

## Legal Protection for Deposit Customers Who Are Not Recorded after BPR's Business License Is Revoked



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**ABSTRACT:** Third-party fund collectors by Rural Banks (BPR) using a pick-up service system bear the risk of internal bank misconduct leading to the omission of customer deposits in the BPR's records. The research method employed is normative research aimed at understanding the prudence principle in fund collection and legal protection for depositors. The research benefits society by enhancing their understanding of their rights as depositors in BPR. The discussion results indicate that customer identification principles Know Your Customer (KYC) embody the prudence principle in fund collection. The Financial Services Authority (OJK) mandates that BPR be accountable for customers harmed by internal misconduct. However, after liquidation, the Deposit Insurance Corporation (LPS) does not guarantee these affected customers. In conclusion, there is a legal vacuum in protecting depositors post-BPR liquidation. The lack of legal certainty in fund collection through pick-up service leads to compensatory relationships between customers and bank staff. Recommendations include amending LPS regulations to provide legal protection for affected bank customers and enhancing supervision in third-party fund collection.

**KEYWORDS:** Prudential Principle, Customer Deposits, Assurance

### I. INTRODUCTION

The existence of banks is an inseparable part of economic activity, including production, consumption, trade, savings, investment, and others. Each of these three activities involves the circulation of money. The Indonesian government realized the need for funds so economic activities could run smoothly. Therefore, an intermediary institution called a bank was established.<sup>1</sup>

Banking institutions are financial service institutions that function as financial intermediaries as a vital supporting infrastructure to support the smooth running of the economy, in their function of transferring funds from savers or surplus units to borrowers on deficit units.<sup>2</sup> The activities carried out by banks as Financial Services Institutions include:<sup>3</sup>

- a. Raising funds from the public or credit recipients by receiving funds in the form of deposits such as savings, time deposits, and checking accounts;
- b. Distributing funds from the public in the form of credit or as a credit-granting institution;
- c. Launching trade transactions and payments in foreign currencies;

In practice, especially in the Bank Perekonomian Rakyat (hereinafter referred to as BPR), in business activities, there is very intense competition among BPR, Commercial Banks, and other financial institutions. With the high level of competition, one of the efforts made by BPR to raise third-party funds is through a direct pick-up system. Through pick-up service activities, customers do not need to deposit and withdraw savings to the bank office; they can deposit them through bank officers. The pick-up service activity provides convenience for customers not to leave their business activities. With the various conveniences enjoyed by customers, on the other hand, it also has several risks such as the risk of using customer money by BPR officers, the occurrence of errors in recording the amount of customer deposits by officers and the risk of losing customer money.

The occurrence of irregularities in customer money by internal bank employees has occurred in several banks, as reported by several print and electronic media. Online media, namely CNN Indonesia on July 21, 2021, reported that one of the employees of a state-owned bank in Sumenep Regency, East Java, with the initials NA, was indicated to have embezzled customer money by not recording the receipt of deposits from customers and illegal loans. The loss suffered by customers reached Rp541 million.<sup>4</sup> Another alleged case of embezzlement of customer funds also occurred at BPR NTB. As reported by antaranews.com online media on Monday, October 2, 2023, one of the BPR NTB employees allegedly embezzled customer money with the mode of using customer deposits for personal interests so that customer deposits were not recorded in the BPR bookkeeping.<sup>5</sup> The

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incident of misappropriation of third-party funds also occurred at PD BPR Bank Buleleng 45 Seririt Cash Office. As reported by the online media nusabali.com on September 6, 2018, the bank employees are suspected of embezzling customer money amounting to IDR 635.3 million. The mode used is that BPR employees withdraw money through the customer's savings book without the customer's knowledge and permission. In addition to withdrawing savings without rights, the person concerned is also suspected of having received savings and deposit funds from customers but not deposited into the bank so that they are not recorded in the bank's books.

