Saving Insurance through Blanket Guarantee Policy and Deposit Insurance Corporation: Indonesia Legal Perspective

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Abstract

The study aimed to analyze saving insurance through blanket guarantee policy and examine the agreement on saving insurance after the establishment of deposit Insurance Corporation based on Law No. 24 of 2004. This research was normative legal research using statutory approach and conceptual approach. The study indicated that the agreement on saving insurance through the blanket guarantee policy guarantees all bank liabilities with an unlimited amount of guarantee. The implementation of savings insurance through the deposit insurance corporation is considered as limited guarantee, however it covers as many depositors as possible. The guarantee provided by the deposit insurance corporation only covers public deposits in banks (depositors).

Keywords Agreement, Saving Insurance, Blanket Guarantee, Deposit Insurance Corporation

Introduction

The banking industry has two special characteristics. First, as one of the subsystems of the financial services industry, in this context the bank can be said to be the heart or the driving force of the economy of a country or one of the leading indicators of the level of stability of a country's economy together with the capital market industry.[1]

In addition, the banking industry is an industry that relies heavily on public trust (fiduciary financial institutions).[1] Public trust is crucial for the bank.[2] Once the public lost their trust in banks, the banks will face a "rush" and eventually collapse.[3] In the United States in the 19th-20th centuries, every 20 years there was a banking crisis as a result of a lack of confidence.[4]

With these two special characteristics, the banking industry is an industry that is considered as the most heavily regulated industries.[5] Implementation and enforcement must be carried out very carefully by taking into account the economic consequences and the function of banking in the country's economy as well as public trust which must be maintained properly.

In 1998, the financial crisis in Southeast Asia was followed by an economic and political crisis in Indonesia.[6] At that time, the economic condition was very worrying, which could be seen from the number of banks being liquidated, causing unrest among the public about the stability of the banking world.[7]

One of the main reasons was that there is no guarantee about the savings when the bank is liquidated.[8] The public trust is very crucial and considered as the main element that must be maintained.[9] This trust can be obtained by having legal certainty in bank regulation and supervision as well as guaranteeing bank customer deposits or saving insurances in order to improve bank business continuity in a healthy manner.[10]

In order to overcome the crises that occurred, especially the crisis of confidence, which began to decline in 1998 when the monetary and banking crisis hit Indonesia, the government issued several policies including providing guarantees for all bank obligations, including public deposits which known as "blanket guarantee".[11] In its implementation, the blanket guarantee can indeed regenerate public trust in the banking industry, however the scope of the guarantee is too broad, causing moral hazard both from the bank management side and the public.[12] In order to overcome this issue, the guarantee program which is too broad in scope was replaced with a limited guarantee system which was implemented through the establishment of the Indonesia Deposit Insurance Corporation also known as IDIC.

The establishment of Deposit Insurance Corporation in Indonesia is regulated under the Law No. 24 of 2004 concerning Deposit Insurance Corporation (hereinafter Deposit Insurance Corporation Law).[13] The Deposit Insurance Corporation or IDIC is "an independent, transparent, and accountable institution in performing its duties and exercising its authority".[14] The Deposit Insurance Corporation or IDIC has 2 (two) main functions, namely: ensuring customer's deposit as well as actively maintaining banking system in accordance with its authority.[15]

The function of the agreement is carried out as required by making payment of guarantee claims for deposits from bank customers whose business licenses are granted. Meanwhile, the function of actively participating in maintaining the stability of the banking system is realized in the form of efforts to save and restore failed banks that do not have a systematic impact or fail banks that are systematically affected (bank resolution).

Previous study was conducted by Diana R. W. Napitulu in 2022 concerning "Beneficiary of Resolution Bank by Indonesia Deposit Insurance Corporation (LPS)".[16] The study was focused on resolution bank or restructuring of the failed bank by Indonesia Deposit Insurance Corporation to meet the beneficiary principle. In 2019, similar study was conducted by Nanang Pradana and Sri Anggraini Kusuma Dewi concerning "Peran Lembaga Penjamin Simpanan (LPS) Pada Bank Gagal sebagai Upaya Perlindungan Hukum Terhadap Nasabah".[11] The focus of the study was on the role of the Deposit Insurance Corporation on Failing Bank as a Legal Protection against Customer.

