



Legal Protection of Depositors' Funds in The Event of Bank Liquidation

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Abstract

In general, a bank is a financial intermediary institution generally established with the authority to accept money deposits, lend money, and issue promissory notes or what is known as banknotes, banks in carrying out one of their functions are collecting funds from the public in other words, storing funds in the bank gets the benefit of interest for customers, in this case not all the benefits promised by the bank can be realized the higher the interest it seems that we as customer consumers feel benefited, but in reality there are banks that provide high interest after that the health of their banks decreases so that it has an impact on customer consumers on their savings at the bank. The formulation of the problems raised in this study are 1). What are the consequences or legal consequences for banks in the placement of funds that are not in accordance with the LPS policy in the event that the bank is not healthy? 2). How is the legal protection of depositors in the event that the bank is liquidated by LPS? This research uses normative legal research methods, namely research by collecting and analyzing secondary data using secondary data sources only, namely books related to the problem, relevant laws and regulations, relevant court decisions, legal theories and relevant scholars' doctrine experts, and case studies related to legal issues, the theory used to analyze the theory of satisfaction, the theory of legal certainty and the theory of legal protection. The conclusion of this research is to provide protection to customers if they save funds in banks that are determined to be unhealthy by the Deposit Insurance Corporation so that customers feel safe if they want to save their funds in the banking world.

Keywords: Bank Liquidation; Customer; Legal Protection.

I. INTRODUCTION

In the development of the era before Indonesia's independence until now it is independent, humans have thought about working in order to continue their lives and needs. Humans in survival do all kinds of ways and types of work in order to get results in the form of money to fulfill their economic life, often humans experience difficulties in the economic field or in the financial field so that it requires humans to think about how to get money to improve their economy. Indeed, humans are creatures who cannot live individually because humans are social creatures, based on Article 33 paragraph 1 of the 1945 Constitution of the Republic of Indonesia states "The economy is structured as a joint venture based on family principles." The meaning is that if humans open a business or work for a particular company, they must continue to interact and there must be no unhealthy competition in other words, we as humans must help apply the principle of kinship for one purpose, namely for the achievement of a common goal, namely getting a profit to improve their respective economies. Along with the development of an era after humans began to think about improving their economy, these humans will be confused if they have more income or money stored where to get benefits and which is certainly safe to

store. In this case, a financial service called a bank financial institution appears.

In general, a bank is a financial intermediary institution generally established with the authority to accept money deposits, lend money, and issue promissory notes or what is known as banknotes. The existence of banks is an integral part of economic activity, which consists of production, consumption, trade, savings, investment, and others. Each of these three activities involves the circulation of money. The need for money circulation so that economic activities can run smoothly. Therefore, an intermediary institution called a bank was established (Kosasih, 2019).

Banks are financial institutions that are places for companies, government agencies, private and individuals to save their funds, through credit activities and various services provided (Amerta, Styawati & Arini, 2021).

From the advancement of information technology from time to time the banking system seems to skyrocket quickly in demand by the public because the interest rates offered there are very high and it is considered safe to save their money, which results in a person or human being wanting to save his money at the bank (Putra & Saraswati, 2020). Banks as business-oriented financial institutions, banks also carry out an activity of buying money by raising funds from the wider community, then selling money that has been collected by channeling it back to the community through lending or credit.

Banks also in terms of raising funds receive time savings or can be said to be deposits where someone deposits their personal money with the bank. As stored in the bank for a period of 3 years, after 3 years the time deposit can be withdrawn and will get interest on deposit savings. The size of an interest rate depends on the need for funds for the bank, the desired profit target, the quality of the guarantee, government policy, time period, company reputation, competitive products, good relations, competition between banks, finally, third party guarantees (Kosasih, 2019).

In this case, not all the benefits promised by the bank can be realized, the higher the interest rate, it seems that we as customer consumers feel benefited, but in reality there are banks that provide high interest rates after that the health of the bank decreases so that it has an impact on customer consumers on their savings at the bank. Bank health is a form of a bank's ability to carry out normal banking operations and be able to fulfill all its obligations properly and in accordance with applicable banking regulations (Indonesian Bankers Association, 2016). A healthy and unhealthy bank has a huge impact on the bank's customer consumers because customer consumers will be confused if their savings and deposits will be what if the bank is declared unhealthy.

Banks that are threatened with declining health will do everything possible to improve their health but also fail to do so the bank will carry out the liquidation process. Liquidation is the process of selling all assets to settle liabilities to creditors, distributing the remaining funds to shareholders, and the closure of a company as a legal entity by a liquidator.

