

Conference Paper

Legal Implications of Bankruptcy on Bank-related Problems and Customer's Legal Protection

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Abstract.

The background of this legal research is that the Bank is an intermediary institution as well as a profit-oriented institution. Intermediation means that banks are pillars of the national economy. This puts the Bank regulated by regulations and supervised by special authorities. Banks are business entities that have special characteristics so revocation of business licenses, dissolution of legal entities, and liquidation of banks cannot be equated with generally accepted procedures. The legal issues in the research are: Can a troubled bank be bankrupt and how is the legal protection for depositors according to the Law on Bankruptcy and Postponement of Debt Payment Obligations? This research is juridical normative by using a statutory approach, namely: the Banking Law and Bankruptcy Law, and a conceptual approach. The legal materials that have been obtained are analyzed by content analysis. Based on the results of the discussion, it is shown that: first, according to the provisions of the Banking Law, Bank Indonesia is given the authority to revoke the business licenses of troubled banks. Likewise, the Bankruptcy Law gives authority to Bank Indonesia to file for bankruptcy against troubled banks. So far, Bank Indonesia in dealing with troubled banks after rescue efforts failed to use the liquidation process and has never used bankruptcy efforts. And protection for Depositors has been provided by the liquidation mechanism and banking regulations are lex specialist to Law no. 37/2004 concerning Bankruptcy and Suspension of Debt Payment Obligations is a lex generalist. In addition, it is impossible for Bank Indonesia to choose a bankruptcy law channel to damage the national economic system just to serve the interests of creditors themselves. Even so, banking regulations and their regulatory agencies have provided legal protection for depositors and if they feel they have been harmed, they can sue the Commercial Court.

Keywords: implications, bank bankruptcy, legal protection, bank customers

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Published: 4 October 2022

Publishing services provided by Knowledge E

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Selection and Peer-review under the responsibility of the INCLAR Conference Committee.

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1. INTRODUCTION

The definition of a bank is a business entity that collects funds from the public in the form of savings and distributes them to the public in the form of credit and or other forms with the aim of improving the standard of living of many people [1]. The banking sector has a strategic position as an intermediary institution (financial intermediary) to support the smooth running of the economy [2].

The main way that must be taken so that the national economic condition can recover is to restore the national banking system by making changes to articles 37, 37 A and 37 B, Banking Law No. 10 of 1998 (hereinafter referred to as the Banking Law) which is a change from the previous Banking Law No. 7 of 1992). Namely through a guarantee scheme with the hope of restoring public confidence by withdrawing funds from foreign/joint venture banks. It is better to avoid revocation of licenses and liquidation of troubled banks, because juridically this will have a complex impact, take a long time, and people will no longer trust the banking system, causing social unrest.

Banks that experience business operational difficulties and jeopardize their business continuity or the banking system, and cannot be saved anymore, then the bank must be removed from the banking system (exit policy) [3]. In the perspective of Depositors, exit policy is a form of indirect protection of their interests as banking consumers. The direct form of protection is that if a Bank fails and is forced to liquidate, then deposits of no more than a nominal value of 2 billion are guaranteed by LPS without waiting for the Bank's assets to be disbursed, as stipulated in Article 1 PP No. 66/2008. LPS is one of the banking authorities authorized to carry out liquidation [4]. From a business perspective, bankruptcy or bankruptcy is synonymous with failure and is the reason for the liquidation of debtors' assets to cover all their debts to other parties.

Different business perspectives have different juridical perspectives. Juridically, the requirements for filing for bankruptcy are regulated in Article 2 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (hereinafter referred to as the Bankruptcy Law): two creditors and one debt are due and have not been paid paid off. However, there is an exception provision in the event that the creditor is a Bank as regulated by Article 2 paragraph (3). If that is the case, then Bank Indonesia is the only party that has a locus standi as a Petitioner, even though BI has never been an applicant before the Commercial Court. Moreover, in the current banking supervision system, Bank Indonesia is no longer authorized in the realm of macroprudential (supervision of individual banks), but OJK [5].

Based on the description of the background above, the legal issues in this study are, can the troubled bank be bankrupt? And what is the legal protection for Depositors under the Bankruptcy Law and PKPU?

