the development of thought realm of legal philosophy of law studies and data obtained from sources the information is collected and systematized, then described and analyzed. The data obtained will be analyzed using qualitative analysis.

#### **IV. THE RESULTS OF RESEARCH AND DISCUSSIONS . .**

In the first stage the first year of the study found the issue of legal inconsistencies genesis of the Act FSA. This phase is done by finding the ratio legis and the basic ontological ((Peter Mahmud Marzuki, 2005 ) settings associated with the birth of the FSA that the 1945 Act and the Act of Bank Indonesia.

##### **IV.1. Ratio legis and basic ontological provision granting independent status in 1945 as the basic law of Bank Indonesia Act.**

Secondary data obtained from the position of the independent central bank granting the backdrop of lack of independency of Bank Indonesia provisions set forth in Act No. 7 of 1992 on Banking. The lack of independency of Bank Indonesia contained in banking law in 1992 that led to the financial crisis is so severe that occurred in 1997. Legally one of the Bank Indonesiaggest causes of this financial crisis is are provisions in the Banking Act 1992 which authorizes the finance minister to give permission the establishment of the bank. On the other hand the finance minister is assistant to the president in the government system in Indonesia. The authority is so great that provides distortion and conflict of interest is so great. As a result, many banks are standing by did not meet the requirements, will have difficulty in operating the bank itself. Many banks closed as due to liquidity problems that exacerbate the monetary krissi as a result of the global crisis at that time led to a prolonged economic crisis in Indonesia. From description above can be assessed that the Indonesian bank independence is a very important position that Bank Indonesia as the central bank can carry out their duties properly into something that is important to be able to achieve the goal of maintaining stability in the rupiah. In other words that the position of the intended independence is independence in the conduct of their duties of Bank Indonesia as stipulated in article 7 of the Act No. 23 of 1999, Bank Indonesia has the following tasks:

- a. Define and implement monetary policy;
- b. Organize and maintain smooth operation of payment systems
- c. Regulate and supervise the Bank.

Seeing the urgency of the independence of the central bank independent position regulated under the 1945 Constitution in Article 23 D as a result of Amendment IV of the Constitution of 1945. From the description above can be assessed ratio legis or reason of the provisions of Article 23 D that the 1945 amendment to IV give independent to the Central Bank is that central banks in carrying out their duties duties no intervention from any institution. The task of organizing and supervising a task that should not be any intervention from any party. Ratio legis of the provision is based on historical considerations in the setting of the Act No. 7 of 1992.

##### **IV.2. Ratio legis and ontological basis of Article 34 of Act No. 23 of 1999 and Article 34 of Act No. 3 of 2004 as the basis for the birth of the FSA.**

###### **IV.2.1. Basic ontological is the philosophical foundation of a law as a whole.**

Basic ontological laws which can be seen from the General Explanation of Act No. 23 of 1999 and General Explanation of Act No. 3 of 2004 concerning the change of Law Decree No. 23 of 1999 concerning Bank Indonesia.

A common explanation of Act No. 23 of 1999, essentially said that the background replacement legislation governing the Central Bank of Act No. 13 of 1968 is, first economic development when it contains many structures and systems weaknesses shown by the lack economical situation, prudential banking fraud , and weak law enforcement. Second, the rapid development of the international economy towards the global economy demanding rapid adjustment. Third. Role of Bank Indonesia in Act No. 13 of 1968 which helped the monetary council to determine monetary policy becomes irrelevant for now. Therefore, Act No. 23 of 1999 provides that the independent role and position for Bank Indonesia in carrying out its duties are set monetary policy, payment systems in organizing and regulating and supervising banks independently, free from any interference whatsoever in the line of duty.

With a historical approach, it can be seen that Act No. 23 of 1999 was formed due to the prolonged banking crisis that led to the financial crisis, one of the factors that led to the financial crisis from the aspect of the role of Bank Indonesia position. Bank Indonesia position is not sourced from the independent Central Bank Act 1968 and Act No. 7 of 1992 on Banking, which give a gap outside interference in this case the finance minister as the assistant to the president to determine licensing and giving witness the establishment of a bank, this means providing space for government intervention in the task of supervision and regulation Bank Indonesia. As a result, many banks are normatively not meet the requirements in the permanent establishment is licensed by the finance minister and ultimately the bank experiencing operational problems and liquidated. The ontological basis of Act No. 23 of 1999 associated with the FSA is considering the importance of central bank independence in carrying their duties without interference by other parties the formation of Act No. 23 of 1999 provides for the independent position of Bank Indonesia in carrying out its duties and its goal to maintain rupiah stability.

