# SKIM OF BANK'S DEPOSIT GUARANTEE SYSTEM IN SOME COUNTRIES IN THE WORLD BASED ON PRINCIPLES OF JUSTICE

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**Abstract:** *The banking business is a trust business. This customer trust can be obtained by the existence of justice and legal certainty in bank regulation and supervision as well as guaranteeing bank customer deposits to improve the continuity of the bank's business in a healthy manner. The continuity of a bank's business in a healthy manner can ensure the security of customer deposits and increase the role of banks as providers of development funds and banking services. The Deposit Insurance Corporation is a deposit insurance company for bank customers that can significantly maintain customer trust in the banking industry after the 1998 crisis. With the 1998 global financial crisis, it is necessary to anticipate that there will be no large-scale withdrawal of bank funds due to the decline in public confidence in guarantee the safety of the money saved. The establishment of the Deposit Insurance Corporation in Indonesia is one of the efforts made by the Government to increase public trust in banking. The government's blanket guarantee program has succeeded in restoring public confidence in the banking system. However, this policy increases the burden on the state budget and has the potential to create moral hazard by bank managers and bank customers. The author will use a normative legal research method with an approach to the relevant laws and regulations, with the hypothesis: there is an injustice in the regulation of the amount of customer deposits in Article 11 (1) of Law Number 24 of 2004 and Government Regulation Number 66 of 2008 concerning the amount of guaranteed deposit value. Deposit Insurance Agency. For depositors whose deposit value is above two billion rupiah, of course this does not fulfill the principle of justice. It is necessary to make a customer deposit guarantee system scheme (Deposit Protection System) that fulfills a sense of justice for all banking customers.*
**Keywords:** *banking, trust, customer deposits, the principle of justice, the guarantee system scheme, the Deposit Insurance Corporation.*

## Introduction

The definition of a bank according to Law Number 14/1967 Article 1 concerning the Principles of Banking, a bank is, "a financial institution whose main business is providing credit and services in payment traffic and money circulation." Meanwhile, according to the law, financial institutions are "all bodies which, through their activities in the financial sector, withdraw money from and channel it into the community". A bank is a financial intermediary that offers loans and deposits, and payment services. Nowadays banks also offer a wide range of additional services, but it is these functions that constitute banks' distinguishing features. Because banks play such an important role in channelling funds from savers to Borrowers. A bank is a financial intermediary whose core activity is to provide loans to borrowers and to collect deposits from savers. In other words they act as intermediaries between borrowers and savers (Casu, Girardone, Molyneux, 2006, p 4). Bank Indonesia Regulation Number 13/1/PBI/2011 concerning Assessment of the Soundness of Commercial Banks, with the regulatory background: (1) Changes in business complexity and risk profile, implementation of consolidated supervision, as well as changes in the approach to assessing bank conditions that are applied internationally affect the approach assessment of Bank Soundness Level; (2) In order to improve the effectiveness of the Bank Soundness Level assessment to deal with the changes as referred to in letter a, it is necessary to improve the Bank Soundness Level assessment with a risk-based approach.

This Bank Indonesia Regulation is effective as of January 1, 2012, namely for the assessment of Bank Soundness Level at the end of December 2011 and on the effective date it revokes Bank Indonesia Regulation Number 6/10/PBI/2004 concerning Commercial Bank Soundness Level Assessment System (https://www.ojk.go.id/id/regulation/Pages/PBI-about-Penilaian-Level-Kesehatan-Bank-Umum.aspx, accessed on Sunday, December 27, 2020 at 3.30 PM). Bank health is in the interest of all parties (stakeholders), namely bank owners, bank management, the community as bank service users and the government as a regulator. Intended as a benchmark for bank management, whether they run the bank's business in accordance with applicable regulations, so as to avoid problems that occurred in the past. Public trust and monetary stability in Indonesia are factors that are influenced by this. Permana (2012) A healthy bank is a bank that can carry out its functions properly, such as being able to maintain public trust, being able to carry out intermediation functions, being able to help smooth payment traffic, and being able to implement monetary policy.

Bank soundness is a qualitative assessment of various aspects that affect the condition or performance of a bank through quantitative and/or qualitative assessments of capital factors, asset quality, management, profitability, liquidity and sensitivity to market risk. After considering the element of judgment based on the materiality and significance of the assessment factors as well as the influence of other factors such as the condition of the banking industry and the national economy. The bank can assess the soundness of its own bank using the method recently issued by the government in Bank Indonesia Regulation Number 13/1/PBI/2011 article 2, it is stated that banks are required to assess the soundness of banks using a risk approach (Risk Based Bank Rating) both individually or consolidation. This regulation replaces the previous valuation method, namely the method based on Capital, Asset, Management, Earning, Liquidity and Sensitivity to market risk or what is called CAMELS. The RBBR method uses an assessment of four factors based on the Circular Letter of Bank Indonesia Number 13/24/DPNP, namely: Risk Profile, Good Corporate Governance, Earning and Capital.