2. METHODOLOGY/ MATERIALS

This type of legal research is normative legal research, namely research that is built on scientific disciplines and the workings of normative legal science. Normative law is the science of law whose object is the law itself. By using a statutory approach (Statue approach) and a conceptual approach. The statutory approach can be done by reviewing all laws and regulations related to the legal issues being handled. In addition, here, the problem approach method is statute and conceptual to solve legal issues. The primary legal materials are the Banking Law UUK and PKPU No. 37 of 2004 and secondary legal materials in the form of literature and journals related to the problems studied. The sources of law used are primary and secondary sources of law. Formal legal sources to address legal issues and non-authority legal sources or doctrines or treatises as a support. The technique of collecting legal materials is carried out by means of a library study of the literature and legislation. The legal materials that have been obtained are then analyzed based on their content (content analysis) to be presented in accordance with the problems studied.

3. RESULTS AND DISCUSSIONS

3.1. BANKRUPTCY IN TROUBLED BANKS

According to the Banking Law Number 10 of 1998, what is meant by a bank is "a business entity that collects funds from the public in the form of savings and distributes them to the public in the form of credit and or other forms in order to improve the standard of living of the people at large [6]. The definition of Bankruptcy according to the Bankruptcy Law is a general confiscation of all assets of a bankrupt debtor whose management and settlement is carried out by the curator under the supervision of a supervisory judge as regulated in this Law (Article 1 paragraph (1) of the Bankruptcy Law [7]. Therefore, the conditions for being declared bankrupt are as regulated in Article 2 paragraph (1) of the Bankruptcy Law as follows:

"A debtor who has two or more creditors and does not pay at least one debt that has matured and can be collected, is declared bankrupt by a court decision, either at his own request or at the request of one or more creditors."

Thus, the bankruptcy status does not automatically state that the Bankrupt Debtor is in a state of being unable to pay its debts. That is, when the debtor is actually able to pay off his debts to his creditors, the Bankrupt Debtor can submit a proposal for reconciliation based on Article 144 of the Bankruptcy Law. If the proposal for reconciliation submitted by the Bankrupt Debtor is rejected by its creditors, or the Bankrupt Debtor does not submit a proposal for reconciliation, then based on Article 178 of the Bankruptcy Law, then the debtor is declared insolvent/in a condition unable to pay off his debts to his creditors.

In the event of bankruptcy for a banking institution, it must pay attention to the provisions of Article 1 number 2 of the Banking Law, that the bank is a business entity that collects funds from the public as well as distributes it back to the community in the form of credit or otherwise (See Article 1 number 2 of the Banking Law).

Some things that need to be considered in the case of banking insolvency are [8]:

1. the submission of an application for bankruptcy cannot be submitted by the bank concerned, because it is based on reasons to prevent such conditions from being used by shareholders/bank owners in an effort to avoid being held responsible for creditors, including depositors of funds;
2. if there is a revocation of the bank's business license and it is liquidated, the payment/refund shall be prioritized to the depositor of funds rather than to other concurrent creditors, with due observance of other creditors in accordance with the prevailing laws and regulations;
3. liquidated banks are still subject to bank secrecy provisions.

Regarding the rules relating to bankruptcy at banks, it is regulated in Article 2 paragraph (3) of the Bankruptcy Law jo Article 9 paragraph (3) of the old Banking Law (1992), namely that Bank Indonesia was authorized to file for bankruptcy for troubled banks. In theory a bank can be filed for bankruptcy by looking at the authority that has been granted by the Bankruptcy Law, but in practice it appears that the bank is immune to bankruptcy.

So that it can be interpreted that although there is a Bankruptcy Law which regulates banking bankruptcy, it cannot provide legal certainty [9] to banking institutions. Moreover, in reality Bank Indonesia has never been a party to a credit agreement between

creditors and debtors, unless Bank Indonesia provides Bank Indonesia Liquidity Credit (KLBI) and Bank Indonesia Liquidity Assistance (BLBI) [10]. For this reason, it is necessary to create a list of actions that provide guidelines for BI to file for bankruptcy with a troubled bank, either in its position as the central bank or in facilitating the interests of other parties [10]. The authority of Bank Indonesia to be the party to file for bankruptcy for troubled banks has never been carried out, thus giving rise to various assumptions as to whether banks in Indonesia are "bankrupt immune" [11].

