

**LEGAL REVIEW ON DEPOSIT INSURANCE INSTITUTIONS
IN THE PROTECTION OF CUSTOMER'S DEPOSITS FUNDS IN THE BANK****Muqtadir¹, Asmadi Weri², Andi Bustamin³, Ilham Nurman⁴, Muhammad Saleh⁵,
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Abstract

The formulation of the problem in this research are 1) How is the Protection of Customer Deposit Funds in the bank by the Deposit Insurance Corporation in the perspective of Law No. 24 of 2004 concerning the Deposit Insurance Corporation?. 2) What is the procedure for returning customer funds by the Deposit Insurance Corporation?. The objectives of this study are: To determine the responsibility of the Deposit Insurance Corporation to depositors of funds. To find out the procedure for refunding depositors by the Deposit Insurance Corporation. The method in this research is normative (doctrinal) by using primary legal materials and secondary legal materials. The conclusions in this study are: The Deposit Insurance Corporation is an independent institution

formed by the government, which was developed based on the Act to foster a sense of public trust in the banking world after the monetary crisis that resulted in the liquidation of several banks in Indonesia. IDIC functions to guarantee bank customer deposits and actively participates in maintaining the banking system's stability following its authority. That socialization and confirmation from IDIC, OJK, and Bank Indonesia. Banking institutions and other stakeholders that deal with the sense of security for customers need to be addressed continually. No customers keep their money in the bank if the customer does not put their trust. Since 13 October 2008, the guaranteed balance for each customer at one bank based on Government Regulation of the Republic of Indonesia No. 66 of 2008 concerning the Amount of Deposit Guaranteed by IDIC is Rp. 2 billion.

Keywords: *Customer; Deposit Insurance Agency; Saving Fund*

INTRODUCTION

The banking industry is one of the essential components in the national economy to maintain balance, progress, and national economic unity. The stability of the banking industry significantly affects the economy's strength as a whole. In 1998, the monetary and banking crisis that hit Indonesia, marked by the liquidation of 16 banks, resulted in a decline in the level of public confidence in the banking system. The government issued several policies to overcome the crisis, including providing guarantees for all bank payment obligations, including general savings (blanket guarantee). One of the policies is Presidential Decree Number 26 of 1998 concerning Guarantees against Payment Obligations of Commercial Banks and Presidential Decree Number 193 of 1998 about Guarantees of Payment Obligations of Rural Banks. In its implementation, the blanket guarantee can indeed regenerate

public confidence in the banking industry, but the scope of the warranty is too broad, causing moral hazard both from the bank management side and the community.

The absence of a protection system for depositors in the past, resulting in the liquidation of banks, will weaken public confidence in the banking industry in Indonesia. The absence of a protection system for depositors has required Bank Indonesia as the central bank to provide an implicit guarantee for the bank's viability, which causes banks to carry out high-risk business activities. It is done because the bank assumes that the government will intervene if it experiences difficulties. In improving the people's standard of living, many banks act as business entities to collect funds in the form of savings and distribute them to the public in credit or other conditions. The function of the bank is as stipulated in Article 3 of the Banking Law, which states that "The main function

of the Indonesian banking system is to collect and distribute public fund." This provision reflects the function of banks as intermediaries for parties with surplus funds (surplus of funds) and parties with shortages and in need of funds (lacks of funds).¹

In the world of banking, customers are consumers of banking services. Customers' position about banking services is in two situations that can alternate according to which side they are on. From the perspective of the mobilization of funds, customers who deposit their funds in banks, either as depositors or buyers of securities, then at that time, the problem is their position as bank creditors. Banks can function as recipients of credit, channeling credit, channeling financing, investing, accepting deposits, creating money, and other services such as a place to store other valuables.² In banking products such as savings and time deposits, the general terms and conditions that apply are the general terms and conditions for the relationship between deposit accounts and savings accounts.³ Banks as financial in-

stitutions that manage public funds require expertise to manage banking businesses professionally.⁴

In carrying out its activities, banks must provide the maximum possible service to feel comfortable and safe to deposit their funds in the bank concerned.⁵ The basis of the engagement between the customer and the bank is a sense of trust, which requires the bank to continue maintaining the confidence of the customer/public in every form of its operational activities. Therefore banking activities need legal rules that can keep bank and customer relations, banking law which contains all legal norms applicable and binding in the form of statutory regulations and recognized banking practices, both written and unwritten.⁶

According to Prof. G.M. Verryn Stuart in his book "Political Banks" says, a bank is an agency that aims to satisfy credit needs, either with its means of payment or money obtained from other people or by circulating new means of ex-

¹ Hermansyah. (2005). *Indonesia National Banking Law*. Jakarta: Kencana. p. 20.

