

# Legal Standing Creditor Customers During Banks Experience Liquidation

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## Legal Standing Creditor Customers During Banks Experience Liquidation

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**ABSTRACT:**Bank liquidation begins with the revocation of its business license by the Financial Services Authority, which then forms a liquidation team. The liquidation team was formed by the Deposit Insurance Corporation whose role was to rescue, in the sense of guaranteeing deposits from bank customers whose licenses were revoked and implementing resolutions (restructuring) of failed banks. The guarantee for bank customer funds is based on Article 54 Paragraph (1) of the LPS Law jo. Article 17 Government Regulation Number 25 of 1999 concerning Bank Business License Revocation, Dissolution and Liquidation of Banks, depositors of funds are in the backward priority order and therefore the depositors of funds are themselves concurrent creditors, who must also compete for repayment or return of their deposits. On the other hand, legal protection must absolutely be given to customers who deposit funds. Legal protection for customers is carried out from the upstream, namely by maintaining the continuity of the bank as an institution in particular and protection of the banking system and protection by granting preferential rights to customers who deposit funds.

**Keynote:** legal position, customer creditors, liquidity.

### I. PRELIMINARY

Banks are a form of the financial system as well as the payment system in each country, both developing and developed countries. Currently in the contemporary era the Bank has become the center of money transactions in the world. Thus, with the very central role of the Bank in its operational activities, the Bank must first obtain an establishment permit and the Bank in its movement is not only to maintain its existence, but also to obtain and carry out the mandate both nationally and globally. The element of trust from the public nationally is crucial because if a bank experiences a bankruptcy, it will have an impact on other banks which in turn will have a bigger impact due to the disruption of the country's financial and payment system functions.<sup>2</sup>

The statement that banks absolutely need the trust of their customers to save and manage public funds is not an exaggeration. This is because the level of public trust that has been created, both people who have not become customers and people who have used their services, will be well maintained. The higher public trust will make the Bank a financial system and payments, the better the financial system in the country.<sup>3</sup>

The banking sector has a role in being the vein as well as the heartbeat of a country's economy, which requires a trust from the public to support economic activity in the banking sector and make banks in a healthy condition. In addition to carrying out function as a means of transmitting monetary policy, banks also play a major role in payment transactions both domestically and between countries.<sup>4</sup> However, it is possible that one day the Bank will experience a crisis of confidence which will make the bank's system unhealthy. This crisis occurs due to several factors, and the most worrying factor is that there are still bank owners who often use the bank for personal interests or for the interests of certain groups, even though the characteristics of the bank are that most of the funds are savings money belonging to the public and the rest is only paid-up capital. The paid-up capital is not bigger than public funds, so the paid-up capital will be more susceptible to exhaustion and even negative. If this happens, what happens next is that the bank will experience solvency, which means that the Bank can no longer fulfill its obligations to all its customers and creditors. This situation is known as a bank failure (failure bank).

Banking business activities are not only limited to securing large profits for the owner or founder, but the Bank is also a business activity full of risks because the money owned and managed is money deposited from

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<sup>2</sup>Adrian Sutedi, 2015, *Hukum Perbankan: Suatu Tinjauan Pencucian Uang, Merger, Likuidasi, dan Kepailitan*, Jakarta: Sinar Grafika, h. 1.

<sup>3</sup>*Ibid.*

<sup>4</sup>*Ibid.*, h. 130.

the public, which can be in the form of savings, current accounts and deposits. Therefore, it is impossible for anyone to freely establish, manage, or even run a bank business without the support of qualified banking regulations from the Government of Indonesia through the Financial Services Authority and Bank Indonesia which is authorized to create and stipulate laws and regulations and is responsible for supervising the movement of the Bank's business and activities. Thus, the policies established to control banking business activities must be oriented towards the goal of realizing a sound and strong banking system for the development of a country's financial infrastructure. The infrastructure here is not only in terms of overcoming the gap between savings and investment, but also in maintaining economic stability on a scale. Through the political enactment of monetary policy.<sup>5</sup>

As explained briefly above, there are still problems that cause banking activities and systems to become damaged as a result of the behavior of owners, founders and even bank managers who tend to exploit and even exploit by ignoring the principle of prudence in running the banking business. In the past, namely since 1997, Indonesia experienced a banking crisis which resulted in 16 banks deemed by the banking authorities to no longer be able to maintain their existence and finally the banking authorities revoked the licenses of 16 banks based on the terms, conditions and procedures stipulated in the Act. Act Number 7 of 1992 concerning Banking, which is currently being revised by Act Number 10 of 1998 concerning Banking, hereinafter referred to as the Banking Law. The situation at that time resulted in liquidation of the 16 banks which resulted in losses to the public as depositors or creditors of the bank. With the withdrawal of the sixteen banks, it resulted in the loss of trust in banks from the Indonesian public nationally. In order to restore public confidence in the banking system, the Government finally issued a policy, namely a commercial bank payment guarantee or a blanket guarantee based on Presidential Decree Number 26 of 1998 concerning Guarantees against General Payment Obligations.<sup>6</sup>

Conditions were such that at that time the bank experienced difficulties and had to be closed and liquidated, thus detrimental to the public and threatening the national economy which resulted in decreased public confidence in banks for customer protection when a bank liquidation occurred. The Bank's business activities are full of risks, both internal and external factors.<sup>7</sup> These risks can cause the Bank's operations to stop (stuck) and can lead to bankruptcy.<sup>8</sup>

These two factors are the risk of bank collapse resulting in the Bank's operational activities to stop. If the supervisory agency does not carry out risk management, it is very possible that the risk will become even greater, namely a banking crisis which, if it remains unresolved, will lead to a monetary and fiscal crisis. Article 37 paragraph 2 of the Banking Law, which principally determines liquidation as a civil process to terminate and/or dissolve a bank, includes the settlement process of bank rights and obligations with the aim that the rights of the depositing customer will be protected. These two processes constitute a series of liquidation activities.<sup>9</sup>

As in the case of bank liquidation that occurred at the Legian People's Credit Bank in Bali by the Financial Services Authority (hereinafter referred to as OJK) because the Legian People's Credit Bank was no longer able to improve its capital adequacy ratio (a way to measure the bank's ability to see the risk of losses it will face.) is at least 8% as stipulated in Article paragraph 3 POJK No.11/POJK.3/2016 concerning Minimum Capital Requirement for Commercial Banks. According to the OJK, there are various causes of the decrease in capital adequacy ratio. The factors experienced by the Bank Perkreditan Rakyat Legian are the disbursement of funds by depositors at a certain period, interbank transactions which originally amounted to approximately Rp. 20,000,000,000, - (twenty billion rupiah) to Rp. 8,000,000,000, - (eight billion rupiah), and it was found that the shareholders' personal expenses using cash funds were found.<sup>10</sup>

After being given a period of 2 (two) months, from 28 March 2019 to 28 May 2019, the Legian People's Credit Bank was unable to carry out restructuring of its financial system. So that the Legian People's Credit Bank was declared a Bank Under Special Supervision (BDPK) as a result of management that ignored the principles of prudence and sound business governance as well as negative intervention from Controlling Shareholders in terms of bank operations. Revocation of business license from Rural Bank Legian was carried

<sup>5</sup> *Ibid.*, h. 131.

