







Rescuing model and system of failed bank

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ABSTRACT

Referring to the provisions of Law Number 7 of 1992 and its amendments to Law Number 10 of 1998 concerning Banking, it is explained that a Bank is a business entity that collects funds from the public in the form of deposits and distributes them to the public in the form of credit and or other forms of to improve the standard of living of the wider community so that the banking industry greatly affects the overall stability of the economy because banking institutions are intermediary institutions that bridge people who do not need their funds (surplus) to be deposited in banking institutions as deposits and distributed by these institutions to people who need them in a productive form of distribution. The role of banking institutions is systemic; in other words, banking is an important part of the economic system which will cause a multiplier effect if it is not healthy or in this case, it becomes a failed bank. The main function of banking in macroeconomic policy infrastructure is indeed directed in the context of how to make money effectively and efficiently to increase economic value, which requires the role of regulation in the economic sector as a rule for the essence and existence of banking institutions in carrying out their operations. This study is normative legal research that uses several approaches namely: the statute approach, the case approach, the historical approach, and the conceptual approach carried out with juridical concepts of banks, failed banks, bank restructuring, macroprudential and microprudential. The objective of this study is to comprehensively explain the model and system for rescuing failed banks that meet the benefits principles.

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Introduction

The existence of banking law provisions is marked by the issuance of various laws and regulations, in the form of Laws, Government Regulations, Presidential Decrees, Bank Indonesia Regulations, Directors Decrees, and Bank Indonesia Circular Letters as well as other implementing and supporting regulations. All the laws and regulations in the banking sector are structured as a system bound by certain legal principles. Positive law in the banking world derives from written and unwritten provisions. Written provisions are provisions established by the authorized legal and statutory bodies, either in the form of original regulations or derivative regulations; meanwhile, unwritten provisions are provisions that have arisen and maintained in the practice of conducting banking operations.

Principally, the banking institutional system in Indonesia has undergone a revolution in 5 stages, namely the Rehabilitation Stage and the improvement of high inflation in 1967-1983, the Net Asset Ceiling Enforcement Stage 1974-1983, the Growth and Deregulation Stage 1983-1988, the Stage Acceleration 1988-1991, and Consolidation Phase 1991-1997 (Batunanggar, 2002).

In the context of realizing a just and prosperous Indonesian society based on Pancasila and the 1945 Constitution, the continuity and enhancement of the implementation of national development by prioritizing the principle of kinship should always be properly maintained. To achieve this goal, the implementation of economic development should pay more attention to the harmony and balance of the elements of equitable economic growth and national stability. One of the means that have a strategic role in harmonizing and balancing each element of the development trilogy is banking. This strategic role is mainly due to the main function of the bank as a place that can collect and distribute public funds effectively and efficiently, on the basis of economic democracy that supports the implementation of national development to increase equitable distribution of development and its results.

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The development of national and international economy must be responded to more quickly by banks, following the increasingly rapid and complex global economic development, so that in carrying out its functions and responsibilities, banks (national banking) need to:

- i. *Arranged in a more straightforward institutional structure, with a broader foundation, and clearer space for movement;*
- ii. *Given the opportunity to expand the reach of its services in all parts of the country, both as general banking and credit banking for the people;*
- iii. *Strengthened by the legal foundation required for the implementation of guidance and supervision that supports the enhancement of the capacity of banks to carry out their functions in a sound, fair, and efficient manner, also enabling Indonesian banks to make the necessary adjustments in line with the development of international banking norms (Hamilton-Hart, 2018).*

Law Number 7 of 1992 was amended for the first time by Law Number 10 of 1998. If we look at the considerations of Law Number 10 of 1998, there are two main reasons and backgrounds for the improvement of legal instruments in banking, including:

- i. *In facing the development of the national economy which is constantly moving fast, competitive and integrative with increasingly complex challenges and an increasingly advanced financial system, it is necessary to adjust policies in the economic sector including banking. So, the revision of the 1992 Banking Act was intended to make it more in line with the demands of developments and policies in the economic field.*
- ii. *In the era of globalization and with the ratification of several international agreements in the trade and services sector, it is necessary to adjust laws and regulations in the economic sector, especially the banking sector. Thus, the revision of the 1992 Banking Law was carried out to make it more in line with developments in world trade in the era of globalization.*

Based on these reasons, this research was conducted to analyze the functions and powers of the Deposit Insurance Corporation (DIC) in handling Failing Banks that do not have a systemic impact, to analyze the influence of the function and authority of the DIC in handling Failed Banks with Systemic Impact, to analyze the functions and authorities of the DIC and the influence of the Institution. The Financial Services Authority (FSA), Bank Indonesia and the Ministry of Finance in handling and supervising Banks with Systemic Impacts before they fail, and analyzing the authority, method and period of time for the DIC to sell the shares of the failed bank after being restrained by DIC.