² Zaina Aikin. (2015). *Introduction to Indonesia Banking Law*. Jakarta: PT. RajaGrafindo Persada. p. 16.

³ Ronny Sautma Hotma Bako. (1995). *Relation Between Banking and Costumer Against Savings*

and Time Deposit Products. Bandung: PT. Citra Aditya Bakti. p. 32.

⁴ Muhamad Djumhana. (2012). *Indonesia Banking Law*. Bandung: PT. Citra Aditya Bakti. p. 351.

⁵ Rachmadi Usman. (2001). *Aspects of Indonesia Banking Law*. Jakarta: PT. Gramedia Pustaka Utama. p. 14.

⁶ Gunarto Suhardi. (2003). *Banking Business in Legal Perspective*. Yogyakarta: Kanisius. p. 23.

change in the form of demand deposits.⁷ Banks are required to adhere to sound credit principles and apply prudential regulations.⁸ Banks collect funds from the public and then distribute the funds to the public to encourage the improvement of the people's standard of living. The two main functions of the bank are the collection of public funds and the distribution of funds to the public therefore it is called Financial Intermediary.⁹

Banks as business-oriented financial institutions carry out various transactions. According to Trading Prasastinah Usanti: "The main banking transactions are raising funds (funding) and channeling funds (lending), besides that other banking transactions to support activities to collect and distribute funds are to provide other bank services."¹⁰ The role of banks in providing credit will be even more significant. The funds needed for development come from or are collected from the

community through banks, which are then channeled back to the community through lending to a more productive direction.¹¹ The objectives of Indonesian banking as regulated in Article 4 of the Banking Law are to support the implementation of national development in the context of increasing equity, economic growth, and national stability to improve people's welfare.¹²

The Deposit Insurance Corporation in Indonesia has been established for a long time, but the existence of this institution has not been known and understood by the wider community, including the legal construction that this institution should have. Formative research was conducted using secondary data in primary, secondary, and tertiary legal materials to analyze this. From the research results, it is found that the legal construction of the Deposit Insurance Corporation in Indonesia cannot be separated from the issue of guarantees and coverages. The establishment of the Deposit Insurance Corporation can protect customer funds. With the existence of an institution that guarantees

⁷ Simorangkir O.P. (1987). *Basic and Mechanism of Banking*. Jakarta: Aksara Persada Indonesia. p. 18.

⁸ Bayu Ardian Aminullah dan Nyoman Serikat Putra Jaya, "BUSINESS ACTIVITIES OF BANK WAKAF MIKRO: CRIMINAL LAW POLICY IN THE IMPLEMENTATION OF MICROFINANCE INSTITUTIONS IN INDONESIA," *Tadulako Law Review* 6, no. 1 (22 Juni 2021): 13–26, accessed on 21 February 2021.

⁹ Ismail. (2011). *Syariah Banking*. Jakarta: Kencana. p. 29.

¹⁰ Trisadini Prasastinah Usanti. (2013). *Prudential Principles in Banking Transaction*. Surabaya: Airlangga University Press. p. 1.

¹¹ Zulfi Diane Zaini and Lukmanul Hakim, "CONTROLLING THE IMPLEMENTATION PRUDENTIAL PRINCIPLES IN BANKING LANDING BY FINANCIAL SERVICES AUTHORITY," *Tadulako Law Review* 3, no. 1 (30 Juni 2018): 57–78. Accessed on 21 February 2021.

¹² Zaini Zulfi Diane. (2011). *The Independence of Bank Indonesia and Resolution for Problematic Bank*. Bandung: CV. Keni Media. p. 57.

public savings, if the bank fails, the institution will replace the public funds deposited with the failed bank. With the premium payment by the bank to the Deposit Insurance Corporation, there has been a risk transfer from the bank to the Deposit Insurance Corporation.

ANALYSIS AND DISCUSSION

Protection of Customer Deposit Funds in the Bank by the Deposit Insurance Corporation in the Perspective of Law no. 24 of 2004 concerning Deposit Insurance Corporation

Banking is one of the branches of industry that is most heavily regulated by the government, the growth and stability of the economy. The government's reasons are:

1. Maintain the security and health of banking institutions and the financial system as a whole;
2. To be able to control the money supply in maintaining price level stability;
3. The banking industry is considered strategic in allocating economic resources to realize various development goals. In other words, it is as if financial institutions are regarded as semi-state companies that the Government can use as an instrument to realize its policy objectives;

4. To maintain fair competition in the financial industry.

To realize the things above, bank customers also need protection. Concerning the safety of bank customers, there are at least six policy choices that can be made, namely:

1. Strictly state that the government does not protect customer deposits;
2. Customer deposits are not covered, but depositors are given priority rights in the bank liquidation process;
3. Uncertain coverage of warranties;
4. Covert guarantees;
5. Explicitly stated limited warranty;
6. A comprehensive warranty that is clearly stated.