<sup>6</sup> *Ibid.*, h. 132.

<sup>7</sup> Slamet RI, 2009, "Kasus Bank Century dan Risiko Keuangan Negara", Detiknews Selasa 24 November 2009, <https://m.detik.com/news/opini/d-1247526/kasus-bank-century-dan-risiko-keuangannegara>, diakses pada 19 Oktober 2020; Admin, "Risiko Usaha Perbankan", Belajararkuntansi.com, <http://www.belajararkuntansi.com/risiko-usaha-perbankan>, diakses pada 19 Oktober 2020; Risiko perbankan ada beberapa macam, diantaranya risiko moneter, risiko kredit macet, risiko likuiditas bank, risiko fraud, risiko politik, risiko persaingan risiko biaya usaha, risiko geografis, risiko sifat usaha dari bank, dan berbagai risiko uncertainty lainnya yang dapat mengakibatkan kegagalan usaha bank.

<sup>8</sup> Bankrupt didefinisikan sebagai *insolvent and unable to pay debts as they come due*; periksa Amy Hackney Blackwell, 2008, *The Essential Law Dictionary*, Illinois: Sphinx Publishing, Naperville, h. 49; berpadanan pula *bankruptcy* (kepailitan/kebangkrutan), *failure* (gagal/pailit), *insolvency* (insolvensi), dan *ruin* (jatuh); periksa Merriam-Webster Dictionary, "Synonyms & Antonyms for bankruptcy", <https://www.merriam-webster.com/dictionary/bankruptcy#synonyms>, diakses pada 19 Oktober 2020.

<sup>9</sup> Adrian Sutedi, *Op.Cit.*, h. 138.

<sup>10</sup> Monica Wareza, Kisah Pencabutan Izin Bank di Bali: Uangnya untuk Foya-foya <https://www.cnbcindonesia.com/market/20190622101217-17-80002/kisah-pencabutan-izin-bank-di-bali-uangnya-untuk-foya-foya>, diakses pada tanggal 19 October 2020.

out after the Legian People's Credit Bank was unable to restore its financial management and management conditions in a healthy state within the predetermined time.<sup>11</sup>Banks, of course, cannot be separated from customers who are also consumers. The rights and obligations of consumers must be protected by law as the spearhead of public protection.<sup>12</sup>

Based on various studies in general conducted by experts, consumers are generally in a weaker position for many aspects, both economic aspects, educational aspects, aspects of ability and aspects of bargaining power in which consumers who join a bank act as individuals or individuals. while a bank is a corporate organization consisting of many powerful people. Therefore, in order to equalize this gap, a legal system is needed in the form of a consumer protection and empowerment policy. Basically, legal protection for customers is also required for depositors of funds, creditors, credit recipients, and users of other banking services. Meanwhile, the fund depositing customer as a consumer has a basic legal relationship with the bank on the basis that the relationship between the customer as the consumer and the bank originates from an agreement.<sup>13</sup>

As for the position of bank customers as consumers, it can be said that they are still quite weak because customers as consumers have no other way to protect their rights other than those recognized by laws and regulations and standard rules that have been previously determined by the bank in terms of offering and approval of use. banking services. Meanwhile, on the other hand, bank customers are also faced with huge risks in terms of their transactions with the bank concerned, including the deposit of customer funds and credit risk at the bank.

Civil liability issues for negligence and/or error on the part of the bank in such a way can be linked to the bank management system. The bank manager or management as the party acting on behalf of the bank based on the provisions of the company's articles of association, has two forms of responsibility. First, namely personal responsibility, namely if the management acts beyond the authority stipulated in the articles of association. Second, is the responsibility of the company, if the management in acting still exercises the authority as determined in the company's articles of association, it will become the responsibility of the company.<sup>14</sup>

As easy as the condition, if the bank is declared unhealthy (experiencing financial problems), then automatically the bank's business continuity cannot be continued and will lose the trust of the public. As a result, the bank's business license was revoked which was then followed up with liquidation. The thing that then becomes a problem is the settlement process when the bank liquidation process in the event that the sale of bank assets has been exhausted but there are still depositors who have not regained their rights. In addition, if a bank goes into liquidation, it is said that the government through the Deposit Insurance Corporation will provide liability in the form of payment guarantees and refunds for depositors and creditors. However, in reality there are still gaps, namely that until now the funds from depositors of funds have not been returned, as was the case in the case of Century Bank which was also liquidated.

This, of course, is not in line with the provisions in Presidential Decree No. 26 of 1998 concerning guarantees of commercial bank payment obligations, due to the absence of clear responsibility or maximum legal protection against the rights of depositors of funds which then arises the question of the extent to which the liquidated bank's responsibilities for customer rights have not been fulfilled. Based on the description above, the authors take the discussion into writing that will be published in the research by raising the formulation of the problem as follows: 1. What is the legal position of creditors who deposit funds at banks that are declared liquidated by OJK; 2. How is the legal protection for fund depositors at a Bank declared liquidated by OJK.

## II. DISCUSSION

### 1. Legal Standing Position on Customer Saving of Funds in Banks Which is Liquidated by The Financial Services Authority

#### 1.1. The Mechanism of Bank Liquidation by the Financial Services Authority and the Deposit Insurance Corporation

In carrying out the functions of a bank, Bank Indonesia will supervise each bank. As explained in the Banking Law Article 29 (1) Bank guidance and supervision is carried out by Bank Indonesia. The forms of guidance and supervision carried out by Bank Indonesia on banks may be preventive in the form of provisions, instructions and advice, guidance and direction, as well as repressively in the form of examinations followed by corrective actions, so that in the end Bank Indonesia can determine the direction of guidance. and bank development, both individually and as a whole.<sup>15</sup>

<sup>11</sup>Siaran Pers OJK Cabut Izin Usaha PT BPR Legian Denpasar, <https://www.ojk.go.id/id/berita-dan-kegiatan/siaran-pers/Documents/Pages/Siaran-Pers-OJK-Cabut-Izin-Uusaha-PT-BPR-LegianDenpasar/SP%20%20OJK%20Cabut%20Izin%20Uusaha%20PT%20BPR%20Legian%20Denpasar.pdf>, diakses pada tanggal 19 Oktober 2020.

<sup>12</sup>Shidarta, 2004, *Hukum Perlindungan Konsumen*, Jakarta:PT. Grasindo, h.9.

<sup>13</sup>Adrian Sutedi, *Op.Cit.*, h. 169.

<sup>14</sup>Muhamad Djumhana, 1996, *Hukum Perbankan di Indonesia*, Bandung: PT Citra Aditya Bakti, h. 168.

<sup>15</sup>Hermansyah, 2011, *Hukum Perbankan Nasional Indonesia*, Jakarta: Kencana Prenada Media, h. 159.

In Article 34 of Law Number 3 of 2004 concerning Bank Indonesia, the task of supervising a Bank will be carried out by an independent financial services sector supervisory institution, and established by law.

