

**JURIDICAL ANALYSIS OF DEPOSIT GUARANTEE AGENCIES
FOR BANKING COMPANIES
LIQUIDATED**

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ABSTRACT

A bank is a financial institution that withdraws funds from the public which are then managed by the bank for other business needs and channeled back to the community in the form of loans. And not only that, in the current era banks have become financial institutions in the flow of payments, fees and levies related to the needs of the community related to their business with other people and/or with certain institutions. So with this very complex governance, banks must be able and trustworthy by the public to carry out their mandate with integrity and credibility. A person who saves funds and/or uses banking services in every business activity at a bank is due to the public's trust as customers in that bank who are believed to be able to play a role and help with banking problems as part of their life needs with the availability of various banking facilities at a bank. This research was conducted using a normative juridical approach. This research uses qualitative analysis techniques which are then explained and analyzed using descriptive analytical methods. The type of approach used in writing this thesis is a library research approach, namely by studying books and documents related to the title and problem formulation. This research also takes an approach using the statutory regulatory approach method, namely by reviewing statutory regulations related to the title and formulation of the problem used as discussion in this research. The results of the research and discussion in this study found that in carrying out the business operations of a bank, it really depends on the financial situation and conditions of the bank itself as a bank's resilience and strength in facing challenges and obstacles both globally and domestically. This can be seen from the global recession that occurred which resulted in a monetary crisis in Indonesia. Many banking institutions at that time were affected and experienced shocks in their business operations, went bankrupt, went bankrupt and were ultimately liquidated. This is the background to the establishment of the Deposit Insurance Corporation (LPS), which was initiated by the government to help banking institutions and protect their customers. With the provisions of the law and mechanisms that have been established. This is done by the government so that people continue to trust banks in managing public finances.

Keywords: Banking Institutions, LPS, and Customer Fund Guarantees.

A. Introduction

The development of the banking world has made a major contribution to the economy in Indonesia. In 1998, when the monetary crisis hit Indonesia, the banking

world was in shock, 16 banks were deemed unable to pay off their debts, both long term and short term, which resulted in a decline in public confidence in the banking system. To overcome the crisis that occurred, the government issued several policies, including providing guarantees for all bank payment obligations, including public deposits (blanket guarantee) as stipulated in Presidential Decree Number 26 of 1998 concerning Guarantees for Payment Obligations of Commercial Banks and Presidential Decree Number 193 of 1998 concerning Guarantees for Payment Obligations of Rural Banks. Law Number 7 of 2009 was born. The renewal of Law Number 24 along with Perpu Number 3 of 2008 and PP Number 66 of 2008 is expected to provide legal certainty and a sense of justice to every customer who will keep their money in the bank if there are any potential circumstances. It is not expected that in the banking world, customer funds in the bank will remain safe and can be retrieved through LPS.¹

The monetary crisis that hit Indonesia in 1998 was marked by the liquidation of 16 banks, this resulted in a decline in the level of public trust in the banking system. The limited guarantee system is implemented through the formation of the Deposit Insurance Corporation (LPS) as the guarantor of public funds. The Deposit Insurance Agency was established based on Law Number 24 of 2004. Juridically, LPS has been regulated in Law Number 24 of 2004. LPS itself has two functions, namely guaranteeing bank customer deposits and resolving failed bank disputes through liquidation.

Liquidation is the revocation of a bank's business license which includes the dissolution of the bank's legal entity and the process of settling all of the bank's rights and obligations. Based on the provisions of Article 37 paragraphs (3) and (4) of the Banking Law, it is stated that a bank can have its business license revoked by the Indonesian Minister of Finance based on a proposal from Bank Indonesia, then order

¹ Sri Anggraini Kusuma Dewi dan Nanang. Peran Lembaga Penjamin Simpanan Pada Bank Gagal Sebagai Upaya Perlindungan Hukum Terhadap Nasabah. Dalam *Jurnal Pemikiran Hukum dan Hukum Islam*. Vol 10 No. 2 . Tahun 2019. Halaman 102.

the liquidation process of the bank to be carried out immediately. The definition of bank liquidation is based on the provisions of Article 17 paragraph (1) of Government Regulation No. 68 of 1996 concerning Provisions and Procedures for Revocation of Business Licenses, Dissolution and Liquidation of Banks, namely the settlement action in the form of settlement of all rights and obligations of the bank as a result of the dissolution of the bank's legal entity.

B. Research Methods

A research cannot be said to be research if it does not have a research method.² Research methods are one of the factors of a problem that will be discussed.³ The study was carried out using secondary data which was analyzed qualitatively using the Desk Research Method. The literature materials used in writing this research are several references originating from the results of research, studies and reviews of several papers which are then summarized into a work of scientific.