This research is compiled based on the results of research in the field with a focus on finding how the Deposit Insurance Corporation carries out its function and authority in handling Failed Banks with Systemic Impacts at Century Bank, because since the inception of the Deposit Insurance Corporation in 2004, Century Bank has been categorized as a Systemic Failure Bank handled by the Deposit Insurance Corporation.

Conceptual Framework

Bank is considered as a financial institution that is safe in carrying out various kinds of financial activities. However, in a modern context, the role of a bank is very large in promoting the economic growth of a country. Almost all business sectors, including industrial, trade, agriculture, plantation, service and housing sectors, really need banks as partners in conducting financial transactions.

The condition of a failed bank is often referred to as "PAILIT". Bankruptcy as a failure that occurs in a company is defined in several senses (Fakhrurrozie, 2007) including Economic Distressed and Financial Distressed. Bankruptcies that occurred in Indonesian banks were caused by the decline in the value of the rupiah currency, high interest rates, a rush, namely the withdrawal of funds from deposit customers at one time and in droves, swelling of debt, low customer deposits and high bad credit. hit almost all banks in Indonesia (Hadad, 2017). And in its later development, the authority to grant and revoke bank business licenses is no longer the obligation of Bank Indonesia, but the Deposit Insurance Corporation (DIC) is authorized to revoke licenses for failed banks as stated in Article 43 letter (d) of Law Number 24 of 2004 concerning the Deposit Insurance Corporation which was later amended by Law Number 7 of 2009.

Prevention of bank failures is continuously carried out in order to prevent the loss of public confidence and must guard against fraud or moral hazard in the financial institution or banking industry through: good corporate governance, regulatory discipline, and market discipline. The national banking crisis provides a lesson for us that failure of a bank will eventually become a burden on the state. Recapitalization through the issuance of bonds will ultimately burden the APBN in a prolonged manner (Djiawandono, 2001). Therefore, it is fair to say that the failure of a bank will eventually become a burden on society so that it needs to be handled systematically so as not to disrupt the sustainability of the economy.

Developing a Critical Approach and Strategic Thinking

The research method is a way to reach a scientific degree. Scientific research is preceded by scientific thinking, -systematically. Legal research is a form of scientific activity that aims to study certain legal symptoms by analyzing or examining the facts of the phenomena of laws in-depth, then developing and testing them to find a solution to solve the research problems using systematics

and certain thoughts. Salim and Nurbani (2016) explained that legal research is a process to find legal rules and legal doctrines to answer legal issues at hand. This study is a juridical-normative research. It examines and analyzes norms to find the truth based on scientific logic as a structured whole of the system (Ibrahim, 2006). Normative legal research is carried out to produce new arguments, theories, or concepts as prescriptions in solving the problems at hand (Marzuki, 2008).

This study uses several approaches, namely: First, the statute approach. Second, the case approach. Third, the historical approach to law. Fourth, the conceptual approach. A study, of course, requires a data source. Likewise, normative legal research also has legal sources from Primary sources of law, laws and regulations relating to banking which apply in Indonesia. Secondary Legal Sources, data that provides an explanation of primary data legal materials, such as interviews on failed bank handling that have been conducted by the Deposit Insurance Corporation. Tertiary Law Sources are data materials that provide information on primary and secondary legal materials, such as legal dictionaries, black law's dictionary, encyclopedias, magazines, mass media, and the internet.

The legal materials used in this study were obtained from tracing literature study activities by collecting legal materials, both in the form of writing and other sources which are related to the period of the sale of failed bank shares that have been healthy by the Deposit Insurance Corporation. The analysis of this paper uses a qualitative-juridical analysis technique, in which it is an analysis of the understanding, concepts, and legal norms by using deductive thinking techniques that are based on abstract things to be applied to concrete propositions. This is based on an analysis which relies on legal interpretation, legal reasoning, and legal argumentation in a coherent and sequential manner, with the following characteristics: first, positivity, which means that the law must have authority; second, coherence, meaning that law must be realized as an order of life; and third, justice which contains useful values.