According the abovementioned, there seems to be a similar topic namely regarding the Deposit Insurance Corporation. However, the focus of the study is different. The current study is focusing on the insurance saving through the blanket guarantee policy and the insurance saving with the establishment of Deposit Insurance Corporation.

The study aimed to analyze saving insurance through blanket guarantee policy. Further, it also examines the agreement on saving insurance after the establishment of deposit Insurance Corporation based on Law No. 24 of 2004 concerning Deposit Insurance Corporation.

Based on the abovementioned, there are two main issues need to be discussed, as follow:

1. How is saving insurance guaranteed through a blanket guarantee policy?
2. How is the guarantee of saving insurance with the establishment of Deposit Insurance Corporation?

Research Method

This study was normative legal research that focusing on the laws and regulations as the object of the research.[17] This research applied statutory approach and analytical conceptual approach. This study used primary legal materials in the form of legislation and jurisprudence, and secondary legal materials which include books, journals, and other written legal materials. Research legal materials are collected through document studies, in search of conceptions, theories, legal opinions that are relevant to the research problem. The collected legal materials were analyzed qualitatively and comprehensively. After being analyzed, then the legal material is presented in a descriptive analysis

Result and Discussion

Saving Insurance through the Blanket Guarantee Policy

The banking crisis in Indonesia was triggered by the revocation of the business licenses of 16 banks which was immediately followed by a systematic flight of deposits and transfers.[7] This is inseparable from the public perception of an implicit guarantee from Bank Indonesia for the viability of a bank, in other words, liquidity for troubled banks is avoided as much as possible and instead strives to be saved.[18] Meanwhile, protection for depositors of funds in the form of an explicit guarantee does not yet exist.

In its later development, the crisis condition in the banking sector became systemic and almost paralyzed. Such conditions are indicated by the Non-Performing Loan (hereinafter NPL) of banks reaching an average of 50% of the total assets of Bank Indonesia. In addition, the cost of rescue is estimated to reach 10% of the average Gross Domestic Product (hereinafter GDP) of Indonesia over the last 15 years. The Blanket Guarantee policy in the international world, in principle, is an instrument of action on the obligations of troubled banks both to depositors and creditors.

In order to increase public confidence in the banking industry, the government in 1998 issued a blanket guarantee policy, as a form of guaranteeing customer funds at Commercial Banks and Bank Pekreditan Rakyat or People's Credit Bank (hereinafter BPR), by issuing Presidential Decree No. 26 of 1998 concerning Guarantees against Payment Obligations for Commercial Banks and Presidential Decree No. 193 of 1998 concerning Guarantees Against Payment Obligations of Bank Pekreditan Rakyat. Both decrees mainly regulate:

Presidential Decree No. 26 of 1998	Presidential Decree No. 193 of 1998
1. Payment obligations guaranteed by the government are funds held by deposit owners and creditors, including rupiah and foreign currencies;	1. Payment obligations guaranteed by the government are non-bank third party funds, which have time deposits, savings and or other equivalent forms;
2. The terms, procedures and other implementation provisions shall be stipulated by the Minister of Finance after receiving consideration from the Governor of Bank Indonesia;	2. The terms of procedure and other implementation provisions are stipulated by a Decree of the Board of Directors of Bank Indonesia;
3. The implementation of the guarantee is carried out by an institution determined by a Presidential Decree.	3. The implementation of the guarantee is carried out by Bank Indonesia.

With the issuance of Presidential Decree No. 26 of 1998 and Presidential Decree No. 193 of 1998, it shows that the government has guaranteed all bank payment obligations, including public deposits.[19] The policy, which is based on the presidential decree, is expected to convince the public to return to trust in saving their funds in banks so that the banking world in Indonesia recovers from the crisis.

