

THE PRESIDENT
OF THE REPUBLIC OF INDONESIA

ELUCIDATION

TO

ACT OF THE REPUBLIC OF INDONESIA

NUMBER 3 OF 2004

CONCERNING

AMENDMENT TO ACT OF THE REPUBLIC OF INDONESIA

NUMBER 23 OF 1999 CONCERNING BANK INDONESIA

GENERAL REVIEW

The sustainability of progress in national development requires adjustments to be made to monetary policy with emphasis on measures for achieving and maintaining the stable value of the rupiah, supported by three main pillars, i.e., prudent monetary policy, a fast, accurate, and secure payment system, and a sound and efficient banking and financial system. The mechanism for formulating this monetary policy must be coordinated with the formulation of policy in fiscal management and the real sector.

The growing competitiveness and integration of the international financial system has resulted in a global economy with ease of movement in capital accompanied and increasingly tight competition. This movement in capital and competition is not only capable of fostering economic growth, but can also cause the national economy to be susceptible to adverse developments.

To overcome these various challenges, it has become necessary to make adjustments to the monetary policymaking mechanism and conduct institutional restructuring of Bank Indonesia as the agency responsible for the monetary policy authority. These measures are necessary to strengthen the accountability, transparency, and credibility of Bank Indonesia without diminishing its independence as a public entity.

In regard to institutional restructuring, a Supervisory Body is to be established to assist the House of Representatives in its performing its

THE PRESIDENT
OF THE REPUBLIC OF INDONESIA

- 2 -

function for supervision of specific areas of the activities of Bank Indonesia. This supervision is part of the effort to strengthen the accountability, transparency, and credibility of Bank Indonesia. In discharging its duties, the Supervisory Body shall not assess the performance of the Board of Governors, nor participate in decision making, nor provide an assessment of policies in the payment system, bank regulation and supervision, and areas that represent the establishment and implementation of monetary policy. The Supervisory Body shall report on the performance of its duties to the House of Representatives.

In regard to duties performed by Bank Indonesia, the function of Lender of Last Resort (LoLR) has so far been performed by Bank Indonesia by provision of credit facilities to banks experiencing short-term funding difficulties, guaranteed by high quality, marketable collateral. This is felt to be extremely limited and does not extend to a Lender of Last Resort function that can be used in emergencies or crisis. To this end, this Act enables Bank Indonesia to provide emergency financing, with funding borne by the government, in the event that a bank experiences financial difficulties with systemic impact and potential to develop into a crisis endangering the financial system. This mechanism comprises part of the concept of the Indonesia Financial Safety Net to be stipulated in a separate Act.

Concerning the formulation of the State Budget, this Act requires Bank Indonesia to provide the Government with opinions and recommendations on the State Budget and other policies pertaining to the powers and functions of Bank Indonesia. The purpose of these obligations is for the formulation of the State Budget to take more careful account of monetary aspects pertaining to various fiscal policies.

According to Act Number 23 of 1999, Bank Indonesia's duties in bank supervision are temporary. Notwithstanding, due to the expiration of the mandate for establishment of the supervisory board for the financial services sector no later than December 31, 2002, this Act reiterates that bank supervision will be conducted by an independent supervisory board for the financial services sector to be established no later than December 31, 2010. The postponement of the deadline for

establishment ...

THE PRESIDENT
OF THE REPUBLIC OF INDONESIA

- 3 -

establishment of this board takes into account the readiness of the human resources and infrastructure of the board for receiving the transfer of bank supervision from Bank Indonesia.

On the basis of the considerations presented above, with emphasis on improved coordination between formulation of monetary policy and fiscal and real sector policies, and fulfillment of the principle of equilibrium between the independence conferred on Bank Indonesia in the discharge of its duties and powers and the supervision and responsibility for its performance that must meet transparent standards of accountability to the public, it is deemed necessary for adjustments to be made by amendment and improvement of Act Number 23 of 1999 concerning Bank Indonesia.