Compliant Failed Bank Rescue Models and Systems Principle of Benefit

Efforts to save the failed bank in Indonesia's positive law mandated in Law no.10 of 1998, Article 37 paragraph (1) which states that: In the case that a bank has difficulty that endangers its business continuity, Bank Indonesia may take action in order to:

- i. *Shareholders increase capital;*
- ii. *Shareholders replace the Board of Commissioners and/or Directors of the Bank;*
- iii. *The bank eliminates non-performing loans or financing based on sharia principles and calculates the bank's losses with its capital;*
- iv. *The Bank conducts a merger or consolidation with other banks;*
- v. *The bank is sold to a buyer who is willing to take over all obligations;*
- vi. *The bank will hand over the management of all or part of the bank's activities to other parties;*
- vii. *The bank sells part or all of the assets and/or liabilities of the bank to the bank or other party."*

The predicament of a bank as referred to in Article 37 paragraph (1) is determined based on the assessment of Bank Indonesia and then transferred to the Financial Services Authority in accordance with Law Number 21 of 2011 for signs of declining capital, asset quality, liquidity, and profitability, as well as bank management that is not implemented based on prudent principles and sound banking principles.

Meanwhile, the efforts that the Financial Services Authority can undertake after the transfer of authority of Bank Indonesia concerning Bank Development and Supervision is transferred to Financial Services Authority if the previous rescue efforts are not successful, is mandated by Article 37 paragraph (2) which states that: "The rescue as referred to Article 37 paragraph (1) is not sufficient to overcome difficulties faced by banks; and/or according to Bank Indonesia's assessment, the condition of a bank may endanger the banking system, the Head of the Financial Services Authority can revoke the bank's business license and submit it to the Deposit Insurance Corporation to instruct the bank's board of directors to immediately hold a General Meeting of Shareholders to dissolve the legal entity of the bank and form a liquidation team, pay deposits of third party funds that are not affiliated with the bank, but regarding the liquidation of a non-systemic bank which was carried out as a final decision by the Financial Services Authority and its implementation was carried out by The Deposit Insurance Corporation to secure national banking, will not be discussed in depth in this study, because the author only focuses on rescuing failed banks.

Furthermore, from the elaboration of Article 37 paragraph (1) of the Banking Law regarding bank rescue above, the provisions contained in Article 37A of the Banking Law are formed which are additional provisions in the previous Banking Law which state that in the context of bank rescue, Bank Indonesia can form a special agency which is temporary. Article 37A is also accompanied by additional powers of the said institution beyond the authority stipulated in Article 37 paragraph (1).

This institution is formed if according to Bank Indonesia's assessment there are banking difficulties that endanger the national economy. Therefore, the Government, after consulting with the House of Representatives of the Republic of Indonesia, may form such an institution, in which at a later stage the special agency shall carry out a restructuring program for banks which are determined to fail and are submitted by Bank Indonesia, and if according to Bank Indonesia this special agency has resolved its duties, then it can be declared by the Government that the special agency has ended. In article 37 of Law Number 10 of 1998 concerning Banking as an amendment of the previous Banking Law, namely Law Number 7 of 1992, it has been mandated that a Deposit Insurance Corporation will be formed to protect deposits of third party funds which are not affiliated with the bank and actively participate in maintaining financial system stability under the authorities.

In carrying out the restructuring of these unhealthy banks, the established entity is given another authority. Article 37a of the Banking Law paragraph (3) describes the authorities of the agency, which include:

- i. *Taking over and running all rights and authorities of shareholders including the rights and powers of the General Meeting of Shareholders;*
- ii. *Taking over and running all rights and authorities of the Board of Directors and Commissioners of the Bank;*
- iii. *Controlling, managing, and taking ownership over assets belonging to or which are the rights of the bank, including bank assets which are in any party, both inside and outside the country;*
- iv. *Reviewing, canceling, terminating, and/or amending contracts that bind the bank with third parties, in which, according to the special agent's considerations are detrimental to the bank;*
- v. *Selling or transferring the assets of banks, Directors, Commissioners and certain shareholders in the country or through a public offering;*
- vi. *Selling or transferring bank bills and/or hand over the management to other parties, without requiring the approval of the debtor customer;*
- vii. *Transferring wealth management and/or bank management to other parties;*
- viii. *Conducting temporary equity participation in the bank, either directly or through the conversion of claims from special entities into equity participation in the bank;*
- ix. *Performing certain bank receivables collection by issuing a Warrant;*
- x. *Vaccinating land and/or buildings belonging to or belonging to the bank which are controlled by other parties, either alone or with the help of authorized law enforcement state officials;*
- xi. *Conducting research and investigation to obtain all necessary information from and regarding banks in the restructuring program and any parties involved or reasonably suspected of being involved, or knowing activities that are detrimental to the bank in the restructuring program;*
- xii. *Calculating and determining the losses suffered by the bank in the restructuring program and charge the loss to the bank's capital, and if the loss occurs because of the fault or negligence of the Board of Directors, Commissioners, and/or shareholders, the loss will be borne by the person concerned;*
- xiii. *Determining the amount of additional capital that must be paid by bank holders in the restructuring program;*
- xiv. *Taking other necessary actions to support the use of authority referred to letter a to letter m.*

