

**AUTHORITY OF LPS TO HANDLE FAILED BANK AND SYSTEMIC
BANK DURING THE COVID-19 PANDEMIC (COMPARATIVE OF POJK
NUMBER 18 OF 2020 AND PLPS NUMBER 3 OF 2020)**

THESIS

By:

Muhammad Dheo Adrian Muhari

Studenet ID Number 18220114



**SHARIA ECONOMIC LAW STUDY DEPARTMENT
SHARIA FACULTY
THE STATE ISLAMIC UNIVERSITY MAULANA MALIK IBRAHIM
MALANG
2022**

TITLE SHEET

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2022

PERNYATAAN KEASLIAN SKRIPSI

Demi Allah,

Dengan kesadaran dan penuh tanggung jawab terhadap pengembangan keilmuan,

Penulis menyatakan bahwa skripsi dengan judul :

**KEWENANGAN LEMBAGA PENJAMIN SIMPANAN DALAM
MENANGANI PERMASALAHAN BANK GAGAL SAAT PANDEMI
COVID 19 (STUDI KOMPARATIF POJK NOMOR 18 TAHUN 2020,
PLPS NOMOR 3 TAHUN 2020, DAN UNDANG-UNDANG NOMOR 24
TAHUN 2004)**

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Malang, April 2022

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NUMBER 18 OF 2020 AND PLPS NUMBER 3 OF 2020)**

The supervisor stated that this thesis has met the scientific requirements to
be proposed and to be examined on the Assembly Board of Examiners.

Malang, April 2022

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Forewored

Alhamdulillahirabbil'alamin, have given His rahmat and servan, so we can finish this thesis entitled **“AUTHORITY OF LPS TO HANDLE FAILED BANK AND SYSTEMIC BANK DURING THE COVID-19 PANDEMIC (COMPARATIVE OF POJK NUMBER 18 OF 2020 AND PLPS NUMBER 3 OF 2020)”**. Peace be Upon into The Rasulullah Prophet Muhammad SAW who has taught us guidance (uswatun hasanah) to do activity correctly in our life. By following Him, may we belong to those who believe and get their intercession on the last day of the end, Amien.

From all the teaching, advice, guidance, and helps of service for us to finish this thesis, then with all humility the writer will expresses the gratitude which is unequaled to:

1. Prof. Dr. H. M. Zainuddin, M.A. as the Rector of The State Islamic University Maulana Malik Ibrahim of Malang.
2. Dr. Sudirman, M.A, as the Dean of Syariah Faculty of The State Islamic University Maulana Malik Ibrahim of Malang.
3. Dr. Fakhruddin, M. HI, as the Head of Sharia Economic Law Department of Syariah Faculty of The State Islamic University Maulana Malik Ibrahim of Malang
4. Miss Dwi Fidhayanti, M.H, as my thesis supervisor. The writer thanks for his spending time to guide, direct, and motivate to finish writing this thesis. The writer hopes that he and his family will be blessed by Allah.

5. Mr Ramadhita, M.H, as supervisor lecturer of the writer during his study at Sharia Economic Law Department of Syariah Faculty of The State Islamic University Maulana Malik Ibrahim of Malang.
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MOTTO

“Selama masih ada nafas, semua bisa dilibas”(Pejuang Primordial).

DEDICATION SHEET

1. To Beloved parents, always supported the writers so well that they could finish the course and write the thesis well.
2. To Nety novita hariyani, a girlfriend who gives some advice to be enthusiastic about completing this thesis.
3. To Big Family of LADEC, PMII Rayon Radikal Al-Faruq, and group KKM DR Muara Harapan Village which always encourages the author and is also the author's study during the course of the lecture.

TRANSLITERATION GUIDENCE

The Latin Arabic Transliteration Guidelines which are the result of a joint decision decision (SKB) of the Minister of Religion and the Minister of Education and Culture of the Republic of Indonesia. Number: 158 of 1987 and Number: 0543b/U/1987.

A. Consonants

A list of Arabic letters and their transliteration into Latin letters can be seen on the following page:

Arab Letters	Name	Latin Letters	Name
ا	Alif	Not Symbolized	Not Symbolized
ب	Ba	B	Be
ت	Ta	T	Te
ث	S/a	S/	Es (with the dot above)
ج	Jim	J	Je
ح	H[a	H[Ha (with thw dot above)
خ	Kha	Kh	Ka and Ha
د	Dal	D	De
ذ	Z/al	Z/	Zet (with the dot above)
ر	Ra	R	Er
ز	Zai	Z	Zet
س	Sin	S	Es

ش	Syin	Sy	Es and Ye
ص	S[ad	S[Es (with the dot above)
ض	D[ad	D[De (with the dot above)
ط	T[a	T[Te (with the dot above)
ظ	Z[a	Z[Zet (with the dot above)
ع	‘Ain	‘	Apostrof backwards
غ	Gain	G	Ge
ف	Fa	F	Ef
ق	Qof	Q	Qi
ك	Kaf	K	Ka
ل	Lam	L	El
م	Mim	M	Em
ن	Nun	N	En
و	Wau	W	We
هـ	Ha	H	Ha
أ / ء	Hamzah	‘	Apostrof
ي	Ya	Y	Ye

Hamzah (ء) which is located at the beginning of the word follows the vowel without any marking. If it is in the middle or at the end, it is written with a sign (‘).

B. Vocal

Arabic vowels, like Indonesian vowels, consist of a single vowel or monophonic and multi vowels or dhipthongs. The Arabic single vowel whose symbol is a sign or vowel, the transliteration is as follows:

Sign	Name	Latin Letters	Name
أ	Fath[ah	A	A
إ	Kasrah	I	I
أ	D[ammah	U	U

Arabic double vowel whose symbol is a combination of vowels and letters, the transliteration is a combination of letters, namely:

Sign	Name	Latin Letters	Name
ي & َ	Fath[ah and ya	Ai	A and I
ي & ُ	Fath[ah and wau	Au	A and U

Example:

كَيْفَ : *kaifa*

حَوْلَ : *haula*

C. Maddah

Maddah or long vowels whose symbols are vowels and letters, transliteration in the form of letters and signs, namely:

Harakat and Letters	Name	Letters and Sign	Name
اَ & اِ & يَ	Fath[ah and <i>alif</i> or <i>ya</i>	a>	a and the line above
اِ & يِ	<i>Kasrah</i> and <i>ya</i>	i>	i and the line above
اُ & يُ	D[ammah and <i>wau</i>	u>	u and the line above

Example:

مَاتَ : *mata*

رَامَ : *rama*

قِيلَ : *qila*

يَمُوتُ : *yamutu*

D. Ta' Marbutah

There are two transliterations for *ta' marbutah*, namely *ta' marbutah* who live or get the letters *fathah*, *kasrah*, and *d[ammah*, the transliteration is [t]. While *ta' marbutah* who dies or get a sukun harakat, the transliteration is [h].

If the word ending with *ta' marbutah* is followed by a word that uses the article *al-* and the reading of the word is separate, then *ta' marbutah* is transliterated with [h].

الْمَدِينَةُ : *al-madinah*

E. Syaddah (Tasydid)

Syaddah or *tasydid* which in the Arabic writing system is denoted by a *tasydid* sign (ّ), in this transliteration it is symbolized by a repetition letters (double consonants) marked with a *syaddah*. Example:

رَبَّنَا : *rabbana*

الْحَقُّ : *al-haqq*

If latter i there is *tasydid* at the end of a word and preceded by the letter *kasrah*, then it is transliterated like the letter *maddah* (i).