After the enactment of Law Number 21 of 2011 concerning the Financial Services Authority, bank regulation and supervision was transferred to the Financial Services Authority, as confirmed in Article 6 the Financial Services Authority has the authority to regulate and supervise financial service activities in the banking sector, capital market, insurance, pension funds, financial institutions and other financial service institutions.

Banks are required to maintain the level of health, to maintain health, every 6 (six) months an assessment will be made of the state of the bank's soundness level. The bank's obligation to maintain a soundness level through the precautionary principle is regulated in the Banking Law Article 29 (2) Banks are required to maintain a bank soundness level in accordance with the provisions of capital adequacy, asset quality, management quality, liquidity, profitability, solvency, and other aspects related to bank business, and must conduct business activities in accordance with the prudential principles.<sup>16</sup>

A bank that is not healthy due to not being careful in its management will experience difficulties that endanger its business continuity, therefore the Bank is assigned a special surveillance status by Bank Indonesia. Then the bank is given 180 days to carry out the restructuring.

For a bank that cannot be healthy, OJK asks the Deposit Insurance Corporation (LPS) to make a decision to save or not save the bank. Furthermore, if the LPS decides not to save the bank so that the Bank's license is revoked by the OJK, as explained in Article 9 letter h of the Law Law number 21 of 2011, namely: to carry out supervisory duties, OJK has the authority to grant and/or revoke business licenses.

After the revocation of the business license, it is continued with the dissolution of the bank legal entity and the liquidation process as described in Article 37 paragraph (2) Paragraph (2) f: (a) The actions referred to in paragraph (1) are not sufficient to overcome difficulties faced by the bank; and/or (b) According to Bank Indonesia's assessment the condition of a bank may jeopardize the banking system, the Management of Bank Indonesia may revoke the bank's business license and order the bank's board of directors to immediately hold a General Meeting of Shareholders to dissolve the bank's legal entity and form a liquidation team. Bank liquidation is carried out by the Liquidation Team formed by the LPS. With the formation of the Liquidation Team, the responsibility and management of the bank in liquidation is carried out by the Liquidation Team. In carrying out its duties the Liquidation Team is authorized to represent the bank in liquidation in all matters relating to the settlement of bank rights and obligations the.

According to the exposure of several experts, the implementation of the national banking system is analogous to a football team with attackers, midfielders, defenders (defenders) and goalkeepers. Each position has its own role. If analogous to the banking system in Indonesia, it has its respective functions. OJK acts as the front office. With its role in regulating and supervising microprudentials in a strong and effective manner, OJK is expected to be able to encourage banks to achieve their goals, namely a banking system that is healthy, stable, growing, and beneficial to the people at large. In addition, by identifying problems early and prompt corrective actions, it is hoped that banking problems can be resolved at an early stage.<sup>9</sup>

As explained above, the basis for Article 41 of Law no 21 of 2011 regarding OJK, that OJK informs the Deposit Insurance Corporation, hereinafter referred to as LPS, regarding problem banks that are under restructuring efforts by OJK as referred to in the laws and regulations. While the LPS is in a back/defensive position, the LPS performs a rescue, in the sense of guaranteeing deposits of bank customers whose licenses have been revoked and implementing the resolution (restructuring) of failed banks. Banks fail and banks whose licenses are revoked generally experience problems of solvency. this is intended to provide protection, a sense of security, and peace so as to increase public confidence in banking. Even if the rescue is allowed, it does not mean that the bailout funds from the LPS will be lost. All costs incurred as a result of rescuing a bank will be counted as temporary investment. The period of time for IDIC participation is limited and it must sell back its shares a maximum of 2-3 years after the rescue is carried out.<sup>17</sup>

The establishment of the LPS was intended to protect the interests of customers and at the same time increase public trust in the bank. Hikmahanto Juwana said: Distrust in the banking industry can cause the industry to collapse in an instant. Currently, Indonesia is fully aware of the importance of trust in the banking world: a lesson that must be paid dearly. Actually, what is experienced by Indonesia today has also been experienced by other countries, such as the United States.<sup>18</sup>

Building a stable banking industry is indeed influenced by various factors. However, trust is the main and determining factor. Therefore, of course, there will be regular sacrifices that must be borne by the Deposit Insurance Corporation (LPS) in the context of becoming a level of trust in banks. On March 22, 2007, the guarantee scheme for deposits has reached a maximum of up to Rp. 100 million per customer/bank. The

<sup>16</sup> Warkum Sumitro, 1996, *Asas-Asas Perbankan Islam dan Lembaga Terkait*, Jakarta: PT Raja Grafindo Persada, h. 133.

<sup>17</sup> Ramadhani Irma T., 2016, "Tinjauan Teoritis dan Yuridis Lembaga Penjamin Simpanan", *Jurnal Adilya*, Vol 10 (2), Bandung: UIN Sunan Gunung Djati, h. 235-236.

<sup>18</sup> Hikmahanto Juwana, 2002, *Bunga Rampai Hukum Ekonomi dan Hukum Internasional*, Jakarta: Lantera, h. 4.

implementation of the guarantee scheme is mandated by Law Number 24 of 2004 concerning the Deposit Insurance Corporation (LPS). In the law it is mandated that to provide a transaction period to the enactment of the amount of guarantee is carried out in stages.<sup>19</sup>

After the enactment of Law No. 24 of 2004 concerning the Deposit Insurance Corporation, the authority that handles a bank whose business license has been revoked is the Deposit Insurance Corporation (LPS). This handling includes the transfer of rights and authority of shareholders, including the rights and powers of the General Meeting of Shareholders (GMS). By taking over the rights and powers of the GMS, the IDIC immediately decided to dissolve the legal entity of the bank, establish the Liquidation Team (TL), determine the bank's status as "Bank Under Liquidation", and deactivate all Directors and Commissioners. TL will then handle the liquidation and dissolution of the bank's legal entity, and report the implementation of these tasks to the LPS.<sup>20</sup>

The establishment of the Deposit Insurance Corporation is a realization of the mandate of Article 37B of the Banking Law, which is basically the establishment of this institution to protect the interests of customers against two risks, namely irrational run (increased interest rates) against banks and systemic risk (market risk), as well as to increase trust of the public to the bank and replace the temporary blanket guarantee program. The implementation of Article 37B of the Banking Law is through the issuance of Law Number 24 of 2004 concerning the Deposit Insurance Corporation.<sup>21</sup> Pursuant to Article 1 point (4) of Government Regulation Number 25 of 1999 concerning Business License Revocation, Dissolution and Bank Liquidation. Bank liquidation is defined as follows: "Bank liquidation is the act of settling all rights and obligations of a bank as a result of revocation of business license and dissolution of bank legal entity."

