

INDONESIAN

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By: PRESIDENT OF THE REPUBLIC OF INDONESIA
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Title: AMENDMENT OF LAW NUMBER 7 YEAR 1992 REGARDING BANKING

BY THE GRACE OF THE ALMIGHTY GOD
THE PRESIDENT OF THE REPUBLIC OF INDONESIA,

Considering:

- a. that national development is a sustained development effort to create a just and prosperous Indonesian society based on Pancasila and the 1945 Constitution;
- b. that keeping pace with national economic development that is fast-paced, competitive, and integrated with increasingly complex challenges and a developing financial system requires adjustments in the field of economics, including the banking sector;
- c. that the arrival of the globalization era and the ratification of several international treaties in the field of goods and service trade calls for adjustments of the laws and regulations governing the economy, specifically the banking sector;
- d. that based on the considerations referred to in letter a, letter b, and letter c above, it is deemed necessary to amend Law Number 7 Year 1992 regarding Banking by a Law;

In view of:

1. Article 5 paragraph (1), Article 20 paragraph (1), Article 23, and Article 33 of the 1945 Constitution;
2. Law Number 13 Year 1968 regarding the Central Bank (State Gazette Year 1968 Number 63, Supplement to the State Gazette number 2865);
3. Law Number 7 Year 1992 regarding Banking (State Gazette Year 1992 Number 31, Supplement to the State Gazette Number 3472);

With the approval of
THE HOUSE OF REPRESENTATIVES

HAS DECIDED:

To stipulate: THE LAW REGARDING THE AMENDMENT OF LAW NUMBER 7 YEAR 1993 REGARDING BANKING.

Article I

To amend several provisions in Law Number 7 Year 1992 regarding Banking as follows:

1. The provisions of Article 1 shall be amended, such that Article 1 shall read in its entirety as follows:

"Article 1

In this Law what is meant by:

1. Banking shall be all matters relating to banks, comprising institutions, business activities, and the implementation procedures and processes of their business activities;
2. Bank shall be a business entity that raises funds from the public in the form of savings and channels them to the public in the form of credit and or other forms in order to improve the standard of living of society in general;
3. Commercial Banks shall be banks conducting business activities conventionally and or based on Syariah (Islamic) principles, which offer payment transaction services;
4. Rural Banks shall be banks conducting business activities conventionally or based on Syariah Principles, which do not offer payment transaction services;
5. Savings shall be funds entrusted by the public to banks by virtue of deposit agreements in the form of demand deposits, deposits, certificates of deposit, savings and or other comparable forms;
6. Demand deposits shall be savings which may be withdrawn at any time by check, deposit check, other payment order facilities or by transfer;
7. Deposits shall be savings which may only be withdrawn at certain times based on an agreement between the customer and the bank;
8. Certificate of Deposit shall be shall be savings in the form of a deposit account, the evidence of deposit of which is transferable;
9. Savings Account shall be savings which may only be withdrawn according to the agreed terms, but may not be withdrawn by check, deposit check, and or other comparable instruments;
10. Commercial Papers shall be acknowledgments of debt, drafts, shares, bonds, credit security, or any derivative thereof, or other interests, or the liabilities of issuers, in a form commonly traded on the capital or money markets;
11. Credit shall be the provision of money or comparable claims, based on lending approvals or agreements between banks and other parties, which oblige the borrowers to pay their debts after a certain period of time, with interest;

12. Financing based on Syariah Principles shall be the provision of money or similar charges based on agreement between bank and other parties, which obligates the party financed to return the money or aforementioned charges after a certain period of time in addition to remuneration or profit sharing;
13. Syariah principles shall be the rules based on Islamic law on contracts between banks and other parties for the deposit of funds and or the financing of business activities or other activities stipulated in accordance with the Syariah, including financing based on the principle of profit-sharing (mudharabah), financing based on the principle of capital participation (musharakah), the principle of selling for a profit (murabahah), or the financing of capital goods based on the principle of pure lease without options (ijarah), or with the option of transferring ownership of the leased goods from the bank to other parties (ijarah wa iqtina);
14. Custody shall be the safekeeping of assets based on an agreement between a Commercial Bank and the depositing party, with the provision that the Commercial Bank concerned shall not have right of ownership to the aforementioned asset;
15. Trusteeship shall be a business activity that may be undertaken by a Commercial Bank to represent the interests of holders of commercial papers based on agreements between the Commercial Bank and the issuer of said commercial paper;
16. Customers shall be parties using the services of a Bank;
17. Depositing Customers shall be customers placing their funds in a Bank in the form of savings based on agreements between the bank and the customers concerned;
18. Debtor Customers shall be customers receiving credit facilities from the bank or financing based on Syariah principles or the equivalent thereof based on agreements between the bank and the customers concerned;
19. Branch office shall be an office of a bank which is directly responsible to the head office of the bank concerned, with a distinct business address where the aforementioned branch office conducts its business;
20. Bank Indonesia shall be the Central Bank of the Republic of Indonesia as intended in the prevailing Laws;
21. The management of Bank Indonesia shall be the management intended in the prevailing Law;
22. Affiliated parties shall be:
 - a. members of the Board of Commissioners, supervisors, Board of Directors or their proxies, officers, or employees of a bank;
 - b. members of the management, supervisors, managers or their proxies, officers or employees of a bank;
 - c. parties providing their services to a bank, including public accountants, appraisers, legal consultants and other consultants;

- d. parties who are deemed by Bank Indonesia to have influence in the management of a bank, including shareholders and their families, families of members of the Board of Commissioners, families of supervisors, families of members of the Board of Directors, and the families of managers;
23. Collateral shall be the additional security submitted by Debtor Customers to a bank in respect of the issuance of credit facilities or financing based on Syariah principles;
24. Deposit Guarantee Institution shall be the legal entity organizing guarantees for customer savings through insurance schemes, buffer funds, or other schemes;
25. Merger shall be the union of two or more banks by maintaining one of the banks and dissolving the other with or without liquidation;
26. Consolidation shall be the union of two or more banks by establishing a new bank and dissolving the aforementioned banks with or without liquidation;
27. Acquisition shall be the take-over of ownership of a bank;
28. Bank Secrecy shall be all matters pertaining to information regarding depositing customers and their deposits."
2. The provision in Article 6 Letter k shall be deleted.
3. The provision in Article 6 letter m shall be amended, such that Article 6 letter m shall read as follows:

"Article 6

- m. to provide financing and or conduct other activities based on Syariah principles, in accordance with the provisions stipulated by Bank Indonesia."
4. The provision in Article 7 letter c shall be amended, such that Article 7 letter c shall read as follows:

"Article 7

- c. to make temporary capital participation in order to overcome the effects of credit failure or failure of financing based on Syariah principles, with the condition that its capital participation must be withdrawn, by complying with the provisions stipulated by Bank Indonesia; and"
5. The Provisions of Article 8 shall be amended in their entirety to read as follows:

"Article 8

- (1) In granting credits or financing based on Syariah principles, Commercial Banks must have confidence based on in-depth analysis in the intentions and capacity as well as the willingness of Debtor Customers to repay such financing in accordance with the agreed terms.
- (2) Commercial Banks must have and apply guidelines for credit and financing

based on Syariah principles in accordance with the provisions stipulated by Bank Indonesia.