The misappropriation of customer money by the bank itself also occurred at PT BPR Sewu, which had its business license revoked by OJK in 2021. Based on court decision Number 4/Pid.Sus/2023/PN. Tab by the Tabanan District Court on May 31, 2023, it was decided that bank administrators and employees deliberately made or caused false records in the books or in the reporting process, as well as in documents or reports on business activities, transaction reports, or accounts of a bank. The impact of these deviations by internal bank personnel resulted in customer deposits not being recorded in the BPR's bookkeeping.

### **II. RESEARCH METHOD**

The research method used in this research is the normative law research method, which uses normative case studies in the form of legal behaviour products, such as reviewing laws. The subject of study is law, which is conceptualized as norms or rules that apply in society and become a reference for everyone's behaviour. Normative legal research focuses on the inventory of positive law, legal principles and doctrines, legal discovery in cases in concreto, legal systematics, the level of synchronization, comparative law, and legal history.

The use of normative research methods in research efforts and writing is based on the suitability of the theory with the research methods needed by the author, especially the rules issued by the Financial Services Authority and the Deposit Insurance Corporation. The approach used in this research is the statutory approach. Normative legal research must certainly use a statutory approach because various legal rules will become the focus and central theme of the study.

The theoretical benefits of this research are that it provides academic information to the public, especially to depositors, related to the principle of prudence and legal protection of funds that have been deposited with BPR. Provide input or ideas for interested parties related to legal protection for bank customers who are harmed by internal bank parties such as OJK, LPS, Financial Services Business Actors (PUJK), and the general public.

### **III. DISCUSSION**

#### **A. BPR Funding Activities**

Banks in their business activities through the mobilization of public funds as in Article 1 of UUP2SK, regarding bank activities which states that:

*"a business entity that collects funds from the public in the form of deposits and distributes them to the public in the form of credit or financing and/or other forms in order to improve people's lives."*

These activities are mobilization activities or collecting public funds. Fund mobilization activities for BPR include raising third-party funds in the form of savings and deposits. The collection of public deposits is the main source of funds for banking companies. The large amount of this type of fund booked as debt makes the bank a highly leveraged one (debt to equity ratio), especially when compared to other types of companies. The most common funds collected by commercial banks and BPRs are deposits.

#### **B. Banking Crimes**

Several forms of banking crimes, among others, are in the form of individual crimes against banks, bank crimes against other banks, or bank crimes against individuals. Banks can be both perpetrators and victims of non-crime in the banking sector. The space dimension of banking crimes is not limited to a certain space; it can cross the territorial boundaries of a country, and the shape dimension can occur immediately, but it can also last for a long time with the support of technology.

The scope of the occurrence of banking crimes can occur in the entire scope of life of the banking world or those closely related to banking activities. More broadly, it also includes other financial institutions. Meanwhile, the provisions that can be violated, both written and spoken, also include customary norms in the banking sector, but all of them must still have regulated criminal sanctions. The scope of perpetrators and banking crimes can be committed by individuals and legal entities (corporations).

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### **C. Theories of Legal Protection**

Legal protection is protection given to legal subjects in the form of legal instruments, both preventive and repressive, both written and unwritten. In other words, legal protection as a description of the function of law, that is the concept when the law can provide justice, order, certainty, benefits, and peace.<sup>6</sup>

Legal protection is always associated with the concept of rechtstaat or the concept of the Rule of Law because the birth of these concepts cannot be separated from the desire to provide recognition and protection of human rights. The concept of rechtstaat emerged in the 19th century and was first coined by Julius Stahl. At the same time, the concept of the rule of law pioneered by AV Dicey also emerged. The concept of rechtstaat, according to Julius Stahl, simply means that the state of law is a state that organizes its government power based on law. The concept of the rule of law or rechtstaat according to Julius Stahl includes four elements, namely:

- a. Protection of human rights;
- b. Division of power
- c. Government based on the law
- d. State administrative court.

Meanwhile, AV Dicey outlines three important characteristics of the rule of law, which are as follows.