From the Risk Profile factor using the calculation of credit risk, market risk and liquidity risk. The GCG factor takes into account the assessment of the implementation of self-assessment. Earning factor or profitability is measured by indicators of profit before tax to total assets (ROA), net interest income to total assets (NIM). Capital factor is measured by the CAR ratio. The overall RGEC method has a very healthy predicate. In Bank Indonesia regulation No. 13/1/PBI/2011 article 2, it is stated that banks are required to assess the soundness of banks using a risk approach (Risk Based Bank Rating) either individually or in a consolidated manner.

## Theory and Concepts Used

The legal relationship between the customer and the bank is a relationship of trust. Trust in banking is very important. In order for the bank to be trusted by customers, it is necessary that this trust relationship must always be maintained and upheld. Unfortunately, the concept of trust has shifted, so banks must uphold the trust of the public/customers. The author uses the Theory of Justice. John Rawls, who coined the theory of procedural justice, defines justice based on 2 main principles originating from the idea of equality: (1) Everyone has the same rights to the broadest basic liberties, as wide as the same freedoms for everyone; (2) Social and economic inequality even though it is regulated in such a way that; (a) can be expected to benefit everyone; and (b) all positions and titles are open to all. John Rawls, who coined the theory of procedural justice, defines justice based on the main principle originating from the idea of equality, everyone has the same rights to the broadest basic freedoms, as wide as the same freedoms for everyone. The author chooses the theory of justice from John Rawls, because according to the author all banking customers are entitled to equal rights to the broadest basic freedoms to obtain justice and legal certainty regarding the regulation of the amount of bank customer deposits guaranteed by Deposit Insurance Agency.

## Discussion

*a.Implementation of the Deposit Guarantee Scheme*

Article 37 B of Law Number 10 of 1998 stipulates that banks are required to guarantee public deposits. To guarantee public savings, it is necessary to establish a Deposit Insurance Corporation (LPS) in the form of an Indonesian legal entity and subsequently regulated based on a Government Regulation. The law does not regulate the form of legal entity that must be established and the authority that must be possessed. In relation to the basis for the establishment of the Deposit Insurance Corporation, ideally, with the authority as possessed by the FDIC, the formation of the Deposit Insurance Corporation must be based on the law, not just government regulations. In its journey, the mandate of Article 37 B is implemented by law, namely the Law of the Republic of Indonesia Number 24 of 2004 concerning the Deposit Insurance Corporation (hereinafter referred to as the IDIC Law).

Article 1 paragraph (8) of the LPS Law stipulates that “Bank Customer Deposit Insurance, hereinafter referred to as Guarantee, is a guarantee carried out by the Deposit Insurance Corporation for bank customer deposits”. The form of the IDIC legal entity, Article 2 of the IDIC Law stipulates that the Deposit Insurance Corporation is a legal entity, an independent, transparent, and accountable institution in carrying out its duties and authorities; and is responsible to the President. However, the IDIC Law does not explain further about legal entities. Meanwhile, independence means that in carrying out its duties and authorities, the IDIC cannot be interfered with by any party, including the government, except for matters that are clearly stated in the law. Since the policy regarding guarantees has an impact on the banking and fiscal sectors, the IDIC has representatives from each competent authority in the banking and fiscal sector. The existence of representatives of authorities is intended to jointly formulate guarantee policies that can support policies in these sectors. However, the implementation of the policy is entirely the responsibility and authority of the IDIC without being interfered with by any party. For example, in carrying out the task of settling a bank whose business license has been revoked, especially in the context of selling and or transferring the bank's assets, IDIC cannot be influenced by the interests of outside parties including the Government. The form of the regulation reflects its mandate and level of independence from other institutions that are also responsible for the financial safety net.

In order to reduce the negative impact of the government guarantee program, a Deposit Insurance Corporation (LPS) has been established, in accordance with Law no. 24 of 2004 concerning the Deposit Insurance Corporation (LPS) on September 22, 2004. The Deposit Insurance Corporation has two functions, namely to guarantee deposits of bank customers and to carry out settlements or handling of banks that have not been successfully rehabilitated or failed banks. Deposit insurance for bank customers by the Deposit Insurance Corporation is limited in nature to reduce the burden on the state budget and minimize moral hazard. However, the interests of customers are maintained optimally. Every bank operating in Indonesia, both Commercial Banks and Rural Banks is required to become a guarantee participant. The types of deposits at banks that are guaranteed include savings, demand deposits, certificates of deposit and time deposits as well as other similar types of deposits. The Deposit Insurance Corporation guarantee scheme has been fully started since March 22, 2007

*b. Legal Protection for Bank Customers Explicitly (Explicit Deposit Protection)*

What is meant by explicit protection is protection through the establishment of an institution that guarantees public deposits so that if the bank fails, the institution will replace the public funds deposited in the bank. Explicit protection can be obtained through the existence of a Deposit Insurance Corporation. In order to gain public confidence in the banking industry, which had slumped during the 1998 monetary crisis, a Deposit Insurance Corporation was created to protect public money collected in a bank from failed bank conditions. A failed bank is a condition where the bank experiences financial difficulties and jeopardizes its business continuity and can no longer be rehabilitated by the Banking Supervisory Agency in accordance with its authority. The legal basis of this institution is Law no. 24 of 2004 concerning the Deposit Insurance Corporation. With this law, protection can be done implicitly or directly against customers.