Based on the description of the background and some previous research, there are similarities in the results of the research even though it was carried out in different places. Therefore, this research is limited to the Legal Protection of Depositing Customer Funds in the event that the Bank is declared unhealthy or liquidated. so that further problem formulations can be formulated including the consequences or legal consequences for banks in the placement of funds that are not in accordance with the LPS policy in the event that the bank is not healthy and the legal protection of depositors in the event that the bank is liquidated by LPS.

II. METHODS

The type of research used is normative legal research, normative legal research is research by collecting and analyzing secondary data (Soekanto & Mamudji, 2007), normative research usually uses secondary data sources only, namely books related to the problem, relevant laws and regulations, relevant court decisions, legal theories and relevant scholars' doctrines, and case studies related to legal issues. There are several approaches used to discuss the problems contained in this research, namely the statute approach is to examine all legal rules and regulations related to the legal issues under study, the

conceptual approach is a type of approach in legal research that provides an analytical point of view of solving problems in legal research seen from the aspect of the legal concepts behind it, or even can be seen from the values contained in the norming of a regulation in relation to the concepts used, Case Approach is to provide an overview of examples of bank cases that are unhealthy or liquidated (Muhammad, 2004).

Normative legal research legal research sources are obtained from library materials. In normative research, literature is the basic material. Normative research is divided into 3 namely primary, secondary, and tertiary legal materials (Marzuki, 2008). Primary legal materials used are the 1945 Constitution of the Republic of Indonesia, the Civil Code, Law of the Republic of Indonesia Number 7 of 1992 concerning Banking as amended by Law Number 10 of 1998, Law Number 8 of 1999 concerning Consumer Protection, Law No. 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes, Law Number 21 of 2011 concerning the Financial Services Authority, Bank Indonesia Regulation Number 13 / I / PBI / 2011 concerning Bank Health Assessment, Regulation of the Minister of Finance of the Republic of Indonesia Number 272 / PMk.05 /2014 concerning the Implementation of Liquidation of Entities Liquidated by the Bank./2014 Regarding the Implementation of Liquidation of Accounting Entities and Reporting Entities at the Ministry of State/Institution, Financial Services Authority Regulation No.10/POJK.03/2015 Regarding the Issuance of Certificates of Deposit, Regulation of the Minister of Finance of the Republic of Indonesia Number 272/PMk.05/2014 Regarding the Implementation of Liquidation of Accounting Entities and Reporting Entities in Ministries of State / Institutions, Financial Services Authority Regulation No.10 / POJK.03/2015 Regarding the Issuance of Certificates of Deposit, Financial Services Authority Regulation No.4 /Pojk.03/2016 Regarding the Assessment of the Health Level of Commercial Banks, How to Assess the Health Level of Commercial Banks, Financial Services Authority Regulation No.15 / Pojk.03/2017 Regarding Determination of Status and Follow-up of Supervision of Systemic Commercial Banks, Regarding Implementation Regulations of Government Regulation Number 33 of 2020 Regarding the Implementation of the Authority of the Deposit Insurance Corporation in the Context of Carrying out Steps for Handling Problems with Financial System Stability, Circular Letter Number 2 of 2022 Regarding the Determination of the Guarantee Interest Rate for Deposits at Rural Banks. Secondary legal materials used, namely secondary materials are doctrines in books, legal journals, and internet websites. Tertiary legal materials used are such as legal dictionaries, encyclopedias, and so on.

Legal Material Collection Techniques used are document studies, namely studies obtained from state documents such as laws, literature studies, namely techniques for collecting data by conducting studies of books and notes that have to do with problems, Internet studies, namely techniques for collecting data by searching for keywords regarding the problem to be solved in a research conducted. The analysis of legal materials used is the drawing of a conclusion from the analysis using deductive thinking, namely by thinking in drawing a conclusion from general matters to specific matters which is the answer to the problem based on the results of the research and description techniques, namely the use of what is the description of a particular situation and condition.

III. DISCUSSION

Consequences or Legal Consequences for Banks in Placing Funds Not in Accordance with LPS Policy in the Event that the Bank is Declared Unhealthy

Consequences or legal consequences for banks in terms of placement of funds is a legal event, which will give birth to rights and obligations, if a bank does not carry out its rights and obligations then there will be legal consequences. Likewise with the placement of funds that are not in accordance with LPS policy.

The doctrine of Jazim Hamidi, states that the legal impact / legal effect means the impact or legal effect directly, strongly, or explicitly. In the legal science literature, three types of legal effects are known, namely as follows (Hamidi, 2006):

The legal effect is the birth, change, or disappearance of a certain legal situation;

The legal effect is the birth, change, or disappearance of a certain legal relationship;

Legal consequences in the form of sanctions, which are not desired by the subject of law (tort).

