



Legal Aspects Of Liquidation Of The Bank Against The Customer

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ABSTRACT

The purpose of writing this article is to be able to determine the regulation of legal aspects of liquidation that have an impact on customers when a bank is liquidated. The method used to study this article is the normative legal research method. In huku research methodsm normative approach is using legislation- invitation and conceptual approach as a way to solve the problem based on legal materials obtained and analyzed by the description technique qualitative . After reviewing the results obtained that arrangements related to bank liquidation in the banking system in Indonesia have actually been arranged. This can be seen in the Banking Act, the UU LPS, Government Regulation No. 25 of 1999 and other provisions. Basically, the decree contains the same thing, namely that liquidation is the end of bank failure. In the event that the bank is liquidated, the bank must return the deposits held by customers. If the assets owned by the bank are insufficient, the commissioners, directors and shareholders can be held accountable to meet the obligations of the bank.

INTRODUCTION

In its presence in the economic system, banks are not just institutions that collect money from the public. However, the bank is also an institution distribute funds to the community for those in need. Of course, this is accompanied by guarantees in accordance with the funds required by the customer. From this it can be said that the bank has the benefit of a financial liaison institution or Financial Intermediary. It can be interpreted that the bank becomes an institution that bridges two customers who have different needs. There are customers who have excess money and on the other hand there are customers who need money. In terms of deposits, the bank offers several forms

of deposits, namely : demand deposits, savings, time deposits and other fund-raising products. In the case of disbursing funds, the bank offers in the form of credit (Ismail, 2016).

Banks as financial institutions carry out its task is to promote the Haitian precautionary principle. This is because the bank is an institution that holds the trust of the public. The public has given full confidence in the Bank as a safe place to set aside funds (money) and in the hope that the money can be taken again in the future accompanied by interest. People believe that " the bank is the safest place to store funds (money)". In its development the bank can survive and develop well due to the trust society (Lindriyani Sojiyan, 2015).

It cannot be denied that the economic system is not always in a stable condition. Sometimes the economy can decline very drastically. Because basically the relationship between the bank and its customers is a bond based on a relationship of trust (fiduciary relationship). Then it will also greatly affect the condition of the bank as a financial institution that works in the economic sector (Bani, 2018). Banks as public trust institutions should still try to maintain that trust. Because if the trust of the public began to decline, then the bank also does not will be able to survive and thrive. If a bank in the consideration of Bank Indonesia enters the phase of a failed bank, then there is a high probability that the bank will experience a revocation of its business license and end up with liquidation if it cannot restore the condition of the bank. In Law No. 10 Of 1998 has been amended by Law No. 7 of 1992, which in Regulation Act it does not convey the interpretation of catalysis. According to KBBI, that "liquidation is the process of dissolving the company as a legal entity includes payment of obligations to creditors and distribution of remaining assets to shareholders (persero)" (Gazali, 2012).

Liquidation is a very sad last resort to cope with a bank that is in a state of distress. The liquidation process is an urgent final effort that must be made on the basis of the assessment that the distress of the bank is not only able to undermine the survival business, but also can lead to system risk in the banking industry as a whole (Churiyah, 2019). Actions taken by the office on the basis of thought against examination by Bank Indonesia, there are a number of banks with financial conditions and kemajuanusaha insolvent and unhealthy, it can threaten to the continuity of its activities and disrupt the rules in banking as a whole and can threaten public needs. In the liquidation process, then all assets owned by the liquidated bank will be disbursed in order to pay "the cost of employee salaries owed, the cost of litigation, auction fees owed, taxes payable in the form of bank tax and tax collected by the bank as a tax cutter/collector and Office fees". Then what about the fate of deposits customer, if the asset is not enough to finance all debts held by the liquidated bank. How will the bank's responsibility for the incident (Lindriyani, 2015).

In this study the authors made a review related to The legal aspect to financial transactions involves the possibility of a Bank. In this study more in-depth conducted as well as to understand how a process undertaken by the bank is not enough to guarantee the loss of deposits made by the customer on the basis of calculations that is to

understand the legal aspects of the bank. Based on these considerations, the authors agree to review the "legal aspects of bank liquidation against customers".