Banking Law Number 10 of 1998 only regulates the protection of customers implicitly/indirectly. In the law, basically protection for customers cannot be separated from efforts to maintain the continuity of the bank as an institution in particular and protection of the banking system in general. Indirect protection to customers can take the form of supervision of banks by the government in this case Bank Indonesia.

In addition to having to maintain their health in accordance with the provisions set by Bank Indonesia, each bank is also required to: (a) Maintain its business in accordance with prudential banking principles, including implementing the provisions on the maximum limit for granting credit, providing guarantees, placing investment in securities, or other similar rights, which may be exercised by the bank to the borrower or a group of related borrowers, including to companies in the same group as the bank concerned as determined by Bank Indonesia; (b) In providing credit in carrying out other business activities, take ways that are not detrimental to the bank and the interests of customers who entrust their funds to the bank. (Article 29 paragraph (4); (c) For the benefit of the customer, the bank provides information regarding the possible risk of loss for customer transactions conducted through the bank (Article 29 paragraph (5).

Protection of customers as creditors is also seen in the form of supervision by Bank Indonesia where according to article 30 paragraph (2) of the Banking Law, banks at the request of Bank Indonesia are required to provide opportunities for inspection of books and files in their possession, and are required to provide necessary assistance. in order to obtain the truth of all information, documents and explanations reported by the bank concerned. Furthermore, Article 31 paragraph (1) states, Bank Indonesia conducts inspections of banks, either periodically or at any time if necessary. Article 32 also adds that if deemed necessary, the Minister may also request Bank Indonesia to submit a report on the results of bank inspections or request Bank Indonesia to conduct special examinations on banks and report the results of the examinations carried out.

In relation to the balance sheet and the calculation of loss/profit, banks are required to submit to Bank Indonesia the annual balance and calculation of loss/profit as well as explanations thereof which have been audited by a public accountant, as well as other periodic reports within the time and form stipulated by Bank Indonesia (Article 34 paragraph (1 ) and (2)).

Government supervision, among others, in the context of protecting customers as creditors can also be seen from the actions of Bank Indonesia when it sees a bank experiencing difficulties that endanger its business continuity. Article 37 paragraph (2) stipulates that if a bank encounters difficulties that endanger its business continuity, Bank Indonesia may take actions including but not limited to: (1) Shareholders increase their capital; (2) Shareholders replace the bank's board of commissioners and directors; (3) Banks write-off non-performing loans, and calculate bank losses with their capital; (4) Banks merge or consolidate with other banks; (5) Banks are sold to buyers who are willing to take over all obligations. If Bank Indonesia considers that the condition of a bank endangers the banking system or the above actions are not sufficient to overcome the difficulties faced by the bank, then Bank Indonesia may propose to the Minister of Finance to revoke the bank's business license and the bank will be liquidated. In addition, in the event that the board of directors does not liquidate the bank, the Minister of Finance after hearing the considerations from Bank Indonesia asks the court to liquidate the bank concerned. This provision is a last resort to protect customer rights if a bank experiences business failure (revocation of its business license).

*c. Legal Basis and Regulations for Settlement of Banking Disputes in Indonesia*

In accordance with Article 41 of Law Number 21 of 2011, the Financial Services Authority informs the Deposit Insurance Corporation about a troubled bank that is currently being restructured by the Financial Services Authority. Likewise, the Deposit Insurance Corporation can carry out inspections of banks related to their functions, duties and authorities and coordinate in advance with the Financial Services Authority (Article

41, Law Number 21 of 2011, concerning the Financial Services Authority). The Financial System Safety Net is the framework that underlies the regulation of the deposit insurance scheme, the mechanism for providing emergency financing facilities by the central bank (Lender of last resort), as well as crisis resolution policies. The Financial System Safety Net is primarily aimed at preventing crises, however, this framework also includes a crisis resolution mechanism so that it does not incur large costs to the economy. Thus, the objective of the Financial System Safety Net is to maintain financial system stability so that the financial sector can function normally and have a positive contribution to sustainable economic development. In 2005, the Government and Bank Indonesia developed a framework for the Financial Sector Safety Net which would later be included in a Bill on the Financial Sector Safety Net. Within the framework of the Financial Sector Safety Net, it clearly states the duties and responsibilities of the relevant institutions, namely the Ministry of Finance, Bank Indonesia and the Deposit Insurance Corporation as players in the Financial Safety Net. In principle, the Ministry of Finance is responsible for drafting legislation for the financial sector and providing funds for crisis management. Bank Indonesia as the central bank is responsible for maintaining monetary stability and banking health as well as the security and smooth running of the payment system. The Deposit Insurance Corporation is responsible for guaranteeing bank customer deposits as well as for resolution of problem banks.