General explanation of Act No. 3 of 2004 is the ontological basis of changes in Act No. 3 of 2004 is the maintenance of rupiah by Bank Indonesia will determine the sustainability of development in Indonesia should be backed up with monetary policy the precautionary principle, the payment system is fast, accurate, and safe, as well as the banking and financial system that is healthy and efficient. Mechanism of monetary policy formulation should be coordinated with the formulation of policies on the fiscal and real sector, the progress of the international financial system that is increasingly competitive and integrated has formed a global economy which facilitates the movement of capital flows is accompanied by increasing competition. To address the above challenges, there should be an adjustment mechanism of monetary policy formulation and institutional restructuring of Bank Indonesia as the responsible authority monetary policy. This step is necessary to strengthen accountability, transparency, and credibility of Bank Indonesia without diminishing the independence of the country. From the last sentence can be interpreted grammatically that the strengthening of Bank Indonesia from the aspect of accountability, transparency and credibility of Bank Indonesia conducted without diminishing its independence Indonesian bank. That is the meaning of independence in question is the meaning of independence is what is stipulated in the provisions of the Banking Act and Act Bank Indonesia itself, namely independence in performing their duties. With a historical approach, the ontological basis of such provisions are some of the issues arising from the implementation of Act No. 23 of 1999, especially the position of Bank Indonesia's independence in carrying out their duties can be further optimized with the addition of provisions Bank Indonesia tasks in implementing the monetary policy should be coordinated with the formulation of policies in fiscal and real sector. Likewise, the establishment of the supervision that would be able to oversee the performance of Bank Indonesia. The establishment of a fixed supervision of financial services may assign tasks mandated to Bank Indonesia's supervision is part of the reason for this change, postponed until 2010 formation. There are inconsistencies. Forming of FSA will take divert task oversee as part of the meaning of independence itself, whereas the explanation sentence saying "This step is necessary to strengthen accountability, transparency, and credibility of Bank Indonesia without decreasing meaning of independence of the country." Inconsistency seen that formation course FSA would reduce the independence of Bank Indonesia to conduct surveillance. So that the meaning of independence will be different from the meaning of independence after the formation of the FSA.

#### **IV.2.2 The ratio legis Financial Services Authority formation can be seen Article 34 of Act No. 23 of 1999 along with an explanation and Act No. 3 of 2004 and its explanation.**

Article 34 of Act No.23 of 1999 on Bank Indonesia provides the basis that one of the tasks of Bank Indonesia as stipulated in article 8 of Act No. 23 of 1999 will be transferred to the supervisory agency for the financial services sector is the task of overseeing. By using the grammatical interpretation of the ratio legis of the provisions of article 34 of Act No. 23 of 1999 can be seen further from the explanation of Article 34. Explanation of Article 34 reads:Paragraph (1) The financial services supervisory board will be formed to supervise the banks and other financial services companies, including insurance companies, pension funds, securities, venture capital, and corporate finance, as well as other entities organized and management of public funds.

This institution is independent in carrying out its duties, the government and required to report to the Agency Pemerikasa Finance and the House of Representatives In performing the duties of this institution (Supervisory Board) coordination and cooperation with Bank Indonesia as the Central Bank will be regulated in the Act the establishment of supervisory institutions in question. The supervisory agency may issue regulations relating to the implementation of bank supervision tasks in coordination with Bank Indonesia and demand an explanation from the Indonesian bank, information and data necessary macro. The function will be held on schedule set by Bank Indonesia.