METHOD

This study employs normative legal methodologies. This study utilizes both primary and secondary legal resources. Through the study of literature, the technique for gathering legal materials is carried out. Normative research methods in which research begins with *das solen* (law on paper) and ends with *das sein* (law in actions). This research is classified as *ke* in normative legal research based on a literature review or a review of merely secondary sources. It is said to be normative because the law is assumed to be an autonomous entity whose enforceability is determined by the law itself and not by external factors. This research methodology employs the Statute and Conceptual approaches. *Primer Legal Material*, which is authoritative legal material, has authority in the form of laws and regulations relevant to this paper's discussion (Ariman Sitompul, 2023)

RESULTS AND DISCUSSION

The existence of laws or rules in the midst of society certainly has a very important role. Law as a guardian of society in the conduct of course very influential. In the life of society the law is the same as the rules. These settings it is the *ebut* that is the reference or benchmark of the community that will lead the community to an orderly life. It is the same with the liquidation of banks that require clear arrangements. In the presence of arrangements related to liquidation, then everything that conducted in the event of liquidation of the bank need to sync with the existing regulatory provisions. As for regulations that can be used as a legal basis or reference used basis of bank liquidation while in a difficult situation, namely Law No. 10 of 1998 on amendments to Law No. 7 of 1992 on Banking, Law No. 24 of 2004 on Deposit Insurance Agency, Government Regulation No. 25 of 1999 on revocation of business licenses, dissolution and liquidation of banks and the decree of the Board of Directors of Bank Indonesia number 32/53 / KEP / dir dated May 14, 1999 on procedures for revocation of business licenses, dissolution and liquidation of banks General.

In the Banking Act there is no certainty about what liquidation is, but if you look more deeply at the provisions of Article 37 paragraph (2) and Paragraph (3) of the Banking Act, so the meaning of

the word liquidation is not limited to revoking the business license of the bank, but also includes the activities of dissolution (outbinding) of the legal entity of the failed bank and also includes the completion (verifying) of all functions and authorities of the failed bank as an impact with the dissolution of the legal entity of the bank. Along with the revocation of the business license of a bank by the head of Bank Indonesia, in accordance with Article 37 paragraph (2), will be immediately followed by the dissolution of the bank in the form of a legal entity and in the form of its liquidation team through the GMS. If the Board of Directors of the Bank does not hold a General Meeting of shareholders, then based on the provisions in Article 37 paragraph (3) of the banking law, that " the head of Bank Indonesia asks the court to issue a determination containing the dissolution of the bank's legal entity, appointment of liquidation team & liquidation implementation order in accordance with applicable laws and regulations". Then the liquidation process of the bank can not be taken for granted but must be preceded by the process of revocation of the license from the failed bank business and the dissolution of the legal entity of the bank (Nugraheni,2014).

In the case of liquidation of a bank, LPS acts as liquidator of the failed bank that revoked his license by Chairman of Bank Indonesia and at the same time act as person in charge of deposits held by bank customers. Because LPS itself takes all responsibility and becomes a substitute for all the duties and authorities of the bank that was revoked its business license. IDIC is also fully responsible for the savings of bank customers who experience difficulties and failures, including guarantees for bank customer deposits based on Sharia principles. LPS responsibility as a guarantor of deposits held by customers is limited but nevertheless the authority of the LPS can be comprehensive to all customers. All banking business conducted within the scope of the state of Indonesia are required to as part of the person in charge and fulfill all guarantee obligations. If in the future the bank cannot continue its activities and must experience a revocation of its business license, the LPS agency is obliged to pay all the savings owned by customers in an amount that is in accordance with the rules. If there is a deposit that is not guaranteed, will be completed by the procedure of liquidation of the bank. After the formation of the liquidation team, the status of the board of directors and board of Commissioners becomes inactive and the board of directors and commissioners have an obligation to help provide

data and information that can be used by the liquidation team (Karim,2014).

If liquidation has not been completed, then members of the board of directors and board of Commissioners of the bank involved are not allowed to resign, except with the approval of Bank Indonesia. The liquidation process is carried out by liquidating assets owned by the liquidated bank, which will later be used to pay all obligations of the bank. Payments to creditors will be repaid by the IDIC when it has completed all obligations held by the bank fails such as by paying salaries of employees, paying the burden of cases at the green table , auction budget, tax burden owned by the bank and Budget Office (Rizal,2020).

Can be known in general, the legal form of the liquidated banks are all in the form of a limited liability company (PT) which is an organization which is in the form of a legal entity and because of this its shareholders have limited liability. Which can be interpreted that in PT shareholders do not have responsibility for any losses from the company that exceed the number of shares they have, their responsibility is limited to the number of shares owned and does not include their personally owned property. Thus, persero or shareholders in PT are not responsible, except for the nominal value of their shares. In this case, the personal property of persero or PT shareholders not involved shall be held responsible for the liability of the carried out by the PT involved, which in law this principle or principle is called the doctrine of separate corporate personality. But there are some exception from the principle of the doctrine of separate corporate personality, because in certain cases all obligations in terms of limited guarantees that it has can be lost. A shareholder can lose his limited liability and can be held personally or civil liability on the basis of piercing the corporate veil principle. If judging by the reference of the banking legal system, it can be seen that there are strict rules related to that the bank has full responsibility for liability of the bank if it is proven that the owner of the bank helped make the bank experiencing financial difficulties and lead to bankruptcy of the bank (Suryahadi,2020).