There are 3 important things that need to be considered in relation to the authority of Bank Indonesia to file an application for bankruptcy, namely: 1). Bank Indonesia has never been a party to a credit agreement between a creditor and a debtor, except in relation to KLBI or BLBI; 2). In the event of Bankruptcy, a Bank as a creditor in dealing with a non-bank debtor can independently exercise its right to file an application for bankruptcy, but if the debtor is a bank, then it cannot [10]. 3). For banks that have gone public, the bankruptcy filing is submitted by BAPEPAM. And currently the position of Bank Indonesia in terms of function has also been transferred to the Financial Services Authority (OJK) which has replaced BI's function in supervising Bank and non-bank Financial Institutions, including BAPEPAM which has also been replaced by OJK (see OJK Law) [12].

Bankruptcy against banking institutions can be caused by reasons of public and community interests. What is meant by public interest are the interests of the nation and state and/or the interests of the wider community, in this case including for example debtors who have debts to BUMN/other business entities that collect funds from the public at large. Although to determine whether the public and community interests have been violated, it is necessary to have clear parameters. It is necessary to consider whether the soundness of the bank and the violation of the prudential principle can be used as a reference, such as in taking actions to revoke business licenses, dissolve legal entities, and liquidate banks [10].

What is considered a troubled bank when referring to the Bankruptcy Law as regulated in Article 2 paragraph (1), which essentially states that: "A debtor who has two or more creditors and does not pay off at least one debt that has matured and can be collected, is declared bankrupt by a decision court, either at his own request or at the request of one or more of his creditors". The element of a problem debtor is quite simple, namely the debtor has two or more creditors and has not paid off at least one debt that has matured and can be collected. However, if the bank is the debtor, it is necessary to consider, among other things, the function of the bank as a party that collects funds from people who have excess funds, and distributes these funds to people who need

them, but as debtors who may have problems, of course they must be held accountable so as not to set a precedent. for bank administrators to be irresponsible. Bank Indonesia does need to maintain the principle of prudence.

If we resolve the problematic bank by way of bankruptcy, then there are advantages that we need to pay attention to, namely:

1. for customers, creditors/general public, namely: reducing fraudulent practices by banks; as well as the emergence of new banks that are oriented towards collecting profits without regard to the rights of others/applicable laws and regulations;
2. for banks; still have the opportunity to continue their business; maintain good name (owners, administrators and third parties); growing/strengthening public trust in the banking world;
3. for the government: through BI can create confidence in the role and function of Bank Indonesia; as a means of law enforcement; protect the public from the fraudulent game of banking institutions.

However, it should also be remembered that there are also disadvantages, namely: loss/lack of public trust in banking institutions if the management is not professional. This is in line with the statement conveyed by Paulus Effendi Lotulung that the current Bankruptcy Law is a process of "grafting" between old regulations and new ideas in special procedural law, so that in its application to things that are not clearly regulated and cause various interpretation and even a legal vacuum for resolution [13].

The Commercial Court is the only court authorized to settle Bankruptcy for Banking Institutions. Bank Indonesia is still the banking authority that plays an important role and is very sensitive in public activities as well as state activities, so that if there is a conflict between creditors (bankruptcy applicants) and banks due to non-payment of debts that have matured and can be collected, the request can be submitted by Bank Indonesia [11].

The presence of Article 2 paragraph (3) of the Bankruptcy Law is ideally intended to [11]:

1. Maintaining the image of banking in the eyes of the public and in the eyes of the world,
2. Avoiding bankruptcy applications submitted by parties who are not responsible for the bank,
3. Maximizing BI functions in carrying out supervisory and coaching duties.

Problems arise, for example: because of the initiative to apply for bankruptcy from creditors, can BI's role be able to stop the authority of the bankrupt applicant to bankrupt the bank? arrogantly and subjectively protect the banks under their supervision, can the authority of BI be deviated by the real bankrupt applicant creditor? (That BI has failed to fulfill its role in resolving the debt-debt conflict) [11].