The Financial Safety Net Framework has been set forth in the Draft Financial Sector Safety Net Law. Thus, the Law on the Financial Sector Safety Net in the future will serve as a solid foundation for policies and regulations set by the relevant authorities in order to maintain financial system stability. In the Draft Law on the Financial Sector Safety Net, all components of the Financial Sector Safety Net are stipulated in detail, which include: (1) Effective bank regulation and supervision; (2) Lender of the last resort; (3) Adequate deposit insurance schemes and (4) Effective crisis resolution mechanisms. In its implementation, the Financial Sector Safety Net requires effective coordination between the relevant authorities. For this purpose, a Coordinating Committee was formed consisting of the Minister of Finance, the Governor of Bank Indonesia and the Chairman of the Board of Commissioners of the Deposit Insurance Corporation. As part of the Financial Sector Safety Net policy, a Joint Decree of the Minister of Finance, the Governor of Bank Indonesia and the Chairman of the Board of Commissioners of the Deposit Insurance Corporation has been issued regarding the Financial System Stability Forum as a coordination forum for Bank Indonesia, the Ministry of Finance and the Deposit Insurance Corporation in maintaining financial system stability.

The government's blanket guarantee program has succeeded in restoring public confidence in the banking system. However, this policy increases the burden on the state budget and has the potential to create moral hazard by bank managers and bank customers. In order to reduce the negative impact of the government guarantee program, the Deposit Insurance Corporation has been established. In accordance with Law no. 24 of 2004 concerning the Deposit Insurance Corporation on September 22, 2004, the Deposit Insurance Corporation has two functions, namely guaranteeing bank customer deposits and carrying out settlement or handling of banks that have not been successfully rehabilitated or failed banks.

If there are banks that experience financial difficulties and fail to be rehabilitated so that their business licenses must be revoked, the Deposit Insurance Corporation will pay the deposits of each customer of the bank up to a certain amount, as determined. The unsecured customer deposits will be settled through the bank's liquidation process. With the guarantee of bank customer deposits by the Deposit Insurance Corporation, it is hoped that public confidence in the banking industry can be maintained (https://www.ojk.go.id/id/kanal/perbankan/stabilitas-sistem-keuangan/Pages/Manajemen-Krisis.aspx, accessed on Wednesday, April 8, 2020). The banking industry is one of the branches of industry that is most regulated by the Government because the stability of the banking and financial system is an absolute prerequisite for growth and stability of the economy as a whole (E.Gerald Corrigan, “Central Banks and The Financial System”, paper present to A Symposium of Central Banking Issues in Emerging Market Oriented Economies). The reasons for the government intervention are:

First, to maintain the security and health of the banking system and the financial system as a whole. Without a reliable banking institution and financial system, it is impossible for the public to be willing to accept money as a medium of exchange, as a measure of value, as a means of storing wealth, or as a means of settling debts and receivables in the future. (deferred payments).

Second, to be able to control the money supply in order to maintain the stability of the price level. The more advanced an economy, the smaller the role of paper money and coins in circulation because the greater the role of debt securities issued by banking institutions as a substitute for paper money and coins. With the high trust held by financial institutions, the bonds issued can be accepted by the public as money.

Third, the banking industry is considered a very strategic industry in allocating economic resources to realize various development goals. Financial institutions are considered as semi-state companies that can be used by the government as an instrument to realize its policy goals.

Fourth, to maintain fair competition in the financial industry. Through fair competition, the financial industry is competing to mobilize public funds, competing to reduce intermediation costs, and competing to reduce doubtful accounts due to bad loans. A decrease in intermediation costs and bad loans will reduce loan interest rates. Rational credit allocation while increasing economic efficiency and increasing business activities (Nasution (2),1991 p. 14-17, See also, Javier Arrigunaga, Op.cit. Case. 330-331).

Bank customers also need to be given a guarantee. In relation to guaranteeing bank customer deposits, there are at least six policy options that can be carried out, namely: (Gillian G.H. Garcia (3), “Deposit Insurance A Survey of Actual and Best Practices”, IMF Working Paper, (WP/99/54, April 1999), p. 4). (a). Strictly stated, that the Government does not provide protection to customer deposits; (b). Customer deposits are not protected, but depositors are given priority rights in the bank liquidation process; (c). Uncertain coverage of warranties; (d). Covert guarantees; (e). Explicitly stated limited warranty; (f). An expressly stated comprehensive warranty.

Broadly speaking, the guarantee can be carried out with an indirect guarantee system and a direct guarantee system. Indirect guarantees are carried out in the form of regulation and supervision of banking activities, such as: provisions for capital adequacy, fit and proper test for controlling shareholders and bank management as well as supervision applied to banks. The indirect guarantee system often results in reduced public confidence due to the lack of firm regulation regarding the status of their deposits if a bank is forced to have its business license revoked by the government or a bank is bankrupt and liquidated. This system is often interpreted by the public as providing covert protection, because guarantees only appear when there is bankruptcy at the bank. Covert guarantees are never conceptually and formally structured. There are no arrangements regarding membership, obligations that must be fulfilled by banks, the level of guarantee provided or the form of reimbursement that will be applied. Naturally, covert guarantees create uncertainty about how the fate of depositors and their funding will depend on government policies and the ability to access public funds (Financial Stability Forum, "Guidance for Developing Effective Deposit Insurance System", Basel: September 2001, page 8).