Example:

عَلَى : 'Ali (not 'Aliyy or 'Aly)

عَرَبِيّ : 'Arabi (not 'Arabiyy or 'Araby)

F. Sandang Word

Sandang word in the Arabic writing system are denoted by letters (alif lam ma'arifah). In this transliteration guide, the article is transliterated as usual, al-, both when is is followed by letter *syamsiah* and the letter *qamariah*. The article does not follow the sound of the direct letter that folloes it. The article is written separately from the word that follows it and is connected by a horizontal line (-). Example:

الشَّمْسُ : *al-syamsu* (not *asy-syamsu*)

الزَّلْزَلَةُ : *al-zalزالah* (not *az-zalزالah*)

الْفُلْسُفَةُ : *al-falsafah*

الْبِلَادُ : *al-biladu*

G. Hamzah

The rule for transliterating the letter hamzah into an apostrophe (') only applies to hamzah which is located in the middle and end of the word.

However, if hamzah is at the beginning of a word, it is not symbolized, because in Arabic it is an alif. Example:

تَأْمُرُونَ : *ta' muruuna*

سَيِّئٌ : *syai'un*

أُمِرْتُ : *umirtu*

H. Writing Arabic words commonly used in Indonesian

Transliterated Arabic words, terms or sentences are words, terms or sentences that have not been standardized in Indonesian. Words, terms or sentences that are commonplace and become part of the Indonesian vocabulary, or have often been written in Indonesian writing, are no longer written according to the transliteration method above. For example the word Al-Qur'an (from the Qur'an), *Sunnah*, *specific* and *general*. However, if these words are part of a series of Arabic texts, then they must be transliterated in their entirety. Example:

Fizila al-Qur'an

Al-Sunnah qabl al-tadwin

Al-'Ibarat bi 'umum al-lafz bi khusus al-sabab

1. Lafz al-Jalalah

The word Allah which is preceded by a particle such as the letter *jarr* and other letters or is located as a *mudlaf ilaih* (nominal phrase), is transliterated without the letter hamzah. As for the *ta' marbutah* at the end of the word that is attributed to *al-jalalah*, it is transliterated with the letter [t]. Example:

دِينُ اللَّهِ : *dinullah*

رَحْمَةُ اللَّهِ : *rahmatillah*

2. Capital

Although the Arabic writing system does not recognize capital letters (All Caps), in its transliteration these letters are subject to provisions regarding the use of capital letters based on the applicable Indonesian spelling guidelines (EYD). Capital letters, for example, are used to write the first letter of a personal name is preceded by an article (al-), then what is written in capital letters remains the initial letter of the personal name, not the initial letter of the article. If it is located at the beginning of the sentence, then the letter A of the article uses a capital letter (Al-). The same provisions also apply to the initial letter of the reference title preceded by the article al-, both when it is written in the text and in the reference notes (CK, DP, CKD, and DR).

Example:

وما محمد إلا رسول	: Wa maâ Muhammadun illâ Rasûl
إن أول بيت وضع للدرس	: Inna Awwala baitin wudli'a linnâsi
شَهْرُ رَمَضَانَ الَّذِي أُنْزِلَ فِيهِ الْقُرْآنُ	: 'Syahru Ramadan al-lazliunzila fih al-Qur'an

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ABSTRAK

Muhammad Dheo Adrian Muhari, 18220114, **Kewenangan Lembaga Penjamin Simpanan Dalam Menangani Permasalahan Bank Gagagl Saat Pandemi Covid 19 (Studi Komparati POJK NOMOR 18 TAHUN 2020, PLPS NOMOR 3 TAHUN 2020, DAN UNDANG-UNDANG NOMOR 24 TAHUN 2004)**,
Jurusan Hukum Ekonomi Syariah, Fakultas Syariah, Universitas Islam Negeri (UIN) Maulana Malik Ibrahim Malang, Pembimbing Dwi Fidhayanti, S.HI.,M.H.

Kata Kunci: *Covid-19, Lembaga Penjamin Simpanan, & Otoritas Jasa Keuangan*

Selain berdampak pada bidang kesehatan pandemi Covid-19 juga berdampak pada bidang perekonomian. Berdasarkan data yang dikutip dari IMF (*Interantional Monetrary Fund*) bahwa pertumbuhan perekonomian Indonesia diproyeksikan akan berada di angka minus 1,5% dan hal tersebut juga berdampak pada sektor perbankan.

Untuk mengatasi permasalahan tersebut, OJK mengeluarkan POJK Nomor 18/ POJK. 03/ 2020 tentang Perintah Tertulis Penangan Permasalahan Bank pada BUK, BUS, BPR dan BPRS yang memiliki Peringkat Komposit paling rendah 3(PK-3). Namun, OJK seolah bekerja sendiri tanpa melibatkan LPS (Lembaga Penjamin Simpanan).

LPS juga mempunyai wewenang dalam menangani masalah bank yang berdampak sistemik dan tidak berdampak sistemik, dan bank gagal sebagaimana yang dimaksud dalam pasal 5 ayat 2 Undang-Undang Nomor 24 tahun 2004 tentang Lembaga Penjaminan Simpanan. Keberadaan POJK Nomor 18/POJK.03/2020 tentang Perintah Tertulis Penangan Permasalahan Bank berpotensi mendistorsi fungsi dan wewenang LPS menciptakan kekaburan norma (*vague norm*).

Penelitian ini termasuk penelitian yuridis normatif yang bertujuan untuk mengetahui bagaimana kewenangan Lembaga Penjamin Simpan Pinjam dalam menjaga stabilitas perbankan saat pandemi Covid-19 dan bagaimana pengaruh POJK Nomor 18 Tahun 2020 terhadap kewenangan LPS dalam menangani bank gagal saat pandemi Covid-19.

Hasil penelitian ini menunjukkan, bahwa POJK Nomor 18 Tahun 2020 bertentangan dengan Undang-Undang Nomor 24 Tahun 2004. Pertentangan tersebut, mempengaruhi dan mengaburkan kewenangan LPS dalam menangani bank gagal saat pandemi Covid-19 karena menciptakan interpretasi yang bervariasi mengenai lembaga mana yang menangani bank gagal saat pandemi Covid-19.

Abstract

Muhammad Dheo Adrian Muhari, 18220114, The Authority of the Deposit Insurance Corporation in Dealing with Failing Bank Problems During the Covid 19 Pandemic (Comparative Study of POJK NUMBER 18 OF 2020, PLPS NUMBER 3 OF 2020, AND LAW NUMBER 24 OF 2004), Department of Sharia Economics Law, Faculty of Sharia, Maulana Malik Ibrahim State Islamic University Malang, Supervisor Dwi Fidhayanti, S.HI.,M.H.

Keywords: *Covid-19, Lembaga Penjamin Simpanan, & Otoritas Jasa Keuangan*

In addition to having an impact on the health sector, the Covid-19 pandemic has also had an impact on the economy. Based on data quoted from the International Monetary Fund (IMF) that Indonesia's economic growth is projected to be at minus 1.5%. which also has an impact on the banking sector.

To overcome these problems, OJK issued POJK No. 18/POJK. 03/2020 concerning Written Orders for Handling Bank Problems at BUK, BUS, BPR and BPRS which have the lowest Composite Rating of 3 (PK-3). However, OJK seems to be working alone without involving the Deposit Insurance Corporation (LPS).