Rescuing Failed Bank by The Deposit Insurance Corporation

After the termination of the term of office of the Indonesian Bank Restructuring Agency (IBRA) on February 27, 2004, the Government Guarantee Implementation Unit, The Ministry of Finance is appointed as the administrator of the banking guarantee program (blanket guarantee), which is a guarantee program for the payment of bank obligations set by the government to encourage restoration of customer trust at the banks.

Like an economy that is recovering from a crisis, the continuous implementation of a banking guarantee program for a long time will only put more strain on state finances. At the same time, it also creates opportunities for moral hazard for banking actors; a situation that we do not want because the discipline of the banking sector will not be better. The government's concrete steps to carefully prepare an exit program from the implementation of the banking guarantee program while maintaining the stability of the banking sector is to take the initiative to establish a Deposit Insurance Corporation through the ratification of Law Number 24 of 2004 concerning the Deposit Insurance Corporation.

Juridically, initially, the establishment of the Deposit Insurance Corporation was carried out because of the mandate of Article 37B of the Banking Law which explicitly stipulates that every bank is obliged to guarantee public funds deposited in the bank concerned. To guarantee public savings in the bank as referred to above, a Deposit Insurance Corporation was formed in the form of an Indonesian legal entity. The Banking Law itself mandates the provisions of public funds guarantee, and the Deposit Insurance Corporation is only regulated by Government Regulation, not by Law (Napitupulu, 2010).

Based on the provisions of the Law on the Deposit Insurance Corporation, the existence of the Deposit Insurance Corporation in Indonesia as an independent, transparent, and accountable public institution in carrying out its duties and authorities is accountable to the President. The function and authority of the Deposit Insurance Corporation (DIC) are not only limited to the customer deposit insurance program but also include maintaining the stability of the banking system (Nugroho & Sugianto, 2015). In carrying out this function, the DIC also performs the task of formulating, stipulating, and implementing a bank resolution policy that does not have a systemic impact and carries out the handling of failed banks with a systemic impact. With this position, the formation of the DIC through the DIC Law is not only within the framework of Article 37B but also includes Article 37A of the Banking Law. Therefore, principally, the Deposit Insurance Corporation has 2 functions, namely: (i) Guarantee deposits from bank customers; and (ii) Perform settlement and handling of failed banks.

In carrying out the function of the DIC as an agency that is actively involved in maintaining the stability of the banking system, the DIC has the following duties (Bako, 2002):

Formulating and determining policies to actively participate in maintaining the stability of the banking system;

Formulating, stipulating, and implementing a resolution policy for Failed Banks (bank resolution) that does not have a systemic impact; and

Carrying out the handling of Failed Banks with systemic impacts.

Non-performing banks are also known as Failed Banks which can be divided into two, namely Failed Banks with Systemic Impact and Failed Banks with Non-Systemic Impacts. A bank is called a failed bank if:

The bank has financial difficulties;

Financial problems faced by banks can jeopardize their business;

Banks can no longer be healthy by the DIC.

Furthermore, related to the implementation of the DIC's duties in terms of failed bank settlement, DIC is legally given the following powers (Kristianto & Widodo, 2020):

Taking over and running all rights and authorities of shareholders, including the rights and powers of the General Meeting of Shareholders (GMS);

Controlling and managing the assets and liabilities of the Failed Bank rescued;

Reviewing, canceling, terminating, and/or amending any contracts that bind a Bank other than the Systemic Bank that was rescued with a third party that is detrimental to the Bank other than the Systemic Bank; and

Selling and/or transferring bank assets without debtor approval and/or bank liabilities without creditor approval.