Blanket guarantee is a temporary emergency instrument and is usually applied when a systemic crisis occurs in the banking sector.[20] In theory, if blanket guarantees are believable, they can prevent ban runs.[21] However, guaranteeing bank restructuring initiatives could incur significant expenses and exacerbate moral hazard in the future.[22] The advantages of a blanket guarantee stem from the fact that it boosts public confidence by removing the temptation to withdraw deposits.

In Indonesia, the implementation of blanket guarantee was implied temporary until the systemic banking crisis recovers and the budget burden will be borne by the government. In practice, there are variations in the coverage of blanket guarantees that have been applied in several countries when the banking system experienced a crisis. The following is the implementation of blanket guarantees in several countries and their scopes:

No.	Country	Scope of Blanket Guarantee
1.	Finland	Covers all deposits of depositors without a limit on the amount
2.	Sweden	Covers all bank obligations to depositors and creditors including bank guarantees
3.	Japan	Covers all deposits of depositors without a limit on the amount
4.	Mexico	Covers all deposits of depositors without a limit on the amount
5.	Turkey	Covers all deposits of depositors without a limit on the amount
6.	Thailand	Covers all deposits of depositors without a limit on the amount
7.	Korea	Covers all deposits of depositors without a limit on the amount

The implementation of the blanket guarantee scheme is indeed able to suppress the occurrence of bank runs and capital flight from the banking industry, but with the large amount of funds that must be provided and issued by the government, the blanket guarantee scheme is considered very burdensome to state finances because it absorbs state finances in a significant amount, and creates a moral hazard for the public and bank managers, where people are not encouraged to be selective in choosing banks and bank management is carried out in an unprudential manner and the principle of prudence is not maintained.[12] For this reason, a new guarantee scheme is needed that can eliminate or at least minimize the emergence of moral hazard and the burden on state finances.

Noting that the blanket guarantee implemented by the National Bank Restructuring Agency (hereinafter IBRA) had negative implications and burdened state finances, such a guarantee scheme ended in 2004 with the establishment of the Deposit Insurance Corporation (LPS) based on the Deposit Insurance Corporation Law. The change in the guarantee scheme in 2004 was carried out in line with the improving performance of the banking industry, namely the implementation of a limited guarantee scheme. This limited guarantee scheme is more oriented towards protecting the payment of public funds deposited with banks in the form of savings, with the amount guaranteed to be limited in a certain amount, but can reach as many customers as possible.

Saving Insurance by the Establishment of Deposit Insurance Corporation

As a substitute for a full or unlimited guarantee policy (blanket guarantee), the Deposit Insurance Corporation (LPS) was established through Law no. 24 of 2004 which was later amended by Law No. 7 of 2009 concerning Stipulation of Government Regulation in Lieu of Law No. 24 of 2004 concerning Deposit Insurance Corporation (hereinafter Law No. 7 of 2009). Saving insurance for bank customers carried out by the Deposit Insurance Corporation or IDIC is limited (limited guarantee), but covers as many customers as possible.

Thus, there are two basic differences between the guarantees provided by the blanket guarantee program and the guarantees provided by the Deposit Insurance Corporation or IDIC, namely in terms of coverage and the amount of money guaranteed..[23] The blanket guarantee guarantees almost all bank liabilities with an unlimited amount of guarantee (the sky is the limits), while the guarantee provided by the Deposit Insurance Corporation or IDIC only covers public deposits with banks (depositors) with a certain maximum amount (limited).