LPS also has the authority to deal with bank problems that have a systemic impact and do not have a systemic impact, and failed banks as referred to in Article 5 paragraph 2 of Law Number 24 of 2004 concerning the Deposit Insurance Corporation. The existence of POJK Number 18/POJK.03/2020 concerning Written Orders for Handling Bank Problems has the potential to distort the functions and authorities of the LPS create norm ambiguity.

This research includes normative juridical research which aims to find out how the authority of the Savings and Loans Guarantee Institution is in maintaining banking stability during the Covid-19 pandemic and how the influence of POJK Number 18 of 2020 on the authority of LPS in dealing with failed banks during the Covid-19 pandemic

The results of this study indicate that POJK Number 18 of 2020 is contrary to Law Number 24 of 2004. This conflict affects and obscures the authority of IDIC in dealing with failed banks during the Covid-19 pandemic because it creates varied interpretations regarding which institutions handle failed banks. during the Covid-19 pandemi

ملخص البحث

محمد ديوا ادريا موحاري، 18220114، سلطة مؤسسة تأمين الودائع في التعامل مع مشاكل البنوك المتعثرة أثناء جائحة كوفيد 19 (دراسة مقارنة لـ POJK رقم 18 لعام 2020 PLPS ، رقم 3 لعام 2020 ، ورقم قانون 24 لعام 2004)، قسم القانون الاقتصادي الشرعي، كلية الشريعة، جامعة مولانا مالك إبراهيم الإسلامية الحكومية مالانج، المشرفة ، دوي فيديانتي الماجستير.

الكلمات الرئيسية: Covid-19, Lembaga Penjamin Simpanan, & Otoritas Jasa Keuangan

بالإضافة إلى تأثيره على قطاع الصحة ، كان لوباء-Covid 19 أيضاً تأثير على الاقتصاد. استناداً إلى البيانات المقتبسة من صندوق النقد الدولي ، (IMF) من المتوقع أن يبلغ معدل النمو الاقتصادي في إندونيسيا -1.5٪. والتي لها تأثير أيضاً على القطاع المصرفي. للتغلب على هذه المشاكل ، أصدر OJK POJK رقم 18 / POJK. 2020/03 بشأن الأوامر المكتوبة للتعامل مع مشاكل البنوك في BUK و BPR والتي لديها أدنى تصنيف مركب من 3 (PK-3). ومع ذلك ، يبدو أن OJK يعمل بمفرده دون إشراك شركة تأمين الودائع (LPS) تتمتع LPS أيضاً بسلطة التعامل مع المشكلات المصرفية التي لها تأثير نظامي وليس لها تأثير منهجي ، والبنوك الفاشلة على النحو المشار إليه في المادة 5 الفقرة 2 من القانون رقم 24 لعام 2004 بشأن مؤسسة تأمين الودائع. إن وجود POJK Number 18 / POJK. 2020 / 03 فيما يتعلق بالأوامر المكتوبة للتعامل مع مشاكل البنك من شأنه أن يشوه وظائف وصلاحيات LPS ، يخلق غموضاً معيارياً

يتضمن هذا البحث بحثاً قانونياً معيارياً يهدف إلى معرفة مدى تأثير سلطة مؤسسة ضمان المدخرات والقروض في الحفاظ على الاستقرار المصرفي خلال جائحة كوفيد -19 وكيف تأثير POJK رقم 18 لعام 2020 على سلطة LPS في التعامل مع البنوك الفاشلة خلال جائحة-Covid 19. تشير نتائج هذه الدراسة إلى أن POJK رقم 18 لعام 2020 مخالف للقانون رقم 24 لعام 2004. ويؤثر هذا الصراع ويحجب سلطة IDIC في التعامل مع البنوك الفاشلة أثناء وباء-Covid 19 لأنه يخلق تفسيرات متنوعة بشأن المؤسسات التي تتعامل معها البنوك الفاشلة خلال وباء كوفيد -19

CHAPTER I

Introduction

A. Background

Covid-19 (*Corona Virus Disease 2019*) is a disease that was designated as a pandemic by WHO (*World Health Organization*) on March 18, 2020. On November 16, 2020, the world's positive cases of Covid-19 reached 54.8 million people with the provisions that 38.1 million recovered and 1.32 million died. On November 15, 2020, Indonesia's positive cases touched 452,000 people, with the provision that 382,000 recovered and 14,933,000 died.

In addition to having an impact on the health sector, the Covid-19 pandemic has also had an impact on the economy. Based on data quoted from the International Monetary Fund (*IMF*) that Indonesia's economic growth is projected to be minus 1.5% and this will also have an impact on the banking sector.¹

To overcome these problems, OJK issued POJK Number 18/POJK. 03/2020 on the Written Order for the Management of Bank Problems on BUK, BUS, BPR, and BPRS which have the lowest Composite Rating 3 (PK-3). However, OJK seems to work alone without involving LPS (Lembaga Penjamin Simpanan). LPS also has the authority to deal with bank errors that have a systemic and non-systemic

¹ Hadijah Alaydrus, IMF:Pangkas Proyeksi Ekonomi Indonesia Jadi Minus 1,5 Persen di 2020,Breaking News 14 Oktober 2020, diakses 12 Oktober 2021, <https://ekonomi.bisnis.com/read/20201014/9/1304743/imf-pangkas-proyeksi-ekonomi-indonesia-jadi-minus-15-persen-di-2020-ini-alasannya>.

impact , and banks fail as referred to in article 5 paragraph 2 of Law Number 24 of 2004 on LPS :²

1. Formulate and establish policies in order to actively participate in maintaining the stability of the banking system.
2. Formulate, determine, and implement a Bank Resolution policy that does not have a systemic impact, and
3. Implement the handling of Failing Banks that have a system impact that has a systemic impact.

In the other insight especially in accordance with Law No. 24 of 2004 in Article 4 and Article 5 of the Deposit Guarantee Board Regulation No. 3 of 2020 Concerning the Implementation Regulation Government Regulation No. 33 of 2020 Concerning the Implementation Authority of LPS In Order To Implement Th Incompability Of The Financial Agency explicitly states in handling systemic banks and failed banks LPS cooperates with OJK in conducting data exchange and inspections with failed banks that have systemic impact and non-systemic impact that set out in the memorandum of understanding.

Based on this, the existence of POJK Number 18 of 2020 has the potential to create a vacuum norm and this study aims to find out how the LPS's authority is in dealing with failed banks during the Covid-19 pandemic and how the influence of POJK Number 18/POJK.03/2020 regarding Written Order for Handling Bank Problems against the LPS authority in dealing with failed banks during the Covid-19 pandemic.

² Pasal 5 Ayat 2 Undang-Undang Nomor 24 tentang Lembaga Penjamin Simpanan.

B. Problem Formulation

Based on the formulation of the problem above, the formulation of the problem is :

1. What is the authority of the Savings and Loans Guarantee Institution in dealing with Failing Banks during the Covid -19 pandemic?
2. What is the effect of POJK Number 18/POJK.03/2020 concerning Written Orders for Handling Bank Problems on the authority of LPS in dealing with problems of Systemic Banks and Failed Banks? ”

C. Purposes

In line with the formulation of the problem above, the purpose of this research is to find out how the authority of the Savings and Loans Guarantee Institution is in maintaining banking stability during the Covid-19 pandemic and how the influence of POJK Number 18 of 2020 on the LPS authority in dealing with failed banks during the Covid-19 pandemic .

D. Research Benefits

The results of this study are expected to provide broad benefits both theoretically and practically:

1. Theoretically

This research is expected to contribute ideas for the development of legal science specifically for financial institution law regarding the authority of the Deposit Insurance Corporation in maintaining banking stability during the Covid-19 pandemic .