6. The provisions of Article 11 paragraph (1) and paragraph (3) shall be amended, and a new paragraph (4A) shall be added, such that Article 11 paragraph (3) and paragraph (4A) shall read as follows:

"Article 11

- (1) Bank Indonesia shall stipulate the provisions regarding the legal lending limits on credit or financing based on Syariah principles, the provision of guarantees, investment in commercial papers and similar items, which may be conducted by a bank for borrowers or groups of related borrowers, including to companies in the same group as the bank concerned.
- (3) Bank Indonesia shall stipulate provisions regarding the legal lending limits for credit or financing based on Syariah principles, the granting of guarantees, investment in commercial papers, or other similar matters which may be undertaken by a bank to:
- a. shareholders owning 10% (ten percent) or more of the bank's paid up capital;
 - b. members of the Board of Commissioners;
 - c. members of the Board of Directors;
 - d. families of the parties referred to in letter a, letter b, and letter c;
 - e. other bank officers;
 - f. companies in which the parties referred to in letter a, letter b, letter c, letter d, and letter e have an interest.
- (4A) In issuing credit or financing based on Syariah principles, banks shall be prohibited from exceeding the legal lending limit on credit or financing based on Syariah principles as stipulated in paragraph (1), paragraph (2) paragraph (3) and paragraph (4)."

7. The provisions of Article 12 shall be amended, such that Article 12 shall read in its entirety as follows:

"Article 12

- (1) In order to support the implementation of the living standards improvement program for society in general through the empowerment of cooperatives, small- and medium-scale enterprises, the Government, together with Bank Indonesia, may enter into cooperation with Commercial Banks.
- (2) The provisions regarding cooperation with Commercial banks as referred to in paragraph (1) shall be further regulated in a Government Regulation".

8. To add a new provision between Article 12 and Article 13 which shall become Article 12 A, and which shall read as follows:

"Article 12A

- (1) Commercial Banks may purchase part or all of the collateral, either through auction or based on voluntary transfer by the collateral holder or based on the authority to sell ex-auction from the collateral holder if the Debtor Customer does not fulfill its liabilities to the bank, with the provision that the collateral purchased must be liquidated as soon as possible.
 - (2) The provisions regarding the procedures for the purchase of collateral and the liquidation thereof as intended in paragraph (1) shall be further regulated in a Government Regulation".
9. The provision in Article 13 letter c shall be amended, such that Article 13 letter c shall read as follows:

"Article 13

- c. provide financing and placement of funds based on Syariah principles, in accordance with the provisions stipulated by Bank Indonesia".
10. The Provisions of Article 16 shall be amended in their entirety, to read as follows:

"Article 16

- (1) All parties engaged the activity of raising funds from the public in the form of savings must first obtain a business license as a Commercial Bank or Rural Bank from the Management of Bank Indonesia, unless such collection of funds from the public is regulated under a separate Law.
 - (2) In order to obtain a Commercial Bank or a Rural Bank License as intended in paragraph (1), conditions regarding least the following must be fulfilled:
 - a. organizational and management structure;
 - b. capital;
 - c. ownership;
 - d. expertise in the field of banking;
 - e. feasibility of the business plan.
 - (3) The conditions and procedures of bank licensing as intended in paragraph (2) shall be stipulated by Bank Indonesia."
11. The provisions in Article 17 shall be deleted.
12. The provisions in Article 18 shall be amended, such that Article 18 shall read in its entirety as follows:

"Article 18

- (1) A branch office of a Commercial Bank may only be opened with the permission of the Management of Bank Indonesia.

- (2) The establishment of a branch office, representative office or other type of office overseas shall only be conducted with the permission of the Management of Bank Indonesia.
 - (3) The opening of sub-branch offices of Commercial Banks must be reported in advance to Bank Indonesia.
 - (4) The conditions and procedures of establishing an office of a Commercial Bank as intended in paragraph (1), paragraph (2), and paragraph (3) shall be stipulated by Bank Indonesia."
13. The provisions in Article 19 shall be amended, such that Article 19 shall read in its entirety as follows:

"Article 19

- (1) Branch offices of Rural Banks may only be opened with the permission of the Management of Bank Indonesia.
 - (2) The conditions and procedures for the opening of Rural Bank offices as intended in paragraph (1) shall be stipulated by Bank Indonesia."
14. The provision in Article 20 paragraph (1) shall be amended, such that Article 20 paragraph (1) shall read as follows:

"Article 20

- (1) The establishment of branch offices, auxiliary branch offices, and representative offices of a bank domiciled overseas may only be conducted with the permission of the Management of Bank Indonesia."
15. The provisions in Article 21 paragraph (1) shall be amended, such that Article 21 paragraph (1) shall read as follows:

"Article 21

- (1) The legal entity of a Commercial Bank may be in the form of:
 - a. a Limited Liability Company;
 - b. a Cooperative; or
 - c. a Regional Enterprise."
16. The provisions of Article 22 shall be amended, such that Article 22 shall read in its entirety as follows:

"Article 22

- (1) A Commercial Bank may only be established by:
 - a. Indonesian citizens and or Indonesian legal entities; or
 - b. Indonesian citizens and or Indonesian legal entities in partnership with foreign citizens or foreign legal entities.
- (2) The provisions regarding the conditions for establishment that must be

fulfilled by the parties intended in paragraph (1) shall be stipulated by Bank Indonesia."

17. The provisions in Article 26 shall be amended, such that Article 26 shall read in its entirety as follows:

"Article 26

- (1) Commercial Banks may issue shares through the stock exchange.
- (2) Indonesian citizens, foreign citizens, Indonesian legal entities and or foreign legal entities may purchase shares in Commercial Banks, either directly or on the stock exchange.
- (3) The implementing provisions as intended in paragraph (2) shall be further regulated in a Government Regulation."

18. The provisions in Article 27 shall be amended, such that Article 27 shall read in its entirety as follows:

"Article 27

Changes in the ownership of a bank must:

- a. fulfill the provisions as intended in Article 16 paragraph (3), Article 22, Article 23, Article 24, Article 25, and Article 26; and
- b. be reported to the Management of Bank Indonesia."

19. The provision in Article 28 paragraph (1) shall be amended, such that Article 28 paragraph (1) shall read as follows:

"Article 28

- (1) Mergers, consolidations and acquisitions must have prior permission from the Management of Bank Indonesia."

20. The provisions in Article 29 shall be amended, such that Article 29 shall read in its entirety as follows:

"Article 29

- (1) Guidance and supervision of banks shall be exercised by Bank Indonesia.
- (2) Banks must maintain the level of bank soundness in accordance with the provisions regarding capital adequacy, asset quality, management quality, liquidity, profitability, solvency and other aspects relating to banking activities, and must conduct their business according to prudential principles.
- (3) In issuing credits or financing based on Syariah principles and conducting other business, banks must take measures that are not detrimental to the interests of the banks nor to the interests of the customers who have

entrusted their funds to the banks.

- (4) For the interests of customers, banks must provide information regarding the potential risk of loss in connection with the transactions conducted through the bank.
- (5) The provisions that banks must comply with as intended in paragraph (2), paragraph (3), and paragraph (4) shall be stipulated by Bank Indonesia."

21. The provisions in Article 31 shall be amended, such that Article 31 shall read in its entirety as follows:

"Article 31

Bank Indonesia shall audit Banks, both periodically and whenever deemed necessary."

22. To include a new provision between Article 31 and Article 32, which shall become Article 31A and shall read as follows:

"Article 31A

Bank Indonesia may assign Public Accountants for and on behalf of Bank Indonesia to audit banks as intended in Article 31."

23. The provisions in Article 32 shall be deleted.
24. The provisions in Article 33 shall be amended, such that Article 33 shall read in its entirety as follows:

"Article 33

- (1) The report on the bank audit as intended in Article 31 and Article 31 A shall be confidential.
- (2) The conditions and procedures for the audit as intended in Article 31 and Article 31A shall be stipulated by Bank Indonesia."