The issuance of Law No. 24 of 2004 concerning the Deposit Insurance Corporation marks a new chapter in the national banking system.[24] The existence of the Deposit Insurance Corporation or IDIC cannot be separated from efforts to increase financial sector stability and to restore public confidence in the banking sector.[25] People are expected to no longer worry about saving their money in banks, because if there is a crisis in a bank, their savings will remain safe and get guaranteed returns from the government.[25]

The existence of the Deposit Insurance Corporation or IDIC is intended to eliminate negative implications arising from the implementation of blanket guarantees in the past and to provide better legal protection for creditors, including depositors of funds. Regarding the protection of depositors in the Indonesian banking system, this can be done in 2 (two) ways, namely:[26]

Implicit Deposit Protection, namely the protection generated by effective supervision and bank development, to avoid the occurrence of a bank bankruptcy. The strategies aren't based on explicit regulations, but rather on inferences drawn from previous government actions.[27] This protection is obtained through:

1. Legislation in the banking sector;
2. Efforts to maintain bank soundness;
3. Maintaining bank soundness;
4. Conducting business activities with the principle of prudence;
5. Providing credit that does not harm the bank and the interests of customers;
6. Provide risk information to customers.

Explicit Deposit Protection, specifically, protection through the creation of an entity that guarantees public deposits, such that if a bank fails, the institution will replace the public monies deposited with the failing bank. The formation of institutions that guarantee public savings provides this protection.

According to abovementioned, it is shown that the establishment of the Deposit Insurance Corporation or IDIC is classified as explicit deposit protection that designed to ensure the protection to the public deposits.[28] The concept of deposit protection is formulated explicitly in the legislation including its purpose, duties, functions and authorities.

The Deposit Insurance Corporation or IDIC is “an independent, transparent, and accountable institution in performing its duties and exercising its authority”.[14] According to the Article 4 of the Law on Deposit Insurance Corporation, it is stipulated that the functions of Deposit Insurance Corporation are:

a. “Insure customer’s deposits; and
b. Actively participate in maintaining the stability of banking system in accordance with its authorities”.

In carrying out its function in insuring customer’s deposits, the Deposit Insurance Corporation or IDIC has “to formulate and determine implementation policies of deposit insurance and implement the deposit insurance program”. Further, the Deposit Insurance Corporation or IDIC also has several tasks in order to be able to maintain the stability of banking system, namely:

a. “To formulate and determine policies to actively participate in maintaining the stability of the banking system;
b. to formulate, determine, and implement the resolution policy for Failing Banks that do not have a systemic effect; and
c. to perform the handling of Failing Bank that has a systemic effect”.

According to the Article 43 of the Deposit Insurance Corporation Law, it is stipulated that “in the process of liquidating a Failing Bank whose license is revoked, the Deposit Insurance Corporation or IDIC shall take necessary actions in order to preserve the asset of the liquidation process”. Further, the Deposit Insurance Corporation or IDIC shall “decide to dissolve the bank’s legal entity, appoint a liquidation team and announce the bank’s status as under liquidation”.

The insurance claim will be certified eligible if it fits the following requirements, as determined by the Deposit Insurance Corporation's reconciliation and/or verification:

a. The Deposit(s) are recorded in the bank;
b. The Deposit interest rate does not exceed the guarantee rate;
c. Does not conduct any action that are burdensome to the bank.

If a bank is unable to continue its business and its business license must be revoked, the Deposit Insurance Corporation (LPS) will pay the deposit of each customer of the bank up to a certain amount after previously carried out reconciliation and verification. The value of deposits guaranteed by the Deposit Insurance Corporation or IDIC as of October 13, 2008 is Rp. 2,000,000,000, - (two billion rupiah) through Government Regulation No. 66 of 2008 concerning the Number of Deposits Guaranteed by the Deposit Insurance Corporation. The issuance of the Government Regulation is the legal basis for the renewal of the maximum value of the previous guarantee, which was Rp. 100,000,000, - (one hundred million rupiah).

The establishment of the Deposit Insurance Corporation or IDIC means that there is a guarantee of legal certainty for the return of customer deposits in the event that a bank's business license is revoked.[29] The existence of the Deposit Insurance Corporation, or IDIC, is part of the government's comprehensive approach to establishing a banking and financial safety net. It is implemented as a banking safety net through a guarantee program and the handling of failing banks (liquidated banks), while it is implemented as a financial safety net through the use of surplus and accumulated premiums.