2. Practically,

This research can be input and advice for OJK in making policies and the general public in understanding policies .

E. Previous Research

Studies involving LPS have been extensively studied, but there are different facets to each study. Therefore, to reconcile these differences with previous research requires discussion of similar research. In this study, there are some researchers associated with the surety as follows:

1. Skripsi Kesit Ramia Devi, (IAIN Metro, 2018). The study was entitled "the role of the house guarantor in raising public trust in the bank of Shari 'ah (case study of CPRS aman syari 'ah)." The study is a qualitative, descriptive field study that aims to describe and solve the problem of LPS's role in promoting religious trust. The conclusion of this study is that LPS is still low. The implication is that many societies do not yet know what LPS, function, duty, and role are. Kesit rami devi suggests that LPS keep their institutions at physical entrances as well as through digital technology.³

³ Kesit Ramia Devi, "Peran Lembaga Penjamin Simpanan Dalam Meningkatkan Kepercayaan Masyarakat Terhadap Perbankan Syari'ah (Studi kasus BPRS Aman Syari'ah Sekampung)", (Skripsi, Institut Agama Islam Negri Metro, 2018),

As for the differences in this study with the study of the author lies in the research object. The study is a field study with case studies on BPRS safe syari 'ah all the village while the author's research is a library study by analyzing LPS authorities in the 2004 twenty-four 2004 rule on the reserve, Bank Indonesia bi governor burhanudin abdullah said here on Monday it was expected to maintain its key rate at 8.25 percent for the second quarter of this year.

2. Juanda Mamuaaja Journal's (Sam Ratulangi University , 2015). The study was entitled "LPS function in legal protection for Indonesian banking." The study was a normative study using library research methods in compiling research materials and using qualitative methods in analyzing the substances already collected. ⁴

The difference between the author's research and the study is that the authors are using a number of research materials such as 2020's excise provision no. 3 of the 2020 government regulation no. 33 of 2020. And regulatory POJK no. 18/ poj.03/2020 on written orders for addressing bank problems and some of the materials in this research such as the government regulation number 28 of 1999 about merger, consolidation, and acquisition.

Furthermore, research also suggests that social media protection is conducted on social media. In contrast with the

<https://repository.metrouniv.ac.id/id/eprint/734/1/SKRIPSI%20KESIT%20RAMIA%20DEVI%20fix.pdf>.

⁴ Juanda Mamuaaja, "Fungsi Lembaga Penjamin Simpanan Dalam Rangka Perlindungan Hukum Bagi Nasabah Perbankan di Indonesia", (FH Universitas Sam Ratulang, no.1, 2015): 40, <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/7024>.

authors who think that the potential LPS authority is reduced by the 18/ POJK.03/2020 reference to a written order for handling bank problems.

3. Riska Limbong Thesis's (STIEI Banking Scholl, 2017). The study was entitled "how customers' perceptions affect the hedge fund (LPS) and the interest rate of interest on bank Banks in banking as modest variables (the xyz case study)." The study is a kausal research comparative with a quantitative approach. The conclusion of the study is that the bank's positive approval on LPS increases and is affecting interest in bank Indonesia's savings by 42%.⁵

The difference between this study and that of the previous research lies in careful data. The study examined data in the Numbers (qualitative) figures obtained from field surveys. While research on the suppressors, analyzing several regulaion such UU Number 24 of 2004, PLPS Number 3 of 2020, and POJK Number 18/ POJK.03/ 2020. In addition, the objective of this institution is to show that it can be used asa strategic contribution to Indonesia. Contrast with the purpose of the research of the author who is creating a vagueness of norms (vague norm) on LPS.

4. Asep Suherman Thesis's (UII , 2011). The study was entitled "The Role and Responsibility of The Reserve Institution In

⁵ Riska Limbong, "Pengaruh Persepsi Nasabah Mengenai Lembaga Penjamin Simpanan (LPS) dan Tingkat Suku Bunga Simpanan Terhadap Minat Menabung Nasabah Pada Bank Dengan Citra Perbankan Sebagai Variabel Moderasi (Studi Kasus Pada Bank xyz)", (Skripsi, Sekolah Tinggi Ilmu Ekonomi Indonesia *Banking School*, 2017), <http://repository.ibs.ac.id/206/1/Riska%20Limbong%20-%20200912085%20-%20Skripsi.pdf>.

Banaging Failing Banks (The Case Study Of The Century Bank)."

The study is an empirical study using the two-data collection techniques of interviews and graduate studies in judicial materials related to this research.⁶

The conclusion of the study was that LPS had authority over bank failure by the establishment of the LPS board of commissioners and was later made known to the coordination committee. In Century Bank case, The LPS's management mechanism failed to provide a report to both the President and the house of representatives, the LPS announced the audited financial statements, and a structurization of the report was issued by the house of commissioners.

The difference between this insight and the previous study object is more specific to LPS's authority in protecting its customers Century Bank. In addition, the primary ingredient of this research is more general than KUHPer focus on agreements. Whereas the authors focus on several regulation such as UU Number 24 of 2004, POJK Number 18 of 2020, and PLPS Number 3 of 2020.

5. Budiyanto Bagus Thesis's (UIN Maulana Malik Ibrahim Malang, 2021). The study is entitled "Effects of Natural Disasters and Inflation Risk to The Stability of Banks in Indonesia at 2011-2020."

The conclusion of this study is that natural disasters and inflation

⁶ Asep Suherman, "Peranan dan Tanggung Jawab Hukum Lembaga Penjamin Simpanan Dalam Menangani Failing Bank(Studi Kasus Bank Century)", (Tesis, Universitas Islam Indonesia, 2011),http://eprints.unpam.ac.id/view/creators/Asep_Suherman=3A=2E=3A=3A.html,

fluctuates significantly affect bank stabilitas over the years from 2011 to 2020.⁷

The obvious difference between this study and that of the author lies in the study where it assesses several methods such as selective selection estimates, classic assumption tests, hypothetical tests, normal tests, autocorrelation tests, and heterosclimity tests through nonnormative data sources. The authors' research USES the two methods of grammatical and comparative to UU Number 24 of 2004, PLPS Number 3 of 2020, and POJK Number 18 of 2020.

6. Wisang Bagus Rahman, (UIN Maulana Malik Ibrahim Malang, 2014). The study is entitled "The Governance and Supervision of OJK according to UU 21 of 2011." The conclusion of the study was focused on OJK's integrated setup and monitoring systems with regular, fair, transparent, open, and accountable objectives that needed to be properly coordinated with the Indonesian bank. OJK formation is consistent with authorities in some countries such as England, Japan, Germany, Korea, and Singapore.⁸

The difference between this study and that of the author lies in the scrutiny of the law. The study examined statute number 21 in 2011 and it also compared ojk with authorities in other countries

⁷ Budiyanto Bagus, Pengaruh Resiko Bencana Alam Dan Inflasi Terhadap Stabilitas Bank Di Indonesia Periode 2011-2020, (Skripsi UIN Maulana Malik Ibrahim Malang, 2021), <http://etheses.uin-malang.ac.id/28000/>.

⁸ Wisang Bagus Rahman, Pengaturan Dan Pengawasan Otoritas Jasa Keuangan Berdasarkan UU Nomor 21 Tahun 2011, (Skripsi UIN Maulana Malik Ibrahim Malang, 2014), <http://etheses.uin-malang.ac.id/361/>.

like the financial service authority in Britain. Whereas this research focus to UU Number 24 of 2004, POJK Number 18 of 2020, and PLPS Number 3 of 2020.