Another form of guarantee system for depositors is the direct guarantee system which can be in the form of a joint fund scheme, deposit insurance and blanket guarantee. The pooling fund scheme is carried out by a buffer fund institution. The buffer fund aims to support a sound banking system and increase public confidence in banking. In addition, buffer funds function to protect the interests of customers.

The direct guarantee system produces many benefits, although there are also many disadvantages, such as: the emergence of setbacks in market discipline (moral hazard). For this reason, effective supervision and regulation is an important element of the financial safety net in controlling moral hazard. Empirically this is supported by research conducted by Demirguc-Kunt and Detragiarche (between 1980-1997) with a sample of 61 developing and developed countries. His findings show that the absence of a prudential regulation system and effective supervision can increase the banking crisis, especially with the existence of a customer guarantee system such as insurance schemes such as deposit insurance schemes (For details see Asli Demirguc-Kunt and Enrica Detragiache, "Does Deposit Insurance Increase Banking System Stability", IMF Working Paper (WP/00/3, January 2000).

Supervision and regulation are important instruments to pressure banks to take risks. If this is not carried out properly, it can threaten the stability of the financial system as a whole. So a deposit protection system such as deposit insurance that is equipped with effective regulation and supervision can reduce systemic risk, although it cannot eliminate it completely (Glenn Hoggarth and Farouk Soussa, "Crisis Management, Lender of Last Resort and the Changing Nature of the Banking Industry", in Richard A. Brealey, et.al., "Financial Stability and Central Bank A Global Perspective", (London: Routledge , 2001), p. 168). The implementation of a deposit guarantee scheme can be more successful if the banking system has been running well. The presence of an effective deposit insurance can contribute to the stability of a country's financial system, especially if the existing system is part of a well-designed safety net. In addition, deposit insurance must also be applied consistently, and can be well understood by the wider community.

The main purpose of the customer deposit guarantee system is to provide direct guarantees to depositors. Direct guarantees are carried out by developing a system that functions to provide guarantees in the form of guarantees for customer funds when the bank's business license is revoked and liquidated. The guarantee can be in the form of a limited warranty or a full guarantee. Direct protection with limited guarantees that are commonly used are deposit insurance schemes, both schemes managed by the government as practiced in the United States, and those managed by the private sector as in Germany. Full direct protection is generally carried out in times of crisis as is practiced in crisis-affected Asian countries, including Indonesia.

The establishment of the Deposit Insurance Corporation was basically carried out as an effort to provide protection against two risks, namely irrational run against banks and systemic risk. In running a business, banks usually only leave a small part of the deposits they receive in case there is a withdrawal of funds by the customer. Meanwhile, the lion's share of existing deposits is allocated as credit. This situation causes banks to be unable to meet requests in large quantities immediately for customer deposits they manage, in the event of sudden and large withdrawals. Limitations in the provision of cash funds, because the bank can not immediately withdraw the loan that has been disbursed.

If the bank is unable to fulfill the deposit withdrawal request by its customer under these circumstances, the customer usually panics and will close his account at the bank, even though the bank is actually healthy. For this reason, the existence of being a deposit is important in order to prevent customer panic by convincing customers about the safety of their deposits, even though the bank's financial condition is deteriorating.

The second risk is the threat of systemic risk. This is because the bankruptcy of one bank can have dire consequences for another bank, thus destroying the largest segment of the banking system. In this connection, the deposit guarantor can function to regulate the security and soundness of the bank in general. Another function of deposit insurance is as a supervisor which is carried out by monitoring balance sheets, lending practices and investment strategies with a view to seeing signs of financial distress that lead to bank bankruptcy (Anna Kuzmik Walker, “Harmessing the Free Market: Reinsurance Models for FDIC Deposit Insurance Pricing”, Harvard Journal of Law and Public Policy, (Summer 1995), p. 737).

The important role of deposit insurance such as deposit insurance is based on several considerations: (Sutalaksana, December 1993, p. 11).

a. In the economic growth of a country, the role of a stable financial sector is very important and the core of financial sector stability is the stability of the domestic banking system. The important role of the banking sector can be seen in the aspect of the payment system that allows trade transactions to occur. In addition, the bank collects funds more efficiently and henceforth distributed to the public. On the other hand, public funds stored in banks will determine the existence and profits of a bank.

b. To prevent the erosion of public confidence in banks which can result in a rush which can certainly endanger the individual bank and the banking system as a whole.

In the era of globalization with advances in information technology and computers, it has resulted in a global market in the financial sector. In the global market, funds are free to move from one country to another. If the owner of the funds lacks confidence in the national banking system, he can invest his funds abroad (capital flight) which can result in the loss or reduction of the productive power of a country.

Judging from the experience of the United States, the establishment of deposit insurance has succeeded in achieving the main goal of banking reform for at least a century, namely to prevent banking panics (Milton Friedman & A. Schwart, “A Monetary History of the United States”, 1867-1960, (Princeton: Princeton University Press 1993) p. 440. See also Oscar Cerda et.al., “The Financial Safety Net, Cost, Benefits, and Implications”, which states, “The federal deposit insurance program is the clearly most recognized component of the financial safety net and has helped sustain the general public's confidence in the banking system. Since its inception in 1933 it has deterred liquidity panics, forestalled bank runs, and avoided instability in the economy", Chicago Fed Letter, (Chicago, Nov. 2001) p.2 ).

