

Legal Protection Of Bank Customers Through The Deposit Insurance Corporation (Lps): A Normative Analysis Of Deposit Guarantee Regulation In Indonesia

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Abstract

The stability of the banking sector is closely tied to public trust, which in turn depends on legal certainty in the regulation and supervision of banks, including the guarantee of customer deposits. Indonesia experienced this reality first-hand during the 1997–1998 monetary crisis, when the collapse of public confidence forced the government to issue a blanket guarantee that later proved fiscally unsustainable and prone to moral hazard. This condition led to the enactment of Law No. 24 of 2004 concerning the Deposit Insurance Corporation (Lembaga Penjamin Simpanan/LPS), later reinforced by Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector. This article addresses two problems: first, the form of legal protection provided to bank customers by the LPS, and second, the regulation of the maximum value of guaranteed deposits. Using normative legal research with statutory and conceptual approaches, this study finds that LPS protection operates through both implicit protection (prudential supervision and regulation of banking operations) and explicit protection (a dedicated deposit guarantee scheme subject to the “3T” requirements: recorded, non-excessive interest rate, and no unlawful act causing loss to the bank). The study also finds a normative inconsistency between Article 11(1) of Law No. 24 of 2004, which sets the guarantee ceiling at Rp100,000,000, and Government Regulation No. 66 of 2008, which raised it to Rp2,000,000,000 without amending the parent law. Based on the principle of *lex superior derogat legi inferiori*, this inconsistency creates a degree of legal uncertainty that should be resolved through a formal amendment of the Law itself. The article concludes that while the LPS has substantially strengthened depositor protection and financial system stability in Indonesia, harmonization of the guarantee-ceiling provisions is necessary to ensure full legal certainty for depositors.

Keywords: legal protection; deposit insurance corporation; bank customer; deposit guarantee; legal certainty

INTRODUCTION

The banking industry is one of the most critical components of a national economy, functioning both as an intermediary of funds and as a barometer of macroeconomic stability. History demonstrates how fragile this stability can be: the 1997–1998 Asian monetary crisis forced the closure of sixteen Indonesian banks and severely eroded public trust in the entire banking system. To arrest the crisis, the Government issued a blanket guarantee under Presidential Decree No. 26 of 1998, covering the full obligations of commercial banks, followed by Presidential Decree No. 193 of 1998 for rural banks. While the blanket guarantee succeeded in restoring short-term confidence, it imposed a heavy fiscal burden on the state budget and generated moral hazard: bank managers were not incentivized to operate prudently, and customers had little reason to evaluate a bank’s soundness before placing their

funds with it. Moreover, because the guarantee rested only on a Presidential Decree rather than a statute, it lacked a sufficiently strong legal foundation.

These weaknesses prompted the enactment of Law No. 24 of 2004 concerning the Deposit Insurance Corporation, which entered into effect on 22 September 2005. The LPS was designed to perform two core functions: guaranteeing customer deposits up to a defined ceiling, and participating in the resolution of failed banks. Limiting the guarantee, rather than covering deposits without limit, was intended to protect the largest possible number of ordinary depositors while reducing the fiscal exposure and moral hazard associated with a blanket guarantee. Indonesia's commitment to this model is further reflected in its membership of the International Association of Deposit Insurers (IADI), founded in Basel in 2002.

The legal architecture surrounding deposit insurance has continued to evolve. Banking operations remain governed by Law No. 7 of 1992 as amended by Law No. 10 of 1998, while Law No. 24 of 2004 on the LPS specifically addresses deposit protection. Both statutes were further reinforced by Law No. 4 of 2023 concerning the Development and Strengthening of the Financial Sector (UU P2SK), which expanded the LPS's mandate to include, among other things, a future policyholder guarantee program. Under current regulation, the LPS guarantees deposits including sharia-based savings up to Rp2,000,000,000 (two billion rupiah) per customer per bank, a ceiling last revised by Government Regulation No. 66 of 2008.

This ceiling, however, sits uneasily alongside its parent statute. Article 11(1) of Law No. 24 of 2004 still states that the guaranteed amount for each customer at a single bank shall not exceed Rp100,000,000, a figure that was only adjusted through a Government Regulation rather than through legislative amendment. This raises a genuine question of legal hierarchy and consistency, since under Indonesia's legislative theory a Government Regulation cannot lawfully override an explicit numerical provision contained in the Law it implements.

