

CHAPTER I

INTRODUCTION

A. Background

Banking institution is a core unit of financial institution in every state. Bank is a financial institution where individuals, private business entities, bodies of state-owned enterprises, and government agencies are saving their funds. Through lending activities and a variety of bank services, bank is serving need of people about financing and launching payment systems mechanism for every economy sectors.¹ Nowadays, banking institution development is increasingly broad and varied, plus by the development of people finance mobility.

The definition of bank is explained by Law Number 7 of 1992 jo Law Number 10 of 1998 on Bank; Bank is business entities that raise funds from the public in form of deposits and distribute to the public in form of credit and/ or other forms in order to improve standard of living of the people.²

The role of banking institution in Indonesia is important as one of supporting economic developments whose the major role is carrying out economic policies and as a component of the national economy. Progress experienced by banking institutions can be improved in a sustainable

¹ Hermansyah, 2005, *Hukum Perbankan Nasional Indonesia*, Jakarta: Kencana, p. 7

² Indonesia, the Law on Bank, Law Number 7 of 1992 jo Law Number 10 of 1998, section 2(2)

manner and provide the greatest possible benefit for the implementation of national development. Then, all the potential, initiative and creativity of the people should be able to be deployed and developed into a real force for the improvement of welfare of people.³ Looking at how big the role of bank institution is, bank institution must perform its function properly.

Basically, the ability of a bank in running businesses is determined by bank health itself. Bank health could be interpreted as the ability of the bank to conduct banking operations as normal and able to fulfill all obligations properly in ways that conform to applicable banking regulations.⁴

Bank health is determined by customer/ community trust. Therefore, without trust of customer/ community, bank will not be able to run their businesses properly.⁵ If customer/ community trust for the bank has decreased, it is possible that a rush to funds occurs to be kept.⁶

To keep customer/community trust, a state is required to regulate and supervise banking situation in order to be in good health. Bank health supervision by state institution is important task of the state to protect customer and community funds. Protection of customer funds has the function to protect rights and obligations of customers, bank institution, and

³ Bachsan Mustafa, 2003, *Sistem Hukum Indonesia Terpadu*, Bandung: Citra Aditya Bakti, p. 12

⁴ Gazali Djoni and Usaman Rachmadi, 2010, *Hukum Perbankan*, Jakarta: Sinar Grafika, p. 628

⁵ Hermansyah, *op.cit*, p. 144

⁶ Michael PRS, -----, accessed on November 20, 2014, <http://lontar.ui.ac.id> at 3.24pm.

also economic system in good way. Protection of customer funds should be done by state institution that has high integration and trustworthy.

Moreover, bank institution is finance institutions which need more regulations than other branches of finance institutions, because bank institution is more dependent on the community that need legal certainty and legal security of community funds that community believes in bank. The loss of community trust about bank institution had happened to Century Bank case. Century bank is a changing name from CIC Bank. The owners of Century Bank had taken the costumers fund. With this case and other cases related to the bank institution, community need regulation and supervision to bank institution. So, community can keep their trust and their funds to the bank institution.

Law Number 21 of 2011 about Financial Services Authority (*Otoritas Jasa Keuangan*) enacted new state institution, namely Financial Services Authority whose authority is to supervise and regulate bank health. Authority to supervise and regulate bank health was formerly the job of Bank Indonesia, the central bank of the Republic of Indonesia. Financial Service Authority is an independent state institution whose function, duties, and authorities are to regulate, supervise, and examine finance institutions, including banks and non-banks.

Financial Services Authority is created with objective to hold regularly, fairly, transparently, and accountably overall activity of financial

services in the financial services sector, and the financial system is able to realize sustainable growth, stable and capable of protecting the interest of consumers and community.⁷ In addition, the FSA judicially established pursuant to Article 34 of Law Number 3 of 2004 jo Law Number 6 of 2009 about Bank Indonesia, namely; The task to supervise bank will be carried out by independent financial supervisory institution, which is formed by law.

The formation of the Financial Service Authority itself was inspired during the economic crisis in 1988. At that time, the authority of Bank Indonesia, which performed monitoring of banks were being widely reported. In the past, various groups were not sure about the performance of Bank Indonesia, so that FSA was created. The initial idea, examination failures of central banks in a number of countries, including in Indonesia prompted the establishment of the FSA. The central bank was considered incapable of creating financial sector stability and creating healthy banking system.⁸

According to an economist, Aviliani, the Law of FSA is the best solution for the supervision of banks and non-bank financial institutions. This is due to the weakness of the financial supervisory agency oversight of non-banks, Capital Market Supervisory Agency and Financial Institutions.

⁷ Hermansyah, *op.cit* p. 217

⁸ Ministry of Justice and Human Rights of the Republic of Indonesia, *Aspek Hukum Pemisahan Pembinaan dan Pengawasan Perbankan*, downloaded on June 13, 2014, <http://perpustakaan.bphn.go.id/index.php/> 6.42 am.

FSA task as overall supervisor for banks and non-banks can reduce the risk. At that time, banking supervision is in the hands of Bank Indonesia and the supervision of non-bank financial institutions are under other finance supervisor institutions. It is difficult to supervise and lead some problems because it needs more time to coordinate each other.

FSA supervisory functions are under Article 6 and 7 of Law Number 21 of 2011 that the FSA has the authority to oversee the health of banks. Oversight and regulation of the FSA are further stipulated in Article 7 (b) of the FSA. The general objective of the regulation and supervision of banks is creating healthy banking system, which meets three aspects, namely, first the banks that can maintain the interest of the community well, second develop naturally, and third in the sense that on the one hand watching risk factors such as ability, both of the systems, financial, and human resources.⁹

Based on the background, the writer is interested in conducting research on the role of the Financial Services Authority in supervising the health of commercial bank.

B. Research Questions

1. How does the role of the Financial Services Authority (FSA) in supervising the health of commercial bank?
2. How does the effort of the Financial Services Authority in overcoming problematic commercial bank?

⁹ Hermansyah, *op.cit*, p.163-164.

C. Purpose of the research

1. Objective Purposes

- a. To find out the role of the Financial Services Authority in supervising the health of commercial bank.
- b. To explore the efforts of the Financial Services Authority in overcoming problematic commercial bank.

2. Subjective Purpose

To obtain datas and materials those are used in the preparation of the thesis as one of requirements to obtain a Law Degree at the Faculty of Law, Universitas Muhammadiyah Yogyakarta.

D. The Advantages of Research

1. Theoretical Advantage

This research would increase knowledge and insight about the role of the Financial Services Authority in supervising the health of commercial bank at the same time contributes to the development of the science of law, especially business law. This study also provides knowledge and insight about the FSA's role in overcoming problematic commercial bank.

2. Practical Advantage

This research would develop the understanding on how role of Financial Services Authority on bank. This research also would share and improve the knowledge regarding healthy and unhealthy bank issue, such as the

healthy and unhealthy bank definitions, the disadvantages of the unhealthy bank to community, and the role of Financial Services Authority in both healthy and unhealthy conditions.