II. ARTICLE BY ARTICLE

Article I

Number 1

Article 4

Paragraph (1)

“Central Bank” is defined as a public institution with powers to issue the legal tender of a state, formulate and execute monetary policy, regulate and safeguard the smooth operation of the payment system, regulate and supervise the banking system, and perform the function of lender of last resort.

The Central Bank as referred to herein has the goal of achieving and maintaining rupiah stability and is not to engage in intermediation activities such as are performed by Banks in general. Notwithstanding, the Central Bank may conduct banking activities as deemed necessary in support of its duties.

In Indonesia, there is only one Central Bank, as stipulated in Article 23D of the 1945 Constitution of the Republic of Indonesia.

Paragraph (2)...

THE PRESIDENT
OF THE REPUBLIC OF INDONESIA

- 4 -

Paragraph (2)

“Interference” is defined as all forms of intimidation, threat, coercion, and persuasion by other parties that may directly or indirectly influence the policies of Bank Indonesia and the performance of its duties. Interference does not include cooperation with other parties or technical assistance provided by other parties at the request of Bank Indonesia in support of the performance of its duties.

“Other parties” are defined as all parties external to Bank Indonesia, including the Government and/or other agencies.

The purpose of this provision is to enable Bank Indonesia to operate effectively in the performance of duties and exercise of its powers.

Paragraph (3)

Under this Act, Bank Indonesia is declared a legal entity with the purpose of ensuring clarity of the powers of Bank Indonesia in managing its own assets set aside from the State Budget. In addition, Bank Indonesia as a public entity has the power to establish regulations and impose sanctions within the limits of its powers.

Number 2

Article 6

Paragraph (1)

The capital of Bank Indonesia as referred to in this paragraph shall originate from state assets set aside for this purpose and comprises the sum of capital, General Reserves, Special Reserves, and the undistributed portion of profit pursuant to Act Number 13 of 1968 concerning the Central Bank prior to the promulgation of this Act.

Paragraph (2)...

THE PRESIDENT
OF THE REPUBLIC OF INDONESIA

- 5 -

Paragraph (2)

“Monetary liabilities” are defined as Bank Indonesia’s liabilities to the public, banks, and the Government, consisting of currency in circulation, credit balances of accounts held by banks, the Government, and other parties recorded at Bank Indonesia, and securities issued by Bank Indonesia.

Paragraph (3)

The scope of the key provisions to be stipulated in a Board of Governors Regulation includes but is not limited to:

- a. Accounting treatment for Bank Indonesia capital.
- b. Requirements and procedure for revaluation of assets.
- c. Requirements for addition of capital from General Reserves or revaluation of assets.

Number 3

Article 7

Paragraph (1)

The stable value of the rupiah referred to in this paragraph is the stable value of the rupiah against goods and services as well as against foreign currencies. Stable value of the rupiah against goods and services is measured by or reflected in the inflation rate. Stable value of the rupiah against foreign currencies is measured by or reflected in the movement in the exchange rate of the rupiah against foreign currencies.

The stable value of the rupiah is extremely important for supporting sustainable economic development and improving the living standards of the population at large.

Paragraph (2)

The purpose of this provision is for the sustainable, consistent, and transparent monetary policy adopted

by Bank ...

THE PRESIDENT
OF THE REPUBLIC OF INDONESIA

- 6 -

by Bank Indonesia to become a definite and clear reference for the business community and the public at large. In addition, the purpose of this provision is also to ensure that policies adopted by Bank Indonesia have taken into account their overall impact on the national economy, including state finances and developments in the real sector.

Number 4

Article 10

Paragraph (1)

Letter a

The inflation target shall be established by the Government. In establishing the inflation target, the Government shall coordinate with Bank Indonesia.

Letter b

Number 1

Open market operations in this paragraph include intervention by Bank Indonesia on the foreign exchange market for stabilization of the rupiah.