Based on this background, the study addresses two research questions: (1) What form does the legal protection provided by the LPS to bank customers take? (2) How is the regulation concerning the ceiling on the value of guaranteed deposits structured, and does it raise any issue of normative consistency? The purpose of this study is to analyze the legal protection mechanism operated by the LPS and to examine the regulatory basis and potential inconsistency of the deposit-guarantee ceiling, so as to contribute both theoretically to legal scholarship on financial-sector protection and practically to policymakers and the banking public.

LITERATURE REVIEW

Theory of the Rule of Law (Rechtsstaat)

The concept of a state based on law is most commonly expressed through the terms *rechtsstaat* (the continental civil-law tradition) and the rule of law (the Anglo-American common-law tradition). Although the two traditions emerged from different historical trajectories *rechtsstaat* as a revolutionary reaction against absolutism, and the rule of law as an evolutionary common-law development both converge on the same objective: protecting human rights and constraining the arbitrary exercise of state power. Julius Stahl identified four elements of *rechtsstaat*: protection of human rights, separation of powers, government based on legislation, and administrative courts, while A.V. Dicey articulated three characteristics of the rule of law: supremacy of law, equality before the law, and due process of law. The International Commission of Jurists later added the independence and impartiality of the judiciary as a further essential principle. For this study, the rule-of-law framework matters because the LPS's authority, governance and accountability must ultimately trace back to statutory authorization rather than to unchecked administrative discretion.

Theory of Legislation

The formation of legislation is understood in Indonesian legal theory both as a process the drafting and enactment of state regulation and as a product the entirety of enacted norms at the central or regional level. Bagir Manan characterizes legislation as a written decision issued by an authorized official, containing rules of general and binding conduct that are abstract rather than addressed to a specific individual or event. Legislative products occupy a strategic position because, as Paul Scholten observed, "law resides in legislation", making legislative drafting and hierarchy central to legal certainty. This theory underlies the study's concern with whether a Government Regulation may validly adjust a numerical threshold explicitly fixed in its parent Law.

Theory of Legal Certainty

Gustav Radbruch regarded legal certainty as one of the primary purposes of law, alongside justice and expediency, and proposed that certainty requires law to be positive, based on fact, clearly formulated, and not easily amended. Jan M. Otto added that legal certainty requires rules to be clear, consistent and accessible; consistently applied by the authorities; broadly accepted by society; adjudicated by an independent judiciary; and concretely enforceable. Nurhasan Ismail further specified that legal certainty within legislation demands conceptual clarity, hierarchical clarity, and internal consistency among norms. Lon Fuller's eight principles of legality generality, publicity, prospectivity, clarity, non-contradiction, possibility of compliance, stability, and congruence between rule and official action offer a further diagnostic checklist. These criteria are directly applicable to the tension identified in this study between Article 11(1) of Law No. 24 of 2004 and Government Regulation No. 66 of 2008.

Theory of Legal Protection

Legal protection refers to action that safeguards a legal subject's rights and interests, giving rise to legal relations between subjects. Sudikno Mertokusumo argues that law functions to protect human interests, and that such protection may operate peacefully or in response to a violation. Philipus M. Hadjon distinguishes preventive legal protection the opportunity for the public to raise objections before a definitive governmental decision is issued from repressive legal protection, which addresses disputes and violations after they occur. Applied to banking, legal protection for depositors therefore takes both an implicit form (prudential regulation and supervision that prevents bank failure in the first place) and an explicit form (a dedicated deposit-guarantee institution that compensates depositors once a bank does fail).

Theory of Justice

Aristotle, in the *Nicomachean Ethics*, distinguished distributive justice allocating goods according to merit or contribution from corrective (commutative) justice, which treats parties equally regardless of merit in transactional exchange. John Rawls's *A Theory of Justice* introduces the "original position" and the "veil of ignorance" to derive two principles of justice: equal basic liberties for all, and permissible social and economic inequalities only insofar as they benefit the least advantaged. Hans Kelsen, writing from a positivist standpoint in the *General Theory of Law and State*, treats justice largely as a subjective value judgment realized through the consistent application of general rules, an approach he links to legality: a rule is "just" when it is applied uniformly to like cases. These perspectives jointly inform the normative benchmark against which the fairness of a Rp2 billion deposit ceiling covering an estimated 99% of Indonesian depositors can be assessed.

