

LEGAL PROTECTION OF BANK INDONESIA'S FINANCIAL INDEPENDENCE

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Abstract

Bank Indonesia as the central bank in Indonesia has financial independence in which Bank Indonesia has the authority to manage its assets separately from the State Budget. However, in carrying out its roles and duties, Bank Indonesia often faces demands or lawsuits, which result in execution of judgments against assets of Bank Indonesia. This can clearly disrupt the financial stability of Bank Indonesia, affecting Bank Indonesia's ability to carry out its roles and duties effectively. Currently, there has been an argument put forth to assert Article 50 of the treasure law in an effort to protect for Bank Indonesia's finances. However, the application of this article as a legal basis for protection of Bank Indonesia's finances is inappropriate because it is not in accordance with Bank Indonesia's financial independence, separating from the State Budget. Departing from these problems, based on data collected through document studies in the form of primary, secondary, and tertiary legal materials, this study examines how the policies of financial independence of Bank Indonesia, legal protection of Bank Indonesia's finance, and ideal arrangements for legal protection of Bank Indonesia's finances considering the attention to the independence of Bank Indonesia. The conclusion of this research is that there is still disharmony in regulations regarding Bank Indonesia's financial protection in the State Finances Law and the State Treasury Law which creates legal uncertainty regarding Bank Indonesia's financial protection.

Keywords: financial independence, bank indonesia, legal protection, state treasury act, confiscation

I. INTRODUCTION

Independence is a vital issue in discussing the role of a central bank.¹ In addition to institutional, policy, operational, and personnel independence, one of the main facets of central bank independence is financial independence.² A central bank has its own resources which are managed in a clear and transparent manner based on an annual financial plan and regulated regarding

¹ Carl E Walsh, *Central Bank Independence* (Santa Cruz: University of California, 2005), 1-2.

² Ashraf Khan, "Legal Protection: Liability and Immunity Arrangement of Central Banks and Financial Supervisors," *IMF Working Paper*, Augustus 2018.

the allocation of financial surpluses and potential losses. The purpose of financial independence is to allow a central bank to carry out its role or duties effectively.

Bank Indonesia is the central bank of Indonesia.³ The Indonesian constitution establishes the independence of Bank Indonesia as the central bank. Article 23D of the 1945 Constitution states “[t]he state has a central bank whose composition, position, authority, responsibility and independence are regulated by law”.⁴ Furthermore, under the Bank Indonesia Law states that Article 23 D of the 1945 Constitution protects Bank Indonesia’s independence to exercise its authority and carry out its, free from interference from the government or other parties.⁵

Bank Indonesia is the central bank of Indonesia established by the Article 23D of the 1945 Constitution which reads “[t]he state has a central bank whose composition, position, authority, responsibility and independence are regulated by law” and reaffirmed by Article 4 of Bank Indonesia Law that Bank Indonesia is an independent institution to exercise its authority and carry out its, free from interference from the government or other parties.

Bank Indonesia’s financial independence is based on its treatment as a legal entity pursuant to Article 4 paragraph (3) of the Bank Indonesia Law. A legal entity must have a specific purpose, have its own interests, the existence of regular organisation, the ability to take legal action, and most pertinent to this article, ownership of assets. As stated in the elucidation section of Article 4 paragraph (3), Bank Indonesia designation as a legal entity is intended so that there is clarity on Bank Indonesia’s authority in managing its own assets separately from the State Revenue and Expenditure Budget. Based on this, Bank Indonesia’s financial independence means that it has the authority to manage its own finances independent of the State Revenue and Expenditure Budget.

When viewed based on the laws and regulations in force in Indonesia, the financial independence of Bank Indonesia still poses problems. The problem is that there is no legal protection for Bank Indonesia’s finances so that the financial independence of Bank Indonesia in managing its finances can be disrupted at any time. This can be seen in civil cases in which Bank Indonesia became the Defendant and there was a request for collateral confiscation of

³ Article 4 (1) Law No. 23 of 1999 on Bank Indonesia.

⁴ Article 23D of the 1945 Constitution is intended to provide a clear legal basis and legal standing for the central bank as a very important institution in a country that regulates and carries out monetary policy functions. When paying attention to the provisions of Article 23D of the 1945 Constitution, in addition to acknowledging the position of the central bank, the formulation in Article 23D of the 1945 Constitution also provides recognition of the independence of the central bank.

⁵ Article 4 paragraph (2) Law No. 23 of 1999 on Bank Indonesia.

goods or assets belonging to Bank Indonesia, for example Civil Case No. 587/Pdt.G/2012/PN.Jkt.Sel or Civic Case No. 253/PDT.G/2014/PN.Jkt.Pst

In several civil cases in which Bank Indonesia was the Defendant, Article 50 of Law No. 1 of 2004 on the State Treasury is often used as the legal basis for the protection of Bank Indonesia's finances when a demand for collateral foreclosure occurs from the plaintiff. If one looks at it, the application of Article 50 as the legal basis for legal protection for Bank Indonesia's finances is problematic.⁶

Based on the definition and scope of the state treasury, Bank Indonesia's finances are not included in the definition and scope of the state treasury, bearing in mind that it is explicitly stated that the state treasury's financial management includes the State Budget or the Regional Budget (Regional Budget), while Bank Indonesia's finances are separated from the State Budget as stated in the Elucidation of Article 4 paragraph (3) of the Bank Indonesia Law.