Further details regarding bank liquidation are regulated in the Deposit Insurance Corporation regulation number 01/PLPS/2011 concerning bank liquidation, stating what is meant by a failed bank (Failing Bank), namely: Banks that are experiencing financial difficulties and endanger the continuity of their business and are declared to be no longer healthy by a banking supervisory institution in accordance with the authorities they have. Therefore, in accordance with the authority possessed by the Deposit Insurance Corporation (LPS), if a bank has been declared a failed bank, the bank is liquidated. In the event that the bank is having problems, the option to close is the last option. Because both the owner and the customer are related to it, bank acts of liquidation (liquidation). The juridical consequence of the revocation of the bank's business license is that the bank's existence as a business entity also ends. It is not possible for the bank to live juridically again.<sup>22</sup>

In order to carry out the actions mentioned above, the IDIC may appoint another party for and on behalf of the IDIC before the liquidation team is formed. Based on Article 2 jo. Article 4 PLPS No. 01/PLPS/2011 concerning Bank Liquidation, which in essence determines that the Board of Commissioners, Directors and employees are prohibited from taking legal actions related to bank assets and liabilities except with the approval and/or assignment of IDIC. As from the date a bank's business license is revoked, the IDIC has taken over and exercised all rights and authorities of shareholders, including the rights and powers of the GMS in the context of bank liquidation (Article 3 PLPS No. 01/PLPS/2011 concerning Bank Liquidation). By taking over the rights and powers of the GMS, the IDIC immediately decided on matters, namely the dissolution of the bank's legal entity, the formation of a liquidation team, the determination of the bank's status as a bank under liquidation and all the directors and board of commissioners of the bank were suspended. This IDIC decision is contained in the minutes of the GMS made in a Notary Deed (Article 6 PLPS No. 01/PLPS/2011 concerning Bank Liquidation). Since then, a bank has been called a bank in liquidation and is required to include the word in liquidation or abbreviated as DL after the writing of the name of the bank (Article 7 PLPS No. 01/PLPS/2011 concerning Bank Liquidation).

The Deposit Insurance Corporation can appoint, authorize, and or assign other parties to carry out reconciliation for the interests of and/or on behalf of the Deposit Insurance Corporation. Reconciliation and verification are carried out in stages based on accounts that are easier to verify. Determination of eligibility to be paid based on the results of reconciliation and verification is completed no later than 90 (ninety) working days after the bank's business license is revoked.

The process of reconciliation and verification carried out by the Deposit Insurance Corporation for customer deposits is carried out in 3 (three) stages to ascertain the status of deposits, including deposits that are eligible to be paid, deposits that are not eligible to be paid, deposits above the maximum guarantee, current accounts / savings that have been closed and deposits that have been disbursed but are still recorded in the bank as state liabilities or other liabilities that are not included in the coverage of the deposit insurance.

<sup>19</sup>Asep Suherman, 2011, "Peranan dan Tanggung Jawab Hukum Lembaga Penjamin Simpanan Dalam Menyelesaikan dan Menangani Bank Gagal (Fail Bank): Studi Kasus Bank Century", *Tesis*, Yogyakarta: Universitas Islam Indonesia, h. 227.

<sup>20</sup>Rosalia Suci, Teddy Yusuf, Isnur Yuwana, Safari Kasiyanto dan Dwi Kartika Siregar, "Aspek Hukum Kepailitan dan Insolvensi Bank di Negara-Negara Asean", Artikel Pada *Buletin Hukum Perbankan dan Kebanksentralan*, Tim Perundang-undangan dan Pengkajian Hukum Bank Indonesia, Vol. 9No. 3September - Desember 2011, h. 11.

<sup>21</sup>*Ibid.*

<sup>22</sup>Asep Suherman, *Op.Cit.*, h. 159.

Savings worth paying in question are deposits that are based on the results of reconciliation and verification conducted by the Deposit Insurance Corporation and have met the eligibility criteria which are not included in Article 36 of the Deposit Insurance Corporation Regulation Number 2/PLPS/2010 stated as deposits that are eligible to be paid can submit claims to obtain payment of deposits by fulfilling the requirements and procedures set by the Deposit Insurance Corporation. The discussion regarding deposits that are not worth paying will be further elaborated in the next sub-chapter.

Observing the provisions in Article 4 and Article 5 of the UULPS stipulating the functions and duties of the LPS. The function of the IDIC is to guarantee deposits of depositors and to actively participate in maintaining the stability of the banking system in accordance with their authority. Then Article 96 of the UULPS stipulates that the LPS carries out the guarantee function for banks based on Islamic principles, which are further stipulated in a Government Regulation.

In carrying out its functions, the LPS has the following duties:

- a) To formulate and determine policies for implementing deposit insurance
- b) Implementing deposit insurance;
- c) Formulating and stipulating policies in order to actively participate in maintaining the stability of the banking system;
- d) Formulating, stipulating, and implementing Bank Resolution policies that do not have a systemic impact; and
- e) Carry out the handling of Failed Banks with systemic impacts.

Meanwhile, the provisions in Article 6 paragraph (1) UULPS stipulate the authority of the IDIC in order to carry out its duties, namely:

- a) Determine and collect insurance premiums;
- b) Determine and collect contributions when the bank first becomes a participant;
- c) Manage the assets and obligations of the IDIC;
- d) Obtain data on customer deposits, bank health data, bank financial reports, and bank examination reports as long as they do not violate bank secrecy;
- e) Perform reconciliation, verification, and/or confirmation of data as referred to in letter d;
- f) Determine the terms, procedures and conditions for paying claims;
- g) Appoint, assign, and/or assign other parties to act for the benefit of and/or on behalf of the IDIC to carry out certain tasks;
- h) Conducting education to banks and the public regarding deposit insurance; and
- i) Imposing administrative sanctions.

With regard to resolving and handling Failed Banks, the IDIC has a number of powers as stipulated in Article 6 paragraph (2) of the UULPS, namely:

- a) Take over and exercise all rights and authorities of shareholders, including the rights and powers of the MS;
- b) Control and manage the assets and liabilities of the Failing Bank that are rescued;
- c) Review, cancel, terminate, and/or amend any contracts that bind the Failing Bank that was saved with the third party that caused harm; and
- d) Sell and/or transfer bank assets without the approval of the debtor and/or the bank's liabilities without the approval of the creditors.

From the above provisions, it can be seen that the LPS functions as a liquidator for a Failing Bank whose business license has been revoked by Bank Indonesia, and at the same time acts as a guarantor for deposits of bank customers. Therefore, the LPS automatically takes over and replaces all rights and obligations of a bank whose business license has been revoked. Likewise, LPS also fully guarantees bank customer deposits whose business license has been revoked, including guaranteeing bank customer deposits based on Sharia Principles.

Article 10 of the UULPS stipulates that the LPS guarantees bank customer deposits in the form of demand deposits, time deposits, certificates of deposit, savings, and/or other equivalent forms. The elucidation of the provisions of Article 10 of the UULPS states, among others, that "what is meant by other forms in this article are forms of deposits held in sharia banks or if there is a new form of savings that is equivalent to deposits based on the provisions of the LPP". Thus, this article confirms that all bank customer deposits, including bank customer deposits based on the Sharia Principle, are guaranteed payment by the LPS, namely including demand deposits, time deposits, certificates of deposit, savings, and/or other equivalent forms. Deposits guaranteed by LPS are deposits that come from the public and also include deposits from other banks.