The Deposit Insurance Corporation (LPS): An Overview

The LPS was established under Law No. 24 of 2004 as an independent, transparent and accountable legal entity, reporting directly to the President. Article 4 of the Law assigns it two functions: (a) guaranteeing the deposits of depositing customers, and (b) actively participating in maintaining the stability of the banking system within its authority. Article 5 elaborates three duties: formulating and implementing banking-stability policy, formulating and implementing bank-resolution policy for non-systemic failed banks, and handling the resolution of systemically important failed banks. In discharging its resolution mandate, the LPS coordinates with Bank Indonesia, the Ministry of Finance and the Financial Services Authority (OJK) through the Financial System Stability Committee, a coordination structure often referred to domestically as the Indonesian Financial Safety Net. Indonesia's membership of the International Association of Deposit Insurers situates its scheme within a broader international practice of limited, rules-based deposit guarantee.

Bank Customers and the Concept of Trust

Under Article 1(16)–(18) of Law No. 10 of 1998, a “customer” is any party that uses the services of a bank, whether as a depositor or as a debtor. Because a bank’s core function is to intermediate between surplus and deficit units in the economy, its relationship with depositors is fundamentally one of trust: depositors transfer legal ownership of their funds to the bank on the understanding that the funds will be safely returned on demand. Ability, benevolence and integrity are commonly identified as the three components of institutional trust, and it is precisely this trust that a deposit-guarantee scheme such as the LPS is designed to protect and, where necessary, to restore.

METHOD

This study employs normative (doctrinal) legal research, which examines legal materials statutes, regulations, and existing legal literature rather than empirical field data. Two approaches are used. The statutory approach analyzes the relevant legislation governing deposit insurance, in particular Law No. 7 of 1992 as amended by Law No. 10 of 1998 on Banking, Law No. 24 of 2004 on the Deposit Insurance Corporation, Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector, and Government Regulation No. 66 of 2008. The conceptual approach draws on legal doctrines and theories the rule of law, legislation, legal certainty, legal protection, and justice as an analytical framework for interpreting the statutory materials.

Three categories of legal materials are used. Primary legal materials consist of the Civil Code and the statutes and regulations identified above. Secondary legal materials consist of law books, journal articles, and prior academic research relevant to deposit insurance and customer protection. Tertiary legal materials consist of supporting reference works such as general and legal dictionaries. Materials were collected through library research, drawing on books, journals, articles and official regulatory publications. The collected materials were then analyzed qualitatively and presented descriptively: legal materials were systematically arranged, classified by theme, cross-referenced against one another, and interpreted in light of the conceptual framework described above, in order to answer the two research questions posed by this study.

RESULTS AND DISCUSSION

Forms of Legal Protection for Bank Customers by the LPS

Legal protection for depositors in the Indonesian banking system can be classified into implicit and explicit protection, following the framework advanced by Marulak Pardede and Hermansyah. Implicit protection is protection generated indirectly, through effective bank regulation and supervision that prevents bank failure from occurring in the first place. Concretely, this includes: (a) the statutory framework governing banking under Law No. 7 of 1992 jo. Law No. 10 of 1998; (b)

supervision and guidance over bank soundness covering capital, asset quality, management quality, earnings, liquidity and solvency under Article 29; (c) the obligation on banks to apply the prudential principle in lending, including maximum lending limits, under Article 29(4); (d) the obligation to disclose risk information to customers under Article 29(5); (e) supervisory audit and inspection powers under Articles 30–32; (f) mandatory publication of audited annual balance sheets and profit-and-loss statements under Article 34; and (g) corrective measures capital injection, replacement of the board of commissioners and directors, write-off of non-performing loans, merger, consolidation, or acquisition that the authorities may require of a troubled bank under Article 37(2), with revocation of the business license and liquidation available as measures of last resort under Article 37. These provisions collectively function as a preventive shield: by keeping banks solvent and well managed, they reduce the probability that a depositor will ever need to invoke the LPS's guarantee.