Ratio legis provisions of Article 34 of Act No. 23 of 1999 can be seen from the explanation provides an understanding that one of the tasks of Bank Indonesia as the central bank as stipulated in article 8 of Act No. 23 of 1999 which is a task in Article 8 section c that Bank Indonesia's task is to regulate and supervise the bank with the financial services supervisory agencies overseeing tasks will be transferred from Bank Indonesia to the Financial Services Supervisory Authority. It can be interpreted that the task is transferred from Bank Indonesia to FSA is the task of overseeing. As mentioned above said that the financial services supervisory agency will also supervise the financial institutions that are not banks or companies other financial services companies, including insurance companies, pension funds, securities, venture capital, and corporate finance, as well as other agencies that organize management public funds.

Subsequent developments can be seen that the provisions of article 34 of those changes with the Bank Indonesia Act, namely the Act of the Republic of Indonesia Number 3 of 2004 on the Amendment of the Act of the Republic of Indonesia Number 23 of 1999 concerning Bank Indonesia. The provisions of Act No. 3 of 2004, among others, said that the elucidation of Article 34 paragraph (1) shall be amended as specified in the description, and the provisions of Article 34 paragraph (2) shall be amended, so that the whole of Article 34 reads as follows:

- (1) The task of overseeing the Bank will be carried out by the institution supervision of the financial services sector are independent, and established by law.
- (2) The establishment of supervisory agencies referred in paragraph (1), will be implemented no later than 31 December 2010.

Explanation Article 34 of the Act No. 3 of 2004 reads as follows Paragraph (1) Financial services supervisory agency will be established to supervise the Bank and companies of other financial services sector, including insurance companies, pension funds, securities, venture capital, and corporate finance, as well as other agencies that organizes the management of public funds. This institution is independent in carrying out its duties outside the government and required to report to the Audit Board and the Board of Representatives. In performing its tasks, this (supervisory board) coordination and cooperation with Bank Indonesia as the Central Bank Act will be regulated. The supervisory agency may issue regulations relating to the implementation of the Bank's stewardship in coordination with Bank Indonesia and Bank Indonesia asked for an explanation of the information and data necessary macro.

Paragraph (2) The transfer of the bank supervision function of Bank Indonesia to the supervisory board for the financial services sector is done in stages after the fulfillment of the requirements which include infrastructure, budget, personnel, organizational structure, information systems, documentation systems, and various implementing regulations in the form of legal instruments, and reported to the Board of Representatives folk. It 's means that the provisions of Article 34 paragraph 1 of Act No. 3 of 2004, unchanged from the provisions of Article 34 paragraph 1 of Act No.23 of 1999 which essentially say that the task of supervising the banks which is the task of Bank Indonesia will be conducted by the supervisory board for the financial services sector that is independent, and is formed by legislation. Changes that occurs in article 34 paragrap 2 of Act No. 3 of 2004 which determines that the establishment of the financial services supervisory agency will be implemented no later than 2002 as mandated by Article 34 of Act No.23 of 1999 but it will be formed no later than December 31, 2010.

### **VI.3. Legal inconsistencies in the form of philosophical clashes between Constitution of 1945 and the FSA act and between the FSA Act and Bank Indonesia Act will interfere with the implementation of tasks and goals set forth in Law FSA .**

From the description above can be assessed that there is a philosophical clash

- a. Between 1945 Constitution and the FSA Act. As described at the beginning of the description in the results of the study that Article 23 D provide insights that can be studied from a historical approach that is independent status for central banks is a matter that must be given due to some event prior to the amendment of this Constitution, banking institutions experienced a banking crisis that one of them due to the position of Bank Indonesia as the central bank is not independent. Understanding yourself is the sense in which the independent Bank Indonesia as the Central Bank was given independence in carrying out their duties in achieving the task of maintaining the stability of the rupiah. The FSA Act provides power to the FSA to conduct supervision and regulation of banking institutions which is one of the tasks of Bank Indonesia, which must be independent of any party as mandated by the Constitution of 1945. Thus, the provisions of the FSA is not synchronize with philosophy making of FSA and meaning of the Constitution desired independence 1945 with historical approach and grammatical interpretation is done.
- b. Between the FSA and Bank Indonesia Act there is a philosophical clash can be seen in Article 6 of Law FSA said that FSA regulation and supervision duties to:
  - a. financial services activity in banking sector
  - b. financial services sector activities Capital Markets: and
  - c. financial services sector activity in insurance, pension funds, Financing Institutions, and other financial services institutions.Furthermore, in Article 7 describes the authority of the FSA in the conduct regulation and supervision in the banking field. FSA has the authority:
  - a. institutional arrangements and supervision regarding bank include:
    1. The permit for the establishment of banks, opening bank office, the basic budget, work plan, ownership, management, and human resources, mergers, consolidation and acquisitions of banks, as well as the bank's license revocation; and
    2. The business activities of the bank, among other sources of funds, provision of funds, hybridization product, and activity in the service sector;
  - b. regulation and supervision of the bank's health that includes:
    1. liquidity, profitability, solvency, asset quality, capital adequacy ratio minimum, lending limits, the ratio of loans to deposits, and bank reserves;
    2. The bank statements relating to the health and performance of the bank;
    3. The debtor information system;
    4. The testing of credit (credit testing); and
    5. The bank accounting standards
  - c. regulation and supervision of the bank's prudential aspects, including:
    1. The risk management;
    2. The governance of the bank;
    3. The principle of know your customer and anti-money laundering; and
    4. prevention of terrorism financing and banking crimes; and
  - d. Bank supervision .