25. The provisions in Article 37 shall be amended, such that Article 37 shall read in its entirety as follows:

"Article 37

- (1) If a bank experiences difficulties which may jeopardize the continuation of its business activities, Bank Indonesia may undertake actions to ensure that:
 - a. shareholders increase the capital;
 - b. shareholders replace the Board of Commissioners and or the Board of Directors of the bank;
 - c. the bank writes off non-performing loans or financing based on Syariah principles and calculates the losses of the bank against its capital;
 - d. the bank conducts a merger or consolidation with other banks;

- e. the bank is sold to buyers who are willing to take over all liabilities;
 - f. the bank transfers the management, either in its part or in its entirety, to other parties;
 - g. the bank sells part or all of its assets and or liabilities to a bank or other parties.
- (2) In the event that:
- a. the actions intended in paragraph (1) are insufficient to overcome the difficulties of bank; and or
 - b. Bank Indonesia deems that the bank's condition could endanger the banking system, the Management of Bank Indonesia may revoke the bank's business license and order its Board of Directors to immediately convene a General Meeting of Shareholders in order to dissolve the legal entity of the bank and form a liquidation team.
- (3) If the Board of Directors of the bank fails to convene a General Meeting of Shareholders as intended in paragraph (2), the Management of Bank Indonesia shall petition a Court of Law to issue a ruling containing the dissolution of the legal entity of the bank, the appointment of a liquidation team, and the liquidation order in accordance with the prevailing laws and regulations."
26. To add 2 (two) new provisions between Article 37 and Article 38, that will become Article 37A and Article 37B, reading respectively as follows:

"Article 37A

- (1) If, in the estimation of Bank Indonesia, a crisis occurs in the Banking sector that endangers the national economy, the Government, at the request of Bank Indonesia and following consultations with the House of Representatives, shall form a special temporary agency for bank restructuring.
- (2) The Special Agency intended in paragraph (1) shall implement a restructuring program for the banks determined and transferred by Bank Indonesia to the agency mentioned.
- (3) In the implementation of the bank restructuring program, the special agency intended in paragraph (1) shall have the authority as intended in Article 37 paragraph (1) as well as other authority, as follows:
 - a. to take over and exercise all rights and authority of shareholders, including the rights and authority of the General Meeting of Shareholders;
 - b. to take over and exercise all rights and authority of the Board of Directors and Board of Commissioners of the bank;
 - c. to control, manage and conduct ownership actions upon the assets or the entitlements of the bank, including the bank's assets that are in the hands of any party whatsoever, both domestically and overseas;
 - d. to review, cancel, terminate and or amend contracts binding upon the bank and third parties that are deemed by the special agency to be injurious to the bank.
 - e. to sell or take over the assets of the bank, the Board of Directors,

- Board of Commissioners, and certain shareholders domestically or overseas, either directly or through a public offering;
- f. to sell or transfer bank claims or transfer the management thereof to other parties, without requiring the approval of the Debtor Customers;
 - g. to transfer the management of assets and or management of bank to other parties;
 - h. to conduct temporary capital participation in the bank, either directly or through the conversion of the claims of the special agency into capital participation in the bank;
 - i. to collect confirmed bank receivables with the issuance of a court injunction;
 - j. to conduct the eviction from land or buildings owned by the bank or to which the bank is entitled that are controlled by other parties, either itself or with the assistance of the authorized state law enforcement apparatus;
 - k. to conduct reviews and audits to obtain all information required from and concerning the bank in the restructuring program, and any party that is involved or suspected with due cause of being involved, or to ascertain actions injurious to the bank in the restructuring program;
 - l. to estimate and determine the losses sustained in restructuring and to charge such loss to the capital of the bank concerned, and in the event that such loss is due to the error or negligence of the Board of Directors, Board of Commissioners, and or shareholders, such loss shall be charged to the parties concerned;
 - m. to stipulate the amount of additional capital that must be deposited by the shareholders of the bank in restructuring;
 - n. to take other actions required in support of the exercise of the authority as intended in letter a up to and including letter m.
- (4) The bank restructuring actions taken by the special agency as intended in paragraph (3) shall be legal by virtue of this Law.
- (5) At the request of the special agency intended in paragraph (1), banks in restructuring must provide all information and explanations regarding their business, including the provision of opportunities for inspection of the books and files in their possession, and must render any assistance required in respect of obtaining information, documents, and clarifications from the banks concerned.
- (6) The parties intended in paragraph (3) letter k must provide any statements and clarifications requested by the special agency.
- (7) The special agency intended in paragraph (1) must submit activity reports to the Minister of Finance.
- (8) If, in the Government's estimation, the special body has concluded its tasks, the government shall declare the winding down of said special body.
- (9) The provisions required for the implementation of this Article shall be further stipulated by a Government Regulation.

Article 37B

- (1) Each bank must guarantee the public's funds deposited at the bank concerned.
 - (2) In order to guarantee the public's deposits at a bank intended in paragraph (1), a Deposit Guarantee Institution shall be established.
 - (3) The Deposit Guarantee Institution as intended in paragraph (2) shall take the form of an Indonesian legal entity.
 - (4) The provisions regarding the lending of public funds and the Deposit Guarantee Institution shall be further regulated by Government Regulations."
27. The provisions in Article 40 shall be amended, such that Article 40 in its entirety shall read as follows:

"Article 40

- (1) Banks must uphold the confidentiality of information regarding Depositing Customers and their deposits, except under the circumstances intended in Article 41, Article 41A, Article 42, Article 43, Article 44, and Article 44A.
 - (2) The provision intended in paragraph (1) shall also apply to affiliated Parties."
28. The provision in Article 41 paragraph (1) shall be amended, such that Article 41 paragraph (1) shall read as follows:

"Article 41

- (1) For taxation purposes, the Management of Bank Indonesia, at the request of the Minister of Finance, shall be authorized to issue written orders to banks to supply information and present written evidence as well as documents regarding the financial condition of certain Depositing Customers to tax officers."
29. To add a new provision between Article 41 and Article 42, which shall become Article 41A and shall read as follows:

"Article 41A

- (1) For the settlement of bank receivables already submitted to the Agency for State Claims and Auctions/State Claims Committee, the Management of Bank Indonesia shall grant permission to the officials of the Agency for State Claims and Auctions/State Claims Committee to seek information from banks regarding the deposits of Debtor Customers.
- (2) The permission as intended in paragraph (1) shall be granted in writing upon a written request from the Head of the Agency for State Claims and Auctions/Chairperson of the State Claims Committee.
- (3) The request as intended in paragraph (2) must state the name and position of the Agency for State Claims and Auctions/State Claims Committee officer, the

name of the Debtor Customer concerned and the reason for seeking such information."

The provisions in Article 42 shall be amended, such that Article 42 shall read in its entirety as follows:

"Article 42

- (1) For the purpose of court proceedings in criminal cases, the Management of Bank Indonesia may grant permission to the Police, Prosecutors, or Judges to seek information from banks regarding the deposits of suspects or defendants with banks.
- (2) The permission intended in paragraph (1) shall be granted in writing at the written request of the Head of the Police Force of the Republic of Indonesia, the Attorney General, or the Chairman of the Supreme Court.
- (3) The request referred to in paragraph (2) must state the name and position of the police officer, prosecutor or judge, the name of the suspect or defendant, the reason for seeking such information and the relevance of the information required to the criminal case concerned."

31. To add a new provision between Article 42 and Article 43, which shall become Article 42A and shall read as follows:

"Article 42A

Banks must provide the information as intended in Article 41, Article 41A and Article 42."