Article 50 of the State Treasury Law prohibits confiscation of money and goods belonging to the state or region or controlled by the state or region. The law encompasses: (a) money or securities belonging to the state/region, whether held by government agencies or third parties; (b) money for deposit by a third party to the state/region; (c) movable property belonging to the state/region, whether held by government agencies or third parties; (d) immovable property and other property rights belonging to the state/region; and (e) goods belonging to third parties controlled by the state/region which are needed for the implementation of governmental operations. Based on the provisions prohibiting the confiscation of goods belonging to or controlled by the state or region, there is no provision covering Bank Indonesia's assets. Bank Indonesia is basically an independent institution, so it is not part of the government. In addition, Bank Indonesia cannot be categorised as a third party as referred to in Article 50 of the State Treasury Act. In the elucidation of Article 50(e) of the State Treasury Law, it is stated that what is meant by goods belonging to third parties that are controlled are goods that are physically controlled or utilised by the government based on a legal relationship made between the government and a third party. Thus, the scope of third parties in the State Treasury Act is more directed to parties who have civil relations (based on contracts or agreements to purchase goods or use services) with the government.

Given that the financial position of Bank Indonesia is not included in the definition and scope of the State Treasury Act because Bank Indonesia's

⁶ Article 50 of Law No. 1 of 2004 on the State Treasury states that "Any party is prohibited from confiscating immovable property and other property rights belonging to the state/region."

financial management is outside the State Budget and the provisions of Article 50 of the State Treasury Act do not explicitly and clearly state the financial position of Bank Indonesia which need to be protected from confiscation, Article 50 of the State Treasury Law which has been used as legal protection for the finances of Indonesian banks is remains weak. Likewise, the Bank Indonesia Law does not contain specific provisions related to legal protection of Bank Indonesia's finances, including the prohibition of confiscation of assets belonging to Bank Indonesia by any party similar to such provisions in Article 50 of the State Treasury Act.

Based on the explanation above, there is a legal vacuum for protection of Bank Indonesia's finances. In fact, if you look at several central banks in other countries, legal protection for central bank finances, including confiscation, has been regulated in many statutory provisions. Such provisions are included for central banks in Argentina, the People's Republic of China (including Hong Kong), and Japan. Even in the UK, Pakistan, South Africa, and Singapore, there have been laws and regulations that provide legal protection for central bank finances since the late 1970s and early 1980s. The United Nations itself has also issued a convention in 2004, namely the United Nations Convention on Jurisdictional Immunities of States and Their Property wherein Article 21(c) stipulates that finances belonging to a central bank or foreign monetary authority has legal protection from legal action which is the implementation or follow-up of a court decision in another country, including judgment execution actions.⁷

Legal protection for Bank Indonesia's finances is very important. Bank Indonesia as the central bank plays an important role and function in the Indonesian economy.⁸ This important role is reflected in Bank Indonesia's objectives, namely, to achieve and maintain stability in the value of the Rupiah. The important role and function of Bank Indonesia in maintaining and supporting the Indonesian economy needs to be kept safe by strong and sound Bank Indonesia finances. Disruptions to Bank Indonesia's finances could hinder the smooth running of Bank Indonesia's duties, while also bearing in mind that a deficit in Bank Indonesia's finances would also have an impact on Government finances. For this reason, legal protection is needed for Bank Indonesia's finances by prioritising the independence of Bank Indonesia.

⁷ Ingrid Wuerth, *Immunity from Execution of Central Bank Assets, dalam The Cambridge Handbook of Immunities and International Law* (Cambridge: Cambridge University Press, 2019), 266–284.

⁸ Perry Warjiyo, *Bank Indonesia, Central Bank of the Republic of Indonesia: An Introduction* (Jakarta: Center for Central Banking Education and Studies, 2004), 5-7; Perry Warjiyo and Solikin M. Juhro, *Central Bank Policy: Theory and Practice* (Jakarta: PT RajaGrafindo Persada, 2016), 8-9.

Research on central banks has been carried out by a number of scholars. Frank examine the influence of central bank independence and central bank transparency and their interactions with institutional quality on foreign equity portfolio inflows.⁹ Meanwhile, Aguir examines the role and influence of independence, credibility, and central bank policy in developing countries in amplifying the effects of inflation targeting. These studies do not specifically examine legal protection of central bank financial independence.¹⁰ Likewise similar research has been conducted by Dewi. Dewi focused on examining the independence of Bank Indonesia under the Bank Indonesia Law.¹¹ Meanwhile, research from Clevalda focuses on Legal Protection for Digital Wallet Customers by Bank Indonesia.¹² This research focuses on the legal protection efforts carried out by Bank Indonesia for customers who use digital wallets. So, it is not legal protection for Bank Indonesia's financial independence. Widjaja's research focuses on the role of the central bank in Indonesia in relation to the use of crypto currency as a means of payment.¹³ Different from previous studies, this research specifically examines the legal protection of Bank Indonesia's finances given Bank Indonesia's financial independence.

Based on this background, this article discusses three main research questions, including: (1) what are the policies regarding Bank Indonesia's financial independence based on the provisions of the laws and regulations that are currently in effect, (2) what is the legal protection for Bank Indonesia's financial independence, and (3) what is the ideal regulatory concept for the legal protection of Bank Indonesia's finances by taking into account the aspects of Bank Indonesia's independence?

⁹ Frank O Kwabi, Agyenim Boateng, & Min Du, "Impact of Central Bank Independence and Transparency on International Equity Portfolio Allocation: A Cross-country Analysis," *International Review of Financial Analysis* 69 (2020): 101464.

¹⁰ Abdelkader Aguir, "Central Bank Credibility, Independence, and Monetary Policy," *Journal of Central Banking Theory and Practice* 7, no.3, (2018): 91-110.