Number 2

“Setting of discount rates” is defined as the setting of certain interest rates applied by Bank Indonesia among others in open market operations for credit extended by Bank Indonesia and in execution of the lender of last resort function.

Number 3

Self-explanatory

Number 4

“Regulation of credit or financing” is defined as the determination of overall growth in channeling of credit or financing

by banking ...

THE PRESIDENT
OF THE REPUBLIC OF INDONESIA

- 7 -

by banking institutions as it pertains to monetary control.

Paragraph (2)

Open market operations for monetary control through Banks based on sharia principles shall be conducted by setting a ratio for profit share or fee to substitute for the discount rate effective for conventional Banks.

Paragraph (3)

The scope of key provisions to be stipulated in a Bank Indonesia Regulation includes but is not limited to:

- a. procedures for conducting open market operations on the rupiah money market;
- b. procedures for foreign currency intervention to stabilize the rupiah;
- c. instruments used in open market operations;
- d. procedure for setting discount rates;
- e. determination of type and size of the statutory reserve for Banks, both in rupiahs and foreign currencies;
- f. imposition of administrative sanctions for infringement of the statutory reserve requirement;
- g. restrictions on credit or financing, including all forms of borrowing facilities on the rupiah and forex market;
- h. regulation of letter c, letter d, and letter g on the basis of Sharia Principles, in particular concerning determination of the ratio for profit share or fee.

Number 5

Article 11

Paragraph (1)

In this article, provision of credit or financing based on Sharia Principles to Banks is intended solely for

resolving ...

THE PRESIDENT
OF THE REPUBLIC OF INDONESIA

- 8 -

resolving difficulties for Banks arising from mismatch caused by shortfall in inflows of funds compared to outflows of funds.

“Days” in this paragraph is defined as calendar days.

“Term not exceeding 90 (ninety) days” in this paragraph is intended as the maximum permissible term, including any extensions thereof.

If credit or financing based on Sharia Principles cannot be repaid at maturity, Bank Indonesia shall be fully entitled to dispose of collateral under its control in accordance with the provisions of applicable laws and regulations.

Banks entitled to liquidity support are Banks that meet the requirements established by Bank Indonesia, for example, it is abundantly clear according to information obtained by Bank Indonesia the Bank is experiencing short-term liquidity difficulties and has adequate collateral, and if necessary, the condition of certain Banks may be subject to further examination.

Paragraph (2)

“High quality, marketable collateral” covers securities and/or claims issued by the Government or other legal entities and having a high rating based on rating by a competent rating agency, and which may be easily sold on the market at any time for cash.

“Financing based in Sharia Principles” is, for example, the profit share or risk borne jointly on a proportional basis.

Paragraph (3)

The scope of key provisions to be stipulated in a Bank Indonesia Regulation includes but is not limited to:

- a. requirements and procedure for extension of credit or financing based on Sharia Principles, including therein requirements for borrowing

Banks ...

THE PRESIDENT
OF THE REPUBLIC OF INDONESIA

- 9 -

Banks. In order to ascertain compliance with Bank rating, Bank Indonesia shall conduct examination of Banks that are prospective borrowers of credit or financing;

- b. the term, interest rate, or profit sharing ratio, and other costs;
- c. type of collateral in the form of securities and/or claims with high rating;
- d. procedure for binding of collateral.

Paragraph (4)

Self-explanatory

Paragraph (5)

Self-explanatory

Number 6

Article 34

Paragraph (1)

The financial services supervisory board to be established will conduct the supervision of Bank and other financial services companies, including insurance companies, pension funds, securities companies, venture capital, finance companies, and other entities operating in the management of funds from the public.

This supervisory board shall be independent in the performance of its duties, existing outside the government and required to report to the Supreme Audit Agency and the House of Representatives. In performing its tasks, this supervisory board shall maintain coordination and cooperation with Bank Indonesia as the Central Bank in the manner to be stipulated in the Act concerning the establishment of this supervisory board.