- a. The supremacy of law, meaning that there should be no arbitrariness so that someone can only be punished if they violate the law;
- b. Equal standing in front of the law, whether for ordinary citizens or government officials.
- c. Guaranteed human rights in laws or court decisions.

The existence of law in society is very important. In life, the law is built imbued with the moral of constitutionalism, which guarantees the freedom and rights of citizens. In addition, the law and the constitution essentially obey the imperative contained as the meaningful substance of the imperative. The human rights of citizens must be respected and upheld by the developers of state power anywhere and anytime, as well as when citizens are using their freedom to participate in or to find out about the process of making public policy.

Article 1, paragraph (1) of Consumer Protection Law states that consumer protection is all efforts to ensure legal certainty to provide protection to consumers. The author argues that the efforts intended to ensure legal certainty are interpreted as efforts in forming laws and regulations or intervening in market mechanisms.<sup>7</sup>

### **D. The validity of recording customer deposits in BPRs**

As a business entity that manages public funds, BPR certainly has a public responsibility and is required to present quality financial reports, which are an important source of information in decision-making and as a form of management accountability for the activities it has carried out within a certain period of time.

Quality financial statements can provide accurate and comprehensive information for all interested parties and reflect the company's performance as a whole. In achieving this goal, the applicable accounting standards and guidelines need to be continuously improved in line with the development of current financial transactions and products, as well as harmonization with international accounting standards. However, with limited and simple activities, it is considered inadequate in terms of costs and benefits for BPRs to use general financial accounting standards for commercial banks. Therefore, for BPRs, simple financial accounting standards, namely the Financial Accounting Standards for Entities Without Public Accountability (SAK-ETAP), have been applied to them since January 1, 2010.

The service system applied by BPRs to collect savings and deposits through pick-up services results in the potential for irregularities by internal elements of the bank itself. In the case that occurred at PT BPR Sewu Bali (DL), as stated in the court decision Number 4/Pid.Sus/2023/PN Tab by the Tabanan District Court on May 31, 2023. The irregularities resulted in savings deposits and deposits no longer being recorded in the BPR's books because they had been disbursed by unauthorized parties, resulting in customer deposits not being recorded in the BPR's monthly report on forms-12.

### **E. Legal Protection of Third-Party Funds on Contractual Relationships in Fund Placement.**

The idea of consumer protection arises as a result of the weak position of consumers compared to business actors. The form of protection given to weak parties, including consumers, is law because one of the characteristics, as well as the purpose of the law, is to provide protection and guidance to citizens. Consumer protection law is the legislation, both laws and other legislation, as well as judges' decisions whose substance regulates the interests of consumers.<sup>8</sup>

The basis of the legal relationship between consumers and banks is the existence of a contract or agreement (the privity of a contract). Various principles in the law of agreements have been put forward by experts in various doctrines. The notion of freedom of contract and the principle of pacta sunt servanda, in reality, can cause injustice. Freedom of contract is based on the assumption that the parties to the contract have equal bargaining power, but in reality, the parties do not always have equal

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bargaining power. Standard terms are always accepted by the opposing party without reading these terms or knowing the full contents, and the determination of the standard contract in use causes very serious losses. The party with a weak bargaining position simply accepts all the contents of the contract by force because if it tries to bargain with other alternatives, it is likely to accept the consequences of losing what it needs. So, there are only two alternative choices for parties with weak bargaining positions to accept or reject.<sup>9</sup>

Problems in the use of products and services by bank customers often lead to disputes between customers and the bank. In resolving disputes over bank products and/or services outside the court, OJK has issued POJK No. 01/POJK.07/2014, dated January 16, 2014, concerning Alternative Dispute Resolution Institutions (hereinafter LAPS) in the Financial Services Sector. The POJK, among others, regulates the mechanism for resolving complaints in the financial services sector through 2 stages: internal dispute resolution and external dispute resolution. In line with the characteristics and developments in the financial services sector, which are always fast, dynamic, and full of innovation, LAPS outside the judiciary requires procedures that are fast, low cost, with objective, relevant, and fair results.