32. To add a new provision between Article 44 and 45 which shall become Article 44A and shall read as follows:

"Article 44A

- (1) Upon the request, approval or authorization of a Depositing Customer in writing, Banks must provide information regarding the deposits of the Depositing Customer at the bank concerned to the party appointed by said Depositing Customer.
- (2) In the event of the demise of the Depositor, the legal heir of the Depositing Customer concerned shall be entitled to obtain information regarding the deposits of said Depositing Customer."

33. The provisions in Article 46 paragraph (1) shall be amended, such that Article 46 paragraph (1) shall read as follows:

"Article 46

- (1) Any person who collects funds from the public in the form of savings without a business license issued by the Management of Bank Indonesia as intended in Article 16 shall be liable for imprisonment of not less than 5 (five) years and not more than 15 (fifteen) years, as well as a fine of not less than Rp. 10,000,000,000.00 (ten billion Rupiah) and not more than Rp.

200,000,000,000.00 (two hundred billion Rupiah)."

34. The provisions in Article 47 shall be amended, such that Article 47 shall read in its entirety as follows:

"Article 47

- (1) Any person not bearing a written order or license from the Management of Bank Indonesia as intended in Article 41, Article 41A, or Article 42, who intentionally forces a bank or affiliated party to divulge the information as intended in Article 40, shall be liable for imprisonment of not less than 2 (two) years and not more than 4 (four) years as well as a fine of not less than Rp. 10,000,000,000.00 (ten billion Rupiah) and not more than Rp. 200,000,000,000.00 (two hundred billion Rupiah).
- (2) Members of the Board of Commissioners, Board of Directors and employees of a bank or other affiliated parties who intentionally divulge information that must be kept confidential by virtue of Article 40, shall be liable for imprisonment for not less than 2 (two) years and not more than 4 (four) years as well as a fine of not less than Rp. 4,000,000,000.00 (four billion Rupiah) and not more than Rp. 8,000,000,000.00 (eight billion Rupiah)."

35. To add a new provision between Article 47 and Article 48 which shall become Article 47A and shall read as follows:

"Article 47A

Members of the Board of Commissioners, Board of Directors, or employees of a bank who intentionally withhold information that must be disclosed as intended in Article 42A and Article 44A, shall be liable for imprisonment of not less than 2 (two) years and not more than 7 (seven) years as well as a fine of not less than Rp. 4,000,000,000.00 (four billion Rupiah) and not more than Rp. 15,000,000,000.00 (fifteen billion Rupiah)."

36. The provisions in Article 48 shall be amended, such that Article 48 shall read in its entirety as follows:

"Article 48

- (1) Members of the Board of Commissioners, Board of Directors, or employees of a bank who intentionally withhold information that must be disclosed as intended in Article 30 paragraph (1) and paragraph (2) and Article 34 paragraph (1) and paragraph (2), shall be liable for imprisonment of not less than 2 (two) years and not more than 10 (ten) years, as well as a fine of not less than Rp 5,000,000,000.00 (five billion Rupiah) and not more than Rp. 100,000,000,000.00 (one hundred billion Rupiah).
- (2) Members of the Board of Commissioners, Board of Directors, or employees of a bank who neglect to disclose information that must be disclosed as intended in Article 30 paragraph (1) and paragraph (2) and Article 34 paragraph (1) and paragraph (2), shall be liable for imprisonment of not less than 1 (one) year and not more than 2 (two) years, as well as a fine of not less than Rp 1,000,000,000.00 (one billion Rupiah) and not more than Rp.

2,000,000,000.00 (two billion Rupiah).

37. The provisions in Article 49 shall be amended, such that Article 49 shall read in its entirety as follows:

(1) Members of the Board of Commissioners, Board of Directors or employees of a bank who intentionally:

- a. make or cause the creation of false records in the books or in reports, as well as in documents or business activity reports, transaction reports or the accounts of a bank;
- b. delete or fail to enter or cause the failure to record in books or in reports, whether in documents or business activity reports, transaction reports or the accounts of a bank;
- c. alter, distort, conceal, delete, or dispose of any record in the accounting or in reports, whether in documents, or business activity reports, transaction reports, or the accounts of a bank, or intentionally alter, distort, delete, conceal or destroy the aforementioned accounting records, shall be liable for imprisonment of not less than 5 (five) years or not more than 15 (fifteen) years as well as a fine of not less than Rp. 10,000,000,000.00 (ten billion Rupiah) and not more than Rp. 200,000,000.00 (two hundred billion Rupiah).

(2) Members of the Board of Commissioners, Board of Directors, or employees of bank, who intentionally:

- a. demand or receive, permit or agree to accept a fee, commission or additional money, services, money or valuable goods, for their personal benefit or for the benefit of their families, in respect of obtaining for other people advance payments, bank guarantees, or credit facilities from a bank, or in respect of purchases or discounts by a bank on drafts, promissory notes, checks, and commercial papers of evidence of other liabilities, or in respect of granting approval for another person to withdraw funds in excess of their credit limit at the bank;
- b. fail to take the measures required to ensure bank compliance with the provisions of this Law and other regulations applicable to banks, shall be liable for imprisonment for not less than 3 (three) years and not more than 8 (eight) years as well as a fine of not less than Rp. 5,000,000,000.00 (five billion Rupiah) and not more than Rp. 100,000,000,000.00 (one hundred billion Rupiah)."

38. The provisions in Article 50 shall be amended, such that Article 50 shall read in its entirety as follows:

"Article 50

Affiliated Parties who intentionally fail to take the measures necessary to ensure bank compliance with regard to the provisions of this Law and other regulations applicable to banks, shall be liable for imprisonment of not less than 3 (three) years and not more than 8 (eight) years as well as a fine of not less than Rp.

5,000,000,000.00 (five billion Rupiah) and not more than Rp. 100,000,000,000.00 (one hundred billion Rupiah).

39. To add a new provision between Article 50 and Article 51 which shall become Article 50A and shall read as follows:

"Article 50A

Shareholders intentionally instructing the Board of Commissioners, Board of Directors, or employees of a bank to take or not to take the measures required to ensure the bank's compliance with the provisions of this Law or the provisions of other laws and regulations applying to banks, shall be liable for imprisonment of not less than 7 (seven) years and not more than 15 (fifteen) years as well as a fine of not less than Rp. 10,000,000,000.00 (ten billion Rupiah) and not more than Rp. 200,000,000.00 (two hundred billion Rupiah)."

40. The provisions in Article 51 paragraph (1) shall be amended, such that Article 51 paragraph (1) shall read as follows:

"Article 51

(1) The criminal actions as intended in Article 46, Article 47, Article 47A, Article 48 paragraph (1), Article 49, Article 50, and Article 50A shall be felonies."

41. The provisions in Article 52 shall be amended, such that Article 52 shall read in its entirety as follows:

"Article 52

(1) Without prejudicing the criminal provisions as intended in Article 47, Article 47A, Article 48, Article 49, and Article 50A, Bank Indonesia may stipulate administrative sanctions for banks which do not fulfill their obligations as stipulated in this Law, or the Management of Bank Indonesia may revoke the business license of the bank concerned.

(2) The administrative sanctions intended in paragraph (1) shall include:

- a. cash fines;
- b. written warnings;
- c. downgrading of the bank's soundness rating;
- d. prohibition on participation in clearing;
- e. the freezing of certain business activities, either for certain branch offices or for the entire bank;
- f. the dismissal of bank managers and subsequent appointment of temporary replacements until the General Meeting of Shareholders or a Meeting of Members of Cooperatives appoint a permanent replacement with the approval of Bank Indonesia;
- g. the inclusion of members of the management, bank employees or shareholders on the banking blacklist.