The supervisory board may issue regulatory provisions pertaining to the execution of Bank supervision duties in coordination with Bank

Indonesia ...

THE PRESIDENT
OF THE REPUBLIC OF INDONESIA

- 10 -

Indonesia and may request explanations from Bank Indonesia and information and macro data as may be necessary.

Paragraph (2)

The transfer of the bank supervision function from Bank Indonesia to a supervisory board for the financial services sector shall be phased in after fulfillment of the requirements covering infrastructure, budget, personnel, organizational structure, information system, documentation system, and various implementation regulations in the form of legal instruments, and shall be reported to the House of Representatives.

Number 7

Article 37

Paragraph (1)

The number of members on the Board of Governors shall be adjusted after transfer of the bank supervision function to the supervisory board for the financial services sector, with consideration for efficiency.

Number 8

Article 38

Paragraph (1)

In the performance of its duties, the Board of Governors may determine the organization and its instruments.

Paragraph (2) and Paragraph (3)

The key provisions to be stipulated in a Board of Governors Regulation include but are not limited to:

- a. division of duties among the members of the Board of Governors;
- b. delegation of authority;
- c. code of ethics of the Board of Governors.

Paragraph (4) ...

THE PRESIDENT
OF THE REPUBLIC OF INDONESIA

- 11 -

Paragraph (4)
Self-explanatory

Number 9

Article 40

Letter a

“Indonesian citizen” is defined as a person declared to be an Indonesian citizen pursuant to the applicable laws and regulations.

Letter b

Self-explanatory

Letter c

“Expertise” is defined as a person having mastery of a field of expertise by virtue of the necessary educational background, specialized knowledge, and experience to support the performance of the duties of that person.

“Experience” is defined as the career track record of the person concerned in one of the fields of economics, finance, banking, or law, specifically pertaining to the duties of the Central Bank.

Number 10

Article 41

Paragraph (1)

The President shall provide nominations for at least 3 (three) candidates to the House of Representatives for each of the positions of Governor, Senior Deputy Governor, and Deputy Governor. These nominations shall be conveyed no later than 3 (three) months prior of the end of the term of office concerned.

The nominations provided by the President shall also take into account public aspirations.

The House of Representatives shall approve or reject candidates for Governor, Senior Deputy Governor,

and Deputy ...

THE PRESIDENT
OF THE REPUBLIC OF INDONESIA

- 12 -

and Deputy Governors no later than 1 (one) month after receipt of the nominations;

In order to provide these approvals, the House of Representatives may request the candidate Governor, Senior Deputy Governor, and Deputy Governors to deliver a presentation in a session of the House of Representatives on the vision, experience, expertise, or capability, and matters pertaining to the moral principles and character of the candidate Governor, Senior Deputy Governor, and Deputy Governors.

The candidates approved by the House of Representatives shall be appointed as the Governor, Senior Deputy Governor, and Deputy Governors by the President in the capacity of head of state in a Presidential Decree.

Paragraph (2)

The recommendation of the Governor shall be provided after a transparent, accountable, and objective selection process has been conducted.

Candidate Deputy Governors shall be selected from within Bank Indonesia and outside Bank Indonesia on the basis of equal opportunity and shall meet the requirements referred to in this Act.

The number of candidates proposed by the Governor to the President shall be no less than 4 (four) persons and no more than 6 (six) persons.

Paragraph (3)

Self-explanatory

Paragraph (4)

Self-explanatory

Paragraph (5)

Self-explanatory

Paragraph (6)

Periodic replacement of members of the Board of Governors is intended to ensure continuity of

leadership ...

THE PRESIDENT
OF THE REPUBLIC OF INDONESIA

- 13 -

leadership and performance of management duties
for Bank Indonesia.

Number 11

Article 47

Paragraph (1)

Letter a

“Holding a direct interest in a company” is defined as when the party concerned holds a position in the management of a company or conducts his or her own business in the trading of goods or services. “Holding an indirect interest” is defined as when the party concerned holds interest through ownership of shares in a company in excess of 25% (twenty-five percent).