With the existence of a deposit guarantee, the announcement of negative information about a particular bank, for example, has no effect on other banks so that it does not cause general chaos because the market has been able to distinguish the financial problems experienced by certain companies and their consequences for the individual (bank and the banking industry as a whole (See Jonathan R. Miller & Elizabeth H. Garret, "Market Discipline by Depositors: A Summary of the Theoretical and Emperical Arguments", Yale Journal on Regulation, (Winter 1988).

The existence of deposit insurance is also an effort to facilitate the settlement of troubled banks, for example due to the revocation of a bank's business license. So that the impact of declining customer confidence which in turn can lead to bank panic can be prevented as soon as possible ( The importance of the immediate settlement of problem banks is based on the reason that banks that are in a state of insolvency and if allowed to continue operating have the opportunity to carry out high-risk activities with the aim of obtaining large profits. Actions like this can result in even greater losses for depositors and other bank creditors). The basic reason for the government's participation in providing protection to bank customers is due to the view that the role of banking is so important. Often the government also intervenes to overcome the banking crisis. The intervention was carried out with the aim of: (1) Maintaining the integrity of the credit mechanism; (2) Maintaining the integrity of the payment system; (3) Maintaining financial stability; (4) Maintaining economic stability; and (5) Creating an efficient banking system structure ( Edward J. Frydl and Marc Quintyn, "The Benefits and Costs of Interventing in the Banking Crisis", IMF Working Paper, (WP/00/147, August 2000) pp.7-8).

However, any formation of a deposit insurance can create a moral hazard, so it must be done properly and carefully. In short, a deposit insurance is something that is necessary but not sufficient in solving banking problems.

d. Scheme of the Deposit Protection System in the United States, Thailand and Germany

Several methods are widely used by the Deposit Insurance Corporation (LPS) in the world, in resolving bank bankruptcy, or managing troubled banks to restore the bank, including: (a) Liquidation and payment of customer deposits; (b) Purchase-and-asumption transactions (P&A); (c) Open-bank financial assistance.

The first method, namely the liquidation and payment of customer deposits or often called the paybox system, is to pay the depositors' bills after the bank's business license is revoked. This system has no responsibility for supervision and regulation or the authority to intervene. This paybox system, requires sufficient authority to make payments immediately. This system also requires access to customer information and adequate funding.

The second method is the Purchase-and-Asumption transaction (P & A) method, which is a risk minimize method. In carrying out this method, the deposit guarantor must have relatively wider authority. These powers include: the authority to grant and revoke membership licenses, the authority to assess and manage risk and the authority to conduct or request bank checks. This system can provide financial assistance in solving problem banks. This system is also authorized to issue regulations and carry out settlement activities for troubled banks. With this method, the deposit guarantor transfers the ownership of the troubled bank to a healthy bank or a newly established bank. The bank receiving the ownership purchases the non-performing bank deposits and assumes responsibility for all of its obligations (except for subordinated loans). The Deposit Insurance Corporation will then restore the troubled assets. The third method is open bank financial assistance, which is a method of providing financial assistance to troubled banks to revive the bank.

*United States Model*

The United States uses a direct protection system through a deposit insurance scheme administered by the Federal Deposit Insurance Corporation (FDIC), an institution that replaces funds deposited by customers in liquidated banks. This system was put in place as a response to the banking crisis that hit the country in the 1930s. The FDIC was established with the objectives of: (1) Stopping a deeper contraction in the banking system; (2) Re-activating lending by banks; and (3) Protecting small banks. FDIC provides guarantees to depositors, so that bank panics can be prevented, and can stop the domino effect that at that time hit US banking. In the United States, the implementation of the deposit insurance scheme has basically succeeded in reducing the number of bankrupt banks. Every bank customer deposit up to USD 100,000 must be insured by the FDIC.
The FDIC was established with the Banking Act of 1933 in response to the widespread three-year bank failure in the United States. At that time the people of the United States who were worried about their savings in the bank, withdrew their funds to be deposited in the form of cash (hoarding). In the decade 1930 to 1932 about 5,100 banks went bankrupt. Many banks went bankrupt, resulting in losses for depositors, shareholders and the business world. This phenomenon is called banking panic ( R.William Keeton, "Deposit Insurance and the Deregulation of Deposit Rates", Federated Reserve of Kansas City, Economic Review, (April 1984), p.4 ). FDIC has an important role in the form of its ability to overcome banking panics, namely preventing "bank raids" (bank run) by providing confidence and guarantees to depositors of funds, that their deposits will definitely return.