When the law provides for a role for Bank Indonesia in resolving debt conflicts involving banks, it must also regulate the procedures for exercising its authority and what the legal consequences will be if Bank Indonesia does not carry out its role. If it is not regulated in Article 2 paragraph (3) of the Bankruptcy Law, it will tend to build legal uncertainty, which will then create a situation where theoretically banks can be filed for bankruptcy but in practice banks are immune from bankruptcy. The situation is even worse, if this area of authority is a place of refuge from rogue banks from being chased by their creditors with disgraceful acts (grey area). This article should not be interpreted with the meaning of "right or wrong, the bank is still right" [11].

Concerns about the emergence of legal ambivalence/uncertainty in implementing Article 2 paragraph (3) of the Bankruptcy Law, as an example can be seen in the case of the bankruptcy petition filed by PT. IFI Bank against PT. Bank Danamon Indonesia [14]. The case arose from the sub-participation agreement between Bank IFI and Bank Nusa Internasional, where Bank Nusa Internasional borrowed US\$5,000,000 to Bank IFI to fulfill a commitment part of a syndicated loan to PT. Riau Prima Energy. As a legal consequence of the merger of several banks, for example Bank Nusa Internasional to become PT. Bank Danamon Indonesia, then the obligation of Bank Nusa Internasional becomes the obligation of the merged subsidiary, namely Bank Danamon Indonesia.

Regarding this dispute, Bank Indonesia as the authority has held several meetings in an effort to seek a peaceful settlement. However, the amicable settlement efforts did not succeed and Bank IFI refused to pay the consignment through the court, so the debt dispute has not been resolved. However, Bank Indonesia still did not proceed with the bankruptcy petition submitted by Bank IFI to the commercial court. Then Bank IFI directly submits an application for a declaration of bankruptcy to the commercial court on the grounds that Bank Indonesia does not proceed with the bankruptcy application submitted by the bankruptcy applicant through Bank Indonesia to the commercial court.

In responding to the case of filing an application for bankruptcy which was directly submitted by Bank IFI to the commercial court, the panel of commercial judges acknowledged: that Article 1 paragraph (3) of the Bankruptcy Law No. 4 of 1998 (now Article 2 paragraph (3) of the Bankruptcy Law (2004) has fulfilled as follows: "That based on the considerations mentioned above are related to each other, it is proven that the elements

of Article 1 paragraph (1) of the Bankruptcy Law (No. 4 1998) have been proven.” due and collectible, still rejecting the bankruptcy application submitted by Bank IFI with legal considerations that Bank IFI is not authorized to file a bankruptcy application directly based on Article 1 paragraph (3) of the Bankruptcy Law No. 4 -1998) 1998 (Article 2 paragraph (3) of the Law on Bankruptcy Bankruptcy Year 2004).

So, it can be concluded in this case, namely: 1). Article I paragraph (3) of the Bankruptcy Law No. 4 of 1998 (now Article 2 paragraph (3) of the 2004 Bankruptcy Law) indicates that a bank as a debtor may be filed for a bankruptcy declaration, but the application for a bankruptcy declaration must be submitted by Bank Indonesia; 2). Bankruptcy mechanism, is not effective to be used as a mechanism to resolve the issue of debt and receivables where the debtor is a bank; 3. In order to protect the interests of creditors, the role of Bank Indonesia to participate in resolving debt and credit problems is very much needed; 4. It is necessary to create an out of court settlement or non-litigation mechanism, either.

There are several reasons that troubled banks do not need to take the bankruptcy route, because [3]:

1. The process of liquidation and insolvency as regulated in the Bankruptcy Law cannot be applied to banking institutions that already have their own regulations regarding liquidation and insolvency processes in more detail and complete as *lex specialist*.
2. The role of the curator in bank bankruptcy will eliminate the role and intervention of Bank Indonesia in problem banks declared bankrupt, the resolution of which requires special expertise;
3. Bankruptcy of a banking institution can jeopardize the position of its own bank and other banks, as well as Bank Indonesia;
4. Protection of the interests of the public who deposit funds as concurrent creditors in bankruptcy is not prioritized so that public trust in banking institutions is reduced and can disrupt state financial stability;
5. The application of the Bankruptcy Law with very simple procedures to troubled banks can lead to confusion and legal uncertainty, which will further lead to opportunities for KKN.