### ***F. Implementation of Prudential Principles in the Collection of Third-Party Funds Through the Application of Know Your Customer (KYC)***

The principle of knowing the customer (know-how customer principle) is the principle applied by the bank to recognize and know the identity of the customer and monitor the customer's transaction activities, including reporting any suspicious transactions. The principle of knowing the customer was initially regulated through Bank Indonesia Regulation Number 31/10/PBI/2001 concerning the Implementation of the Know Your Customer Principle. The regulation has undergone several changes, and the latest change was made by OJK through POJK No.8 of 2023 concerning the Implementation of Anti-Money Laundering, Prevention of Financing of Terrorism, and Prevention of Financing of Proliferation of Weapons of Mass Destruction in the Financial Services Sector or referred to as POJK APU and PPT. As one of the realizations of the prudential principle in the collection of third-party funds, it is an embodiment of the Banking Law, which requires banks to apply the principle of recognizing customers or KYC.

BPR as one of the financial intermediary institutions is required to make a policy and producer in implementing the principle of knowing the customer. The policy is a guideline so that the banking industry is not used as a means of money laundering crimes.<sup>10</sup> Banks are required to have a policy in accepting customers, both customers who go directly to the bank office and those who are picked up by bank officers at the customer's location. Written policies and procedures for accepting customers become very important in the collection of third-party funds as a first step to ensure that the collection of third-party funds contains elements related to consumer protection. In the policy made by the BPR, BPR is obliged to ensure that the funds collected by BPR officers have been received and recorded in the BPR's bookkeeping on the same day.

In addition to banks being required to have adequacy in policies and procedures for collecting third-party funds, they are also required to ensure adequate supervision. The KYC principle is a principle applied by banks to determine the identity of customers and monitor customer transaction activities, including suspicious transaction reporting. The implementation of KYC principles and financial education activities to customers is a preventive effort to protect customer interests and increase customer understanding related to the use of banking products and services. The adequacy of policies and procedures in raising funds also includes a written policy with a pick-up service system. Validity in the placement of money in BPR if the customer has signed the account opening application form and the customer's deposit is recorded in the BPR bookkeeping, namely forms 11 and 12 in the BPR monthly report.

### ***G. Basis for Payment of Guarantee Claims by LPS if BPR is Liquidated***

If OJK revokes the BPR's business license, LPS will immediately reconcile and verify the depositor data based on the financial data owned by the bank. The financial data is the data as of the date of revocation of the business license. The purpose of the verification is to determine deposits that are eligible for payment and deposits that are not eligible for payment. The depositor data is the customer data recorded in the BPR monthly report which is submitted monthly to OJK.

Based on Article 31 of PLPS No.2/PLPS/2010 on the Deposit Insurance Program, hereinafter referred to as PLPS No.1, it is stipulated that in order to conduct reconciliation and verification as referred to in Article 30, Bank employees, Directors, Commissioners, and Shareholders of Banks whose business licenses are revoked are obliged to assist in providing all data and information required by LPS, as follows:

- a. List of customer Deposits recorded in the bank's bookkeeping;
- b. List of customer deposits that also have obligations to the bank that have matured and or defaulted;
- c. List of the bank's bills to debtor customers, including those that have been written off by the bank;
- d. Bank's internal Standard Operating Procedures (SOP) relating to customer deposits;
- e. The composition of the Board of Directors, Commissioners, and Shareholders of the Bank;

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- f. Balance sheet and its details; and
- g. Data, information, and other supporting documents required by LPS.

Guaranteed deposits include all deposits collected by the bank up to the time of revocation of the bank's business license by OJK, including deposits that have a period of time and have matured before or at the time the bank revoked its business license but have not been paid by the bank in part or in full to customers. In paragraph (1) of Article 26 of PLPS No.1, it is stipulated that the value of Deposits guaranteed by LPS includes the balance recorded in the bank's books on the date of revocation of the bank's business license. The balance, as referred to in paragraph (1), is the principal plus interest that has become the right of the Saving Customer for deposits that have an interest component or the present value as of the date of revocation of the bank's business license using the discount rate recorded in the bank's books, for Deposits that have a discount component.