*Thai Model*

Thailand took a different step from the steps taken by the United States in rescuing the banking system, namely by providing assistance to troubled banks through pooling funds (The disaster fund scheme (Pooling Funds / Common Funds) is a concept based on the existence of Standing Funds in which the minimum amount of funds is attempted to be a certain percentage of the total third party bank funds. These funds come from participating banks in the form of special or non-permanent contributions. Mandatory contributions are mandatory contributions paid by participating banks periodically, the amount of which is a certain percentage of the total bank third party funds. See Marulak Pardede, "Perspective on Legal Protection of Customer Funds in Banks", in the Journal of Business Law, (Vol.11, 2000) p. 53). At the end of 1983, to provide liquidity assistance to troubled banks and securities companies, the Government and members of the Thai Bankers Association (TBA) established a "liquidity fund" of 5 billion Bath. The funds are used to help financial institutions in trouble and are managed jointly by representatives of TBA, the Ministry of Finance and the Bank Of Thailand (BOT). TBA uses market interest rates for the loans it receives and also uses market interest rates for users of these funds. Borrowers at this institution get waivers of up to three years and can be rolled-over (R. Barry Johnston, "Distressed Financial Institution in Thailand: Structural Weaknesses, Support, Operations, and Economic Consequences", in V. Sundararajan and Thomas

JTBallino (ed) Banking Crisis: Cases and Issues, (Washington DC: IMF 1998), Case. 265-266).

In April 1984, when the public's loss of trust in financial institutions became more serious, the Ministry of Finance initiated a "lifeboat" scheme as additional assistance to liquidity funds. Based on this scheme, any non-performing financial institution can become a member and the scheme offers three types of assistance, First, a credit line by charging market interest rates, without a period of time and is used to pay customers who withdraw their deposits. Second, providing an injection of capital through investment. Third, soft loans from BOT for a period of five years with an interest rate of 0.1 - 2.5%. Then in 1985, the Financial Institutions Development Fund (FIDF) was formed. FIDF was formed within the Bank of Thailand as a separate legal entity, with the aim of refining troubled financial institutions and strengthening financial system stability. FIDF has its own Board of Directors which is separate from the Board of Directors of the Bank of Thailand. However, its operations are carried out by Bank of Thailand personnel (Carl-Jaohan Lindgren, et al, "Financial Sector Crisis and Restructuring Lessons from Asia", (Washington DC: IMF, 1999) p. 94).

FIDF has the authority to invest in short-term securities, place deposits with financial institutions, provide loans to financial institutions with collateral, purchase assets and own shares of financial institutions and provide financial assistance to depositors of a collapsed financial institution. . FIDF funding sources come from mandatory contributions from financial institutions and participation from the Bank of Thailand. Each financial institution is required to provide a contribution of the amount determined by the Fund Management Committee with cabinet approval of a maximum of 0.5% of the total deposits, debts, and funds received by the institution for a year ( Section 29 Quinque, Bank of Thailand Act. B.E. 2485).

FIDF was formed to overcome the financial crisis that hit Thailand due to the economic recession in the early 1980s, in which 57 financial institutions experienced severe financial difficulties. Thailand made 3 (three) amendments to the Law, namely: the Bank of Thailand Act, Commercial Banking Act and the Act on The Undertaking of Finance Business, Security Business and Credit Focier Business. Through this amendment, the FIDF was formed (Wichai Hirunwong, "Deposit Protection System In Thailand", paper presented at the Asean Conference on Deposit Protection System", (Denpasar Bali, 16 December 1993), p. 1-5). During the crisis in the 80s, known as the "King of Crisis", the Thai Government has proposed to establish a deposit insurance. However, due to political changes that occurred, the government finally withdrew the proposal from parliament (Wichai Hirunwong, "Deposit Protection System In Thailand", paper presented at the Asean Conference on Deposit Protection System", (Denpasar Bali, 16 December 1993), p. 1).

Assistance provided by FIDF to troubled banks through financial and non-financial assistance, among others: management assistance, supervision and inspection, providing operational advice, replacing the board of directors, revocation of licenses and liquidation. Financial assistance is carried out through, first, bail out by placing funds in financial institutions, providing funds and injecting capital. Second, purchase and assumption by taking over bad debts from non-performing financial institutions for liquidation and providing funds to cover obligations to depositors. Third, pay-off by providing financial assistance to depositors from a liquidated bank. After the financial crisis that hit Southeast Asian countries in mid-1997, forced the Thai government to provide a blanket guarantee.

*German Model*

Deposit insurance for private banks was established by the German Bank Association to offset the competitive advantage of saving banks owned by the government. The saving bank group has several regional deposit insurance schemes and national compensation schemes. Although saving bank depositors are protected by institutional explicit guarantees from government ownership, saving banks are also forced to establish a deposit insurance scheme to offset the competitive disadvantage of private banks. As with saving banks, cooperative bank groups also have regional and national insurance schemes. Savings bank and cooperative schemes do not directly guarantee savings but guarantee institutions (The three bank groups have auditing institutions and work closely with the Federal Supervisory Office and the Bundesbank (central bank). Bundesbank is prohibited by law from acting as a lender of last resort for deposit insurance schemes. In the case of a systemic crisis, a political solution will be found without this being predicted. The three schemes are voluntary and funded by premiums charged to participating banks. Ibid).