¹¹ Lely Savitri Dewi, "Kajian Independensi Bank Indonesia dalam Kedudukannya sebagai Bank Sentral Menurut Tinjauan Hukum Berdasarkan UUBI Nomor 3 Tahun 2004 Tentang Bank Indonesia" *Coopetition IX*, no. 1, (2018): 47-52.

¹² DK Clevalda and Dona Budi Kharisma, "Perlindungan Hukum Terhadap Nasabah Dompot Digital oleh Bank Indonesia," *Jurnal Privat Law* 9, no. 1 (2019): 1-9.

¹³ Gunawan Widjaja, "Cryptocurrency and the Role of Indonesian Central Bank," *Journal of Legal Ethical and Regulation Issues* 24, no. 2 (2021): 1.

II. BANK INDONESIA'S FINANCIAL INDEPENDENCE UNDER THE LAWS AND REGULATIONS IN INDONESIA

Bank Indonesia is the independent central bank of the Republic of Indonesia.¹⁴ The independence of Bank Indonesia began with the enactment of Law No. 23 of 1999.¹⁵ Based on Article 4 paragraph (2) of Law No. 23 of 1999 it is stated that Bank Indonesia is an independent state institution, free from interference from the government and/or other parties except for matters expressly regulated in the Bank Indonesia Law. Based on these provisions, structurally the position of Bank Indonesia does not fall under the auspices of the government but shares an equal position. This condition is different from in the past where Bank Indonesia actually fell under or was subordinate to the government.¹⁶

As an independent institution, Bank Indonesia has financial independence. Bank Indonesia's financial independence is the authority granted by law to

¹⁴ Related to Bank Indonesia as the central bank is also a substance in the Fourth Amendment to the 1945 Constitution of the Republic of Indonesia as stated in Article 23D that the State has a central bank whose composition, position, authority, responsibility, and independence are regulated by law. With this clear and strong foundation in the constitution, the Bank Indonesia Act, in addition to regulating the status of Bank Indonesia as the Central Bank of the Republic of Indonesia, also regulates the position of Bank Indonesia as an independent state institution.

¹⁵ Act No. 23 of 1999 on Bank Indonesia was formed in an effort to find a juridical solution to the banking crisis which triggered the banking crisis in 1997 which was caused by the non-independence of Bank Indonesia. With the onset of the global crisis in 2008, Law No. 23 of 1999 was amended by Law No. 3 of 2004 on Amendments to Law No. 23 of 1999 on Bank Indonesia. Furthermore, in order to overcome the existing problems, a Government Regulation in lieu of Law No. 2 of 2008 was issued on the Second Amendment to Law No. 23 of 1999 on Bank Indonesia. This arrangement contains changes to the FPJP requirements which originally required "high-quality and easy-to-liquidate assets" to become high-quality assets. In 2009 there was Law of the Republic of Indonesia No. 6 of 2009 on the Stipulation of Government Regulations in Lieu of Law No. 2 of 2008 on the Second Amendment to Law No. 23 of 1999 on Bank Indonesia to Become Law.

¹⁶ During the Old Order and New Order eras, there were regulations regarding Bank Indonesia, namely Law No. 11 of 1953 on Determination of Principles of Bank Indonesia and Law No. 13 of 1968 on Bank Indonesia. With the enactment of Law No. 11 of 1953, Indonesia already has a central banking institution under the name Bank Indonesia. Since then, Bank Indonesia has officially become the central bank in Indonesia. The position of Bank Indonesia, both in Law No. 11 of 1953 and in Law No. 13 of 1968, is under the coordination and command of the government (executive agency), which is tiered upwards through the Monetary Council and the President. The task of the Monetary Board is to determine the monetary policy that must be implemented by Bank Indonesia. The Monetary Board also gave instructions to the directors of Bank Indonesia in maintaining currency stability and advancing credit and banking. The Monetary Board was formed by the government and works under the government, where structurally the Monetary Board is chaired by the Minister of Finance and consists of the minister of economics and the Governor of Bank Indonesia. Based on this, Bank Indonesia's position as a central bank is not autonomous or independent but is still part of the government. See Djoni Gazali and Rachmadi Usman, *Banking Law* (Jakarta: Sinar Grafika, 2010), 104; BLBI Task Force, et al., *Bank Indonesia Liquidity Assistance Financial Study* (Jakarta: Bank Indonesia, 2002), 6.

Bank Indonesia to determine its budget¹⁷ and manage its assets separately from the State Revenue and Expenditure Budget. Article 4 paragraph (3) states that Bank Indonesia is a legal entity. Based on the Elucidation of Article 4 paragraph (3), Bank Indonesia designated as a legal entity with the clear intention of defining Bank Indonesia's authority to manage its own finances apart from the State Revenue and Expenditure Budget.¹⁸

From a legal perspective, Bank Indonesia's financial independence is a guarantee for Bank Indonesia to carry out its duties effectively. The tasks or objectives of Bank Indonesia are to achieve stability in the value of the rupiah, maintain payment system stability, and help maintain financial system stability to support sustainable economic growth.¹⁹ Unlike commercial organisations where the finances are intended to generate profits, Bank Indonesia's finances are intended as policy instruments, used to carry out tasks or achieve the goals of Bank Indonesia.²⁰ Based on this, Bank Indonesia's financial independence plays an important role in supporting the implementation of Bank Indonesia's duties.