C. Analysis And Discussion

1. The Function of the Deposit Insurance Agency in Banking Law

The background that prompted the establishment of LPS was the monetary crisis that hit Indonesia in 1998. At that time, the monetary crisis resulted in the liquidation of 16 banks and the level of public confidence in the banking system fell. To overcome this, the government issued several policies, such as providing guarantees for all bank payment obligations. These policies are stated in Presidential Decree Number 26 of 1998 and Presidential Decree Number 193 of 1998. In its implementation, this policy slowly restored public confidence in the banking industry. However, the very broad scope of guarantees gives rise to moral hazard from bank managers or the public. Therefore, to create a sense of security for customers and maintain the stability of the banking industry, very broad guarantee programs must be replaced with a limited guarantee system. Law Number 10 of 1998 concerning Banking

² Ismail Koto, "Perlindungan Hukum Terhadap Korban Tindak Pidana Terorisme", *Proceeding Seminar Nasional Kewirausahaan*, 2.1, (2021): 1052-1059.

³ Ida Hanifah, Ismail Koto, "Problema Hukum Seputar Tunjangan Hari Raya Di Masa Pandemi COVID-19", *Jurnal Yuridis* 8.1, (2021): 23-42.

accommodates this by mandating the formation of LPS. LPS was finally inaugurated on September 22 2004 on the legal basis of Law Number 24 of 2004 concerning the Deposit Insurance Corporation. LPS only became effective one year later, to be precise on September 22 2005.

Based on Law Number 24 of 2004, it is stated that the function of LPS is to guarantee customer deposits and maintain the stability of the banking system. Apart from that, LPS has several tasks, such as formulating and establishing policies to actively participate in maintaining banking stability and formulating, establishing and implementing policies for resolving failed banks that have systemic or non-systemic impacts.

The Deposit Insurance Corporation (LPS) was established by Law Number 24 of 2004 concerning the Deposit Insurance Corporation (LPS Law). Based on the LPS Law, LPS has two functions, namely guaranteeing customer deposits and actively participating in maintaining the stability of the banking system.

The importance of public trust for banks is for at least two reasons. First, increase the efficiency of bank use and intermediation efficiency. Second, preventing bank runs and panics. Public trust is needed because banks do not have enough cash to pay their obligations to all customers at once. The presence of LPS is believed to increase public trust in the banking industry. This trust grows because saving customers, especially small saving customers, do not need to worry about losing their savings if at any time the bank has its business license revoked and is liquidated. Apart from that, the presence of LPS is also to create social equality, namely by providing protection to small customers from irresponsible bankers. Experts agree that one of the approaches needed to build a healthy and strong banking system is to provide explicit guarantees to deposit customers.

The importance of public trust in banks has created a relationship of trust between banks and their customers. This happens because the bank acts as a financial advisor for its customers, creating a relationship of trust and confidentiality between

the bank and the customer. This relationship of trust in turn results in a fiduciary duty for the bank when dealing with its customers. With such a relationship, the bank has an obligation to disclose (a duty to disclose) all material facts to its customers, if the bank has knowledge that may be very important to the customer.

The establishment of deposit insurance institutions was basically carried out as an effort to provide protection against two risks, namely irrational runs on banks and systemic risk. In carrying out business activities in the form of providing credit, banks usually only leave a small portion of the deposits they receive in case there is a withdrawal of funds by customers. Meanwhile, the largest portion of existing savings is allocated for providing credit. This situation causes banks to be unable to meet large requests immediately for the customer deposits they manage, if there is a sudden and large withdrawal.

The limitation in providing cash funds is because banks cannot immediately withdraw the loans they have disbursed. If a bank cannot fulfill a customer's deposit withdrawal request, the customer usually panics and will close their account at the bank in question, even if the bank is actually healthy. Meanwhile, systemic risk occurs if the bankruptcy of one bank has a negative impact on other banks, thereby destroying the largest segment of the banking system. Another dimension of the important role of LPS in the banking system is based on several considerations:

First; In a country's economic growth, the role of a stable financial sector is very important and the core of financial sector stability is the stability of the domestic banking system. The important role of the banking sector can be seen in the payment system aspect which allows trade transactions to occur. In addition, banks collect funds more efficiently and then distribute them to the community. On the other hand, public funds deposited in banks determine the existence and profits of a bank.

Firm action by banking authorities is urgently needed because if we look at the previous crisis, the main causes of bank failure in Indonesia were negligence, fraud and embezzlement by bank administrators which it was very difficult for customers to

detect (market discipline). Fred Galves said "the best way to rob a bank is to own one." Supervision and regulation are important instruments to suppress banks from taking risks – if this is not implemented properly it can threaten the stability of the financial system as a whole. Thus, a customer protection system (Deposit protection system) such as LPS which is equipped with effective regulation and supervision can reduce systemic risk although it cannot eliminate it completely. The presence of LPS can be more successful if the banking system runs well. The presence of an effective LPS can contribute to the stability of a country's financial system, especially if the existing system is part of a well-structured financial system safety net.