In Article 24 paragraph (1) of Government Regulation No. 25 of 1999 on revocation of business licenses, dissolution and liquidation of banks states that: " in the event that the assets of the bank in liquidation are not sufficient to meet all the bank's obligations in the liquidation must be fulfilled by the members of the board of directors and members of the board of Commissioners and shareholders who participate in the liquidationcauses of financial

difficulties faced by the bank or a cause of bank failure.”

That the provision is intended to uphold the precautionary principle held by banking and must be obeyed by the bank. If the board of commissioners, directors and shareholders are proven to be part of the trigger for the difficulties experienced by the failed bank, the shareholders, directors and commissioners can be held accountable in a civil manner and participate in paying all debts owed by the bank to customers and all creditors. From the contents of these provisions can also be seen that the goal is to trust customers to the bank stay awake because banking is a financial institution that requires full trust from customers in running its business. Makawith viewing that the customer is a pillar of strength owned by the bank in running its business, if the bank in the future bad luck so that it must experiencing the revocation of his business license and eventually dissolved his legal entity, it is appropriate if the payment for the return of the money owned by the customer depositors take precedence without neglecting their repayment to customers and other parties.

CONCLUSION

Banking law in Indonesia has been about liquidation. It can be seen that specifically contained in the law on Banking, Law- Law on Deposit Insurance Agency, Government Regulation on revocation of business license, dissolution and liquidation, decree of the Board of Directors of Bank Indonesia on procedures for revocation of business license, Dissolution and liquidation of commercial banks and other legal basis relating to the liquidation of banks. Basically all of these provisions contain things the same is that liquidation is the final act of a bank failure in order to save the banking system and public confidence in the bank. In the process of liquidation, when the assets owned by the liquidated bank is not sufficient to pay all of its obligations, then shareholders, directors and commissioners can be held accountable for what has happened to the bank, if it has been proven that participated in triggering the failure of the bank.

REFERENCES

- Ariman Sitompul, Mhd. Nasir Sitompul, 2023, Application of money laundering in corruption cases in maintaining state stability. *The International Journal of Politics and Sociology Research*, Vol. 11, No. 1), pp.95
<https://doi.org/10.35335/ijopsor.v11i1.12>
- Ariman Sitompul. 2023, Transfer Of Billing Rights To Third Parties In The Banking System. *International Asia Of Law and Money Legalpreneur Journal* Vol. 2, No.1 . DOI: <https://doi.org/10.46576/lpj.v1i2.3134>
- Bani, F., & Yaya, R., 2018, . Risiko Likuiditas pada Perbankan Konvensional dan Syariah di Indonesia. *Jurnal Riset Akuntansi dan Bisnis*, Vol. 16, No.1. pp. 15.
- Churiyah, M., Sholikhah, S., Filianti, F., & Sakdiyyah, D. A., 2020, . Indonesia Education Readiness Conducting Distance Learning in Covid-19 Pandemic Situation. *International Journal of Multicultural and Multireligious Understanding*, Vol 7, No. 6, pp. 491-500.
- Gazali, Djoni S dan Usman Rachmadi, 2012, *Hukum Perbankan*. Sinar Grafika, Jakarta, pp 531.
- Ismail, 2016, *Manajemen Perbankan*, Jakarta: Prenadamedia Group, Jakarta, pp. 8 – 9.
- Karim, M. A., Hassan, M. K., Hassan, T., & Mohamad, S. ,2014, Capital adequacy and lending and deposit behaviors of conventional and Islamic banks. *Pacific-Basin Finance Journal*, Vol.28, 58-75
- Lindriyani Sofiyani, 2015, Prinsip Kehati-Hatian (Prudential Banking Principle) Dalam Pembiayaan Syariah Sebagai Upaya Menjaga Tingkat Kesehatan Bank Syariah, *Pakuan Law Review*, Vol. 1, No.2, pp. 35.
- Nugraheni, P., & Alam, W. F. I., 2014, Pengaruh Risiko Likuiditas Terhadap Profitabilitas Pada Perbankan Syariah dan Konvensional Di Indonesia. *Journal of Accounting and Investment*, Vol. 15, No. 1, pp. 1-16.
- Rizal, F., & Rofiqo, A. ,2020, Determinants of Sharia Banking Profitability: Empirical Studies in Indonesia 2011-2020. *El-Barka: Journal of Islamic Economics and Business*, Vo. 3, No. 1), pp. 140.
- Suryahadi, A., Al Izzati, R., & Suryadarma, D, 2020, Estimating the impact of covid-19 on poverty in Indonesia. *Bulletin of Indonesian Economic Studies*, Vol. 56, No. 2, pp. 175-180.

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