Bank Indonesia's finances include capital, assets, and liabilities. Bank Indonesia's capital is separate from state assets. Pursuant to Article 6 of Law No. 23 of 1999 on Bank Indonesia, Bank Indonesia's capitalisation is set at a minimum of IDR 2 trillion. Bank Indonesia's capital must be increased to the level of 10% (ten percent) of the total monetary obligations whose funds come from general reserves, designated reserves, other sources in the form of asset revaluation results, and paid-up capital from separate state assets.

Bank Indonesia's liabilities based on its Annual Financial Report for 2022 consist of: (a) Money in circulation; (b) Financial liabilities for Monetary Policy Implementation (Bank Current Accounts/GWM); (c) Allocation of Special Drawing Rights from International Financial Institutions; (d) Financial liabilities to the Government (central and regional); (e) Non-policy obligations; and (f) other obligations.²¹

¹⁷ Article 60 of the Bank Indonesia Law stipulates that the board of governors determines the budget for Bank Indonesia.

¹⁸ Bank Indonesia as a public legal entity also has the authority to stipulate regulations and impose sanctions within the limits of its authority and as a civil legal entity, Bank Indonesia can act for and on behalf of itself in court (litigation) and outside the court (non-litigation). (See Explanation of Article 4 paragraph (3) of Law No. 23 of 1999 as amended by Law No. 3 of 2004 and Law of 2023.

¹⁹ Article 7 Law No. 23 of 1999 on Bank Indonesia as last amended by Law of the Republic of Indonesia No. 4 of 2023 on Development and Strengthening of the Financial Sector.

²⁰ Komite Penyusun KAK-Bank Indonesia, *Kebijakan Akuntansi Keuangan Bank Indonesia*, (Jakarta: Bank Indonesia, 2012), 5.

²¹ Bank Indonesia Annual Report 2020 which has been audited by the Supreme Audit Agency (BPK)

Bank Indonesia assets are resources controlled by Bank Indonesia as a result of past events and are expected to generate future economic benefits.²² Bank Indonesia assets consist of financial assets and non-financial assets.

Financial assets include, but are not limited to: (1) cash other than Rupiah currency; (2) gold bars; (3) equity instruments issued by other entities; (4) contractual rights, in the form of (a) receivables in cash or other financial assets from another entity or (b) to exchange financial assets or financial liabilities with another entity on terms that are potentially favourable to that entity; (5) contracts that will or may be settled in the entity's own equity instruments and are (a) non-derivative, where the entity is or may be obliged to receive a variable number of the entity's issued equity instruments, or (b) a derivative, which will or may be settled other than by exchanging a fixed amount of cash or another financial asset for a fixed number of the entity's own equity instruments.

Non-financial assets include Rupiah currency management assets, information system assets and physical assets.²³ Rupiah currency management assets are Bank Indonesia assets in the form of Rupiah paper currency that has not been designated as legal tender, raw materials for Rupiah paper currency, main and supporting cash registers, and other non-financial assets related to Rupiah currency management, such as laboratory equipment and transportation equipment.

Meanwhile, information system assets are Bank Indonesia assets in the form of applications and information technology related to information system management. Goods included in information system assets include information systems such as communication networks, standard information technology hardware, software packages, and software development procured through regulations regarding Bank Indonesia's financial accounting system. Furthermore, physical assets include land, buildings, office machines, transportation equipment or vehicles, furniture, security equipment, and radio communications, and other physical assets that are not included in the classification of Rupiah currency management assets and information system assets.

²² Arrangements regarding Bank Indonesia assets are contained in the Regulation of the Board of Governors No. 18/1/PDG/2016 dated 18 January 2016 on the Write-Off of Bank Indonesia Financial Assets and the Writing-Off of Non-Financial Assets of Bank Indonesia as amended by Regulation of the Board of Governors No. 21/6/PDG/2019 dated 30 September 2019 on Amendments to the Board of Governors Regulation 18/1/PDG/2016 dated 18 January 2016 on the Write-off of Financial Assets and the Write-off of Non-Financial Assets of Bank Indonesia (PDG of the Write-off of Financial Assets and the Write-off of Non-Financial Assets).

²³ Board of Governors Regulation No. 23/5/PDG/2021 on Planning, Procurement of Goods and/or Services, and Asset Management.

III. ANALYSIS OF LEGAL PROTECTION FOR BANK INDONESIA'S FINANCES

The Bank Indonesia Law regulates the composition, position, authority, responsibility, and independence of Bank Indonesia. Based on the current Bank Indonesia Law,²⁴ there is no regulation that provides legal protection for Bank Indonesia's finances. This is different for the board of governors or Indonesian bank officials. Under Article 45 of the Bank Indonesia Law, Governors, Senior Deputy Governors, Deputy Governors and/or Bank Indonesia officials cannot be held personally liable for making decisions or policies that are in line with their duties and authorities as referred to in the Bank Indonesia Law as long as they are carried out in good faith.²⁵ The provisions in Article 45 of this Bank Indonesia Law provide legal protection for personal responsibility for members of the Board of Governors and/or Bank Indonesia officials who, in good faith based on their authority, have made decisions that are difficult but very necessary in carrying out their duties and authorities.

As a result of the legal vacuum for legal protection for Bank Indonesia's finance, there was a case for a request for execution against Bank of Indonesia's assets (*Conservatoir Beslag*), for example, Civil Case No. 587/Pdt.G/2012/PN.Jkt.Sel and the Civil Case No. 253/PDT.G/2014/PN.Jkt.Pst.