In Law Number 24 of 2004 concerning the Deposit Insurance Corporation, it is stated that there was a Banking Supervisory Agency which was originally implemented by Bank Indonesia but since Law Number 21 of 2011 concerning the Financial Services Authority, so since December 31, 2012 the functions of the duties and the authority to regulate financial services was transferred to the Financial Services Authority and on January 1, 2013 the Financial Services Authority officially became the supervisor of Non-Bank Financial Institutions and the Capital Market. Then, on December 31, 2013 the same transition was carried out for the regulation and supervision of financial service activities in the banking sector from Bank Indonesia (BI) to the Financial Services Authority.

Rescuing Failed Bank That Does Not Have Systemic Impact

A bank that does not have a systemic impact can be closed immediately after Deposit Insurance Corporation (DPC) enters and pays deposits of the third-party funds that are not related to bank shareholders and management. After that, DPC disburses all bank assets and if it is insufficient the costs incurred by DPC to cover payment of the third party's deposits. Then, DPC bills control shareholder of the bank, namely, the shareholder who owns shares of more than 20% in the bank, and if the non-systemic failed bank will be rescued by the DPC, it must have the following requirements (Bank Indonesia, 2010):

- i. The estimated cost of rescuing the bank is significantly lower than the estimated cost of not rescuing the bank concerned;
- ii. After being rescued, the bank still shows good business prospects;
- iii. There is a statement from the GMS of the bank which at least includes the readiness to:
 - a. Submit the rights and powers of the GMS to the DPC;
 - b. Submit bank management to the DPC; and
 - c. Do not sue the DPC of the party appointed by DPC if the rescue process is unsuccessful, as long as the DPC of the party appointed by DPC performs its duties in accordance with the laws and regulations and submits all documents and information required
 - d. After the requirements are met, GMS will hand over all rights and authorities to the DPC. After submission by GMS, DPC is authorized to take the following actions:
 - i. Control, manage, and take ownership of assets belonging to or which are the rights of the bank and/or the bank's liabilities;
 - ii. Conducting temporary equity participation (PMS);
 - iii. Selling or transferring bank assets without the approval of the debtor and /or bank obligation without approval of the debtor consumer;
 - iv. *Transferring bank management to another party;*
 - v. *Conducting a merger or consolation with other banks;*
 - vi. *Transferring bank ownership; and*
 - vii. *Reviewing, canceling terminating and/or changing bank contracts that bind the bank with third parties, which according to DPA is detrimental to the bank.*

If the above requirements are not fulfilled or DPC decides not to continue the rescue process, DPC will request the revocation of the banks' business license in accordance with the prevailing laws and regulations.

Rescuing Failed Bank That Has Systemic Impact

The settlement submitted to the DPC by the Financial Services Authority (FSA) is intended for the settlement of failed bank that has a systemic impact. Handling failed bank by with as systemic impact is a series of activities to save systemic failed banks submitted by FSA to DPC with or without involving old shareholders. DPC received a notification from the Banking Supervisory Agency (BSA) that since January 1st, 2014, the duty of regulation and supervision of financial service in banking sector was officially transferred from Bank Indonesia (BI) to FSA, regarding trouble banks that are currently in a restructuring effort. If the troubles bank is declared unable to be reinstated by FSA in accordance with its authority, the problematic bank will become a failed bank. If the bank fails, it is declared to have a systemic impact by the Coordinating Committee, which consists of the FSA; DPC; Ministry of Finance; Bank Indonesia (BI), DPC takes care of failed banks with a systemic impact after receiving the handover from the Coordinating Committee. This is done in two ways, namely (Lestari, 2012):

- i. Handling failed banks which have systemic impacts with Open Bank Assistance
- ii. Handling failed banks which have systemic impacts without paying up shareholders' capital.

Handling Failed Banks Due To Crisis Accoridng To Law Number 7 Of 2009

The phenomenon of the global financial crisis that occurred has had an impact on the performance of the financial system in several countries. This makes the financial system not perform its function and role effectively. It is worried that this condition can have a negative impact on financial system stability and can threaten the balance of the national economy (Zaini & Febriansyah, 2014).