### 1.2. Priority Level Position for Returning Banking Customer Deposits

Talking about position, of course, it cannot be separated from rejecting thoughts on what legal relationships are created between customers and banks. The legal relationship referred to here generally occurs after both parties sign an agreement to take advantage of the service products offered by the bank. Every bank product always has provisions offered by the bank. The agreement between the customer and the bank is

binding. Customers as fund depositors keep their funds in the bank and give the bank the freedom to manage the money or funds that are stored. The bank's obligation under the agreement is to return deposits by giving interest on customer deposits.

Another issue is whether the public knows their rights and obligations in having a legal relationship with a bank. This issue needs to be addressed. Basically, customers already trust the bank, so they also believe what is made and contained in these forms. Based on trust, the agreements between the customer and the bank are unilaterally beneficial for the bank, but the public does not care about this, because they have fully trusted the chosen bank.<sup>23</sup>

In fact, the relationship between a bank and a depositing customer is not just an ordinary contractual relationship between a debtor (bank) and creditor (a depositing customer) which is covered by general principles and from contract law, but also a trust relationship covered by the principle of trust. This recognition has the consequence that the relationship between banks must not only pay attention to their own interests, but must also pay attention to the interests of the depositing customers. In its role as one of the main pillars for national economic development, banking institutions are required to be able to realize the objectives of national banking as contained in Law Number 7 of 1992 as amended by Act Number 10 of 1998 concerning Banking, namely supporting the implementation of national development, in the framework of increasing equity, economic growth and national stability towards improving the welfare of the people at large.<sup>24</sup>

The method of liquidating a bank has been regulated in the provisions of Article 53 of the IDIC Law, which stipulates that liquidation of a bank can be carried out in the following ways:

- a. This is carried out by disbursing assets and/or collecting receivables from debtors followed by payment of bank liabilities to creditors from the proceeds of the disbursement and/or collection.
- b. Performed by transferring bank assets and liabilities to other parties based on the approval of the IDIC.

After the implementation of the liquidation ends, the payment of the bank's liabilities to creditors from the proceeds from the disbursement of assets and/or collection of accounts receivable will be followed. In Article 54 Paragraph (1) of the LPS Law, the LPS Law stipulates the order of payment of bank obligations to creditors from the proceeds of disbursement and/or collection in accordance with Article 53 of the LPS Law, carried out in the following order:

1. Reimbursement of outstanding employee salary payments.
2. Reimbursement for employee severance pay.
3. Court fees, outstanding auction fees and office operating costs.
4. Salvage costs incurred by the IDIC and/or payment of insurance claims that must be paid by the IDIC.
5. Taxes payable.
6. The portion of deposits from depositors that are not guaranteed for payment and deposits from depositors that are not guaranteed.
7. The rights of other creditors.

Payment of liquidated bank liabilities is carried out by a paying bank appointed by the LPS. Based on the above article, it can be interpreted that in addition to providing protection for small customers, LPS also seeks to protect large customers or for those who have deposits of more than two billion in deposits, a bank. The definition is a customer who has a deposit of up to two billion is a claim that must be paid by the IDIC when the bank's license is revoked.

For customers whose deposits are more than two billion, or for customers whose deposits are not guaranteed, they will be paid after the liquidation of the liquidated bank assets. The technique is that in terms of completing the liquidation process, LPS will form a liquidation team, this liquidation team will control all failed bank assets. If the bank assets are sold, the proceeds will be calculated to pay all costs related to liquidation and will be listed in the list of liquidation fees, including the portion of deposits from depositors whose guarantees are not paid and deposits from unsecured depositors will be borne by the bank's assets in liquidation, and issued beforehand from each disbursement (the sequence is in accordance with Article 54 Paragraph 1 of the LPS Law).

If all of the bank's liabilities under liquidation have been paid and there is still the remaining liquidation proceeds, then the remainder is handed over to the old shareholders, but if the bank's assets have been used up in the liquidation process and there are still bank liabilities to other parties, then these obligations must be paid by the holder. old shares that are proven to cause the bank to become a Failing Bank.

The legal effect of the relationship that arises between the bank and the depositing customer is based on the deposit agreement. The bank is the recipient of deposits and the depositing customer as the provider of deposits. The definition of saving by a bank according to the Banking Law is to be used by the bank in conducting banking activities. This means that the funds of the depositing community will be used on the trust

<sup>23</sup>

Rachmadi Usman, 2001, *Aspek-Aspek Hukum Perbankan di Indonesia*, Jakarta: Gramedia Pustaka Utama, h.23.

<sup>24</sup> Kevin R. Kemp, "Perlindungan Hukum Terhadap Nasabah Penyimpan Dana Dalam Likuidasi Bank Oleh Lembaga Penjamin Simpanan Berdasarkan Undang-Undang Nomor 7 Tahun 2009", *Jurnal Lex Privatum*, Vol. VI No. 1 Januari 2018, h. 27.



of the owner of the funds, the position of the bank as a debtor or a debtor to the owner of the funds, while the creditor is the fund depositing customer who is entitled at a certain time to collect the funds back along with interest.

In order to recover the funds that he keeps with interest if possible, then basically the customer is the concurrent party who gets the first attention to be paid from the proceeds from the sale of the assets of the bank concerned as stated in Article 17 Paragraph (2) letter a of Government Regulation Number 25 of 1999 concerning Business License Revocation, Bank Dissolution and Liquidation, so that customers who are harmed by problematic and liquidated bank customers can claim their rights based on lawsuit in court, either by class action or individually.<sup>25</sup>

In accordance with Article 11 of the LPS Law, the guaranteed deposit value for each customer in one bank is Rp. 100,000,000.00 (one hundred million rupiah). However, the guaranteed deposit value can be changed if one or more of the conditions as referred to in Article 11 paragraph (2) of the LPS Law occur, namely simultaneous withdrawal of large amounts of bank funds, significant inflation within a few years or the number of guaranteed customers. all deposits are less than 90% (ninety percent) of the total deposit customers of all banks.

Based on Perpu No. 3 of 2008 concerning Amendments to Law No. 4 of 2004 concerning the Deposit Insurance Corporation, the government added one requirement to be used as the basis for changing the value of deposits guaranteed by LPS. The criterion is that there is a threat of crisis that has the potential to result in a decline in public trust in banking and endanger financial system stability. Based on the Perpu, the government issued Government Regulation No. 66 of 2008 concerning the Amount of Value of Deposits guaranteed by LPS, which stipulates that the guaranteed deposit value for each customer at one bank is a maximum of Rp. 2,000,000,000.00 (two billion rupiah). Perpu No. 3 of 2008 was later approved by the DPR to become Law Number 7 of 2009 concerning Amendments to Law No. 4 of 2004 concerning the Deposit Insurance Corporation.