1. Case No. 587/Pdt.G/2012/PN.Jkt.Sel

Bank Indonesia was one of the co-defendants (Defendant II) together with Defendant I, PT. Bank Mega, in this case brought by Sudirman as Plaintiff. The claim was that Defendant I offered an unlawful line of credit. Specifically, the interest rate and instalment terms were not appropriate or more expensive when compared to other banks and Bank Indonesia as Defendant II has neglected its legal obligations to supervise or monitor Defendant I in the activities of providing credit, thereby causing damages to Plaintiff.

The Plaintiff next moved the South Jakarta District Court to place a judgment lien (*Conservatoir Beslag*) on the goods belonging to the Defendants

²⁴ Law No. 23 of 1999 on Bank Indonesia as amended by Law No. 3 of 2004, Law No. 6 of 2009 on Bank Indonesia, and finally Law No. 4 of 2023 on Development and Strengthening of the Financial Sector.

²⁵ In the Elucidation of Article 45 of the Bank Indonesia Law, it is stated that what is meant by an officer of Bank Indonesia is an employee of Bank Indonesia who, based on a decision of the Board of Governors, is appointed to a certain position, and is given the right to make decisions in accordance with the limits of his authority. Decision-making can be considered in good faith if (1) it is carried out with the intention of not seeking profit for oneself, family, own group, and/or other actions indicating corruption, collusion and nepotism; (2) It is carried out based on in-depth analysis and has a positive impact; (3) Followed by a preventive action plan if the decisions taken turn out to be inappropriate; and (4) Equipped with a monitoring system.

including goods belonging to Bank Indonesia, land and local buildings known as the Bank Indonesia Building which is located on Jalan M.H Thamrin No.2, Central Jakarta. Regarding the Plaintiff's petition, Bank Indonesia stated that the Plaintiff's argument was erroneous, for the following reasons.

- a. That state assets cannot be executed against because doing so would violate Article 50(d) of the State Treasury Law which states: "Any party is prohibited from confiscating immovable property and other property rights belonging to the state/region".
- b. That the Land and Building (Bank Indonesia Building) located on Jalan M.H Thamrin No. 2 Central Jakarta is a state asset which is clearly and firmly regulated in the Elucidation to Article 6 paragraph (1) of the Bank Indonesia Law: "Bank Indonesia's capital as referred to in this paragraph comes from separate State assets, which is the sum of capital, general reserves, objective reserves and the portion of profits that have not been distributed according to Law No. 13 of 1968 on Central Banks prior to this Law".
- c. Whereas in accordance with the provisions mentioned above, it is clear that the Bank Indonesia building cannot be executed on and therefore Plaintiff's request must be denied.

In this case, the decision of the Panel of Judges can accept the exception regarding the relative authority or competence of Defendant I and declare that the South Jakarta District Court has no authority to examine and try this case. Furthermore, because the Panel of Judges can accept the exception of Defendant I, the Panel of Judges will not consider the exceptions of the other Defendants and this decision is the final decision. In its legal considerations, the Panel of Judges did not reach the issues in Bank Indonesia's response, especially in relation to the response to the request for security confiscation (*Conservatoir Beslag*) for property belonging to Bank Indonesia, that the Bank Indonesia building could not be placed as security confiscation (*Conservatoir Beslag*) as requested by the Plaintiff to the Jakarta District Court. South based on the prohibition of confiscation provisions in Article 50 of the State Treasury Law.

2. Case No. 253/PDT.G/2014/PN.Jkt.Pst

In this case, Bank Indonesia was one of five defendants (Defendant V) brought by PT. Wisma Kosgoro as Plaintiff. The argument at the heart of the lawsuit was that the PMH was carried out by the Defendants in connection with the construction work of 12 Bank Indonesia official housing units. The main points of the Plaintiff's lawsuit are as follows.

- a. Defendant I, namely PT. Elti Prima Karya entered into an Agreement with Bank Indonesia to work on the construction of 12 Bank Indonesia official housing units.
- b. The Plaintiff worked with Defendant I to carry out the remaining work on the construction of Bank Indonesia's official residence.
- c. The scope of work includes work included:
 - 1) Field preparation and cleaning work.
 - 2) Structural work.
 - 3) Architectural and landscape work.
 - 4) Mechanical and electrical work.
 - 5) Procurement work and implementation of architectural and interior finishing.
 - 6) Procurement and installation of mechanical and electrical installations.
 - 7) Carrying out testing and commissioning/acceptance tests and handing over.
 - 8) Provide as-built drawings consisted of:
 - a) four sets of blueprint drawings;
 - b) one original set in the form of tracing; and
 - c) one CD in AutoCAD 2000 format.The scope of work included the provision of materials as well as examples, tools/equipment, provision of good labour, testing of both materials or goods and work results, permits from authorised agencies so that the work can be carried out and completed well and can be accepted.
- d. In accordance with the Agreement, the work was to be completed by Defendant I (100% performance) and submitted to Bank Indonesia within 360 (three hundred and sixty) calendar days from the date of the letter of appointment or until 28 December 2011.
- e. As of the deadline of 28 December 2011, it turned out that Defendant I had not been able to complete his work, even Bank Indonesia had given him the opportunity to extend the period twice, namely until 28 July 2012 and he had not been able to complete his work, so after going through the process of giving the first, second and third warning letters, the Bank Indonesia via letter No. 16/36/DLP dated 5 March 2014 terminated the Agreement with Defendant I.
- f. Prior to the termination of the Agreement, Bank Indonesia had made payments for Defendant I's work performance.
- g. After receiving notice of termination of the Agreement on March 5, 2014, Defendant I made a statement in part that "if in the future there is a demand for payment from Defendant I's subcontractors or vendors

against Bank Indonesia regarding the implementation of the Work, it will be the burden and responsibility of Defendant I”.