No	Identity	Tittle	Similarity	Diferent
1.	Kesit Ramia Devi (Institut Agama Islam Negeri Metro, 2018).	Peran Lembaga Penjamin Simpanan Dalam Meningkatkan Kepercayaan Masyarakat Terhadap Perbankan Syariah (Studi kasus BPRS Aman Syariah Sekampung)	The subjek pertain to LPS	Research method is empirical research
2.	Juanda Mamuaja (Universitas Sam Ratulangi Manado, 2015)	Fungsi Lembaga Penjamin Simpanan Dalam Rangka Perlindungan	The object pertain to LPS	Primary research material foccus to century case

		Hukum Bagi Nasabah Perbankan di Indonesia		
3.	Riska Limbong (Sekolah Tinggi Ilmu Ekonomi Indonesia Banking Scholl, 2017)	Pengaruh Persepsi Nasabah Mengenai Lembaga Penjamin Simpanan (LPS) Dan Tingkat Suku Bunga Simpanan Terhadap Minat Menabung Nasabah Pada Bank Dengan Citra Perbankan Sebagai Variabel Moderasi (Studi Kasus Pada Bank XYZ)	The object pertain to LPS	Research method is quantitati ve research
4.	Asep Suherman	Peranan dan	The Objek	Primary

	(Unibersitas Islam Indonesia , 2011)	Tanggung Jawab Hukum Lembaga Penjamin Simpanan Dalam Menangani Bank (<i>Fail Bank</i>) (Studi Kasus Bank Sentury)	pertain to LPS	research material foccus to century case and research method is empirical research
5.	Budiyanto Bagus (UIN Maulana Malik Ibrahim Malang, 2021)	Pengaruh Resiko Bencana Alam Dan Inflasi Terhadap Stabilitas Bank Di Indonesia Periode 2011-2020	The object pertain to stability bank.	Thate research foccus to action LPS in saving stability bank .
6.	Wisang Bagus Rahman, (UIN Maulana Malik Ibrahim Malng, 2014).	Pengaturan Dan Pengawasan Otoritas Jasa Keuangan Berdasarkan UU Nomor 21 Tahun 2011	The object pertain to LPS.	Primary research material about II number 41 of 2011

CHAPTER II

Library Review

A. Theoretical Studies

1. LPS

In 2004, the banking industry was marked by the beginning of the abolition of the popular guarantee program called the *blanketguarantee* and will be replaced by a more permanent guarantee system. Gradually the program will reduce its coverage and lower the maximum amount guaranteed. *Blanketguarantee* as a temporary policy has been implemented by the government since 1998 through Presidential Decree 26 of 1998. This guarantee program is implemented by the National Banking Rehabilitation Agency (BPPN) “indonesian called” which in 2004 will also be dissolved.⁹

Before the Indonesian banking crisis hit, several other countries also experienced it. According to *Financial Risk Management in Banking*, throughout the 1980s there was a tendency to increase the number of banks that experienced mismanagement around the world for various reasons. The number of failing banks continues to increase. Initially only 10 banks, then 42 banks, 48 banks, 79 banks in 1984, 120 banks in 1985, 138 banks in 1986, 184 banks in 1987, 200 banks in 1988, and finally 206 banks in 1989. In the paper *Bank for*

⁹ Asep Suherman, “Peranan dan Tanggung Jawab Hukum Lembaga Penjamin Simpanan Dalam Menangani Failing Bank(Studi Kasus Bank Century)”, (Tesis, Universitas Islam Indonesia, 2011), http://eprints.unpam.ac.id/view/creators/Asep_Suherman=3A=2E=3A=3A.html,

International Settlement (BIS) titled banking, there are a number of methods applied in a number of countries. However, there is a common red thread in various countries in the face of the financial crisis, namely the emergence of the establishment of formal schemes for protecting depositors, ie guarantee institutions that can meet the bank's obligations to all *stakeholders* if the bank is liquidated to maintain public trust.¹⁰

Some of the countries that implement the guarantee program policy include China, India, Hong Kong, South Korea, Thailand, Argentina, Brazil, Chile, Mexico, Russia, the European Union, Japan, and the United States. In India, the guarantee program has been conducted by the Deposit Insurance and Credit Guarantee Corporation since 1962 with a maximum guarantee value of 100,000 rupees/person. Hong Kong since 1995 has limited the maximum guarantee limit to 100,000 Hong Kong dollars. South Korea has implemented a guarantee program with a maximum limit of 20 million won since 1996. Argentina implements the *New Deposit Insurance Fund for Financial Institutions* (known as SEDESA) since 1995 with a maximum limit of 30,000 US dollars. Mexico is also implementing a similar program (known as FOBAPROA), with a maximum limit of US \$ 100,000 which will gradually end at the end of 2005.¹¹

On September 22, 2004, the Government enacted Law of the Republic of Indonesia Number 24 of 2004 on Savings Guarantor

¹⁰ Chessa Sthefanny. "Kewenangan Lembaga Penjamin Simpanan Dalam Menyelesaikan Permasalahan Solvabilitas Bank Di Luar Bank Sistemik Di Tinjau Dari Undang-Undang No. 9 Tahun 2016 Tentang Pencegahan Dan Penangan Krisis Sistem Keuangan". (Skripsi Universitas Sumatera Utara, 2018). <http://repositori.usu.ac.id/handle/123456789/4556>.

Institutions. Based on the law, the Savings Guarantor Institution (LPS) is an independent institution that serves to guarantee the savings of depositors' customers and actively participates in maintaining the stability of the banking system in accordance with its authority. This law is effective from September 22 , 2005, and since that date the Deposit Guarantor Institution has officially operated. ¹²

In the Islamic world, there is one institution that has a control and supervision function that resembles OJK, namely *wilayatul hisbah* . In line with the OJK, *wilayatul hisbah* is an institution or body that has the authority to remind members of the public about the existing rules that must be followed, how to use and comply with the rules and actions that must be avoided because they are in conflict with the rules. ¹³ In contrast to OJK which only covers supervision around banking, *wilayatul hisbah* has a wider scope of supervision functions, namely all matters related to the enforcement of *amar ma'ruf nahi munkar* . In addition *to the province of hisbah*, there is another independent institution that has the function of *backing up* the economy if there is a problem of stability or financial crisis. To realize the success of property supervision, at that time Caliph Umar applied the independence of the *baitul mal* supervision device from the executive power (the guardians) and relied on a system

¹² Chessa Sthefanny. “Kewenangan Lembaga Penjamin Simpanan Dalam Menyelesaikan Permasalahan Solvabilitas Bank Di Luar Bank Sistemik Di Tinjau Dari Undang-Undang No. 9 Tahun 2016 Tentang Pencegahan Dan Penangan Krisis Sistem Keuangan”. (Skripsi Universitas Sumatera Utara, 2018). <http://repositori.usu.ac.id/handle/123456789/4556>.

¹³ Abdul Qadir Handuh dan Kamil Hadi, “Peran Pengawasan *Wlayatul Hisbah* Terhadap Pelaksanaan Syari’at Islam Di Kabupaten Aceh Selatan. (Jurnal Al-Mursalah, STAI Aceh Selatan 2017). <file:///C:/Users/dheo23/Downloads/95-343-1-PB.pdf>

of separation of administrative duties and accounting duties in the state apparatus.