However, there are legal consequences for customers whose deposits exceed the LPS guarantee, then the excess of the LPS guarantee amount can be paid after waiting for the proceeds from the sale of assets by the bank liquidation team, which occurs because of a legal relationship between the depositing customer and the bank concerned, namely the storage agreement. Therefore, the customer has the right to get the money back. However, if from the sale of the asset the bank is no longer able to pay its obligations to the customer, the customer concerned can sue him so that their rights are fulfilled. Because one of the rights of depositors is the right to obtain legal protection for funds deposited in the bank in the event of the bank's inability to continue its business activities due to bankruptcy.

There are several stages of deposit claims at LPS that need to be considered by customers as depositors of funds at banks liquidated by OJK, one of which is the reconciliation and verification of guaranteed deposits. Reconciliation is the process of matching financial transaction data processed with different systems based on the same legal source document. Meanwhile, verification is a form of supervision through testing financial documents. The guaranteed deposit reconciliation and verification is regulated in Article 30 paragraph (1) Regulation of the Deposit Insurance Corporation Number 2/PLPS/2010 concerning the Deposit Insurance Program, which states that if the Banking Supervisory Agency revokes the bank's business license, the Deposit Insurance Corporation will immediately carry out reconciliation and verification of data on depositing customers based on data per business license revocation date to determine deposits that are eligible to be paid and deposits that are not eligible for payment.

In the provisions of Article 17 of Government Regulation Number 25 of 1999 concerning Business License Revocation, Dissolution and Liquidation of Banks, the order of payment of obligations to bank creditors (depositors of funds) for which their business license is revoked, is determined, namely:

- 1) Payment of obligations to creditors as referred to in Article 16 shall be made after deducting the salaries, employees owed, court fees, auction fees payable, taxes payable in the form of bank taxes and taxes collected by the bank as the withholding agent or tax collector, and office expenses.
- 2) The remaining funds resulting from disbursement of assets and/or collection of receivables from debtors after deducting the payment as referred to in paragraph (1) shall be paid sequentially to creditors:
  - a) Customer depositing funds, whose payment amount is determined by the Liquidation Team,
  - b) Others.
- 3) In the event that there is an institution in its position to pay in advance part or all of the rights of the depositing customer, the position of the institution shall replace the position of the depositing customer.
- 4) After the implementation of the last payment stage, there are still excess assets, the Liquidation Team distributes the remaining amount to shareholders on a pro-rata basis.
- 5) Claims arising after the liquidation process can be submitted against the remaining liquidation proceeds which are the rights of the shareholders.

<sup>25</sup>Muhamad Djumhana, 1993, *Hukum Perbankan di Indonesia*, Bandung: Citra Aditya Bakti, h. 285.

Then the provisions in Article 18 of Government Regulation Number 25 of 1999 determine the financial burden of the bank liquidation process and related to it, as follows:

- 1) All costs related to liquidation and listed in the List of Liquidation Fees will be borne by the assets of the bank in liquidation and are excluded in advance from each proceeds of the disbursement concerned.
- 2) The fee for the Liquidation Team which is included as a component in the fees as referred to in paragraph (1) shall be determined based on the provisions stipulated by Bank Indonesia.

From these provisions, it is clear that the payment of bank deposits is not a priority credit, and the depositing customer is automatically a concurrent creditor, who must also compete for repayment or return of his deposit. In such a position, there is a possibility that the depositing customer will receive a payment or return of his deposit in an amount less than the amount of deposits that should have been paid or returned by the liquidated bank. If this happens, then they will share pro rata or proportionally (equally) with other creditors. This means that the position of the depositing customer is not fully guaranteed if the bank is liquidated. Whereas fund depositing customers are the backbone of the banking business operation.

Further on deposits that are not eligible to be paid as referred to in the previous sub-chapter, based on the results of reconciliation and verification in accordance with the provisions of Article 40 of the Deposit Insurance Corporation Regulation Number 2/PLPS/2010 which states that insurance claims are declared unfit for payment if based on the results of reconciliation and verification is:

- a) Data on customer deposits is not recorded in the bank.

Deposits from customers that are declared defective at the bank if there is data on the bank's books, such as the account/bilyet number, name of the depositing customer, account balance and other information commonly applicable to similar accounts and/or there is evidence of a flow of funds indicating the existence of deposits the.

- b) The depositing customer is an unfair advantage

The depositing customer is declared as an unfair advantage if the customer receives an interest rate that exceeds the maximum loan interest rate stipulated by the Deposit Insurance Corporation of IDR 2,000,000,000.00 (two billion rupiah).

- c) The depositing customer is the party that causes the bank to become unhealthy.

A party is declared to be the party causing the bank to become unhealthy, if the party concerned has obligations to the bank which are classified as bad debts based on laws and regulations and the balance of the party's liabilities is greater than the balance of its deposits.

Furthermore, as explained above, there is one more requirement added by the Government when needed to increase the amount of guarantee value by the IDIC, namely based on Government Regulation No. 66 of 2008 concerning the Amount of Guaranteed Deposit Value by the Deposit Insurance Corporation, the guaranteed deposit value is changed to a maximum of Rp. 2,000,000,000, - (two billion rupiah). The implementation of the policy, which limits the guarantee policy to only Rp. 2,000,000,000.00 (two billion rupiah), may indeed have several possible consequences, such as the possibility of a mutation of accounts as part of consolidation for depositors who have several savings accounts at a bank. Since the guarantee limit is per customer/bank, those who have more than one account at the same bank will consolidate their deposits. The solution is to move part of the savings if on a consolidated basis the amount is more than Rp. 2,000,000,000.00 (two billion). The transfer process can be done by transferring to another bank or changing the name of the deposit, so that the requirements per customer/bank are still met. If what is to be taken is to transfer deposits, there will be traffic transfer of deposits between banks. This of course will lead to an increase in the number of accounts in the bank which will have an impact on the technological system capacity of each bank.

With the limitation of the guarantee, the deposit insurance institution protects it up to Rp. 2,000,000,000.00 (two billion) and the rest by the bank concerned. The difference is of course only in terms of liquidation of the guarantee. For deposits guaranteed by the Deposit Insurance Corporation, it is very liquid, because ten days after the verification of the bank was liquidated, LPS has to pay claims for deposits of customers. In accordance with Law Number 24 of 2004, depositing customers with more than Rp. 2,000,000,000.00 must wait for further processing, namely in the form of selling liquidated bank assets. This guarantee is certainly not liquid because of the asset sales process, where the depositors occupy the priority of the seven priorities for distributing the proceeds from the sale of assets.

In Articles 53 and 54 of the LPS Law, it can be explained that the proceeds from the disbursement of assets from banks which are liquidated together with priority must be paid to depositors whose deposits are not guaranteed. This means including depositors with deposits of more than Rp. 100 million. So when the depositor has a savings of Rp. 200 million in the bank A. When Bank A fails and has to be liquidated, the claim that will be paid by LPS is Rp. 100 million. The rest, because it includes deposits that are not guaranteed by LPS, the payment is waiting for the proceeds from the sale of assets. Based on these provisions, it implies that all depositors remain the same. In practice, the guarantee is the responsibility of the IDIC of Rp. 100 million and the rest by the bank concerned. It must be acknowledged that to be able to find out whether a bank is

trustworthy or not is not an easy problem. However, to provide a reference so that customers do not become objects that are harmed can be seen in the claim payment requirements as regulated in the LPS Law .