- h. The plaintiff is the holder of the claim rights on behalf of Defendant I for the construction work of 12 Bank Indonesia official housing units.
- i. The Plaintiff has submitted a claim to Bank Indonesia on behalf of Defendant I and/or Defendant II but it was rejected on the grounds that the Plaintiff only has a legal relationship with Defendant I and/or Defendant II.

Regarding this matter, the Plaintiff submitted several requests, including a request for the Plaintiff to place a construction lien (*conservatoir beslag*) for the object of the dispute, namely 12 (twelve) Bank Indonesia official housing units. Regarding the request for placing the collateral confiscation, Bank Indonesia provided the following response:

- a. Under Article 4 of Law no. 23 of 1999 on Bank Indonesia as last amended by Law no. 6 of 2009 (Bank Indonesia Law), is Bank Indonesia is basically a state institution.
- b. That the object of work which is considered to be the object of dispute by the Plaintiff is an asset belonging to Bank Indonesia ic. Defendant V is therefore an asset belonging to the state.
- c. Whereas based on Article 50(d) of Law No. 1 of 2004 on the State Treasury (State Treasury Law), “Any party is prohibited from confiscating immovable goods and other property rights belonging to the state/region”.
- d. Whereas, apart from that, as explained by Bank Indonesia in the chronological section above, legally Bank Indonesia only has a legal relationship with Defendant I based on Agreement No. 13/3/DLP dated 20 January 2011 so that it is not legal for the Plaintiff to apply for a conservatorship of Bank Indonesia’s assets.
- e. Whereas based on the legal facts mentioned above, it is clear that the request for execution on the subject property submitted by the Plaintiff for assets belonging to Bank Indonesia is contrary to the State Treasury Law, so legally it must be rejected.

In its decision, the Panel of Judges at the Central Jakarta District Court did not grant the Plaintiff’s requests, including the request for placing a construction lien (*conservatoir beslag*) on the object of the dispute, namely 12 Bank Indonesia official housing units. However, the Panel of Judges at the Central Jakarta District Court did not include Bank Indonesia’s response in considering its decision that the object of the dispute was a state-owned asset so it could not be confiscated based on Article 50 of the State Treasury Law.

From these two cases, in case No. 587/Pdt.G/2012/PN.Jkt.Sel, Bank Indonesia became one of the defendants (Defendant II). The argument that

became the subject of the lawsuit was that there was an unlawful act committed by Defendant I and Defendant II (Bank Indonesia). According to the Plaintiff, Bank Indonesia had neglected its legal obligation to supervise Defendant I in the activity of providing credit facilities that are not appropriate, especially the imposition of instalment payments that must be paid by the Plaintiff so that as a result of the actions of Defendant I have greatly harmed the Plaintiff both materially and immaterially. The plaintiff then requested the South Jakarta District Court to be able to place a lien on the Defendants' property, including property belonging to Bank Indonesia in the form of Land and Buildings. Meanwhile, in Civil Case No. 253/PDT.G/2014/PN.Jkt.Pst. In this case, Bank Indonesia became one of the defendants (Defendant V) along with five other Defendants. The argument that forms the basis of the lawsuit is that there were unlawful acts committed by the Defendants in relation to the construction work of 12 Bank Indonesia official housing units. The Plaintiff filed several requests, including an application for placing collateral by the Plaintiff against the object of dispute, namely 12 Bank Indonesia official housing units.

In the two cases above, applications for liens on assets belonging to Bank Indonesia, the argument that has been used by Bank Indonesia to reject the plaintiff's application is to use Law No. 1 of 2004 on the State Treasury, specifically the provisions of Article 50. If we pay attention, the implementation The State Treasury Law and the provisions in Article 50 of the Law cannot be used as a legal basis for legal protection of Bank Indonesia's finances. Several considerations of the State Treasury Law cannot be used as a legal basis for protection of Bank Indonesia's finances as follows.

The first consideration is that the definition and scope of the state treasury contained in the State Treasury Act does not include Bank Indonesia's finances. In Article 1 point 1 of the State Treasury Law, it is stated that the state treasurer is charged with the management and accountability of state finances, including investments and separate assets, which are stipulated in the State and Regional Budgets. In line with this understanding, the scope of the state treasury in Article 2 of the State Treasury Law includes (1) management of state revenues and expenditures; (2) management of regional revenues and expenditures; (3) cash management; (4) management of state/regional receivables and debts; (5) investment management and state/regional property; (6) implementation of state/regional accounting and financial management information systems; (7) preparation of accountability reports for the management of the State/Regional Budget; (8) settlement of state/regional losses; (9) management of the Public Service Agency; and (10) formulation of standards and policies, as well as systems and procedures related to the management of state finances in the context of implementing the State/Regional Budget. Based on the

definition and scope of the state treasury, Bank Indonesia's finances are not included in the definition and scope of the state treasury, bearing in mind that it is explicitly stated that the state treasury is a financial management that is included in the State or Regional Budget, while Bank Indonesia's finances are separate from the Budget. State Expenditure Income as stated in the Elucidation of Article 4 paragraph (3) of the Bank Indonesia Law.

The second consideration is that the State Treasury Law regulates the division of duties and responsibilities related to the management of state assets and liabilities between ministries/state agencies and the Ministry of Finances where the Ministry of Finances has the authority and responsibility for managing state assets and liabilities nationally. Thus, the provisions in the State Treasury Act are not in line with the principles of the financial independence of Bank Indonesia, especially in the management of assets and obligations of Bank Indonesia. The Bank Indonesia Law grants authority to Bank Indonesia to be able to manage Bank Indonesia's own assets including its assets and liabilities without any interference from the Ministry of finance. Based on the Elucidation of Article 4 paragraph (3) of the Bank Indonesia Law, Bank Indonesia as an independent legal entity has the authority to manage its own assets apart from the State Revenue and Expenditure Budget.