It can be implemented with an indirect and direct protection system. Indirect protection is held in the form of regulation and supervision of banking activities, such as provisions for capital adequacy, fit and proper test for controlling shareholders and bank management, and maintenance applied to banks. The indirect protection system often results in reduced public confidence due to the lack of strict regulation regarding the status of their deposits if a bank is forced to revoke its business license by the government. The community calls this system the provision of covert protection because new protection appears

when there is a bank bankruptcy, pastor from a statement issued by a government official. Hidden protection is never conceptually formalized. Naturally, personal protection creates uncertainty about how the fate of depositors and their funding will depend on the government's policies and ability to access public funds.

Direct protection with limited guarantees commonly used is in terms of deposit insurance, both those managed by the government as practiced in the United States and those managed privately as in Germany. Full direct protection is generally carried out in times of crisis, as is practiced in crisis-stricken Asian countries, including Indonesia. The establishment of a deposit guarantee institution is carried out to protect against two risks, namely irrational run against banks and systemic risk. In running a business, banks usually only leave a small portion of the deposits they receive in case there is a withdrawal of funds by the customer. Meanwhile, the most significant share of existing deposits is allocated as lending.

To increase public trust in banking institutions, there need to be regulations that can protect the interests of depositors, in this case, depositors. How about in Law no. 7 of 1992 concerning Banking, whether the position of depositors and deposi-

tors of funds is generally protected. If we carefully examine this Law, there is no single article that explicitly describes the protection for depositors of funds in banks. If this is the case, are public funds deposited in banks not protected by law? To fully answer this question, it is necessary to look at the general explanation of Law No. 7 of 1992, which states: "Considering the strategic role of banking institutions in achieving national development goals, banking institutions must have effective guidance and supervision at all times. Based on a solid foundation of motion, banking institutions in Indonesia can function efficiently, soundly, fairly, and face increasing global competition, properly protect the funds entrusted by the public to them, and channel these public funds to other sectors. Productive for the achievement of development goals".

From this explanation, it can be seen that banking institutions need guidance and supervision. Who supervises and develops banking institutions. This is determined and described in Article 29 of Law No. 7 of 1992 concerning Guidance and Supervision, which stipulates that Bank Indonesia carries out the development and supervision of banks.

From the above provisions, it can be seen that efforts to protect funds deposited

in banks are carried out indirectly, namely through Bank Indonesia as supervisor and supervisor of banks in Indonesia. To carry out its duties, Bank Indonesia is given the authority related to licensing to provide recommendations on applications for bank licenses. In addition, Bank Indonesia also has the power to issue regulations that provide for the implementation of these provisions provide bank guidance in the form of rewards or penalties.

What about the public or, more specifically, the depositors of funds? Do they have the right to supervise banking institutions directly? If the public sees that things are not fair or feel disadvantaged in banking activities, they need to be immediately reported to the police for investigation or can be sued civilly. Law Number 7 of 1992 concerning Banking stipulated that criminal provisions have been regulated for members of the board of commissioners, directors, or bank employees who violate the requirements of the law (see Article 49 of Law Number 7 of 1992 concerning Banking). From the above conditions, it can be seen explicitly that the customer gets legal protection if there is a bank management error. However, it is difficult to implement what the depositors are entitled to in practice. Thus, the depositors or depositors of funds who

have released their funds based on high trust in the bank cannot quickly receive their funds back either in whole or part if the bank collapses or the funds are taken away by one-day unscrupulous bank officials. An example of an interesting case to consider is the decision of the Supreme Court of the Republic of Indonesia Number 2990.KIPdtl1989, dated 23 May 1992. This decision states that those responsible for the repayment of deposit money to customers, depositors of funds, legally, are Banks as Legal Entities. With the Supreme Court's decision, the existence of a bank as a business entity needs to be carefully considered by the public regarding whether the bank concerned has indeed fulfilled the requirements determined by the law relating to business entities, such as the limited liability company law.

Procedures for Returning Customer Funds by the Deposit Insurance Corporation

Customer refunds must wait for the search results for assets or collection of receivables from the debtor after deducting the cost of paying employee salaries due, court fees, auction fees payable, taxes payable, and office fees. Deposits and interest can be paid in full and relatively short. It's just that there is no experience in the Indonesian banking industry in

terms of a deposit protection system that is carried out systematically and thoroughly.

Some depositors consider whether the bank is a member of IDIC or not, but maybe on average, they don't understand IDIC's performance if there is a problem with a failed bank like the Century Bank case. In 2008, Century Bank experienced liquidity difficulties because several large Century Bank customers withdrew their funds amounting to Rp 2 trillion, while the funds in the bank did not exist. Hence, they were unable to return the customer's money as much as USD 56 million and foreign exchange securities that maturity and default. In general, customers deposit large amounts of funds in foreign exchange commercial banks which have a vast regional network and are national in scale, and as long as customers make sufficiently large withdrawals, there are no liquidity constraints at the bank. So, we can conclude that customers who deposit large enough funds only rely on trust in the bank that is the place to deposit them. Only a few of them consider the existence of the bank as a member of IDIC.