Letter b

In view of the highly strategic tasks of members of the Board of Governors in monetary affairs, the payment system, and banking regulation and supervision, it is appropriate for members of the Board of Governors to demonstrate a higher level of professionalism and dedication to the performance of their tasks.

Such concurrent positions include leadership in a political party and other institution or organization that may adversely affect performance and professionalism pertaining to the discharge of duties and responsibilities as member of the Board of Governors of Bank Indonesia.

Notwithstanding, based on the relationship to their duties and position, members of the Board of Governors may hold concurrent positions at certain institutions, including but not limited to the International Monetary Fund

(IMF) ...

THE PRESIDENT
OF THE REPUBLIC OF INDONESIA

- 14 -

(IMF), the World Bank, and the Indonesian
Banking Institute.

Letter c

Self-explanatory

Paragraph (2)

In the event that a Senior Deputy Governor and/or
Deputy Governor known to have infringed the
provisions in paragraph (1) refuses to resign, the
Governor shall submit a proposal to the President to
call on the person to resign. If the infringing party is
the Governor, the President shall ask that person to
resign.

Paragraph (3)

Self-explanatory

Number 12

Article 48

Paragraph (1)

Letter a

Resignation as referred to in this article shall be
tendered voluntarily by the party concerned or
shall be effective by virtue of the provisions
referred to in Article 46 paragraph (2) or Article
47 paragraph (2).

Letter b

Dismissal due to conviction of a felony as
referred to in this article shall be proven by a
court decision with permanent legal force.

Letter c

Without reasonable cause as referred to in this
article is a case in which a member of the Board
of Governors is physically absent without
notification to the Board of Governors.

Letter d ...

THE PRESIDENT
OF THE REPUBLIC OF INDONESIA

- 15 -

Letter d

Bankruptcy and inability to settle liabilities shall be based on a court decision with permanent legal force.

Letter e

“Permanently incapacitated” is defined as deceased, physically and/or mentally disabled so that the person concerned is unable to discharge his or her duties properly, or loss of Indonesian nationality.

Paragraph (2)

Self-explanatory

Paragraph (3)

Self-explanatory

Number 13

Article 52

Paragraph (1)

As cashier for the Government, Bank Indonesia shall in essence administer all Government accounts. This administration shall be conducted in accordance with an agreement between Bank Indonesia and the Government.

Paragraph (2)

“Laws and regulations” are defined as the law regulating the state treasury.

Number 14

Article 54

Self-explanatory

Number 15

Article 55

Paragraph (1)

These consultations are necessary for proper time of the issuance of government securities and to avoid negative impact on monetary policy, thus enabling

the sale ...

THE PRESIDENT
OF THE REPUBLIC OF INDONESIA

- 16 -

the sale of the securities to be conducted on terms and conditions acceptable to the market and favorable to the Government.

Paragraph (2)

Consultations with the House of Representatives shall be held with the committee in charge of the State Budget.

Paragraph (3)

If state revenues from taxes, profits, state enterprises, and so on are insufficient to finance state expenditures in full, the deficit shall be covered with funds from the public, whether in the form of domestic borrowings or borrowings from the international community through the issuance of government bonds.

Bank Indonesia may only purchase government securities indirectly or on the secondary market.

Paragraph (4)

“Government securities necessary for monetary control operations” are defined in this paragraph as short-term government securities with a term of no more than 1 (one) year.

Paragraph (5)

Self-explanatory

Number 16

Article 58

Paragraph (1)

The annual report submitted to the House of Representatives is for the purpose of accountability, while the annual report to the Government is for information purposes.

Paragraph (2)

Self-explanatory

Paragraph (3)

Self-explanatory

Paragraph (4) ...

THE PRESIDENT
OF THE REPUBLIC OF INDONESIA

- 17 -

Paragraph (4)

Self-explanatory

Paragraph (5)

Self-explanatory

Paragraph (6)

Public disclosure, in addition to reflecting the principle of transparency, is also intended to keep the public informed of policy direction in monetary affairs. This can be used by market actors as one of the important considerations in business planning.