The third consideration is the prohibition of execution on a court judgment by any party against the objects mentioned in Article 50 do not include the financial scope of Bank Indonesia. The focus of Article 50 of the State Treasury Law is the prohibition on the confiscation of money and goods belonging to the state/region and/or those controlled by the state/region. The provisions state that any party is prohibited from executing a judgment against: (a) money or securities belonging to the state/region, both of Government agencies and at third parties; (b) money that must be deposited by a third party to the state/region; (c) movable property belonging to the state/region, whether in government agencies or third parties; (d) immovable property and other property rights belonging to the state/region; and (e) goods belonging to third parties controlled by the state/region which are needed for the implementation of governmental operations.

Based on the prohibition of execution on government assets in Article 50 of the Treasury Law there is no coverage that constitutes Bank Indonesia's financial coverage. For example, points prohibiting the execution on money or securities held by government agencies. Bank Indonesia is basically an independent state institution and is not part of the Government, so the prohibition against confiscation of money or securities only applies to money or securities held by government agencies. Additionally, Bank Indonesia cannot be categorised as a third party as referred to in Article 50 of the State Treasury

Act. In the elucidation of Article 50(e) of the State Treasury Law, it is stated that what is meant by goods belonging to third parties that are controlled are goods that are physically controlled or utilised by the government based on a legal relationship made between the government and a third party. Thus, the scope of third parties in the State Treasury Act refers to parties who have contractual relations (based on contracts or agreements to purchase goods or use services) with the government.

By considering the characteristics of Bank Indonesia's independence as stipulated in the Bank Indonesia Law, the legal protection of Bank Indonesia's finances based on the State Treasury Act, in particular Article 50, is inappropriate because it is not in line with the principle of independence established in the Bank Indonesia Act. This is because the aims and objectives of the provisions in the State Treasury Law are the management and accountability of state finances stipulated in the State and Regional Budgets, while Bank Indonesia's financial management and accountability are separate from the State Expenditure Budget.

Based on the examination in this section, it can be concluded that there is still a legal vacuum regarding legal protection for Bank Indonesia finances that has not been regulated either in the Bank Indonesia Act or other laws and regulations.

IV. LEGAL PROTECTION OF BANK INDONESIA'S FINANCES

Legal protection for Bank Indonesia's finances is something that is necessary because, as the central bank, Bank Indonesia plays important role in the Indonesian economy. This important role is reflected in the goals of Bank Indonesia, namely, to achieve and maintain stability in the value of the Rupiah, maintain payment system stability, and help maintain financial system stability in order to support sustainable economic growth. The functions of Bank Indonesia, especially in maintaining and supporting the Indonesian economy, need to be supported by strong and healthy Bank Indonesia finances. Disruptions to Bank Indonesia's finances could hinder the ability of Bank Indonesia to fulfil its duties and if there is a deficit in Bank Indonesia's finances it would also have an impact on Government finances.²⁶ For this reason, legal protection is needed for Bank Indonesia's finances while considering the independence of Bank Indonesia.

²⁶ Article 62 paragraph (3) of the Bank Indonesia Law stipulates that in the event that after efforts to maintain general reserves have been made, Bank Indonesia's capital is still less than Rp. get Parliament's approval.

Protection of central bank finances is common and legally established in several other countries. In general, there are two approaches to legal protection of central bank finances.

The first approach is the regulation of legal protection for central bank finances set forth in a central bank's organic law which is part of the legal protection of institutions. In addition to not being regulated in separate statutory provisions in the organic law, regulation of legal protection for central bank finances is included in the institutional protection section. For example, Legal protection arrangements for the Monetary Authority of Singapore and the Reserve Bank of India apply this approach, namely regulating legal protection for their institutions as a whole, including finances (assets and liabilities) in order to maintain the independence of the central bank from the government.

The second approach is the regulation of legal protection for the central bank focused specifically on the regulation of legal protection for a central bank's finances. These legal protections are not fully enforced either for central bank institutions or their personnel. In the United States, this legal protection regulatory approach is carried out by The Federal Reserve System (the Fed). The Federal Reserve Act does not regulate the legal protection of the Federal Reserve System institutions and their personnel in a comprehensive and absolute manner. The Federal Reserve Act only regulates the prohibition on execution of assets held by the Federal Reserve System before a final court judgment is issued. Thus, the legal protection is limited and temporary.

In line with Bank Indonesia's position as the central bank, legal protection arrangements for Bank Indonesia's finances can be regulated by choosing between these two approaches. The first option is to regulate legal protection for Bank Indonesia's finances in the Bank Indonesia Law. The regulation would protect Bank Indonesia institutions as a whole, which would also include legal protection for Bank Indonesia finances. In one of the provisions of the article in the Bank Indonesia Law, for example, it can be stated that "no actions, lawsuits or other legal processes can be filed against: (1) Bank Indonesia Institutions; (2) each Member of the Board of Governors, Officers and Bank Indonesia Employees; (3) any person assigned by Bank Indonesia or bound to Bank Indonesia; or (4) any person appointed, approved, or directed by Bank Indonesia to carry out part or all of the powers of Bank Indonesia and/or the functions or duties of Bank Indonesia, or to assist Bank Indonesia in carrying out its powers or carrying out its functions or duties based on the Bank Indonesia Law, for any actions taken (including any statements made) or omitted in good faith during or in connection with the exercise of powers, duties and functions under this Bank Indonesia Act or other relevant laws and regulations".