Meanwhile, in terms of distributing the property of Baitul Mal, Caliph Umar established several departments that were considered necessary, such as:¹⁴

- a. Department of Military Service. The department serves to distribute aid funds to people involved in the war. The amount of assistance funds is determined by the number of family dependents of each beneficiary.
- b. Department of Justice and Executive. This department is responsible for the payment of salaries of judges and executive officials. The amount of this salary is determined by two things, namely the amount of salary received must meet the needs of his family to avoid bribery and the amount of salary given must be the same and even if there is a difference, it remains within the limits of fairness.
- c. Ministry of Islamic Education and Development. The department distributes financial assistance to spreaders and developers of Islamic teachings and their families, such as teachers and preachers.
- d. Department of Social Security. The department keeps a list of assistance for the needy and poor. The purpose of this department is to ensure that no one in this country neglects the necessities of

¹⁴ Dwi Hidayatul Firdaus, "Analisis Kebijakan Ekonomi Umar Bin Khattab Perspektif Bisnis Syari'ah", (Jurnal, STAI At-Tadzhib Jombang, 2013). https://scholar.google.co.id/citations?view_op=view_citation&hl=id&user=7KvzxksAAAAJ&citation_for_view=7KvzxksAAAAJ:u5HHmVD_uO8C.

life. all people who are sick, elderly, disabled, orphaned, widowed or for any other reason so unable to earn a living are given annual financial assistance from baitu mal.

At the time of the Ramadan crisis, this institution has an important role in providing subsidies to the people of Medina in need. Reserve funds that are usually used as reserve expenditures are gradually depleted and even run into a deficit. To solve the problem, Caliph Umar bin Khattab sent a letter to the regional leaders to provide assistance to the people of Medina and its surroundings. Abu Ubaidillah was the first person to bring 4000 camels to be distributed to the people of Medina and its surroundings.¹⁵

2. General Authority of the Savings Guarantor Board

In carrying out its duties, LPS has the following authorities:¹⁶

- a. Setting premiums and collecting guarantee premiums,
- b. Assign and collect contributions when the bank first becomes a participant,
- c. To manage the wealth and obligations of LPS,
- d. Obtain customer savings data, bank health data, bank financial statements, and bank inspection results reports as long as they do not violate bank confidentiality.

¹⁵ Ardhina Nur Aflaha, “Manajemen Krisis Ramdah (Umar bin Khattab Perspektif Sejarah Ekonomi Islam)”, (Jurnal Sjarah dan Kebudayaan RIHLAH UIN Alauddin Makassar), <https://scholar.google.com> .

¹⁶ Pasal 3 Undang-Undang Nomor 23 Tahun 2004 tentang Lembaga Penjamin Simpanan.

- e. Perform reconciliation, verification, and/or confirmation of data as referred to in letter d .
- f. Establish terms, procedures, and conditions for payment of claims,
- g. Appoint to authorize , and or assign other parties to act in the interests of and / or on behalf of LPS, in order to perform certain tasks,
- h. Provide extension to banks and the community on savings guarantees, and ,
- i. Impose administrative sanctions.

3. Bank Failed

Failed Bank (failing bank) is a bank that experiences financial difficulties and endangers the continuity of business and is declared no longer healthy by the LPP in accordance with the authority it has.¹⁷

In carrying out its activities, Faile Bank is also monitored by OJK. Failed Bank oversight status consists of:¹⁸

- a. normal supervision ,
- b. intensive surveillance , or
- c. special supervision.

¹⁷ Pasal 1 Angka 5 Undang-Undang Nomor 9 Tahun 2016 tentang Pencegahan dan Penangan Krisis Sistem Keuangan.

¹⁸ JDIH BPK, “Penangan Bank Gagal Berdampak Sistemik”, (BPK, 2017): 3, <https://jdih.bpk.go.id/wp-content/uploads/2017/07/Penanganan-Bank-Gagal-Berdampak-Sistemik>.

The status of intensive supervision is given to OJK in case the Bank is deemed to have potential difficulties that endanger the continuity of business, that is, if it meets one or more criteria:¹⁹

- a. the Minimum Capital Provision Obligation (KPMM) ratio is equal to or greater than 8% (eight percent) but less than the KPMM ratio in accordance with the Bank's risk profile that must be met by the Bank ,
- b. the core capital ratio (tier 1) is less than a certain percentage set by the OJK ,
- c. Minimum Mandatory Giro ratio (GWM) in rupiah is equal to or greater than the ratio set for GWM in rupiah that must be met by the Bank, but based on the Bank's OJK assessment has underlying liquidity issues ,
- d. a net non -performing loan ratio (Non Performing Loan/NPL) or a net non -performing loan ratio (NPF net) of more than 5% (five percent) of the total credit or total financing ,
- e. Bank health level with a composite rating of 4 (four) or a composite rating of 5 (five) and/or ,
- f. Bank health level with composite rating of 3 (three) and governance with planning factor rating .

¹⁹ JDIH BPK, “Penangan Bank Gagal Berdampak Sistemik”, (BPK, 2017): 3, <https://jdih.bpk.go.id/wp-content/uploads/2017/07/Penanganan-Bank-Gagal-Berdampak-Sistemik>.

4. The Authority of LPS in Dealing with Failed Banks

In resolving the problem of failed banks, LPS has the following authorities: ²⁰

- a. Take over and exercise all rights and authorities of shareholders, including the rights and authorities of the GMS,
- b. Control and manage the assets and liabilities of the salvaged Failed Bank,
- c. Review, cancel, terminate, and/or modify any contract binding the Failed Bank salvaged with a third party to the detriment of the bank, and
- d. Selling and/or transferring bank assets without the approval of the debtor and/or bank obligations without the approval of the creditors.

Cooperation between LPS and OJK is stronger in dealing with systemic banks and failed banks that have a systemic impact and no systemic impact is increasingly seen in PLPS Number 3 of 2020 as intended in articles 3, 4 and 5 of PLPS Number 3 of 2020 in conducting data exchange and joint inspections. as follows:²¹

Article 3

²⁰ Pasal 21 Undang-Undang Nomor 24 Tahun 2004 tentang Lembaga Penjamin Simpanan.

²¹ Pasal 3 Peraturan Lembaga Penjamin Simpanan Nomor 3 Tahun 2020 Tentang Peraturan Pelaksana Peraturan Pemerintah Nomor 33 Tahun 2020 Tentang Pelaksanaan Kewenangan Lembaga Penjamin Simpanan Dalam Rangka Melaksanakan Langkah-Langkah Penangan Permasalahan Stabilitas Sistem Keuangan.

- (1) LPS shall prepare for Bank Handling during the period when the Bank is designated as a bank under intensive supervision notified by the OJK.
- (2) Preparation of Bank Handling as referred to in paragraph (1) shall be carried out by LPS in coordination with OJK.
- (3) Coordination of LPS with OJK as referred to in paragraph (2) shall be conducted in order to:
 - a. exchange of Bank data and/or information ,
 - b. joint examination of the Bank , and/or
 - c. other activities in the framework of the preparation of the Bank's resolution by the LPS.

Article 4

- (1) Exchange of data and/or information as referred to in Article 3 paragraph (3) letter a, among others, notification from the OJK to the Deposit Guarantor Institution regarding the determination of the Bank's status as:²²
 - a. banks under intensive supervision and extension of the Bank's status as a bank under intensive supervision; and/or
 - b. banks under special supervision.
- (2) Further provisions regarding technical and procedures for the exchange of data and/or information are stipulated in the memorandum of understanding between LPS and OJK .