(3) Further implementation regarding administrative sanctions shall be stipulated

by Bank Indonesia."

42. The provision in Article 55 shall be amended, such that Article 55 shall read in its entirety as follows:

"Article 55

Banks in possession of business licenses when this Law comes into effect shall be declared as having obtained a business license by virtue of this Law."

43. To add a new provision between Article 59 and Article 60 which shall become article 59A and shall read as follows:

"Article 59A

Existing special bodies conducting Bank restructuring prior to the applicability of this Law shall remain in effect."

Article II

1. With the coming into effect of this Law, Regulations regarding Credit Organized by Sub-district Offices in the Paku Alaman Regency (Rijksblad issued by the Paku Alaman Region Year 1937 Number 9), shall be declared void.
2. This law shall come into effect on the date of its stipulation.

For public cognizance, this Law shall be promulgated by its placement in the State Gazette of the Republic of Indonesia.

Ratified in Jakarta
on November 10, 1998
President of the Republic of Indonesia

Signed

BACHARUDDIN JUSUF HABIBIE

Enacted in Jakarta
on November 10, 1998

MINISTER/STATE SECRETARY

Signed

AKBAR TANJUNG

STATE GAZETTE OF THE REPUBLIC OF INDONESIA YEAR 1998 NUMBER 182

Copy in accordance with the original
CABINET SECRETARY OF THE REPUBLIC OF INDONESIA
Head of the Law and Legislation Bureau

Lambock V. Nahattands

ELUCIDATION
OF
LAW NUMBER 10 YEAR 1998 REGARDING THE AMENDMENT OF LAW NUMBER 7
YEAR 1992 REGARDING BANKING

GENERAL:

National Development has up to now been in the form of sustainable development to create a just and prosperous society based on Pancasila and the 1945 Constitution. In order to achieve this objective, National Development must never fail to take into account the harmony, synergy and balance of various aspects of development, including in the economic and financial sectors.

Recent developments in the national economy indicate greater integration with regional and international economies which can be supportive but may at the same time have less advantageous effects. National economic development, meanwhile, being consistently fast-paced and bringing increasingly complex challenges, demands various policy adjustments in the economy, including in the banking sector, which are expected to improve and strengthen it.

The banking sector, with its strategic position as an intermediary agency and as a mainstay of the payment system, shall be a determining factor in the aforementioned adjustments. This calls for the improvement of the national banking system which includes not only restructuring efforts for individual banks but also the restructuring of the banking system as a whole. Such efforts shall be the joint responsibility of the government, the banks themselves and the public who use the banks' services. This collective responsibility shall help to reinforce the soundness of the national banking sector such that it can play a full role in the national economy.

To ensure that bank supervision can be implemented effectively, the authority and the responsibility for bank licensing which previously rested with the Minister of Finance, shall now be invested in the Management of Bank Indonesia. Thus Bank Indonesia shall have full authority and responsibility to determine the licensing, development and supervision of banks as well as imposing penalties on banks that fail to comply with the prevailing banking regulations. Bank Indonesia thus has the authority and the responsibility to assess and decide upon the feasibility of establishment of a bank or the opening of bank offices.

Prudential principles shall be firmly upheld, while the provisions concerning bank business activities should be updated, especially those relating to the channeling of funds, including the expanding role of the Environmental Impact Analysis (AMDAL) for large-scale and/or high-risk companies.

The role of national banking will need to be extended, in accordance with its function in the raising and channeling of public funds, by focusing on financing the activities of sectors of the national economy by prioritizing cooperatives, small and medium-scale entrepreneurs, and various levels of society without discrimination in order to strengthen the national economic structure. Banks should also give greater attention to improving economic performance in the operational area of each office.

In the meantime, the role of banks that conduct business based on Syariah principles shall be increased to accommodate the public's aspirations and needs. This law therefore provides extensive opportunities for the public to conduct business activities based on Syariah principles, including the option for commercial banks to establish branches which conduct business exclusively based on Syariah principles.

In order to increase the social control function in respect of Banking institutions, the provisions concerning bank secrecy, which have hitherto been very strict, need to be reviewed. Bank secrecy shall be one of the factors that must be maintained by each bank as an institution of public trust that manages the public's funds, but not all aspects administered by a bank need be confidential matters.

Supporting the performance of the national banking sector requires supporting institutions, both temporary, in order to deal with the problems currently facing the banking industry, and more permanent ones such as Deposit Guarantee Institutions. To strengthen banking as a trusted institution demands regulations regarding the accountability of shareholders who intentionally cause the violation of banking provisions, by imposing severe criminal sanctions.

In line with the developments above, and with Indonesia's commitment to various International for such as the World Trade Organization (WTO), the Asia Pacific Economic Cooperation (APEC) and the Association of South East Asian Nations (ASEAN) various adjustments of national Banking provisions are called for, including the opening of market access and the non-discriminative treatment of foreign parties. The liberalization in the banking sector has been undertaken in such a way that it can at the same time enhance the performance of the national banking industry. Accordingly, wider opportunities should be afforded to foreign parties to participate in and own national banks to maintain the partnership with national parties.

In relation to the above, attention should also be given to the legislation related to this Law, including Law Number 5 Year 1962 regarding Regional Enterprises, Law Number 25 Year 1992 regarding Cooperatives, Law Number 7 Year 1994 regarding the Ratification of the Agreement Establishing the World Trade Organization, Law Number 1 Year 1995 regarding Limited Liability Companies, Law Number 8 Year 1995 regarding the Capital Market, Law Number 9 Year 1995 regarding Small Enterprises, and Law Number 4 Year 1996 regarding Security Rights to Land and Assets related to Land.

ARTICLE BY ARTICLE

ARTICLE I

Number 1

Article 1

Point 1 to point 28

Sufficiently clear

Number 2

Sufficiently clear

Number 3

Article 6

Letter m

Commercial banks conducting conventional business activities may also conduct business activities based on Syariah principles through:

- a. the establishment of branch offices or sub-branch offices; or
- b. the conversion of branch offices or sub-branch offices conducting conventional business activities into offices conducting activities based on Syariah principles. In respect of the preparation of said conversion, the branch office or sub-branch office which previously conducted conventional business activities shall organize a special unit to conduct business based on

Syariah principles in the bank office concerned.

Commercial banks based on Syariah principles shall not conduct conventional business activities.

The main points of the provisions stipulated by Bank Indonesia include the following:

- a. business activities and bank products based on Syariah principles;
- b. the establishment and duties of the Syariah Supervisory Council;
- c. The conditions for a branch office conducting conventional business activities to conduct business activities based on Syariah principles.

Number 4

Article 7

Letter c

The main points of the provisions stipulated by Bank Indonesia include the following:

- a. temporary capital participation by banks originating from the conversion of bad credits or default on financing based on Syariah principles of the company concerned.
- b. the conditions for converting default on credit or Syariah financing into capital participation.
- c. said capital participation must be withdrawn if:
 - i) it has exceeded a maximum period of 5 (five) years; or
 - ii) the company has earned a profit.
- d. the aforementioned temporary capital participation must be written off from bank balance sheets if a bank fails to withdraw the participation within the 5 (five) year period;
- e. the reporting to Bank Indonesia regarding temporary capital participation by banks.

Number 5

Article 8

Point (1)

There are inherent risks in credit or Syariah financing that is channeled by a bank, therefore in the implementation of such, banks should give strict attention to the sound principles of credit and Syariah financing. To reduce these risks, a guarantee for the issuance of credit and Syariah financing, in terms of certainty regarding the intention and capacity of debtor customers to repay their obligations in accordance with the agreed terms, is an important factor that must be taken into account by banks.