From the description may be assessed by grammatical interpretation that the FSA Act article 6 and article 7 mandates that task was transferred from the Central Bank regulation and supervision tasks while the base of the formation of the FSA is the Bank Indonesia Act. While Article 34 of Bank Indonesia says only supervision task will be given to FSA.

## V. CONCLUSION AND SUGGESTION

### V. 1. Conclusion

Legal inconsistencies genesis of FSA Act can be concluded from Contitution of 1945 and The Bank Indonesia Act. This phase is done by finding the ratio legis and the basic ontological settings as sociated with the birth of the FSA from Contitution of 1945 and the Bank Indonesia Act . Legal inconsistencies between Constitution of 1945 and FSA Act can be concluded from the 1945 Constitution that give independence of Bank Indonesia , in the other side FSA Act obscures the meaning of Bank Indonesia independence . Legal inconsistencies between the Bank Indonesia Act and the FSA Act is also apparent from the mandate of the Bank Indonesia Act only divert the supervisory duties of Bank Indonesia while the FSA Act gives authority to FSA itself not only supervising but also making regulation.

### V. 2. Suggestion

Cooperation and clear regulation of divison tasks between Bank Indonesia and the FSA

## REFERENCES

Bank Indonesiasmar Nasution, 2010, *Impementasi Pasal 34 Undang-Undang Tentang Bank Indonesia dan Dampaknya pada Peranan dan Fungsi Bank Indonesia di Bank Indonesiadang Moneter, Sistem Pembayaran dan StaBank Indonesialitas Sistem Keuangan*,Buletin Hukum Perbankan dan Kebanksentralan, Vol 8, Nomor 3, September 2010.

Bank Indonesiasmar Nasution, 2009, *Kajian Terhadap RUU Tentang Otoritas Jasa Keuangan*, Bulletin Hukum Perbankan dan Kebanksentralan , Volume 8, No 2 , Mei 2010.

Ec Abdul Mongid, 2010,*Bank Indonesia: Independensi Pengawasan Bank dan StaBank Indonesialitas Sistem Keuangan*. Bulettin Hukum Perbankan dan Kebanksentralan, Vol 8, Nomor 3, September 2010.

Muhammad Nurliff, 2001, *Urgensi Pengaturan Peranan Dan Kedudukan Bank Sentral Dalam Amandemen Konstitusi*,makalah disampaikan dalam seminar “Urgensi Pengaturan Peranan dan Kedudukan Bank Sentral Dalam Amandemen Konstitusi” Yogyakarta 30 April 2002.

Peter Mahmud Marzuki, 2005,*Penelitian Hukum*,Prenada Media, Jakarta.

Soetandyo Soetandyo Wignyosoebroto,,1994, *Masalah Metodologik Dalam Penelitian Hukum Sehubungan Dengan Masalalnya, Keragaman Pendekatan konseptualnya*, Makalah Komunikasi Hasil Penelitian Bank Indonesiadang Hukum, Dirjen Dikti, Jakarta.

Indonesian Contitution of 1945

Act No.7 of 1992

Act No. 10 of 1998

Act No. 23 of 1999

Act No. 3 of 2004