In practice, BI has never submitted an application for a declaration of bankruptcy against a bank. This is because the provisions of the bankruptcy requirements of Article

2 paragraph (1) of the Bankruptcy Law are not appropriate (not appropriate) to be applied to banks, namely [3]:

1. The bankruptcy conditions are based on the thought that there will be a state of stopping paying because they are unable or unwilling to pay debts. If it is associated with a bank as a debtor, then this is closely related to the bank's credibility at stake;
2. There is no direct relationship (causality) between the requirements for filing an application for bankruptcy declaration and the bank's level of soundness (bankruptcy and performance), meaning that a bank classified as included in the criteria for filing for bankruptcy is not necessarily classified as not viable.

Liquidation in bankruptcy does not directly result in the dissolution of a company, even if the bankruptcy has ended, the company can live again by fulfilling the requirements after being rehabilitated. It is impossible for such a thing to be applied to a banking institution, which if its business license is revoked and the bank is dissolved, the bank will automatically no longer operate.

On the other hand, Adrian Sutedi argues that it is better for Bank Indonesia to take advantage of bankruptcy efforts than liquidation because bankruptcy has better and more certain prospects than liquidation. The reasons include: a. Bankruptcy settlement is carried out through the court (Commercial Court) so that it is prudent, while the liquidation settlement is through an out-of-court route; b. The decision to declare bankruptcy by the Commercial Court can be carried out immediately despite the legal action of Cassation/Review, while in liquidation there is no such arrangement so that there is no firmness on when its implementation will begin; c. In bankruptcy, there are provisions for temporary measures that can be used to protect assets that are the object of bankruptcy from possible misuse by parties who control them prior to the decision to declare bankruptcy from the Commercial Court, while in liquidation there are no provisions regarding such temporary measures; e. In bankruptcy, it is stipulated that the Curator who handles the bankruptcy estate must be independent and has no conflict of interest with the debtor or creditor and the Curator is supervised by the Supervisory Judge, while in liquidation the liquidation property is handled by the Liquidation Team without any Supervisory Judge supervising it so that it seems less prudent.

3.2. LEGAL PROTECTION OF DEPOSITING CUSTOMERS ACCORDING TO ACT NUMBER 37 YEAR 2004 ABOUT PENUNDANAAN KEWAJIBAN PEMBAYARAN UTANG NUMBER YEAR

In 2004, the government revised the old bankruptcy law and issued a new law on bankruptcy, namely Law Number 37 of 2004 entitled "Bankruptcy and Postponement of Debt Payment Obligations", hereinafter referred to as the Bankruptcy Law [15]. From an economic perspective, bankruptcy is closely related to insolvency. Insolvency is "the inability to meet financial obligations when they fall due ... or in excess of liabilities relative to their assets within a certain time" [16]. Insolvency in economic theory can be divided into several categories [17]:

1. Economic failure (economic failure);
2. Business failure (business failure);
3. Technical insolvency or technically not insolvent;
4. Insolvency in bankruptcy; and
5. Bankruptcy according to legal law.

In essence, a priori bankruptcy is considered a failure caused by an error on the part of the debtor in running his business, causing the debt to be unable to be paid. Bankruptcy is essentially unable to pay the debts. According to Jerry Hoff, the purpose of (the legal regulation) of bankruptcy is to pay the creditors the rights they should have obtained according to their rank.

From an economic perspective, bankruptcy is closely related to the business sector, namely the activity of running a company with characteristics (i) continuously in the sense of being uninterrupted, openly in a legal sense, and these activities are carried out in the context of obtaining profits. for yourself or others. Not infrequently, business-economy actors in the course of their business experience difficulties that can lead to bankruptcy, a condition where the payment of bills that are due in the field of assets to other parties is greater than the assets of wealth. Andrew R. Keay explained that measuring bankruptcy (in economics) refers to the state of debtor insolvency which is usually proven through an insolvency test using a cash flow test or practical insolvency approach [18].