Explicit protection is protection realized through the establishment of a dedicated institution the LPS that compensates depositors directly once a bank's operating license is revoked and the bank enters liquidation. This form of protection was first attempted through the blanket guarantee under Presidential Decree No. 26 of 1998 and Presidential Decree No. 193 of 1998, and was placed on a firmer statutory footing with the enactment of Law No. 24 of 2004. Under Article 11 and Article 23 of that Law, the LPS's guarantee covers current accounts, time deposits, certificates of deposit, savings accounts, and equivalent products, including their sharia-compliant counterparts based on wadiah and mudharabah principles. To be eligible for payment, a deposit must satisfy the so-called "3T" criteria under Article 25: it must be recorded in the bank's books; its interest or profit-sharing rate must not exceed the guarantee rate set by the LPS; and the customer must not have engaged in any unlawful act detrimental to the bank. Deposits that fail to satisfy these criteria are instead resolved through the bank's liquidation process, in which the depositor becomes an ordinary creditor of the liquidated bank's estate.

When a bank's license is revoked, the LPS assumes broad authority over the affected institution. Under Article 6 of Law No. 24 of 2004, the LPS may take over and exercise all rights and authorities of the bank's shareholders, including those otherwise reserved to the General Meeting of Shareholders; control and manage the assets and liabilities of the rescued failed bank; review, cancel, terminate or amend any contract binding the bank that is detrimental to it; and sell or transfer the bank's assets without debtor consent, or its liabilities without creditor consent. The LPS also appoints and supervises a liquidation team responsible for verifying and reconciling depositor data, disbursing guaranteed claims, and realizing the bank's remaining assets for the benefit of unguaranteed creditors, including depositors whose balances exceed the guarantee ceiling. LPS Regulation No. 5 of 2024

concerning Bank Resolution further differentiates the handling of systemic and non-systemic failed banks: for systemic banks the LPS may inject temporary capital or apply other resolution tools, whereas for non-systemic banks the LPS chooses between rescue and straightforward revocation of the license, based on a least-cost test supplemented since the COVID-19 emergency regulation later enacted as Law No. 2 of 2020 by additional considerations besides cost alone.

Beyond the payout mechanism, protection for depositors as bank creditors is reinforced by banking-secrecy rules under Articles 40–44A of Law No. 10 of 1998, the requirement that banks exercise due care before extending credit under Article 8, restrictions on mergers, consolidations and acquisitions that would prejudice customers, and for depositors in their capacity as debtors Article 1320 of the Civil Code on the validity of agreements and Article 18 of the Consumer Protection Law (Law No. 8 of 1999) on standard-form contract terms. Taken together, these provisions show that Indonesian law protects the depositor along the entire life cycle of the banking relationship: before a problem arises, through implicit and preventive protection based on prudential regulation, and after a bank fails, through explicit and repressive protection based on the LPS guarantee and liquidation process.

Beyond its compensatory role, the LPS also performs an educational function, publicizing the existence, scope and mechanics of the guarantee to the public so that depositors understand both the protection they enjoy and its limits, in particular the 3T requirements and the Rp2 billion ceiling. This educational role matters because a guarantee that the public does not understand cannot fully perform its confidence-building function, a point that is returned to in this study's recommendations.

Regulation of the Ceiling on Guaranteed Deposit Value

The second research question concerns how the maximum guaranteed deposit value is regulated, and whether that regulation is internally consistent. When Law No. 24 of 2004 was first enacted, Article 11(1) fixed the guaranteed amount at a maximum of Rp100,000,000 (one hundred million rupiah) per customer per bank. As the economy grew and public deposits increased in nominal value, this ceiling was judged insufficient to protect the great majority of ordinary depositors. The Government therefore issued Government Regulation No. 66 of 2008 concerning the Value of Deposits Guaranteed by the Deposit Insurance Corporation, effective from 13 October 2008, which raised the guaranteed ceiling to Rp2,000,000,000 (two billion rupiah) per customer per bank the ceiling that remains in force today. The guaranteed balance comprises the principal amount plus any interest or profit-sharing already accrued to the customer as of the date the bank's business license is revoked; where a customer holds both single and joint accounts, single-account balances are calculated first, and joint-account balances are apportioned pro rata among the account holders.