As stipulated in letter a, Article 30 of PLPS No.2, that data and information including data on deposits by the public in BPRs which are the basis for LPS to make claim payments are customer deposit data recorded in the bank's books. The customer deposit data is previously determined whether it is eligible to pay or not eligible to pay after verification by LPS. The verification is based on the list of savings and deposits recorded in the BPR's bookkeeping.

What about customer deposits that are not recorded in the BPR's books as a result of irregularities committed by internal BPR personnel. Based on letter a, article 30 of PLPS No.2, it is stipulated that data and information, including data on deposits by the public in BPRs, which are the basis for LPS to make claim payments, are customer deposit data recorded in the bookkeeping. By not recording customer deposits in the BPR's financial report, as stipulated in letter a, article 30 of PLPS No.2, the customer deposits are not verified by LPS to determine whether the customer deposits are eligible for payment or not eligible for payment. By not being the object of verification by the LPS, the customer's right to file an objection to the LPS is lost.

The depositor customer can file an objection to the results of verification by LPS as stipulated in Article 46, PLPS No.2, in the event that the depositor customer whose deposit is not eligible to be paid feels aggrieved, then the customer can:

- a. submits an objection to LPS supported by real and clear evidence: or
- b. takes legal action through the court.

If LPS accepts the objection of the Depositor Customer or the court grants the legal remedy of the Depositor Customer as referred to in paragraph (1), LPS changes the status of the customer's deposits (reclassification) from deposits that are not eligible for payment to deposits that are eligible for payment. LPS only pays the customer deposits mentioned in paragraph (2) in accordance with the Guarantee, along with reasonable interest from the time the customer deposits are determined not worth paying until the customer deposits are paid by LPS.

### **H. Legal Liability for Crimes Committed by Internal Bank Personnel**

The most difficult problem faced by the banking industry and the bank's supervisory body is to monitor or quickly find out the negligence or intentions of the bank's management and/or Bank employees and/or shareholders and/or affiliated parties in committing mistakes or crimes, such as fraud and embezzlement committed. The forms of legal violations or crimes committed by the bank's management, employees, and shareholders are often closely related to the responsibilities and management duties of the bank's management in managing the bank's business activities, especially those related to lending to debtors and collecting third-party funds.<sup>11</sup>

Every criminal offense must be subject to liability, both criminal and civil and administrative liability. This responsibility is imposed on both perpetrators outside the banking institution and "insiders" or officials in banking. According to Kranenburg and Vetig, there are two theories that underlie the liability of officials:

- a. The theory of fautes personnelles, which is a theory that states that losses to third parties are charged to the party whose actions have caused the losses. The burden of responsibility is directed to the human being as a person.
- b. The theory of fautes de services states that losses against third parties are charged to the agency of the official concerned. According to this theory, the responsibility is charged to the position.

Hans Kelsen states that absolute responsibility is an act that causes consequences that are considered detrimental by the legislator, and there is a relationship between the act and its consequences. There is no relationship between the mental state of the perpetrator and the consequences of his actions.<sup>6</sup>

Austin provides the concept that legal responsibility is the same as a legal obligation and that a legal obligation is described as follows:

*“To be obliged to do or not to do something, or to be placed under the obligation or necessity of doing or not doing, is to be held liable for a sanction in the event of disobeying an order.”*

The criminal penalties for internal bank personnel are regulated in Article 49 paragraph (1), Letters A, b, and c paragraph (2), Letters A and b, Article 50 and Article 50 A of the Banking Law. In comparison, civil liability is in the form of responsibility to compensate for losses suffered by aggrieved bank customers. In line with the theory of fautes personnelles, which is a theory that



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states that losses to third parties are charged to the party whose actions have caused losses. In addition, there are administrative sanctions by OJK in the form of a reassessment of the Main Party, hereinafter referred to as PKPU. The result of the PKPU assessment is a ban on becoming owners, managers, and executive officials in financial services institutions for a certain period of time.