From a legal perspective, bankruptcy is defined as a process that protects debtors seeking relief from unmanageable financial responsibilities and assists creditors trying

to recover obligations from these debtors [19] or legally and differently by Bankruptcy Law it means "...general confiscation of all assets of Bankrupt Debtors who are managed and the settlement is carried out by the Curator under the supervision of the Supervisory Judge".

A bank is a legal entity (*rechtspersoon*) which means it has rights and obligations and can perform legal actions. Among these legal actions are entering into agreements in funding and lending. According to the national bankruptcy law, the parties that can be sued for bankruptcy (the Respondent) are Banks. Article 2 of the Bankruptcy Law regulate parties who have a locus standi as petitioners for bankruptcy to the Commercial Court. It reads as follows:

Section 2

(1) A debtor who has two or more Creditors and does not pay off at least one debt that has matured and is collectible, is declared bankrupt by a court decision, either at his own request or at the request of one or more creditors.

(2) The application as referred to in paragraph (1) may also be submitted by the public prosecutor's office.

(3) *In the event that the Debtor is a bank, the application for a declaration of bankruptcy may only be submitted by Bank Indonesia.*

(4) In the event that the Debtor is a Securities Company, Stock Exchange, Clearing Guarantee Institution, Depository and Settlement Institution, the application for a declaration of bankruptcy may only be submitted by the Capital Market Supervisory Agency.

(5) In the event that the Debtor is an Insurance Company, Reinsurance Company, Pension Fund, or State-Owned Enterprise operating in the field of public interest, the application for a declaration of bankruptcy can only be submitted by the Minister of Finance.

Based on the textual text of Article 2 of the Bankruptcy Law without considering other statutory provisions, in the case of filing for Bank bankruptcy, it can be understood simply that the one who is legally entitled to file for bankruptcy is Bank Indonesia. As discussed in the previous description, all laws and regulations in the banking sector are *lex specialis*, while the rules in Bankruptcy Law are *lex generalis*. Bankruptcy Law do not apply to the Bank's liquidation mechanism.

This understanding can be traced from the sound of Article 1 point 6 PLPS No. 1/2011 concerning Bank Liquidation, which states, "Failure Bank is a bank that is experiencing financial difficulties and endangers its business continuity and is declared unable to

be rehabilitated by LPP ...". Bank failure factors can be due to (i) the inability to carry out normal banking operations; or (ii) inability to fulfill all of its obligations properly in accordance with applicable regulations [20].

Bankruptcy Law do regulate legal mechanisms related to Banks as defendants for bankruptcy, but Banking law is a separate legal field and is specific in nature and does not mention the bankruptcy mechanism as a legal route to be taken, but liquidation. The special treatment for Banks can be seen from the existence of Bank Indonesia as an institution mandated by Article 11 paragraphs (1) and (4) of the BI Law to back up Banks experiencing temporary liquidity by providing bailout funds (BLBI) [21]. This kind of thing does not apply to other business entities, for example in the case of PT. Banks are legal entities whose existence is more complex than legal entities engaged in other business fields, for example in the case of non-bank PT. The complexity can be seen that the Bank, apart from being a business entity engaged in industry, is an institution that plays a role in the development of a country.

Regarding legal protection for Depositors, there have been various banking regulations in general and Bank Liquidation mechanisms in particular. Among other things, if the Bank is liquidated, then Customer Deposits below 2 (two) billion are guaranteed payment by LPS. Meanwhile, for every deposit above this value, the return will be paid after the disbursement of assets (Article 53 of the LPS Law). Referring to the provisions of Article 48 of the LPS Law, the text of which is as follows: "The liquidation team of the bank must be completed within a maximum period of 2 years from the date of formation of the liquidation team and can be extended by the LPS for a maximum of 2 times for a maximum of 1 year each." This means that the protection and legal certainty of payment for Depositing Customers above the nominal deposit of 2 billion or and a maximum deposit of less than 2 billion, but fulfilling the elements in Article 19 paragraph (1) of the LPS Law, the 3T element, when matching debts by the LPS, is after disbursement or transfer of assets.