²² Pasal 4 Peraturan Lembaga Penjamin Simpanan Nomor 3 Tahun 2020 Tentang Peraturan Pelaksana Peraturan Pemerintah Nomor 33 Tahun 2020 Tentang Pelaksanaan Kewenangan Lembaga Penjamin Simpanan Dalam Rangka Melaksanakan Langkah-Langkah Penangan Permasalahan Sabilitas Sistem Keuangan.

Article 5

1) In preparation for Bank Handling, LPS receives the determination of the Bank's status as a bank under intensive supervision and the extension of the Bank's status as a bank under intensive supervision from OJK, accompanied by data and/or supporting information after the determination of the Bank's status.

(2) Joint Examination in preparation for Bank Handling shall be conducted in the period the Bank is designated as a bank under intensive supervision by the OJK.²³

Based on the above explanation, LPS and OJK have a close relationship in dealing with systemic banks and failed banks that have a systemic impact and no systemic impact during the Covid- 19. pandemic . explain the coordination between OJK and LPS. OJK seems to be able to work on its own without involving other institutions to start collecting data on health level measures to be given written warnings in mergers, mergers, and acquisitions of banks that do not have stable health.

In article 3 paragraph 2 Banks that can be given a written order are BUK (Conventional General Bank), BUS (Syari'ah General Bank), BPR (People's Institutional Bank), and BPRS (Syari'ah People's Credit Bank) which has the highest level of health low Composite Rating. ²⁴Banks that

²³ Pasal 5 Peraturan Lembaga Penjamin Simpanan Nomor 3 Tahun 2020 Tentang Peraturan Pelaksana Peraturan Pemerintah Nomor 33 Tahun 2020 Tentang Pelaksanaan Kewenangan Lembaga Penjamin Simpanan Dalam Rangka Melaksanakan Langkah-Langkah Penangan Permasalahan Sabilitas Sistem Keuangan.

²⁴ Pasal 3 Ayat 2 Peraturan Otoritas Jasa Keuangan Nomor 18 Tahun 2020 tentang Perintah Tertulis Untuk Penangan Permasalahan Perbankan.

have a health level of Composite Rating of 3.4, and 5 are Failed Banks. Based on this, the existence of POJK Number 18 of 2020 on the Written Order for Bank Handling Problems has the potential to create vague norms .

The ambiguity of the norm is a situation where the norm already does not have a clear meaning or the norm has an interpretation that is too varied so that the norm is vague and difficult to interpret.

To create legal certainty, legislation must meet two clear elements to avoid confusion in meaning as stated by Prof. Tjip, there are 4 elements in legislation to achieve legal certainty, namely:

- a. Written,
- b. Based on current facts,
- c. Formulated in a clear way and does not create a gap of confusion in its meaning .
- d. Consistent/ not often changed.

B. Research Methods

The use of research methods in pre, process, and research results is an inseparable unit. This strongly illustrates the quality of research. Therefore this research method consists of:

1. Type of Research

In this research , the author uses a type of normative legal research that only examines library materials or secondary data in the form of primary legal materials, secondary legal materials, and tertiary legal

materials. Some of the legal norms studied in this study are POJK Number 18 of 2020, PLPS Number 3 Of 2020, and UU 24 Number of 2004.

2. Research Approach

In Peter Mahmud Marzuki's book, normative law consists of five approaches. The first is the *statue approach*, the second is the *case approach*, the third is the *historical approach*, the fourth is the *comparative approach*, and the fifth is the *conceptual approach*. In this case, the author uses a legal approach (*statue approach*) because the object of the study is part of the legislation.²⁵

In this study, the author uses 2 approaches:

A. Legal Approach (*statue appraoch*)

The Legal Approach is an approach by examining the various kinds of Laws related to the object under study. The laws used by the author in this study include:

1. UU Number 24 of 2004,
2. PLPS Number 3 of 2020,
3. POJK Number 18 of 2020.

B. Comparative approach

In this study, the authors compared the validity of LPS in the 3 regulations above. This comparison aims to measure the change of authority of LPS after the existence of POJK Number 18/ POJK.03/ 2020, PLPS Number 3 of 2020, and UU Number 24 of 2004 .

In this study, there are three types of legal materials used, namely:

²⁵ Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Kencana: 207), 93.

A. Primary Legal Materials

This legal material consists of binding legislation such as POJK Number 18/ POJK.03/ 2020, PLPS Number 3 of 2020, and UU Number 24 of 2004 .

B. Secondary Legal Material

Secondary legal material is legal material that explains the primary legal material. In this case, the author uses the work of legal circles in the form of scientific articles, journals, etc. related to the concept of the establishment of legislation, LPS, banking, and research methods.

4. Legal Material Collection Techniques

In this research, the author uses library research data collection techniques (library research). A literature review is an analysis of written information from several published legal sources. ²⁶In this study, the author conducted a study on primary and secondary legal materials to obtain the purpose of research that is legal certainty.

5. Legal Material Analysis Techniques

In analyzing legal materials, the author uses two methods, namely as follows:

A. Grammatical Method

The grammatical method is the simplest way of interpretation or explanation to know the provisions of the law by describing it according to the language, word order or sound.²⁷ In this study, the author describes

²⁶ Abdulkadir Muhammad, *Hukum dan Penelitian Hukum*, (Bandung: Citra Aditya Bakti, 2004), 82.

²⁷ Sudikno Metokusumo, *Penemuan Hukum Sebuah Pengantar*, (Yogyakarta, Liberty 1996), 36.

each word in POJK Number 18/ POJK.03/ 2020, PLPS Number 3 of 2020, and UU Number 24 of 2004 .

B. Comparative Method

The comparative method is a method of comparing all the primary law materials that are examined. The author compares the authority of LPS in POJK Number 18 of 2020 with Law Number 24 of 2004, and PLPS Number 3 of 2020.

C. Systematics of Writing

Systematics Discussions are intended to make research proposals more systematic and focus on one problem under study. The author presents an overview discussion system as follows:

Chapter I contains an introduction which includes the background of why the author conducted the research, the formulation of the problem describes what problems are being studied, the purpose of why this research is carried out and what is the urgency, and previous research that explains information related to this research with research on what LPS similarities and differences

Chapter II is a theoretical study that provides a general explanation regarding the authority of the IDIC in the 3 regulations that the authors researched, the research method explains what type of research is being studied, how to approach the research, what legal materials are used, how to process legal materials, and how to analyze materials. law, and systematic writing in the form of writing sequences starting from Chapter I Introduction to Chapter IV Closing.

Chapter III contains results and discussions that comprehensively explain how the LPS's authority in dealing with failed banks during the

Covid-19 pandemic and how the POJK No. 18 of 2020 affects the LPS's authority in dealing with failed banks.

Chapter IV contains conclusions from the results of the discussion and the author's suggestions given sincerely and honestly in this research.

In the last section there is a bibliography containing the sources used in the research and the author's CV if the reader requires it.