Against these legal consequences if there are banks in the placement of funds that are not in accordance with the provisions or policies of LPS, namely: Providing high interest rates to customers this is contained in Circular Letter Number 2 of 2022 concerning Determination of Guaranteed Interest Rates for Deposits in Rural Banks which reads:

LPS will evaluate the guarantee interest rate every month.

In accordance with the Deposit Insurance Corporation Regulation No. 1/PLPS/2018, each bank is required to place an announcement at all bank offices that can be easily known by depositors regarding the maximum guaranteed interest rate and the maximum value of deposits guaranteed by LPS.

If the Bank provides a deposit opening rate exceeding the guaranteed interest rate, the customer's deposit will not be guaranteed by LPS.

If the Legal Consequences for Banks in Placing Funds are not in accordance with LPS Policy in the event that the Bank is declared unhealthy, it is associated with satisfaction theory. Customer satisfaction is the customer's perception that his expectations have been met, obtained optimal results for each customer and banking service (Karim, 2020), according to Djaslim Saladin's doctrine, customer satisfaction is a person's feeling of pleasure or disappointment that comes from a comparison between his impression of the performance (results) of a product and his expectations (Karim, 2020). Thus, if it is related to the study of satisfaction theory, the feeling of pleasure for a product that the customer wants, namely wanting to get a high deposit storage interest rate so that he expects multiple benefits but in fact the bank provides high interest rates not in accordance with LPS policy, the impact on customers can no longer be guaranteed by LPS if the bank takes adverse actions such as providing high interest rates in order to attract customers to place funds at the bank. As explained in Circular Letter Number 2 of 2022 concerning the Determination of the Guarantee Interest Rate for Deposits in Rural Banks, it is explained in point 2 regarding the maximum guarantee interest rate and the maximum value of deposits guaranteed by LPS and point 3 If the Bank provides a deposit opening rate exceeding the guarantee interest rate then the customer's deposit is not guaranteed by LPS, so the role of the deposit insurance agency does not apply to protect customers if the bank commits fraud or violates the rules of the LPS policy. In terms of legal protection, LPS also cannot guarantee one hundred percent (100%) anymore if it is the bank's fault for violating the policies set by LPS.

But if the Bank in this case violates the LPS policy, the consequences or legal consequences of the bank in the event that the placement of funds is not in accordance with the LPS policy, namely in Law No. 2 of 2020 concerning the Deposit Insurance Corporation Regulation Number 2 of 2020 concerning the Third Amendment to the Deposit Insurance Corporation Regulation Number 2/PLPS/2010, concerning the Deposit Insurance Program, the deposit insurance institution (LPS) is authorized to:

Preparing for handling and increasing the intensity of joint preparation with the Financial Services Authority (OJK) for handling bank solvency issues;

Taking action:

Sale/repo of Government Securities held to Bank Indonesia;

Issuance of debt securities;

Loans to other parties; and/or

Loans to the Government.

Deciding to save or not save a Bank other than a Systemic Bank by considering 5 other criteria besides the *Least Cost Test* (LCT).

Formulate and implement deposit guarantee policies for customer groups by considering the source of funds and / or designation of deposits and the amount of value guaranteed for these customer groups.

Legal Protection of Fund Depositing Customers in the Event of Bank Liquidation by LPS

Bank in liquidation is the status of a bank company that has been revoked its business license and is no longer allowed to carry out all banking activities, and the company cannot carry out legal actions, except as needed to clean up all the company's affairs in the context of liquidation. The legal effect of a bank whose business license is revoked is that the bank must liquidate and dissolve the bank's legal entity. Bank In Liquidation still exists and is still a legal entity, but is run by its liquidator or by a party appointed by the liquidator (Siahaan, Suwitra & Nahak, 2017).

The bank continues to run and may not conduct new business, but merely completes its tasks in the context of the winding up and liquidation process. Business activities stop in principle, but can be continued if deemed profitable for the company while cleaning up the company.

In the process of bank liquidation, the Deposit Insurance Corporation plays an important role in resolving the return of deposits of bank customers when the bank is liquidated related to the payment of deposit guarantee claims of bank customers whose licenses are revoked, the Deposit Insurance Corporation has the right to replace the position of the depositors (subrogation rights) in the distribution of bank liquidation proceeds.

If the Legal Protection of Fund Deposit Customers in the event that the Bank is declared unhealthy or liquidated is associated with the theory of legal protection, according to Satjipto Raharjo's doctrine, legal protection is to provide protection for human rights that are harmed by others and that protection is given to the community in order to enjoy all the rights granted by the law (Atmadja & Budiarta, 2018). So the theory of protection should be a reference or provide protection for customers to enjoy all their rights according to the initial agreement to place funds, namely getting a profit in placing funds in the bank but still referring to the applicable provisions issued by LPS regarding the placement of funds in accordance with LPS policy.