Deposit insurance membership is voluntary but mandatory for all members of the German Bank Association, unless they have joined another insurance scheme. Although membership is voluntary, non-member banks face major obstacles. The Federal Supervisory Office is required, under Section 32(3) of the Banking Act, to consult with the association before granting permission to a bank to participate in an insurance scheme. The Bank Association has a consultative role in the licensing process and has the authority to provide recommendations on whether or not to grant a permit for a bank. Banks that are not yet members of insurance must notify that the bank is not a member of deposit insurance in the General Terms and Conditions, as well as in the announcements displayed on the bank's wall and the application form for opening an account.

All non-bank deposits are guaranteed a maximum of 30% of the capital obligations of problematic institutions. With the minimum capital under the Banking Law is 5 million euros, the maximum guaranteed is 1.5 million euros, or about 50 times the German per capita income. With a commercial bank's total equity of 295.5 million Euros, the guarantee coverage limit is 90 million Euros. With such a high limit, the coverage is almost able to cover all participants in the guarantee provided to domestic and foreign customers in the form of their home currency. Skim also includes national and international domestic branch offices. Meanwhile, what are not covered are interbank bond payment accounts and insider accounts. Thus, although the coverage of the guarantee is very broad, there is no guarantee from the government for depositors or banks in the event of a crisis.

Coverage under the German model is the highest in the world, both in absolute terms and when compared to savings on a per capita basis. The average guarantee coverage limit is three times per capita across explicit schemes. Likewise with the other two deposit insurances that apply in Germany, the scheme that applies to private banks is financed by the member banks and the mix is based on ex-ante and ex-post. Members must pay a premium of 0.03% of obligations to creditors originating from the banking business every year. This premium can be doubled or nil depending on the condition of the adequacy of funds of each bank. There may also be a premium of up to 100% of the regular premium in the event that the bank does not have sufficient funds. Regarding membership requirements, banks that have been paying for 20 (twenty) years and are classified as category A (low risk) can be excluded from the obligation to pay premiums. Banks that are qualified as high risk (B or C) are required to pay an additional premium of 250% of the regular premium.

The Bundesbank, Germany's central bank, is prohibited by law from functioning as a lender of last resort for deposit insurance institutions. However, it has become an agreement that if private bank deposit insurance lacks funds to pay obligations to depositors, when a seismic crisis occurs or a number of banks go bankrupt, the central bank can provide assistance. Worldwide, only 10 (ten) countries have unfunded deposit insurance on an ex-ante basis, mostly from Europe. Most countries are financed at least from premiums paid by members, but most receive additional funding from the government or may be funded by the government in times of crisis.

This customer guarantee institution is managed by a commission which is a representative of 10 (ten) banks, reporting to the General Council of the Association. All groups of commercial banks are represented on the commission. Ideally 4 representatives from large banks, 3 representatives from private banks, and 3 from regional banks of foreign cooperatives and other banks. Institutions are flexible in terms of providing assistance to troubled banks. The guarantor agency can pay through the bank itself. Guarantee institutions can also issue guarantees or take over the obligations of troubled banks.

**Table 1: Deposit Guarantee System Scheme (Deposit Protection System)**

| No | Country | Premium | Guarantee Limit |
|---|---|---|---|
| 1 | Indonesia | 0.1 % (one thousandth) | Rp.2,000,000,000, - (two billion rupiah) |
| 2 | United States of America | Max Insurance Coverage is:<br>US $ 5.000 (1934)<br>US $ 10.000 (1950)<br>US $ 15.000 (1966)<br>US $ 20.000 (1969)<br>US $ 100.000 (now) | The FDIC allows banks to cease their business activities and pay all deposits insured by the FDIC. |
| 3 | Thailand | Maximum 0.5% of total savings. | blanket guarantee) -1997. |
| 4 | German | 0.03% of the liability. | All non-bank deposits are guaranteed a maximum of 30% of the capital obligation of problematic institutions.<br><br>Minimum banking capital 5 million Euros, maximum guaranteed 1.5 million Euros (50x German per capita income).<br>With a commercial bank's Equity amounting to 295.5 million Euros, the guarantee coverage limit is 90 million Euros. |

(Source: Catarina Manurung, 2022, Dissertation: Reformulation of Regulations on the Amount of Bank Customer Deposits Guaranteed by LPS Based on the Principles of Justice and Legal Certainty, pp. 320-322)

## Conclusion

The banking business is a trust business. Article 37 B of Law Number 10 of 1998 stipulates that banks are required to guarantee public deposits. To guarantee public savings, it is necessary to establish a Deposit Insurance Corporation (LPS) in the form of an Indonesian legal entity. In its journey, the mandate of Article 37 B is implemented by law, namely the Law of the Republic of Indonesia Number 24 of 2004 concerning the Deposit Insurance Corporation (hereinafter referred to as the IDIC Law). Several methods are widely used by the Deposit Insurance Corporation (LPS) in the world, in resolving bank bankruptcy, or managing troubled banks to restore the bank, including: (a) Liquidation and payment of customer deposits; (b) Purchase-and-asumption transactions (P&A); (c) Open-bank financial assistance. For the state of Indonesia, it is necessary to create a customer deposit guarantee system scheme (Deposit Protection System) that fulfills a sense of justice for all banking customers.

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