As for civil liability, it is regulated in Article 10 POJK concerning Consumer Protection, namely that BPR shall be responsible for consumer losses caused by errors, negligence, and acts contrary to the provisions of laws and regulations in the financial services sector and/or agreements, whether committed by the Board of Directors, Board of Commissioners, Employees, and/or committed by third parties representing or working for the benefit of BPR.

This is in line with the theory of *fautes de services*, which is a theory that states that losses to third parties are charged to the agency of the official concerned. The responsibility of BPR for consumer losses can be agreed upon by the consumer and BPR. Thus, the POJK on the protection of Consumers and the public in the Financial Sector has provided legal certainty for Consumers and the Public in placing their funds in BPRs in the event of deviations by internal BPR elements.

### ***I. Legal Protection of Fund-Saving Customers as Consumers***

Consumer Protection in the Financial Services Sector is all efforts to ensure legal certainty for consumers in the Financial Services Sector. In Article 98, POJK Consumer Protection stipulates that for the protection of consumers and society, OJK is authorized to conduct legal defence, including:

- a. Order or take certain actions to PUJK to resolve Consumer Complaints; and/or
- b. Filing a lawsuit.
- c. Related to legal defence by OJK for protection.

OJK can provide legal defence to bank customers by providing assistance in the legal process. In providing assistance to consumers, OJK does not have to be the legal representative of the customer but can be in the form of recommendations or other actions based on applicable provisions in order to restore the losses suffered by the customer. Legal defence to customers can be provided if the bank has not had its business license revoked. If the bank has revoked its business license, then OJK does not have the authority to protect its customers.

Sri Rahayu Widodo said that the mandate for filing a lawsuit at the OJK initiative is legal standing. So, it will not create OJK regulations governing the industry but internal OJK regulations to execute the mandate of Article 30 of the OJK Law. Obstacles in the protection of bank customers when bank customers choose to use litigation channels in resolving their disputes. OJK can only act as a companion during the trial. However, if the case has been decided in court, OJK does not have the authority to execute it.

One of the cases taken as an obstacle in customer protection is the case between Bank X, which did not pay compensation in accordance with Decision Number 03/Pdt.G/2012/PN-SAB. Customers can freely choose to resolve disputes through litigation or non-litigation. If dispute resolution is used through the court (litigation), then the final result of the case examination is a decision. In the case of execution of court decisions, OJK does not have the authority to execute. OJK is only a facilitator of problem-solving.

## **IV. CONCLUSION**

Know Your Customer (KYC) principle is a prudential principle in the collection of funds and is a preventive effort in protecting the interests of depositing customers. The validity of placing money in BPR if the customer has signed the account opening application form and the customer's deposit is recorded in the BPR bookkeeping on form-11 and 12 of BPR monthly report. There is a lack of norms in the collection of funds related to the legal protection of depositing customers who are not recorded in the books after the BPR is liquidated because it is not guaranteed by LPS. Recording customer deposits in the bank's bookkeeping is the main requirement for LPS to pay guarantee claims. So that the settlement of losses experienced by customers becomes a personal relationship between customers and BPR elements. The norm vacuum causes the absence of legal certainty in the collection of funds with a pick-up service system.

For the bank, in this case, it is necessary to have periodic audits and the use of technology in fundraising activities with a pick-up service system to prevent crimes by internal BPR elements. Furthermore, for customers in terms of opening a new account, it is necessary to seek information from the BPR office to ensure that the customer has signed the account opening form, has a passbook, and the deposit is guaranteed by LPS. For LPS, amendments should be made to PLPS No.1 on the Deposit Guarantee Program by adding articles related to consumer protection for customers who are harmed by internal BPR elements. The types of consumer protection include legal defence of aggrieved customers and paying for losses suffered by customers.

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