To achieve such certainty, prior to issuing the credit, banks should conduct an in-depth analysis of the character, ability, capital, collateral and business prospects of debtor customers.

Given that collateral is one of the factors in credit issuance, if the other factors have convinced a bank of a debtor customer's ability to repay their obligations, collateral may be in form of goods, projects, or collection rights financed by the credit concerned. Land of which the title is based on customary (adat) law, that is, land with proof of ownership in form of girik, petuk and so on, may be used as collateral. Banks need not demand collateral in the form of goods related directly to the object of financing, commonly known as additional collateral.

In addition, in the provision of credit and Syariah financing, banks should give careful attention to the results of the Environment Impact Analysis (AMDAL) for large-scale or high-risk companies to ensure that the projects financed continue to safeguard the environment.

Point (2)

The main points of the provisions stipulated by Bank Indonesia include the following:

- a. the issuance of credit and Syariah financing made in the form of a written agreement;
- b. that banks must be certain of the capacity and intention of debtor customers, acquired among other means by an in-depth analysis of the character, ability, capital, collateral and business prospects of the debtor customers;
- c. banks' obligation to draw up and apply procedures for the issuance of credit or Syariah financing;
- d. banks' obligation to provide clear information regarding the procedures and conditions for credit lending or Syariah financing;
- e. the prohibition on banks on the provision of credit or Syariah financing with different conditions to debtor customers and or affiliated parties;
- f. the settlement of disputes.

Number 6

Article 11

Credit lending and Syariah financing by banks contains the risk of failure or non-performance in the settlement thereof, to the extent that bank soundness can be affected. Given that the source of such credit or financing is the public's funds deposited in banks, the risks faced by a bank may affect the security of said public funds. Therefore, to maintain soundness and improve the resistance of a bank, it must spread the risks by regulating the channeling of the credit or Syariah financing, providing a guarantee or other such means to ensure that it is not concentrated on a certain debtor customer or group of debtor customers.

Paragraph (1)

Group shall be an assembly of people or organizations which have an ownership, management, and or financial relationship with each other.

Paragraph (3)

Letter a

Sufficiently clear

Letter b

Sufficiently clear

Letter c

Sufficiently clear

Letter d

What is meant by family in this provision shall be a familial relationship up to the second degree either vertically or horizontally, including parents-in-law, sons/daughters-in-law and siblings-in-law.

Letter e

Sufficiently clear

Letter f

Sufficiently clear

Point (4A)

This prohibition is intended to ensure that in the provision of credit or Syariah financing, banks apply sound credit principles. Banks shall be declared as violating this paragraph if at the time of issuance, the balance of such credit or financing exceeds the legal limit stipulated by Bank Indonesia.

Number 7

Article 12

Paragraph (1)

In respect of clarifying the provisions regarding Banking principles, functions and objectives, the implementation thereof shall always be adjusted to the demands of national development, provided that this is not in conflict with the Bank Indonesia monetary program.

Paragraph (2)

The main points of these provisions, which are further regulated in a Government Regulation, include the following:

- a. The obligation of commercial banks to channel credit or Syariah financing to cooperatives, small- and medium-scale enterprises, on soft terms;
- b. That the standard of living improvement program shall be in the form of credit with low interest or Syariah financing with a low share of the profits;
- c. Subsidies on interest or profit sharing shall be borne by the State Budget.

Number 8

Article 12A

Paragraph (1)

The purchase of collateral by banks at auction is intended to help banks to accelerate the settlement of the liabilities of their Debtor Customers. If a bank serves as the purchaser of a Debtor Customer's collateral, the bank's status shall be the same as that of non-bank buyers.

The intention of allowing Banks to purchase collateral other than by auction is to speed up the settlement of the liabilities of their Debtors Customers.

Bank shall be prohibited from owning the collateral purchased and it must be resold as soon as possible to ensure that the proceeds from the collateral sale can be used by the banks.

Paragraph (2)

The main points of these provisions, which are further regulated in a Government Regulation, include the following:

- a. Banks may buy the collateral of credit which has been categorized as bad for a certain period of time;
- b. The collateral purchased must be liquidated within no more than 1 year;
- c. Within this 1 year period, a bank may defer the liabilities related to the transfer of rights to the collateral concerned, in accordance with the prevailing legislation.

Number 9

Article 13

Letter c

Rural Banks conducting business activities based on Syariah principles shall be

prohibited from conducting conventional business activities. Likewise, Rural Banks conducting conventional business activities shall be prohibited from conducting business based on Syariah principles.

The main points of the provisions stipulated by Bank Indonesia include the following:

- a. the business activities and products of banks based on Syariah principles.
- b. the establishment and tasks of the Syariah Supervisory Council.

Number 10

Article 16

Paragraph (1)

The collection of funds from the public by any party is in principle an activity that requires supervision, given that this activity is related to the interests of the public whose funds are deposited with the parties collecting said funds. In connection with the above, this paragraph emphasizes that the collection of funds from the public in the form of savings may be conducted by any parties that have obtained a business license as a Commercial Bank or as a Rural Bank.

However, there are other types of institution which also raise funds from the public in the form of savings or types of savings, such as that conducted by the Post Office, pension funds, or insurance companies. The activities of the said institutions are not included as banking business activities based on the provisions in this paragraph. The collection of public funds by the aforementioned institutions is regulated under a separate law.

Paragraph (2)

In order to grant business licenses for Commercial Banks and Rural Banks, Bank Indonesia must take into consideration not only the fulfillment of the conditions as intended in this paragraph, but also the level of healthy competition among banks, the saturation level of banks in a single area, and the equitable distribution of national economic development.

Letter a

Foreign management shall be permissible for Commercial Banks provided that it complies with the provisions of the prevailing legislation.

Letter b

Sufficiently clear

Letter c

The ownership requirements intended here include the total and composition of foreign ownership allowed in a Commercial Bank.

Letter d

Sufficiently clear

Letter e

Sufficiently clear

Paragraph (3)

The main points of the provisions stipulated by Bank Indonesia include the following:

- a. the requirements for bank managers, such as expertise in banking and good performance reports;

- b. the prohibition on familial relationships between the managers of a bank;
- c. the minimum paid-up capital required to establish a Commercial Bank or a Rural Bank;
- d. the maximum limits on ownership and management;
- e. the feasibility of the business plan;
- f. the time limit for issuing the license for the establishment of a bank.

Number 11

Sufficiently clear

Number 12

Article 18

Paragraph (1)

Sufficiently clear

Paragraph (2)

Sufficiently clear

Paragraph (3)

The definition of sub-branch office includes auxiliary branch offices and cash offices. In respect of providing banking services, it is also possible to establish other types of sub-branch office, such as payment points, mobile cashiers, and ATMs. Bank Indonesia must be given prior notice of plans to establish such offices.

Paragraph (4)

The main points of the provisions stipulated by Bank Indonesia include the following:

- a. bank soundness requirements;
- b. the level of healthy competition among banks;
- c. the saturation level of banks in a single area;
- d. the equitable distribution of national economic development;
- e. the time limit for issuing a license for the establishment of a branch, within no more than 60 (sixty) days of receipt of the application in full;
- f. the time limit and reasons for rejection;
- g. the time limit for reporting the establishment of a sub-branch office.

Number 13

Article 19

Paragraph (1)

In granting a license for the establishment of a Rural Bank branch, Bank Indonesia must take into consideration not only the fulfillment of the conditions intended in this paragraph, but also the level of healthy competition among banks, the saturation of banks in a single area, and the equitable distribution of national economic development.