2. Form of Legal Relationship Between Deposit Insurance Corporation and Bank

The presence of LPS can give customers confidence in entrusting their money to the bank. The better a bank is, the existence of LPS will increase banking stability in the implementation of bank resolutions, whether it concerns systematically failed banks that must be liquidated or systemically failed banks that must be rescued. In general, all LPS in various countries have the authority to carry out bank resolutions.⁴

In this bank deposit agreement, the bank has an obligation to store funds from customers that are handed over to the bank based on the principle of trust. Every person who enters into an agreement with another party believes that the debtor will carry out the performance as agreed.

Engagements that arise from (solely) law, including legal events such as the existence of legal conditions such as Bankruptcy Decisions. A bankruptcy declaration will give rise to a situation where the party declared bankrupt loses the right to manage their assets which are included in the bankruptcy assets, and these assets will be confiscated for public purposes and will be used to pay off all their obligations to creditors in accordance with the provisions. Without this trust, it is impossible for an

⁴ Andriyanto Adhi Nugroho Sugianto, 'Kajian Hukum Mengenai Peran dan Fungsi Lembaga Penjamin Simpanan dalam Menjamin Simpanan Nasabah Perbankan' (2015) 2 (2) Jurnal Yuridis 241, 243.

agreement to be concluded between the parties. Public trust is very important for banking development. The public will believe that banking health is maintained.

To maintain the trust of people who deposit funds in banks, the presence of LPS is very necessary. LPS is expected to be able to maintain public trust in the banking industry and minimize the emergence of risks that will burden the state budget. Apart from implementing the guarantee system, LPS is also active in maintaining financial system stability. In accordance with the PPKSK Law, there is additional authority for LPS in the context of implementing bank resolutions.⁵

LPS is an independent institution formed based on the LPS Law. The form of legal relationship between LPS and banks has been stated in law, both the Banking Law and the LPS Law. Apart from being stated in the provisions of the Law, as a guarantor of bank deposit customers' funds, the relationship between the Bank and LPS is similar to insurance or coverage in the *Dadang Law Book (KUHD)* and insurance (*borgtocht*) which is known in the Civil Code.

Based on various provisions in the Civil Code and the LPS Law, it can be said that LPS is the guarantor/guarantor (*borg*) for customers. However, there are also characteristics of LPS that are different from underwriting. Therefore, it can be said that LPS is a special guarantee. The presence of LPS is an embodiment of the integration of the principles of economic law which include the principle of balance, the principle of public supervision, and state intervention with the principles of contract law which include the principle of consensualism, the principle of freedom of contract, the principle of *pacta sunt servanda*, which is imbued with values that contained in *Pancasila* as the foundation of the nation's philosophy. The principle of consensualism is a principle of contract law relating to the occurrence of agreements. That agreement occurs with an agreement (meeting of mind). This is in accordance with Article 1320 of the Civil Code. The principle of freedom of contract relates to the contents of the

⁵ Jeanette Stephani, 'Analisis Hukum Peranan Lembaga Penjamin Simpanan dalam Melindungi Nasabah Bank' (2013) 1 (6) *Jurnal Ilmu Hukum* Legal Opinion halaman 1

agreement being determined freely by the parties. The principle of the binding force of an agreement (*pacta sunt servanda*) is related to the implementation of the agreement. The presence of LPS as a guarantor of customer deposits, as well as having an important role in maintaining the country's financial stability, shows that the government can supervise agreements between banks and customers. This is to maintain the balance of the legal relations between the parties.

3. Legal Solutions by Deposit Insurance Institutions for Customer Deposits in Handling Bank Liquidation

Based on Article 43 in conjunction with Article 6 Paragraph 2 of Law Number 24 of 2004 concerning the Deposit Insurance Corporation, after a bank's business license is revoked by the Banking Supervisory Agency (Financial Services Authority), LPS will take over all rights and authority of the bank's shareholders, taking the necessary actions. In order to safeguard bank assets before the liquidation process begins, decide to disband the bank's legal entity, form a liquidation team, and declare the bank's status as a bank in liquidation. Furthermore, referring to Article 16 of Law Number 24 of 2004 concerning the Deposit Insurance Agency, LPS will carry out reconciliation and verification of deposits, paying deposits that are worth paying to customers according to the 3T criteria.