In this case, if the customer in terms of placing funds is not in accordance with the LPS policy, namely the deposit insurance agency (LPS):

The value of deposits guaranteed by LPS is a maximum of IDR 2 billion per customer per bank since October 13, 2008. If a customer has several deposit accounts at one bank, then to calculate the guaranteed deposits, the balances of all accounts are summed up (Sutedi, 2010).

The guaranteed deposit value includes principal plus interest for conventional banks, or principal plus profit sharing that has become the customer's right for Islamic banks. However, if deposits exceed 2 billion the bank will be settled by the Liquidation Team based on the results of the liquidation of bank assets.

So in choosing a banking institution, it must be considered by the customer so that the customer's deposit gets a deposit guarantee by LPS and certainly in accordance with LPS policy, in addition to meeting the amount of guaranteed deposit value, customers also need to meet the following conditions:

Customer deposits are recorded in the bank's books;

The customer does not earn interest on deposits that exceed the fair interest rate set by LPS/customers do not receive unreasonable compensation from the bank; and

The customer does not take actions that harm the bank, for example having bad credit at the bank.

So the conclusion is that if depositors deposit funds in banks below 2 billion LPS will guarantee their funds, and vice versa if depositors deposit their funds in banks more than 2 billion automatically LPS cannot guarantee the customer's funds in failed banks or banks declared unhealthy, but deposits exceeding 2 billion will be resolved by the liquidation team.

Legal protection of bank customer deposits is part of the agreement or contract that

materializes between the bank and the depositor with the consequence, the bank must be able to maintain that the deposit can be withdrawn or disbursed at any time in accordance with the type or form of the deposit concerned. The inability of the bank to withdraw deposits according to the type specified, is a violation of treaty law and is qualified as a default.

IV. CONCLUSIONS

Based on the above discussion, the following conclusions can be drawn. The consequences or legal consequences for banks in the placement of funds are not in accordance with the LPS policy in the event that the bank is declared unhealthy, as explained in Circular Letter Number 2 of 2022 concerning Determination of the Guarantee Interest Rate for Deposits in Rural Banks explained in point 2 regarding the maximum guarantee interest rate and the maximum value of deposits guaranteed by LPS and point 3. If the Bank provides a deposit interest rate exceeding the guarantee interest rate then the customer's deposit is not guaranteed by LPS, so that the role of the deposit insurance agency does not apply to protect customers if the bank misuses or violates the rules of the LPS policy. In terms of legal protection as well, LPS cannot guarantee one hundred percent (100%) anymore if it is the bank's fault for violating the policies set by LPS. If the Bank violates the LPS policy, the legal consequences of the bank in terms of placing funds are not in accordance with the LPS policy, namely in Law No. 2 of 2020 concerning the Deposit Insurance Corporation Regulation on the Third Amendment to the Deposit Insurance Corporation Regulation Number 2 / PLPS / 2010, concerning the Deposit Insurance Program, the Deposit Insurance Corporation (LPS) has the authority to: one of which is to decide to save or not save a Bank other than a Systemic Bank by considering 5 other criteria besides the Least Cost Test (LCT).

Legal protection of depositors is intended to ensure that customer funds can be protected in the event of health problems with banks that are declared unhealthy. Legal protection guaranteed by the Deposit Insurance Corporation (LPS) is a system so that the Indonesian economy can always exist against the turmoil that occurs in financial matters. In the condition of unhealthy banks, the provisions regarding legal protection refer to Government Regulation No. 66 of 2008 concerning the Amount of Value Guaranteed by the Deposit Insurance Corporation, in the event that the bank is declared unhealthy which is not in accordance with the policy of the Deposit Insurance Corporation (LPS), namely: The value of deposits guaranteed by LPS is a maximum of Rp 2 billion per customer per bank, effective from October 13, 2008. For deposits that exceed the value of 2 billion or the provision of interest exceeds the LPS policy, there is no legal protection for the customer.

Based on the above discussion, the following suggestions can be made to the Government in this case the Financial Services Authority and the Deposit Insurance Corporation should be more proactive in evaluating monitoring if the bank is experiencing unhealthy conditions, because if the bank is declared unhealthy and the bank is immediately frozen it will have an impact on bank customers and the Indonesian economy. To the public, especially bank customers, it is hoped that they will be more careful in choosing a bank and not be tempted by high deposit interest because high deposit interest does not guarantee that funds are stored safely because this violates the OJK and LPS rules that have been set. To Academics, this research should be used as a reference for further research related to legal protection for depositors in the event that the bank is declared unhealthy or liquidated, so that it can become a juridical study in developing the concept and doctrine of saving funds in a bank declared unhealthy which provides legal protection and customer satisfaction in order to get their rights or money back if the bank is declared unhealthy.

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