On the other hand, if we pay attention to the concept of a moral hazard transition (the actions of one party can turn into losses to the other party), which initially tended to be in banks dominated by depositors of more than Rp. 2,000,000,000 (two billion) to banks that had Rp. 2,000,000,000 (two billion) which is more dominant. Moral hazard<sup>26</sup> this is possible, considering that for banks whose deposits are dominated by deposits only up to Rp. 2,000,000,000.00, this means that the guarantee is a blanket guarantee. As is common with a blanket guarantee (guarantee program), the chances of moral hazard being greater. Logically, if all deposits are guaranteed for what the bank is well managed, because whenever something happens there will be a guarantee. If this has the opportunity to occur, a more intensive form of guidance and supervision is needed for banks which, on the basis of the composition of their deposits, are dominated by deposits of up to Rp 2,000,000,000.00 (two billion). This requires more adequate preparatory steps considering that the number of banks and rural banks (BPR) with the aforementioned category is still relatively large.

As described above, the legal relationship between a depositing customer and a bank is based on the freedom of contract agreed by the parties. The legal position of bank customers in liquidation is that the creditors are not privileged. According to the provisions in Government Regulation Number 25 of 1999 concerning Business License Revocation, Bank Dissolution and Liquidation, depositors of funds must compete with other concurrent creditors, after the assets proceeds from the disbursement of bank assets are in liquidation. "is paid to preferred creditors, namely holders of lien, mortgages, and creditors who hold mortgages. In disbursement of liquidated bank assets, depositors of funds receive payment of the liquidated bank assets in the last sequence.

## 2. Forms of Legal Protection Provided by the Deposit Insurance Corporation for Fund Depositors due to Bank Liquidation Legal protection must be absolutely provided to the depositing customer to protect their rights.

Depositors prefer a bank that is safe to deposit their funds than a bank that provides high interest rates but is very risky for depositing funds. In fact, if there is legal protection for a depositing customer, the depositing customer will be encouraged to save their funds in the bank.<sup>27</sup>

The provisions containing legal protection for fund deposit customers based on the Banking Law are described in the following articles:<sup>28</sup>

- a) Article 2 of the Banking Law states that, "In conducting its business, Indonesian banking is based on economic democracy using prudential principles". This is also confirmed in Article 29 paragraph (2) and paragraph (3) of the Banking Law. The law requires banks as managers of public funds entrusted to them to maintain their health level. In carrying out its business, banks are required to observe the precautionary principle. The principle of prudence aims to ensure that banks carry out their business properly and correctly by complying with the provisions and legal norms in force in the banking sector so that the banks concerned are always in a healthy condition, so that the public will trust them more. In turn, this will create a healthy and efficient banking system. In a narrow sense, it can maintain the interests of the community properly, develop naturally and benefit the development of the national economy.
- b) Article 9 paragraph (1) of the Banking Law mandates BI to carry out bank guidance and supervision. Efforts to maintain the continuity of the bank's business as an institution in particular and to protect the banking system in general. For the purposes of guidance and supervision, BI establishes provisions concerning bank soundness by taking into account the aspects of capital, asset quality, management quality, profitability, liquidity, solvency and other aspects that are incorporated into the bank business. If according to the assessment of a bank it is estimated that it is experiencing difficulties that endanger the continuity of its business, Bank Indonesia will notify the minister of finance and may take measures so that the bank and / or affiliated parties take any necessary actions to improve the financial situation or Bank Indonesia will take other actions in accordance with prevailing laws and regulations. In Article 37 paragraph (2) of the Banking Law it has been stated that in the event that a bank experiences difficulties that endanger its business continuity, Bank Indonesia may take measures to increase shareholders' capital, and to replace the board of commissioners and/or directors of shareholders. Banks write-off bad loans and calculate losses with their capital. The bank carries out a merger or consolidation with other parties or the bank is sold to a buyer who is willing to take over all obligations. Then if according to the assessment the condition of a bank is endangering the banking system or the actions referred to above are not sufficient to overcome the difficulties faced by the bank, then Bank Indonesia proposes to the minister of finance to revoke the bank's

<sup>26</sup>Adrian Sutendi. *Op.Cit*, h. 79.

<sup>27</sup>Hesti Roman Natania, 2019, "Perlindungan Hukum Nasabah Pengguna Produk Wadiah Yad Amanah pada Bank BTPN Syariah", *Skripsi*, Yogyakarta: Universitas Islam Indonesia, h. 73.

<sup>28</sup> Hayatul Izzah, 2017, "Perlindungan Terhadap Nasabah Penyimpan Saat Bank Dilikuidasi", *Jurnal Ilmu Mahasiswa Bidang Hukum Keperdataan*, Vol 1 No. 1, h. 72-74.

business license and instructs the board of directors to liquidate the bank as further protection against customer. In the event that the board of directors does not liquidate their bank, the Minister of Finance after hearing Bank Indonesia's considerations asks the court to liquidate the bank concerned.

- a) Article 29 paragraph (3) and paragraph (4) of the Banking Law mandates that banks in providing credit and other business activities are required to take methods that are not detrimental to the bank and the interests of customers who entrust their funds to the bank and for the benefit of bank customers, they must provide information regarding the possibility of the risk of loss on customer transactions conducted through banks. The stipulation of the Legal Lending Limit (BMPK), is solely aimed at maintaining the health of the bank and increasing bank resilience through the spread of risk in the form of investing credit to various borrowing customers. The BMPK exists to prevent lending only to certain borrowers or groups of borrowers. In addition, in extending credit, a bank is required to have confidence in the ability and ability of the debtor to pay off his debt as agreed. This provision is intended so that in providing credit, banks always pay attention to sound credit principles, so as to reduce the risk of bad credit. As it is known how a relatively large bad credit bank will be able to affect the continuity of its business, where the consequences will further befall customers who entrust their funds to the bank.
- b) Article 35 of the Banking Law states that, "Banks are required to announce the balance sheet and profit/loss calculation in the time and form stipulated by Bank Indonesia". The existence of reports, information and explanations regarding the balance sheet as well as profit/loss calculations can help Bank Indonesia to carry out early supervision or appropriate action if there are irregularities in the balance sheet and profit/loss calculations. In addition, the bank's obligation to announce its annual profit/loss calculation can provide information to the public, especially fund depositors, regarding the soundness of the bank and other matters related to the bank.
- c) Article 40 of the Banking Law regarding bank secrecy, in which banks are prohibited from providing information recorded at the bank regarding the financial condition and other matters of their customers, which the bank must keep confidential according to the prevailing banking world. These are excluded for the purposes of taxation, judicial proceedings in criminal cases, civil cases between banks and customers and in the context of exchanging information between banks. As a further protection for customers, in the event that the bank provides information for this purpose, then the party who feels harmed by the information provided by the bank has the right to know the contents of the information and ask for correction if there is an error in the statement.