Facing a crisis that began in 2006 was triggered by a contraction in the secondary mortgage market in the Unites States and then spread to all corners of the world, the government issued three regulations, including:

- i. *Act Number 6 of 2009 concerning Stipulation of Government regulations in lieu of Act Number 2 of 2008 concerning the Second Amendment to Act Number 23 of 1999 concerning Bank Indonesia into Law. This Act relaxes the requirements for the granting of a Short Term Funding Facility (STFF) by BI. The aim is, during a crisis period, banks experiencing liquidity difficulties can take advantage of STFF, which is strictly regulated in Law Number 23 Year 1999. Making it difficult for banks to fulfill, especially, during crisis times;*
- ii. *Law Number 7 of 2009 concerning Stipulation of Government Regulations in Lieu of Law Number 3 of 2008 concerning Amendments to Law Number 24 of 2004 concerning DOC into Law. This law aims at increasing public trust in the banking industry by increasing the amount of customer deposits guaranteed by DPC;*
- iii. *Government Regulation in Lieu of Law Number 4 of 2008 concerning Financial System Safety Network. The goal is to enable banks and non-bank financial institutions with systemic impacts to receive assistance from the government when experiencing financial difficulties. This Government Regulation was formed based on considerations in order to carry out the mandate of Bank Indonesia Law Number 3 of 2004 Article 11 paragraph (5) concerning decision making in conditions of financial difficulties that have a systemic impact and anticipating the threat of a global financial crisis that can endanger the stability of the financial system and national economy.*

System of Rescuing Banking Based On The Law Of The Financial Services Authority

To keep banking institution strong and sound, BI then supervised the soundness of banks. However, since the beginning of 2012, supervision for banking has been handed over to FSA. This is stated in accordance with the mandate in Article 34 of Law of the Republic of Indonesia Number 3 of 2004 concerning Amendments to Law of the republic of Indonesia Number 23 of 1999 concerning Bank Indonesia. Then, FSA was formed with basis of its establishment in law Number 21 of 2011 concerning FSA. This is intended so that there is no separation of the central bank's authority function namely overseeing monetary stability, so that BI can more easily carry out its duties and powers. This is also explained in article 34 paragraph (1) of Act Number 3 of 2004 concerning BI. So, FSA is in charge of the micro-prudential aspect (more towards the analysis of the soundness of individual financial institutions) and BI is more focused on the macro-prudential aspect (in the field of monitoring and assessing the overall financial system).

In a principle of law, BI still has the authority to supervise banks even though the supervision has shifted to FSA. This (regulated in Article 29 of Law Number 21 of 2011) is carried out against banks and other institutions that have a relationship with authority. Granting and revoking bank business licenses, previously in the hands of BI, but after the establishment of DPC, the authority to revoke permanent licenses for failed banks rests with DPC as stated in Article 43 letter d of Law Number 24 of 2004 concerning DPC.

For assessing the soundness of bank based on the aspect of assessment and the soundness level of a bank known as CAMELS (Capital, Asset, Management, Earning, Liquidity and Sensitivity). However, since 2011, BI has replaced bank's soundness rating by using risk-based bank rating consisting of a risk profile, good corporate governance, earning and capital replacing CAMEL system as regulated in BI Regulation Number 13./1/PBI/2011 concerning Rating of Commercial Bank Soundness (followed up by BI Circular Letter Number 13/24/DPNP issued on October 25th, 2011) and FSA Number 8/POJK.03/2014 concerning Rating of the Soundness of Sharia Commercial Banks and Sharia Business Units (followed up through FSA Circular Letter Number 10/SEOJK. 03/2014 concerning Rating of Soundness of Sharia Commercial Banks and Sharia business Units) (Financial Fervices Authority, 2016).

A bank that operates in Indonesia is stated to be sound bank if it fulfills the minimum capital ownership as stipulated in Bank Indonesia Regulation Number 15/PBI/2013 concerning Minimum Capital Adequacy requirement for Commercial Banks and FSA Regulation Number 21/POJK. 03/2014 concerning the Minimum Capital Requirement for Islamic Commercial Banks, namely the provision of minimum capital, stipulates a minimum of 10% to 11% of Risk Weighted Assets (RWA) for a bank with a risk profile rating 3. The bank is considered having difficulties in business continuity if it has the value of capital less than equal to 8%, then the bank is set under intensive supervision based on Article 4 paragraph (2) of BI Regulation Number 15/2/PBI/2013 concerning Status Determination and Supervision Follow up on Conventional Commercial Banks.