A license is not required for the establishment of a sub-branch office of a Rural Bank. Bank Indonesia must be given prior notice of plans to open such an office.

Paragraph (2)

The main points of the provisions stipulated by Bank Indonesia include the following:

- a. bank soundness requirements;
- b. the level of healthy competition among Rural Banks;

- c. the saturation level of Rural Banks in a single area;
- d. the equitable distribution of national economic development;
- e. the time limit for issuing a license for the establishment of an office, within no more than 30 (thirty) days of receipt of the application in full;
- f. the time limit and reasons for rejection.

Number 14

Paragraph (1)

Banks domiciled overseas shall be banks established under foreign law and headquartered overseas. Such banks are thus subject to the law of the place of domicile.

In granting a license for the establishment of this type of office, Bank Indonesia must take into consideration not only the soundness of the bank, but also the level of healthy competition among banks, the saturation of banks in a single area, and the equitable distribution of national economic development.

Number 15

Article 21

Paragraph (1)

Sufficiently clear

Number 16

Article 22

Paragraph (1)

Letter a

The definition of Indonesian legal entities shall include the State of the Republic of Indonesia, State-owned Enterprises, Regional Enterprises, cooperatives, and private enterprises.

Letter b

If one of the parties establishing a Commercial Bank is a foreign legal entity, the party concerned must first seek a recommendation from the Monetary Authority of the country of origin. Said recommendation should contain at least a statement indicating that the foreign legal entity concerned has a good reputation and has never committed any dishonorable deeds in the banking sector.

Paragraph (2)

The main points of the provisions stipulated by bank Indonesia include the following:

- a. share ownership;
- b. the documentation required;
- c. the financial condition of the prospective bank founders.

Number 17

Article 26

Paragraph (1)

The provisions in this paragraph are intended to strengthen the capital structure and distribution of ownership, and to increase the performance of the bank.

Share issues may be made on a stock exchange in Indonesia or overseas.

Paragraph (2)

The provisions in this paragraph are intended to widen the opportunities for various parties, both Indonesian and foreign, to participate in the ownership of Commercial Banks.

Paragraph (3)

The main points of these provisions, which are further regulated in the Government Regulation, include the following:

- a. the conditions of share ownership, including the financial condition of prospective bank owners;
- b. the documentation required.

Number 18

Article 227

Letter a

Sufficiently clear

Letter b

Plans to transfer the ownership of a bank directly must be reported in advance to Bank Indonesia. This report is intended to ensure that ownership is transferred to parties that fulfill the conditions of bank ownership.

The transfer of ownership of bank shares through a stock exchange should be reported to Bank Indonesia if the ownership of one party through the stock exchange reaches a certain amount which could influence the management of the bank, in accordance with the provisions stipulated by Bank Indonesia.

Number 19

Article 28

In conducting a merger, consolidation or acquisition, the concentration of economic power on a certain group in the form of a monopoly which is detrimental to the public, must be avoided. Likewise, any mergers, consolidations or acquisitions shall not be allowed to damage the interests of the customers.

Number 20

Article 29

Paragraph (1), paragraph (2), and paragraph (3)

What is meant by guidance in paragraph (1) shall be the efforts made through the stipulation of regulations concerning the institutional, ownership, management, business, reporting and other aspects related to the operational activities of a bank.

The definition of supervision in paragraph (1) shall include indirect supervision especially in form of early supervision through research, analysis and evaluation of bank reports, and direct supervision in the form of audits followed by recovery actions.

In line with the above, Bank Indonesia is invested with the full authority, responsibility and obligation to exercise supervision over banks through preventive or repressive measures.

Banks, meanwhile, must possess and apply internal supervision systems to guarantee that the process of decision making in the management of the bank complies with prudential principles.

Given that banks work principally with funds collected from the public which are deposited with banks on the basis of trust, each bank should consistently preserve its soundness and uphold the public's trust.

Paragraph (4)

The provision of information regarding the potential risk of customers' losses is intended to ensure that access to information concerning the business and condition of a bank is more open, and at the same time to guarantee transparency in the

banking community.

Such information may cover the condition of a bank, including its capital adequacy and asset quality.

If such information has been made available, a bank shall be deemed to have fulfilled this provision. The information concerned should be provided if the bank acts as an intermediary in the placement of customers' funds, or in the sale/purchase of bonds for the interest of and on the order of customers.

Paragraph (5)

The main points of the provisions stipulated by Bank Indonesia include the following:

- a. the scope of guidance and supervision;
- b. the criteria for assessing soundness;
- c. prudential principles in management;
- d. guidelines for the disclosure of information to customers.

Number 21

Article 31

In principle, Bank Indonesia shall conduct periodic audits at least once a year for each bank. In addition, audits may be conducted whenever deemed necessary to confirm the results of indirect supervision and if there are any indications of deviation from sound banking practices.

In respect of the state finances managed by a bank, the Supreme Audit Agency (BPK) shall audit the bank concerned.

Number 22

Article 31A

Bank audits conducted by Public Accountants shall be local audits, which is the embodiment of the delegation of Bank Indonesia's authority as the supervisory authority.

Number 23

Sufficiently clear

Number 24

Article 33

Paragraph (1)

Sufficiently clear

Paragraph (2)

The main points of the provisions stipulated by Bank Indonesia include the following:

- a. the types, procedures and scope of audits;
- b. the time span and reporting of audit results;
- c. the follow-up on audit results.

Number 25

Article 37

A bank shall be said to be experiencing difficulties that may jeopardize its continued business if, according to Bank Indonesia, the bank's business condition is worsening. Indications may include a decline in capital, asset quality, liquidity and profitability, and bank management that is not based on prudential principles or sound banking principles.

This paragraph stipulates the measures that should be taken in respect of a bank

experiencing difficulties that may jeopardize the continuation of its business, to avoid the revocation of its business license and or the liquidation actions intended in paragraph (2).

The intention of such measures is to maintain/rescue the bank as an institution trusted by the public.

The other parties intended in this paragraph shall be any parties outside the bank concerned, be they other banks, other business entities or eligible individuals.

Paragraph (2)

The criteria for endangering the banking system shall be that if the degree of difficulties experienced by a certain bank in conducting its business is such that it is unable to fulfill its obligations to other banks, and in its turn will lead to a domino effect on other banks.

Paragraph (3)

Sufficiently clear

Number 26

Article 37A

Paragraph (1) and paragraph (2)

What is meant by banking difficulties that endanger the national economy shall be that the condition of the banking system, according to Bank Indonesia, has caused a crisis of public confidence in banking that has an impact on the livelihoods of many people.

Such circumstances call for the direct intervention of the government to overcome them through policies and actions that affect the State Budget.

Given the matters above, in the event of the formation of a special agency as intended in paragraph (1), the government should consult with the House of Representatives of the Republic of Indonesia. Such consultation shall be held with the Commission dealing with finance and banking in order to obtain approval. The special agency shall be stipulated by a Presidential Decree and shall be accountable to the Minister of Finance.

The special agency intended in these provisions shall be temporary until the conclusion of the tasks entrusted to it, which are:

- a. The restructuring of banks transferred to it by Bank Indonesia;
- b. The settlement of bank assets, either physical assets or debtor liabilities, through the Assets Management Unit;
- c. Efforts to recover state finances which have been channeled to banks.

Paragraph (3)

Letter a

By taking over all the rights and authority of shareholders, including the rights and authority of the General Meeting of Shareholders, the special agency may exercise the management and organization of banks in the restructuring program. Thus, all shareholders' rights and authority including the rights and authority of the General Meeting of Shareholders of banks in the restructuring program shall be transferred to the special agency.