Conclusion

Based on the abovementioned, it can be concluded that Blanket guarantee is a temporary emergency instrument and is usually applied when a systemic crisis occurs in the banking sector. In theory, blanket guarantees can prevent ban runs if they are credible. However, guarantee could add substantial costs to bank restructuring programs and may increase moral hazard going forward. With regard to the saving insurance, the government establish an institution named Deposit Insurance Corporation or IDIC with limited guarantee, but covers as many customers as possible. The existence of the Deposit Insurance Corporation or IDIC is intended to eliminate negative implications arising from the implementation of a blanket guarantee and provide better legal protection for depositors.

Reference

A. Rozali, "Prinsip Mengenal Nasabah (Know Your Customer Principle) Dalam Praktik Perbankan," J. Wawasan Yuridika, vol. 24, no. 1, pp. 298–307, 2014.

H. Jayadi and H. Adolf, "Fungsi Lembaga Penjamin Simpanan dalam Hukum Perbankan Indonesia," J. Komun. Huk., vol. 4, no. 2, pp. 66–88, 2018.

I. P. I. Prastika, "Perlindungan Hukum Terhadap Uang Simpanan Nasabah di Bank Gagal oleh Lembaga Penjamin Simpanan (LPS) Menurut U UNomor 10 Tahun 1998 dan UU Nomor 24 Tahun 2004," J. Magister Huk. Udayana, vol. 5, no. 3, pp. 447–458, 2016.

H. Juwana, "Analisa Ekonomi atas Hukum Perbankan," J. Huk. Pembang., vol. 28, no. 1–3, pp. 83–97, 2017.

T. Tapver, "CSR reporting in banks: does the composition of the board of directors matter," Quant. Financ. Econ., vol. 3, no. 2, pp. 286–314, 2019.

C. H. A. Le, "Macro-financial linkages and bank behaviour: evidence from the second-round effects of the global financial crisis on East Asia," Eurasian Econ. Rev., vol. 6, no. 3, pp. 365–387, 2016.

W. Astriyani and H. Rinardi, "Hubungan Letter of Intent (LoI) International Monetary Fund dan Perkembangan Ekonomi Khususnya Sektor Perbankan Indonesia (1997-2006)," Historiografi, vol. 2, no. 2, pp. 118–127, 2022.

A. S. Utama, "Kepercayaan Masyarakat terhadap Penegakan Hukum di Indonesia," J. Ensiklopedia Soc. Rev., vol. 1, no. 3, pp. 306–313, 2019.

P. W. J. van Esterik-Plasmeijer and W. F. Van Raaij, "Banking system trust, bank trust, and bank loyalty," Int. J. Bank Mark., 2017.

A. S. Utama, R. Iqsandri, A. P. Susanty, and F. A. Permana, "Perlindungan Negara Terhadap Dana Simpanan Nasabah Pada Perbankan," J. Sociohumaniora Kodepena, vol. 2, no. 1, pp. 48–60, 2021.

N. Pradana and S. A. K. Dewi, "Peran Lembaga Penjamin Simpanan (LPS) Pada Bank Gagal Sebagai Upaya Perlindungan Hukum Terhadap Nasabah," YUDISIA J. Pemikir. Huk.