Legal certainty includes all efforts based on law to empower consumers to obtain or determine their choice of goods and/or services they need and defend or defend their rights if they are harmed by the behavior of business actors providing these consumer needs[22]. The consumer in this case is the customer of the bank, and the bank is the provider of consumer needs.

Banking law is a special field of law when compared to bankruptcy. In banking law, there is no "bankruptcy" mechanism, but if a bank is deemed to have had a turnaround, it will be handled formally through revocation of business license followed by liquidation.

In the case of a Bank experiencing funding liquidity, the Bank may request a BLBI facility from BI, while when the Bank is under the supervision of the banking authority, it shows signs of failure, it will be under special supervision by the authorities. Thus, banking law has provided legal protection for Depositors by guaranteeing Deposits below 2 (two) billion and through disbursement of Bank assets if the Deposit is above the nominal value.

Customer legal protection in the case of Bank Liquidation itself is more profitable than the protection according to the Bankruptcy Law mechanisms. This can be seen from the duration of the “settlement of asset distribution” by the Liquidation Team. Article 14 PLPS No. 1/2010, it says:

1. Implementation of liquidation by the Liquidation Team must be completed within a maximum period of 2 years from the date of formation of the Liquidation Team.
2. In the event that the implementation cannot be completed within the period as referred to in paragraph (1), the LPS may extend the period of liquidation for a maximum of 2 times, each for a maximum of one year.

Meanwhile, in the settlement of bankruptcy cases as regulated in the Bankruptcy Law, it does not guarantee the exact duration of time.

4. CONCLUSION AND RECOMMENDATION

4.1. CONCLUSION

Based on Bankruptcy Law, Bank Indonesia is given the opportunity to file for bankruptcy against troubled banks. Bankruptcy is an alternative for rescuing or settling bankrupt assets of a troubled bank through the Commercial Court if the bank rescue measures based on the Banking Law are not successful in rescuing a troubled bank. However, this bankruptcy effort has never been used by Bank Indonesia because so far bank liquidation efforts are considered more appropriate to be used to resolve troubled banks. Systematically, banking law does not recognize the mechanism of bankruptcy, but only recognizes the liquidation process which is the ultimum remedium step for banks that do not have a systemic impact, where the assessment of a failed bank has a systemic impact or is not fully under the authority of the banking authority. Bank bankruptcy as regulated in Article 2 paragraph (3) of the Bankruptcy Law, this is a “general law”, because regarding Banking and the protection of Depositors has been regulated in Banking regulations, which incidentally is a special law. This means, “who can act as

Petitioners in the case of Bank insolvency” in the UUK and PKPU are regulations that do not apply to banks based on the principle of *lex specialist derogat lex generalist*.

Furthermore, legal protection for Depositors in the provisions of national legal law essentially consists of two ways: (i) indirect protection, which if viewed from the national economic system is microeconomic supervision which is a supporting factor for macroeconomic system stability, and (ii) protection direct, which is a form of protection for Depositors through Deposit insurance with certain qualifications as regulated in Article 1 PP No. 66/2008 jo Article 19 paragraph (1) of the LPS Law, namely deposits below 2 billion and those deposits are not qualified as “3T” Deposits. As for Deposits that do not meet the required qualifications, the Deposits are returned after the process of disbursing the Bank’s assets by the Liquidation Team/LPS. The legal protection of Depositing Customers in the event of liquidation of the Bank is already covered by banking law and the provisions of Article 2 paragraph (3) of the Bankruptcy Law by itself do not apply in the case of bank creditors, considering the function of the bank as an intermediary institution.

4.2. SUGGESTION

That Bank Indonesia can take advantage of the use of bankruptcy to settle troubled banks. However, Bank Indonesia should remain cautious in using bankruptcy efforts before there is a law that specifically regulates bankruptcy for banks.

In the event that the Bank is unhealthy or even fails in business, the steps taken by the banking authority are bailout (for Failing Banks with systemic impact) and rescue or liquidation (for non-systemic Failing Banks), not submitting a bankruptcy application to the Commercial Court. On the other hand, in the construction of contract law, the right to collect is an attribute of the debtor.

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