The return of funds from depositors must be a top priority. The principle of trust adopted by the Banking Law, namely, the relationship between a bank and a

customer depositing funds, is a relationship of trust or fiduciary relationship. Therefore, to increase public confidence in banking, the government provides provisions in Article 37B of the Banking Law concerning Deposit Insurance Corporations (Law No. 24 of 2004). As regulated in Article 16 paragraph 1 of Law Number 24 of 2004, IDIC is required to pay guarantee claims to depositors from Banks whose business licenses are revoked. The process of claiming or refunding customer funds is an action that requires special attention from all parties involved in the banking industry. Because returning customer funds from a bank whose business license has been revoked needs considerable funds, so directly or indirectly can affect the national economy. Therefore, in Law Number 24 of 2004 concerning the Deposit Insurance Corporation, the procedure for returning customer funds by the Deposit Insurance Corporation is regulated in such detail to avoid problems that may occur in the future. The method for refunding guarantee funds for bank customer deposits whose business licenses have been revoked are:

1. Reconciliation and verification of guaranteed deposits.

This stage is crucial because it will determine which customers are

entitled to receive Guarantee Payments from IDIC. Some processes occur at this stage, including:

- a. After the Banking Supervisory Agency (in this case still Bank Indonesia), IDIC will immediately reconcile and verify depositors based on bank data as of the date of revocation of business license (Article 27 of the Deposit Insurance Corporation Regulation No. 1 of 2006). And for reconciliation and verification, IDIC has the right to obtain Depository Customer data and other information needed to calculate and pay Guarantee claims. (Article 16 paragraph (1) of Law No. 24 of 2004)
- b. The IDIC may appoint, seek, and/or assign other parties to reconcile and verify for the interest of and/or on behalf of the IDIC. (Regulation of the Deposit Insurance Corporation No. 1 of 2006 Article 2)
- c. Since the verification and reconciliation process is a difficult task and is quite complex and complex, to facilitate verification and reconciliation and to collect data and information, IDIC performs reconciliation, and validation is carried

out in stages based on easily verifiable accounts.

2. IDIC will verify whether the customer's deposit data has complied with the 3T IDIC requirements or not.
3. Finally, IDIC determines the status of customer deposits whether they are eligible to pay or not eligible to be paid based on the reconciliation and verification process.

To note, the time for submitting a deposit claim by a customer to IDIC is five years from the date the bank's business license is revoked. The procedure for submitting a deposit claim to IDIC if the bank goes bankrupt is as follows:

1. IDIC submits an announcement regarding payment of eligible deposit guarantees on the IDIC website and bank offices whose business licenses have been revoked. Notification and the amount of deposit insurance claims are carried out in stages.
2. Customers can check the status of their deposits through the Eligible Savings Application at www.lps.go.id.
3. If the customer's deposit is declared eligible for payment, the customer needs to bring the following documents to the Paying Bank, including:

- a. Original and photocopy of the customer's proof of identity (KTP/SIM/Passport/other).
 - b. Original and photocopy of proof of ownership of a savings account (passbook, deposit slip, proof of demand deposit).
 - c. Original and photocopy of articles of association and composition of management for customers in the form of organizations/companies.
4. Other documents or data that the paying bank may require as payment supporting documents or data, including:
- a. Written information from the organization/company management regarding the account number for the transfer destination for organizational/company customers.
 - b. Original and photocopy of the power of attorney and proof of identity of the recipient of a power of attorney (if authorized).
 - c. Domicile certificate (if changing address).
 - d. Fill out and submit the Customer statement form according to its designation.
 - e. Submit a statement/statement from another party as supporting evidence for payment.
1. Deposit Insurance Corporation is an independent institution established by the government which selected based on a law to foster public confidence in the banking world after the monetary crisis that resulted in the liquidation of several banks in Indonesia. IDIC functions to guarantee bank customer deposits and actively participates in maintaining the banking system's stability following its authority.
 2. That socialization and confirmation from IDIC, OJK, and Bank Indonesia. Banking parties and other stakeholders regarding a sense of security and comfort for customers when depositing their money in the bank need to be carried out ongoing. No customers keep their money in the bank if the customer does not put their trust. Since 13 October 2008, the guaranteed balance for each customer at one bank based on the Government Regulation of the Republic of Indonesia No. 66 of 2008 concerning the Amount of Deposit Guaranteed by IDIC is Rp. 2 billion.

CONCLUSION

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