dan Huk. Islam, vol. 10, no. 2, pp. 101–120, 2019.
A. Demirgüç-Kunt, E. Kane, and L. Laeven, “Deposit insurance around the world: A comprehensive analysis and database,” J. Financ. Stab., vol. 20, pp. 155–183, 2015.
J. E. J. Lisungan, “Peranan Lembaga Penjamin Simpanan Terhadap Perlindungan Bank Dan Nasabah Menurut Undang-Undang Nomor 24 Tahun 2004,” LEX Priv., vol. 7, no. 5, 2020.
M. E. Triyadi and B. Bambang Eko Turisno, “Tanggung Jawab Direksi pada PT Bpr sebagai Bank Gagal,” Diponegoro Law J., vol. 6, no. 2, pp. 1–15, 2017.
A. A. NUGROHO and S. Sugianto, “Kajian Hukum Mengenai Peran dan Fungsi Lembaga Penjamin Simpanan dalam Menjamin Simpanan Nasabah Perbankan,” J. Yuridis, vol. 2, no. 2, pp. 231–238, 2017.
D. R. W. Napitupulu, “Beneficiary of Resolution Bank by Indonesia Deposit Insurance Corporation (LPS),” J. Huk. dan Peradil., vol. 11, no. 1, pp. 134–150, 2022.
M. Fajar and Y. Achmad, Dualisme Penelitian Hukum Normatif & Empiris. Yogyakarta: Pustaka Pelajar, 2013.
M. Muqtadir et al., “Legal Review On Deposit Insurance Institutions In The Protection Of Customer’s Deposits Funds In The Bank,” Tadulako Law Rev., vol. 6, no. 1A OCTOBER, pp. 25–35.
V. V. Rakian, “Eksistensi Lembaga Penjamin Simpanan Dalam Upaya Menjaga Stabilitas Perbankan Nasional Di Era Pandemi Covid-19,” LEX Crim., vol. 10, no. 13, 2022.
N. T. H. Saputera, “Perlindungan Bagi Dana Nasabah dengan Nilai Total Melebihi Batas Hak Penjaminan Simpanan pada UU No. 24 Tahun 2004.” Universitas 17 Agustus 1945 Surabaya, 2021.
A. H. M. Noman, M. K. Hassan, S. Pervin, C. R. Isa, and C. Sok-gee, “The mediating role of competition on deposit insurance and the risk-taking of banks in ASEAN countries,” Res. Int. Bus. Financ., vol. 59, p. 101551, 2022.
L. Laeven and F. Valencia, “The Use of Blanket Guarantees in Banking Crises,” SSRN Electronic Journal, 2008. .
T. Budiyono, “Penjaminan Simpanan Dari Waktu Ke Waktu (Studi Penjaminan Simpanan Di Indonesia),” Refleks. Huk. J. Ilmu Huk., vol. 3, no. 2, pp. 129–144, 2019.
T. Y. Kembuan, “Perlindungan Hukum Terhadap Nasabah Perbankan Oleh Lembaga Perjanjian Simpanan (Lps) Berdasarkan Undang-Undang Nomor 24 Tahun 2004,” LEX Soc., vol. 6, no. 9, 2019.
S. Febryanti, H. Saptono, and S. Mahmudah, “Tanggung Jawab Lembaga Penjamin Simpanan terhadap Nasabah Penyimpan Bilyet Deposito Akibat Likuidasi Bank,” Diponegoro Law J., vol. 5, no. 2, pp. 1–15, 2016.
J. Karundeng, “Perlindungan Hukum Nasabah Dalam Likuidasi Bank Menurut Undang-Undang Nomor 24 Tahun 2004 Tentang Lembaga Penjamin Simpanan,” LEX Soc., vol. 3, no. 10, 2015.
M. S. Jameaba, “Deposit insurance and financial intermediation: The case of Indonesia Deposit Insurance Corporation,” Cogent Econ. Financ., vol. 6, no. 1, p. 1468231, 2018.
H. Rauf, “Kajian Yuridis Tentang Perlindungan Hukum Terhadap Nasabah Ditinjau Dari Undang-Undang Nomor 24 Tahun 2004 Sebagaimana Telah Diubah Menjadi Undang-Undang Nomor 7 Tahun 2009 Tentang Lembaga Penjamin Simpanan,” LEX Priv., vol. 9, no. 6, 2021.
G. R. Kalam, “Peranan Lembaga Penjamin Simpanan Dalam Melindungi Simpanan Dana Nasabah Menurut Undang-Undang No. 24 Tahun 2004 Jo. Undang-Undang No. 7 Tahun 2009,” LEX Priv., vol. 5, no. 5, 2017.