This first approach is the most ideal form in order to provide legal protection and legal certainty for Bank Indonesia which is also in line with the independence principle adopted in the Bank Indonesia Law. This is because in the first approach, the level of legal protection provided to Bank Indonesia is very high. However, regulation with this first approach has the potential to generate resistance from the community which could affect the effectiveness of the enforcement of the legal protection arrangements. Therefore, as an alternative, a second approach can be taken regarding regulation of legal protection for Bank Indonesia's finances.

In this case the regulation of legal protection for Bank Indonesia's finances in the Bank Indonesia Law can be focused only on the regulation of legal protection for Bank Indonesia's finances. Legal protection arrangements are not fully enforced either for Bank Indonesia institutions (including Bank Indonesia finance) as well as personnel and other parties related to Bank Indonesia. The regulation on legal protection for Bank Indonesia's finances only regulates the prohibition of confiscation or execution of assets belonging to Bank Indonesia. In other words, the Bank Indonesia Law can regulate the prohibition of executions on assets (*Conservatoir Beslag*) of Bank Indonesia's assets and liabilities, both before the final court decision is issued until the final judgment is rendered. In the Elucidation section of the article that regulates the prohibition of confiscation in the form of execution seizures or confiscation of collateral of Bank Indonesia's assets and liabilities, an explanation can be added regarding the need for regulation regarding legal protection of Bank Indonesia's finances. The explanation is that the assets and liabilities of Bank Indonesia are also part of the State Finances as referred to in the Law on State Finances which are very much needed in the context of carrying out Bank Indonesia's duties in the monetary, payment system and management of Rupiah currency, as well as macro prudential. The achievement of the intended implementation of Bank Indonesia's task targets will ultimately be able to support the growth and stability of the Indonesian economy.

The existence of a regulation prohibiting liens either in the form of execution on assets pre- or post-judgment is intended to maintain legal certainty over the legal protection of Bank Indonesia's finances. In other words, with the regulation regarding the prohibition of confiscation in the form of execution on Bank Indonesia's assets, there is no legal vacuum in the protection of Bank Indonesia's financial law. With this legal protection, Bank Indonesia's financial stability can be maintained so that the duties and functions of Bank Indonesia can be carried out better.

V. CONCLUDING REMARKS

Regulations regarding the financial independence of Bank Indonesia based on the provisions of the laws and regulations that are currently in force are based on Article 4 paragraphs 2 and 3 of Law No. 23 of 1999 as amended by Law No. 3 of 2004, Law No. 6 of 2009 on Bank Indonesia, and Law No. 4 of 2023 on Development and Strengthening of the Financial Sector. Based on Article 4 paragraph (3) it is stated that Bank Indonesia is a legal entity. The elucidation of Article 4 paragraph 3 which states that Bank Indonesia is declared as a legal entity with the intention that there is clarity on Bank Indonesia's authority in managing its own wealth apart from the State Revenue and Expenditure Budget. This confirms that there are regulations regarding the financial independence of Bank Indonesia based on the provisions of the laws and regulations that are currently in effect.

In carrying out its duties, Bank Indonesia often faces various demands and/or lawsuits. The application for lawsuit against Bank Indonesia is similar to the application for confiscation of guarantees against the assets of Bank Indonesia. Based on current statutory provisions, there is no regulation regarding legal protection for Bank Indonesia's finance, either in the Bank Indonesia Act or in other laws and regulations. In dealing with a lawsuit for confiscation of bank assets in Indonesia, the argument that is often used to reject the application is Article 50 of the State Treasury Law. The provisions in Article 50 of the State Treasury Law, which so far have been the legal basis for legal protection for Bank Indonesia's finance, are not sufficient as a basis for legal protection for Bank Indonesia's finances. This is because the understanding and scope set forth in that Article are not included in the scope of Bank Indonesia's finances so that the application of Article 50 of the State Treasury Act as a legal basis for legal protection of Bank Indonesia's finances cannot be used. This lack of legal basis creates legal uncertainty over the protection of Bank Indonesia's finances.

Legal protection for Bank Indonesia's finances needs to be created since the strategic position of Bank Indonesia as a central bank which has an important role and function in the Indonesian economy. Disturbances to Bank Indonesia's finances could result in Bank Indonesia being unable to carry out its roles and functions effectively. For this reason, legal protection is needed for Bank Indonesia's finances in order to support Bank Indonesia as an independent institution to carry out its functions effectively.

The ideal arrangement in the framework of legal protection for Bank Indonesia's finances should also considering the aspects of independence of Bank Indonesia through updating regulations. This can be done with two approaches. The first approach is that legal protection arrangements in the Bank Indonesia Law are formulated in its entirety for Bank Indonesia

institutions, including Bank Indonesia finance, as practiced by several overseas central banks such as the Monetary Authority of Singapore and the Reserve Bank of India. The second approach is the regulation of legal protection in the Bank Indonesia Law which is formulated partially which focuses on legal protection of Bank Indonesia's finances (particularly related to assets and liabilities) as this approach is also practiced by foreign central banks such as the Federal Reserve System. The second approach can be applied in the context of regulating the legal protection of Bank Indonesia's finances which is also in line with the pattern of regulating the legal protection of state-owned or regional-owned assets or goods as stipulated in the State Treasury Act which focuses on legal protection of state-owned assets and property rights.

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