Number 17

Article 58A

Paragraph (1)

“Supervising in specific areas” encompasses the duties of:

- a. examination of the annual financial statement of Bank Indonesia;
- b. examination of the operational and investment budgets of Bank Indonesia;
- c. examination of decision making procedures for operations outside monetary policy and management of Bank Indonesia assets.

In performing the duties referred to above, the Supervisory Body shall not assess the performance of the Board of Governors, not participate in decision making, and not provide an opinion on policies in the payment system, bank regulation and supervision, and implementation of monetary policy.

The Supervisory Body may not:

- a. attend the Board of Governors Meeting;
- b. interfere with and assess Bank Indonesia policies;
- c. evaluate the performance of the Board of Governors;
- d. express opinions on behalf of Bank Indonesia;

e. disclose ...

THE PRESIDENT
OF THE REPUBLIC OF INDONESIA

- 18 -

e. disclose information directly to the public in relation to the performance of its duties.

The findings of examination of the report on the discharge of the duties and powers of Bank Indonesia shall be submitted to the House of Representatives.

Paragraph (2)

Membership in the Supervisory Body shall be proposed by the President for at least 10 (ten) persons.

The Chair of the Supervisory Body shall be elected from and by the members of the Supervisory Body.

Paragraph (3)

Self-explanatory

Paragraph (4)

Self-explanatory

Paragraph (5)

The Supervisory Body shall be domiciled in premises made available by Bank Indonesia.

Paragraph (6)

Self-explanatory

Number 18

Article 60

Paragraph (1)

Self-explanatory

Paragraph (2)

Self-explanatory

Paragraph (3)

Approval as referred to in this paragraph shall be issued in consultation with the committee for Bank Indonesia and the banking system no later than December 31 of each fiscal year. If after December 31 no approval has been issued, the proposed budget shall be deemed approved.

Paragraph (4) ...

THE PRESIDENT
OF THE REPUBLIC OF INDONESIA

- 19 -

Paragraph (4)

The term “under a specific procedure” is defined as reported confidentially to the committee for Bank Indonesia and the banking system.

Number 19

Article 62

Paragraph (1)

General Reserves shall be used to reinforce capital or cover the deficits of Bank Indonesia, while Special Reserves shall be used among others for costs of replacement and/or renewal of fixed assets, procurement of needed equipment, organizational and human resources development for the performance of the duties of Bank Indonesia and exercise of its powers, and equity participation necessary for the performance of the duties of Bank Indonesia as referred to in Article 64.

Act Number 13 of 1968 concerning the Central Bank stipulates the portion of the Bank Indonesia surplus for General Reserves at 20% (twenty percent), to be used for replacement and/or renewal of fixed assets and equipment necessary for execution of the duties and operations of Bank Indonesia.

Under this Act, Special Reserves are used to finance the replacement and/or renewal of fixed assets, procurement of necessary equipment, organizational and human resources development for the performance of the duties of Bank Indonesia and exercise of its powers, and equity participation as referred to in Article 64.

Under this Act, allocation of the surplus at Bank Indonesia for Special Reserves is raised to 30% (thirty percent), in view of the challenges faced by Bank Indonesia that include but are not limited to

THE PRESIDENT
OF THE REPUBLIC OF INDONESIA

- 20 -

ongoing improvement in the quality of human resources and the need for upgrading technology.

Paragraph (2)

Self-explanatory

Paragraph (3)

Self-explanatory

Paragraph (4)

In the event that capital, including General Reserves, has reached 10% (ten percent) of monetary liabilities, any remaining surplus accruing to the Government must first be used for settlement of Government liabilities to Bank Indonesia.

Number 20

Article 77

Self-explanatory

Number 21

Article 77A

Self-explanatory

Article II

Self-explanatory

Article III

Self-explanatory