A bank is determined to be a failed bank if it is categorized as the bank under special supervision that cannot be sound with a capital coverage equal to or less than 4% and is deemed unable to increase to 8% based on Article 26 of BI Regulation Number 15/2/PBI/2013 concerning the Status Determination and supervision Follow up for Conventional Commercial Banks.

To maintain a public trust in banking institutions, the government issued Law Number 10 of 1998 which is an Amendment to Law Number 7 of 1992 concerning banking to form a DPC as an implementation of public funds guarantor. In 2004, the banking industry began to abolish the deposit insurance program, which is better known as the blanket guarantee and replace it with a more permanent guarantee system. As a substitute for the blanket guarantee program has made a law in the form of an independent institution that functions as a guarantor for public savings in a financial institution, called DPC which was passed through Law Number 24 of 2004 concerning DPC. The role of the DPC in the bank is to overcome financial difficulties and fail to restore soundness so the business license is revoked. In this case, DPC will pay the deposits of each bank customer up to certain amount as determined (the maximum amount of funds guaranteed by DPC).

To maintain the stability of the banking system, the government restructures the banking system, namely, through the restructuring process of banks with the aims of creating a better banking system by providing liquidity assistance by the central bank or implementing Lender of Last Resort (LLR). In Indonesia, the granting of LLR facilities is regulated in Article 11 paragraph (1), (2) and (4) of Law Number 3 of 2004 concerning Amendments to Law Number 23 of 1999 concerning BI, namely, by granting Short Term Funding Failure for Commercial Banks, the Emergency Financing Facility is regulated in Bank Indonesia Regulation Number 10/31/PBI/2008 concerning Emergency Financing Facilities for Commercial Banks. Lender of the Last Resort (LLR) is an effort to restructure banks in an effort to prevent or resolve banking crises, it is necessary to determine the status of the bank, whether the bank will be reinstated or liquidated, and or whether the bank failure has a systemic impact or no systemic impact. This issue will involve several institutions including Bank Indonesia, DPC, FSA and Ministry of Finance (the four of which are included in a Financial System Stability Committee).

The management of banking crisis policies also needs to include the stage of strengthening resilience or what is often called crisis prevention. Crisis prevention is implemented by establishing a financial safety network which is a series of implementing LLR functions by the central bank, KSSK, DPA and FSA based on prudential regulations. The whole series must be based on a clear legal framework including the determination of emergency or crisis conditions so that provisions under normal conditions can be addressed in a crisis period.

Conclusion

In the case of a failed bank rescue by DPC Insurance Corporation, there is a difference treatment between systemic and non-systemic bank rescue. For non-systemic failed banks, the rescue does not include the old shareholders. This means that all costs incurred for salvation will be provided by DPC. Meanwhile, for banks that fail systematically, this can be done without involving existing shareholders or by involving existing shareholders (open bank assistance). In this case, the old shareholder will be involved in the rescue and they are required to deposit a minimum of 20% of a total cost of the rescue. Just like a bank failing systemically, the deficiency will be handled by DPC.

For the handling of failed banks with any scheme, DPC based on Law Number 24 of 2004 is given very adequate authority based on the Law. The authority of General Meeting of Shareholders and the management of the bank failed completely to be left to DPC so the rescue program could be carried out more effectively. It is also included in the authority given to DPC to make temporary investment, conduct mergers and consolidations with other banks if necessary. Even, if the rescue is allowed, it does not mean that the bailout funds from DPC will be lost. All costs incurred as result of rescuing a bank will be counted as temporary participation and according to the law, the period for DPC participation is limited and its shares must be resold up to a maximum of 2-3 years after the rescue. If the bank eventually has to be liquidated, the proceeds from the sale of liquidated bank assets will be distributed on a priority based for employee salaries and severance pay, operational costs and expenses incurred by DPC. If the proceeds from the sale of assets are still insufficient, the remaining portion will remain the liability of the old shareholders. Therefore, if there is a bank failure in system manner, there is already a more definite and structures settlement mechanism. In addition, there are clear and firm sanctions against shareholders, especially controlling shareholders, which results in their failed bank. This, of course, will provide a more adequate protection for both the community and the government. However, it must be realized that the existence of DPC has not yet been able to free the burden on the government.

It is because if DPC's capacity is from capital, premium accumulation and reserves as well as business surpluses is not sufficient then the government will ask for the deficiency. The good thing in handling a failed bank is if the existing bank is always sound

because the element of supervision runs based on its authorization. In a daily operation, the determination determines whether the manager and the owner are better or not.

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