The difficulty is that Government Regulation No. 66 of 2008 amends, in substance, a figure that Article 11(1) of Law No. 24 of 2004 itself explicitly fixes at Rp100,000,000. A Government Regulation is, in Indonesia's legislative hierarchy under Law No. 12 of 2011 as amended by Law No. 13 of 2022, subordinate to a Law; it is meant to implement the Law, not to override its explicit numerical content. Because the parent Law was never formally amended to reflect the new ceiling, a literal reading of Article 11(1) and the practical operation of Government Regulation No. 66 of 2008 stand in tension an inconsistency between two norms addressing the same subject matter at different points in the legislative hierarchy.

Applying the classical conflict-of-norms principle *lex superior derogat legi inferiori* a higher-ranking norm displaces a lower-ranking one the position that should formally prevail is that of the Law, not the Government Regulation, notwithstanding that the Regulation reflects the currently operative and more protective figure. From the standpoint of legal-certainty theory, this is precisely the kind of contradiction between rules addressing the same subject that undermines certainty: a depositor consulting the primary Law alone would form an inaccurate expectation of the protection actually available, while a depositor relying only on the derivative Regulation would be unaware that the underlying statutory basis for that higher figure is, strictly speaking, incomplete. In terms of the theory of legislation, the criterion of hierarchical clarity is not fully satisfied, since the norm that is operationally applied Rp2 billion does not trace cleanly back to an amended provision of its parent Law.

This is not merely a technical point. Because the guarantee ceiling defines the practical limit of explicit protection available to a depositor, any uncertainty in its legal basis potentially exposes the LPS's payout decisions to challenge and, more importantly for ordinary customers, makes the actual scope of their protection harder to verify from the primary legislative text alone. Considered against Rawlsian justice, the current Rp2 billion ceiling, covering an estimated 99% of all Indonesian depositors according to the LPS's own figures, arguably satisfies the difference principle by directing the greatest protective benefit toward smaller, less advantaged depositors, while leaving large depositors to bear a greater share of counterparty risk a policy choice that appears fair in substance even though its formal legal basis remains imperfect. The appropriate remedy, consistent with legislative theory, is a formal legislative amendment of Article 11(1) of Law No. 24 of 2004 so that the statutory ceiling and its implementing regulation are textually aligned, thereby closing the gap between the letter of the Law and its operative practice.

CONCLUSION

This study concludes, first, that legal protection for bank customers under Indonesia's deposit-

insurance scheme takes two complementary forms: implicit protection, realized through prudential bank regulation and supervision that seeks to prevent bank failure altogether, and explicit protection, realized through the LPS's direct guarantee of deposits meeting the 3T requirements, backed by the LPS's extensive authority to manage, resolve, and liquidate failed banks. Together, these mechanisms are designed to prevent bank runs, protect small depositors as a priority, and preserve overall confidence in, and the stability of, the national banking system.

Second, the study finds a normative inconsistency in the regulation of the deposit-guarantee ceiling: Article 11(1) of Law No. 24 of 2004 still states a ceiling of Rp100,000,000, while Government Regulation No. 66 of 2008 operationally raises that ceiling to Rp2,000,000,000 without a corresponding amendment to the parent Law. Applying the principle of *lex superior derogat legi inferiori*, this inconsistency should, in strict legal theory, be resolved in favor of the Law, yet doing so would defeat the evidently protective purpose that motivated the higher figure in the first place. The more coherent solution is legislative harmonization: amending Article 11(1) itself so that the guaranteed ceiling is stated, and can be verified, directly within the Law.

Based on these findings, this study offers two recommendations. First, the Government, and the LPS in particular, should intensify public education and outreach regarding the existence, scope, and operating mechanism of deposit insurance, so that the level of public confidence and the level of practical understanding of the protection available keep pace with one another. Second, banking-sector employees, as the primary point of contact between depositors and the deposit-guarantee system, should receive deeper training on the LPS framework so that they are equipped to explain accurately to customers how, and to what extent, their deposits are protected. Beyond these two recommendations, the study also suggests that the legislature use the next available legislative opportunity to formally amend Article 11(1) of Law No. 24 of 2004, aligning its stated ceiling with the figure actually applied in practice, so as to remove the normative inconsistency identified in this study and strengthen legal certainty for depositors going forward.

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