The protection for depositors of funds regulated in the Banking Law basically cannot be separated from the efforts to maintain the continuity of the bank as an institution in particular and protection of the banking system in general. When there was a prolonged monetary crisis around 1997 which resulted in the revocation of business licenses of 16 banks on November 1, 1997, the existing Banking Law was unable to provide protection to depositors of funds.

In addition to providing guarantees for commercial bank obligations, the government also seeks to provide legal protection for customers who deposit funds in BPRs through Presidential Decree No. 193 of 1998 concerning guarantees for rural bank payment obligations. With these two prescriptions, the government is essentially trying to provide legal protection for fund-depositing customers by providing guarantees for fund-depositing customers who deposit their funds in commercial banks or liquidated rural banks that will get their savings back, at the relevant commercial bank or BPR.

Article 1 of Presidential Decree No.26 of 1998 concerning Guarantee Against Commercial Bank Payment Obligations, namely, "The government guarantees that the payment obligations of Commercial Banks to depositors and their creditors will be fulfilled".

This means that the government guarantees all the rights of depository customers who deposit their funds in a bank whose business license is revoked or liquidated. The objective of the comprehensive implementation of this guarantee is to quickly restore public trust in the national currency and banking. Article 3 of the Presidential Decree No. 26 of 1998 concerning Guarantee Against Commercial Bank Payment Obligations states that the terms, procedures and other provisions required for the implementation of the guarantee provision as referred to in this Presidential Decree shall be stipulated by the Minister of Finance after receiving consideration from the Governor of Bank Indonesia. This was followed up by Decree of the Minister of Finance Number 26/KMK.017/1998 concerning Terms and Procedures for Implementing Government Guarantee on Commercial Bank Payment Obligations.

Furthermore, when there was upheaval in the banking world and the Banking Law no. 7 of 1992 has not been able to solve the existing problems, the government on November 10, 1998 passed Law no. 10 of 1998 concerning Amendments to Law No.7 of 1992 concerning Banking. The Banking Law is in addition to and complements the previous one. The articles which contain the content to provide protection for depositors of funds implicitly in this law are not much different from those stated in the previous banking law. The most prominent thing in the effort to provide legal protection to depositors of funds in the new Banking Law which was not regulated in the previous Law is contained in Article 37B.

The content of this article is that each bank is obliged to guarantee public funds deposited at the bank concerned, while to carry out the deposit guarantee, an LPS is established.

With regard to legal protection for customers at a liquidated bank, Hermansyah divides it into 2 (two) types, namely the first is indirect protection which means a legal protection provided to customers who deposit funds against all risks of loss arising from a policy or arising from business activities carried out by the bank. This is done as an internal preventive measure by the bank concerned. For example, banks are required to apply the principle of prudence, this principle requires banks to always be careful in carrying out their business, which means that banks must always be consistent in implementing banking laws and regulations based on professionalism and good faith. It can also be seen in Article 29 Paragraph (2), (3) and (4). In Article 29 Paragraph (2) it explains that there is no reason whatsoever for the bank not to implement the prudential principle. All actions and policies made in the framework of carrying out its business activities, it must always be based on the prevailing laws and regulations so that it can be accounted for legally.

Then in Article 29 Paragraph (3) it means that in lending or financing based on sharia principles to depositors, customers must comply with the 5C elements which serve as guidelines in providing credit by banks. The provisions contained in Article 29 Paragraph (2) and (3) are closely related to Article 29. For the benefit of customers, banks are required to provide information regarding possible risk of loss in connection with customer transactions conducted through banks. Because in this article there are provisions for the protection of the interests of customers who deposit funds and their deposits.

Then the second form of protection is direct protection. Direct protection is a protection provided to customers who deposit funds directly against the possibility of risk of loss from business activities conducted by the bank. For example, in this direct protection there is a preference right for depositors of funds. In connection with this preference right, there are direct protection provisions which can be seen in Article 29 Paragraph (3) and (4) of the Banking Law. From the provisions of Article 29 Paragraph (3), it is clear that it provides direct protection to the interests of depositing customers because this is a means preventive (prevention) against the risk of customer loss arising from a violation of the prudential principle by a bank in its business activities including in lending. Whereas in Article 29 Paragraph (4) it is explained that the provision of information regarding the possibility of customer loss risk is intended so that access to information regarding the business activities and condition of the bank to become more open so as to ensure transparency in the banking world.

Legal protection for depositors at a liquidated bank is also regulated in the LPS Law. The establishment of the IDIC is a mandate of Article 37B paragraph (2) of Law No.10 of 1998 concerning Banking. In other words, the Banking Law is one that underlies the enactment of the LPS Law. LPS is an independent institution whose function is to guarantee deposits of depositing customers and is actively involved in maintaining the stability of the banking system in accordance with its authority.

As is known in the banking regulations in Act Number 7 of 1992 concerning Banking prior to the issuance of Law Number 24 of 2004 concerning the Deposit Insurance Corporation, it only provides implicit protection for depositors. Legal protection for depositors of funds prior to the LPS Act, for example what occurred during the 1997 economic crisis which was followed by the liquidation of 16 banks, the most affected were customers who were depositing funds, the existing Banking Law has not been able to provide protection to customers fund saver. At that time, the Banking Act only provided indirect protection for customers who deposit funds.

The protections provided are only for how the bank runs its business so as not to experience failure so that it automatically protects customers who deposit funds as well. But how a bank or government should act in providing legal protection when a bank is liquidated has not been regulated by the Banking Law at that time.<sup>29</sup>The existing banking regulations should be able to provide protection to depositors of funds because depositors will feel disadvantaged when the bank where they deposit their funds is revoked their business license, because they have to try to get their savings back. This protection can be carried out while the activities of a bank are still running until the time the bank must have its business license revoked because it can no longer continue its business activities.<sup>30</sup>

### III. CONCLUSION

The legal standing of creditor customers is that: Bank liquidation begins with the revocation of its business license by the Financial Services Authority, which then forms a liquidation team for the Bank. The liquidation team was formed by the Deposit Insurance Corporation whose role was to rescue, in the sense of guaranteeing deposits from bank customers whose licenses were revoked and implementing resolutions (restructuring) of failed banks. The guarantee for bank customer funds is based on Article 54 Paragraph (1) of the LPS Law jo. Article 17 Government Regulation Number 25 of 1999 concerning Bank Business License

<sup>29</sup> Zuriyati, "Perlindungan Hukum Terhadap Nasabah Penyimpan Dana Pada Bank Yang Dilikuidasi Menurut Undang-Undang Nomor 24 Tahun 2004 tentang Lembaga Penjamin Simpanan", *Jurnal JOM Fakultas Hukum*, Vol. 2 No. 2 Oktober 2015, h.8.

<sup>30</sup> *Ibid.*, h. 9.

Revocation, Dissolution and Liquidation of Banks, depositors of funds are in the backward priority order and therefore depositors of funds are themselves concurrent creditors, who must also compete for repayment or return of their deposits.

That legal protection must absolutely be given to customers who deposit funds. Legal protection for customers is carried out from the upstream, namely by maintaining the continuity of the bank as an institution in particular and protection of the banking system and protection by granting preferential rights to customers who deposit funds.

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