Letter b

Sufficiently clear

Letter c

With this provision, the special agency may control, manage and take ownership actions as the owner of the bank.

Letter d

If the review, cancellation, expiry, and or amendment of the contract by the special agency causes any party to sustain a loss, said party may only demand compensation which up to amount of the useful value received from the contract after clearly proving the loss sustained.

Letter e

The sale or transfer of Bank assets by the special agency shall be followed by the transfer of proprietary rights to the buyer. The purchaser shall thereby have legal certainty of the transfer of the rights to said assets. The sale or transfer may be conducted directly or through a public offer to obtain the best price.

Letter f

The other parties according to this paragraph shall be individuals, state-owned enterprises, private enterprises and or other legal entities.

Letter g

The other parties according to this paragraph shall be individuals, state-owned enterprises, private enterprises and or other legal entities.

Letter h

Sufficiently clear

Letter i

According to this provision, the special agency may take collection measures on a bank's receivables in respect of third parties which have been taken over by the special agency. Such actions shall be conducted by the issuance of a warrant, based on the record of debts of the debtors concerned at the bank in restructuring.

This warrant, headed with the words "FOR JUSTICE BASED ON BELIEF IN THE ONE GOD", shall have executorial force and equivalent legal status to a court ruling that has permanent legal force. If the party in debt does not comply with the debt collection measures, the special agency may confiscate the property rights of said party, and may then auction said assets to recover the receivables concerned. Assets which may not be confiscated include household equipment, books, and office equipment required for the survival of the debtor. Although the special agency is invested with the authority to conduct the collection by force, the method of implementation shall nevertheless take into account the aspects of legal certainty and justice.

Letter j

Sufficiently clear

Letter k

To obtain said information, the special agency may seek the assistance of the authorized state law enforcement apparatus.

What is meant by any party shall be Affiliated Parties and other parties that are involved or suspected with due cause of being involved, including the legal entities owned by the bank or Affiliated Parties.

Letter l

The losses intended may be caused by improper transactions involving banks in this program. Such improper transactions include:

- a. transactions that benefit certain parties illegally;
- b. transactions that are not included in the terms and conditions that represent the results of negotiation among unaffiliated parties;
- c. transactions that cause said bank to receive a value that does not match the value released or surrendered by said bank.

Letter m

Sufficiently clear

Letter n

The other actions intended shall include the formation of a division in the special agency or the formation of and or capital participation in a legal entity.

Paragraph (4)

Legal actions taken by any party shall not prevent or delay the implementation of legal actions conducted by the special agency as intended in this article. If a court ruling that has permanent legal force (in kracht) has already been issued in respect of such legal actions in favor of the party concerned, the special agency must comply with the court's decision.

Paragraph (5)

Sufficiently clear

Paragraph (6)

Sufficiently clear

Paragraph (7)

Sufficiently clear

Paragraph (8)

Sufficiently clear

Paragraph (9)

The main points of these provisions, which are further regulated in a Government Regulation, include the following:

- a. the establishment of the special agency;
- b. the budget and expenditure of the special agency;
- c. the procedures for the collection of the receivables of banks under the restructuring program;
- d. the procedures for temporary capital participation;
- e. dissolution;
- f. the procedures for bank restructuring.

Article 37B

Paragraph (1)

Sufficiently clear

Paragraph (2)

The establishment of a Deposit Guarantee Institution is required to protect the interests of the public and at the same time increase the public's trust in banks.

In organizing the guarantee of the public's savings at banks, the Deposit Guarantee Institution may use:

- a. mutual fund schemes;
- b. insurance schemes;
- c. other schemes approved by Bank Indonesia.

Paragraph (3)

Sufficiently clear

Paragraph (4)

The main points of these provisions, which are further regulated in the Government Regulation, include the following:

- a. the establishment of a Deposit Guarantee Institution;
- b. the organizational structure;
- c. the guarantee scheme options;
- d. the obligation of banks to be members.

Number 27

Article 40

Paragraph (1)

If the customers of a bank are both depositor customers and debtor customers, the bank must uphold the confidentiality of information regarding customers in their position as depositor customers.

Information regarding customers other than depositor customers need not be kept secret by the bank.

Banks operating as capital market supporting institutions, for example banks serving as custodians and or trustees, shall be subject to the provisions of the laws and regulations of the capital market.

Paragraph (2)

Sufficiently clear

Number 28

Article 41

Paragraph (1)

Sufficiently clear

Number 29

Article 41A

Paragraph (1)

Sufficiently clear

Paragraph (2)

Sufficiently clear

Paragraph (3)

Sufficiently clear

Number 30

Article 42

Paragraph (1)

The word may be used to confirm that the Management of Bank Indonesia shall grant the permission on condition that said request complies with the provisions as intended in paragraph (3).

Paragraph (2)

Bank Indonesia shall grant the permission no later than 14 (fourteen) days after receipt of application in full.

Paragraph (3)

Sufficiently clear

Number 31

Article 42A

Sufficiently clear

Number 32

Article 44A

Paragraph (1)

Sufficiently clear

Paragraph (2)

Sufficiently clear

Number 33

Article 46

Paragraph (1)
Sufficiently clear

Number 34

Article 47
Paragraph (1)
Sufficiently clear
Paragraph (2)
Bank employees shall be the officials and staff of a bank.

Number 35

Article 47
Sufficiently clear

Number 36

Article 48
Paragraph (1)
Bank employees shall be the bank officials with the authority and responsibility to perform the operational tasks of the bank, and staff who have access to information regarding the bank's condition.
Paragraph (2)
Sufficiently clear

Number 37

Article 49
Paragraph (1)
Bank employees shall be all officials and staff of the bank.
Paragraph (2)
Letter a
Bank employees shall be all officials and staff of the bank.
Letter b
Bank employees shall be bank officials with authority and responsibilities regarding matters related to the business of the bank concerned.

Number 38

Article 50
Sufficiently clear

Number 39

Article 50A
Sufficiently clear

Number 40

Article 51
Paragraph (1)
The actions intended in the articles referred to in this paragraph shall be categorized as criminal actions, meaning that such actions shall be subject to more severe sanctions than would mere violations. Given that a bank is an institution that safeguards funds that are entrusted to it by the public, any actions that could damage the public's confidence in a bank, which will be injurious to both the bank and the public, should be avoided.

It is anticipated that categorizing the actions as criminal actions will encourage greater compliance with the provisions of this Law.

Criminal actions committed by members of the Board of Commissioners, Board of Directors, or employees of Rural Banks shall in principle be subject to the provisions regarding criminal sanctions in chapter VIII, given that the criminal penalties concerned are of a general nature.

Number 41

Article 52

Paragraph (1)

Sufficiently clear

Paragraph (2)

Sufficiently clear

Paragraph (3)

The main points of the provisions stipulated by Bank Indonesia include the following:

- a. types of Administrative sanctions;
- b. the implementation procedure for Administrative sanctions;
- c. the follow-up to the implementation of Administrative sanctions;
- d. supervision of the implementation of Administrative sanctions.

Number 42

Article 55

Sufficiently clear

Number 43

Article 59A

The special agency intended in this provision shall only be temporary, assigned specifically to take the actions necessary to restructure the national banking industry. Existing organizations that undertake bank restructuring may continue to perform their bank restructuring tasks pursuant to this law.

Article II

Sufficiently clear.

STATE GAZETTE OF THE REPUBLIC OF INDONESIA NO. 3790

Source: ELECTRONIC MEDIA OF THE STATE SECRETARY YEAR 1998