The Liquidation Team will settle the rights and obligations of the Bank in Liquidation, including selling bank assets and settling other creditor obligations. The sale of bank assets is carried out in order to obtain maximum results in order to recover guarantee funds. In carrying out Bank handling, one of the resolution options that LPS has with the aim of saving the Bank is through Temporary Capital Inclusion, both in Banks Other Than Systemic Banks and Systemic Banks. This is regulated in Article 26 letter b of Law no. 24 of 2004 concerning the Deposit Insurance Corporation. Through this method, LPS will take over all rights and authority of the General Meeting of Shareholders, ownership and management of the Bank, and then deposit capital into the Bank which is decided to be saved.

In Systemic Banks, LPS can involve old shareholders in making capital deposits to the saved Bank (Open Bank Assistance/OBA). All costs of rescuing Failed Banks incurred by LPS are calculated as additional capital paid in by LPS in the Bank being rescued. Furthermore, LPS will divest saved banks within a maximum period of 6 years for Systemic Banks and 5 years for Banks Other than Systemic Banks by considering the optimal rate of return for LPS.

In relation to this research regarding the explanation in the description above, one of the incidents of bank liquidation handled by the Deposit Insurance Corporation (LPS) can be seen in the case of PT. Century Bank. Where there was a failure in the bank's operational system which was caused by the economic crisis experienced by Indonesia at that time. The government, through the Deposit Insurance Corporation (LPS), ultimately invested capital to "revitalize" PT's performance. Century Bank has good and correct banking operational channels because there has been an injection of capital from the government. But the reality is in the end. PT. Century Bank is not getting healthier in terms of performance in its banking operations, but on the contrary it is becoming increasingly shaky and tends towards liquidity. It is known that there has been abuse in the use of capital participation funds from the government by the owner of PT. Century Bank itself is corrupt. Capital participation funds are not used to make the bank healthy but are corrupted for the personal interests and profits of the owner of PT. Century Bank.

Seeing the situation and conditions that occurred at PT. Century Bank, the government through LPS then took steps and took action to take over PT. Century Bank will then be handled by LPS by becoming the majority shareholder in PT. Century Bank. This was done as an effort to rescue and guarantee customer funds that were threatened by the collapse of PT. Century Bank will be liquidated. Meanwhile, due to the corrupt actions of the owner of PT. Century Bank has been in legal proceedings and has also been subject to legal sanctions.

Based on the Bank Resolution Mechanism by referring to Article 5 of Law no. 24 of 2004 concerning the Deposit Insurance Agency, one of the tasks of LPS is to formulate, determine and implement policies for resolving Failed Banks that do not have a systemic impact as well as implementing the handling of Failed Banks that have a systemic impact.

Based on Article 43 in conjunction with Article 6 Paragraph 2 of Law Number 24 of 2004 concerning the Deposit Insurance Corporation, after a bank's business license is revoked by the Banking Supervisory Agency (Financial Services Authority), LPS will take over all rights and authority of the bank's shareholders, taking the necessary actions. in order to safeguard bank assets before the liquidation process begins, decide to disband the bank's legal entity, form a liquidation team, and declare the bank's status as a bank in liquidation. Furthermore, referring to Article 16 of Law Number 24 of 2004 concerning the Deposit Insurance Agency, LPS will carry out reconciliation and verification of deposits, pay deposits that are worth paying to customers according to the 3T criteria.

D. Conclusion

The function of the Deposit Guarantee Institution in Banking Law is to guarantee bank customer deposits and take an active part in maintaining the stability of the banking system in accordance with its authority. What does LPS guarantee? LPS guarantees bank customer deposits in the form of savings, time deposits, current accounts, certificates of deposit, and other similar forms. LPS is an institution established based on Law number 24 of 2004 concerning LPS. LPS's task is to guarantee the deposits of all banking customers in Indonesia and carry out bank resolutions.

The Deposit Insurance Corporation is an independent, transparent and accountable institution whose function is to guarantee banking customer deposits. Therefore, in carrying out its functions, LPS has the task of formulating and establishing deposit insurance implementation policies and implementing deposit

insurance. The legal relationship between the Deposit Insurance Corporation and the Bank is one of guarantee, based on Law no. 24 of 2004 concerning Deposit Insurance Corporation. Carrying out deposit insurance. Formulate and establish policies to actively participate in maintaining banking system stability. Formulate, determine and implement a policy for resolving Failed Banks that does not have a systemic impact.

If losses occur as a result of the bank being liquidated, the deposited customer funds will be returned and paid by the Deposit Insurance Corporation (LPS) because it is the obligation of every bank to become an LPS participant. The Deposit Insurance Corporation (LPS) is an institution formed based on the provisions of Law Number 24 of 2004 concerning the Deposit Insurance Corporation. LPS guarantees bank customer deposits in the form of savings, deposits, current accounts, certificates of deposit, and other equivalent forms.

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