CHAPTER III

Results and Discussion

A. Authority of LPS in Overcoming Banks Failing During the Covid-19 Pandemic

Before the Indonesian banking crisis hit, several other countries also experienced it. According to *Financial Risk Management in Banking* records, throughout the 1980s there was a tendency to increase the number of banks that failed to manage throughout the world for various reasons. The number of failed banks continues to grow. Initially there were only 10 banks, then 42 banks, 48 banks, 79 banks in 1984, 120 in 1985 banks, 138 banks in 1986, 184 banks in 1987, 200 banks in 1988, and finally 206 banks in 1989. In the *Bank for International Settlement paper* (BIS) entitled banking, there are a number of methods applied in a number of countries. However, there is one common thread in various countries in dealing with financial crises, namely the emergence of the impetus for the formation of formal schemes for protecting depositors, namely guarantee institutions that can fulfill bank obligations to all *stakeholders* if the bank is liquidated in order to maintain public trust.²⁸

²⁸ Chessa Sthefanny. "Kewenangan Lembaga Penjamin Simpanan Dalam Menyelesaikan Permasalahan Solvabilitas Bank Di Luar Bank Sistemik Di Tinjau Dari Undang-Undang No. 9

Several countries that implement the guarantee program policy include China, India, Hong Kong, South Korea, Thailand, Argentina, Brazil, Chile, Mexico, Russia, European Union, Japan, and the US. In India, the guarantee program has been carried out by the Deposit Insurance and Credit Guarantee Corporation since 1962 with a maximum guarantee value of 100,000 rupees/person. Hong Kong since 1995 has limited the maximum guarantee limit to HK\$100,000. South Korea has implemented a guarantee program since 1996 with a maximum limit of 20 million won. Argentina has implemented *the New Deposit Insurance Fund for Financial Institutions* (known as SEDESA) since 1995 with a maximum limit of US\$30,000. Mexico is also implementing the same program (known as FOBAPROA), with a maximum limit.²⁹

On September 22, 2004, the Government ratified the Law of the Republic of Indonesia Number 24 of 2004 concerning the Deposit Insurance Corporation. Based on the law, the Deposit Insurance Corporation (LPS) is an independent institution that functions to guarantee depositors' deposits and actively participates in maintaining the stability of the banking system in accordance with its authority. This law is effective as of September 22, 2005, and since that date the Deposit Insurance Corporation has officially operated. *The authority of the*

Tahun 2016 Tentang Pencegahan Dan Penangan Krisis Sistem Keuangan”. (Skripsi Universitas Sumatera Utara, 2018). <http://repositori.usu.ac.id/handle/123456789/4556>.

²⁹ Chessa Sthefanny. “Kewenangan Lembaga Penjamin Simpanan Dalam Menyelesaikan Permasalahan Solvabilitas Bank Di Luar Bank Sistemik Di Tinjau Dari Undang-Undang No. 9 Tahun 2016 Tentang Pencegahan Dan Penangan Krisis Sistem Keuangan”. (Skripsi Universitas Sumatera Utara, 2018). <http://repositori.usu.ac.id/handle/123456789/4556>.

Deposit Insurance Corporation in dealing with failed banks and systemic banks is enshrined in several existing laws and regulations.

Among them are Law Number 24 of 2004 concerning the Deposit Insurance Corporation, Law Number 12 of 2001 concerning the Financial Services Authority, and Regulation of the Deposit Insurance Corporation Number 3 of 2020 concerning Regulations for Implementing Government Regulations Number 33 of 2020 concerning the Implementation of the Authority of the Deposit Insurance Corporation. In order to carry out the steps for dealing with the problems of financial system stability.

The LPS Law consists of 16 chapters and 103 articles which contain:

1. Chapter I regarding general provisions.
2. Chapter II on formation, status, and place of position. In this chapter there are 2 articles that govern it.
3. Chapter III concerning functions, duties, and authorities. In this chapter there are 4 articles that regulate it.
4. Chapter IV concerning guarantee of bank customer deposits. In this chapter there are 13 articles that regulate it.
5. Chapter V regarding the settlement and handling of failed banks. In this chapter there are 22 articles that regulate it.
6. Chapter VI on liquidation. In this chapter there are 19 articles that regulate it.
7. Chapter VII on organization. In this chapter there are 19 articles that regulate it.

8. Chapter VIII concerning wealth, financing, and management. In this chapter there are 5 articles that regulate it.

9. Chapter IX on the annual work plan and budget. In this chapter there is 1 article that regulates it.

10. Chapter X on reporting and accountability. In this chapter there are 3 articles that regulate it.

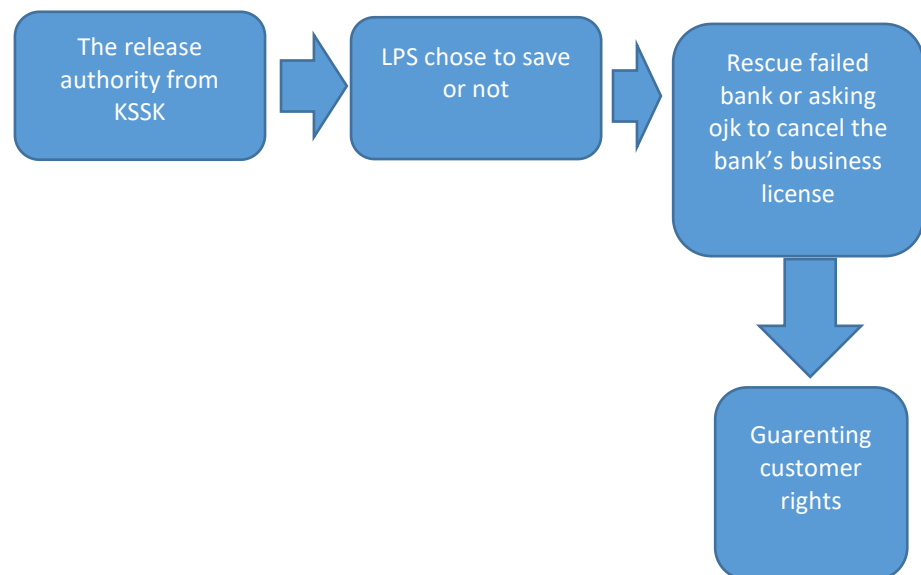
The LPS 's authority in overcoming problems with systemic banks and failed banks is described in a comprehensive manner, especially in chapters 3 and 5 of the law. The explanation regarding the LPS's authority in dealing with failed banks is divided into two, namely failed banks that have a systemic impact and those that do not have a systemic impact. The LPS has several powers in dealing with failed banks, including the following:

1. Take over and exercise all shareholder powers including the GMS,
2. Control and manage the bank's assets,
3. Evaluate, continue, even cancel existing contracts,
4. Sell and transfer existing assets without the approval of creditors and debtors.

1. Failed Bank Handling No Systemic Impact

The flow of failed bank rescue that does not have a systemic impact is as follows:³⁰

Chart 2.1 : Failed Bank Rescue Flow With No Systemic Impact.



After receiving an order from KSSK, LPS is authorized to choose to save or not to save the failed bank. The characteristics of failed banks that are rescued are as follows:

- a. Banks still have the potential to show good business prospects,

³⁰ Pasal 24 Ayat 1 Undang-Undang Nomor 24 Tahun 2004 tentang Lembaga Penjamin Simpanan.

- b. Obtaining approval from the GMS in the form of a commitment to full trust in the LPS and not prosecuting the LPS if the rescue process is not successful.

After choosing with a high commitment to save the bank, LPS can do several things as follows:³¹

- a. Master all assets,
- b. Make a temporary capital investment,
- c. Sell and transfer assets.
- d. Transferring management to another bank.
- e. do a merger,
- f. Review, cancel, amend, and terminate ongoing contracts.

Of course, this is different from the handling of failed banks that do not have a systemic impact that is not saved. At this bank, IDIC only needs to take two actions, namely:

- a. Revocation of business license, and
- b. Carry out payment of claims for customer guarantees for bank depositors whose business is revoked.

2. Handling of Failed Banks with Systemic Impact

In contrast to failed bank handlers, which do not have a systemic impact, LPS has two options to save or not save the bank concerned with careful consideration. In the case of a failed bank rescue with a

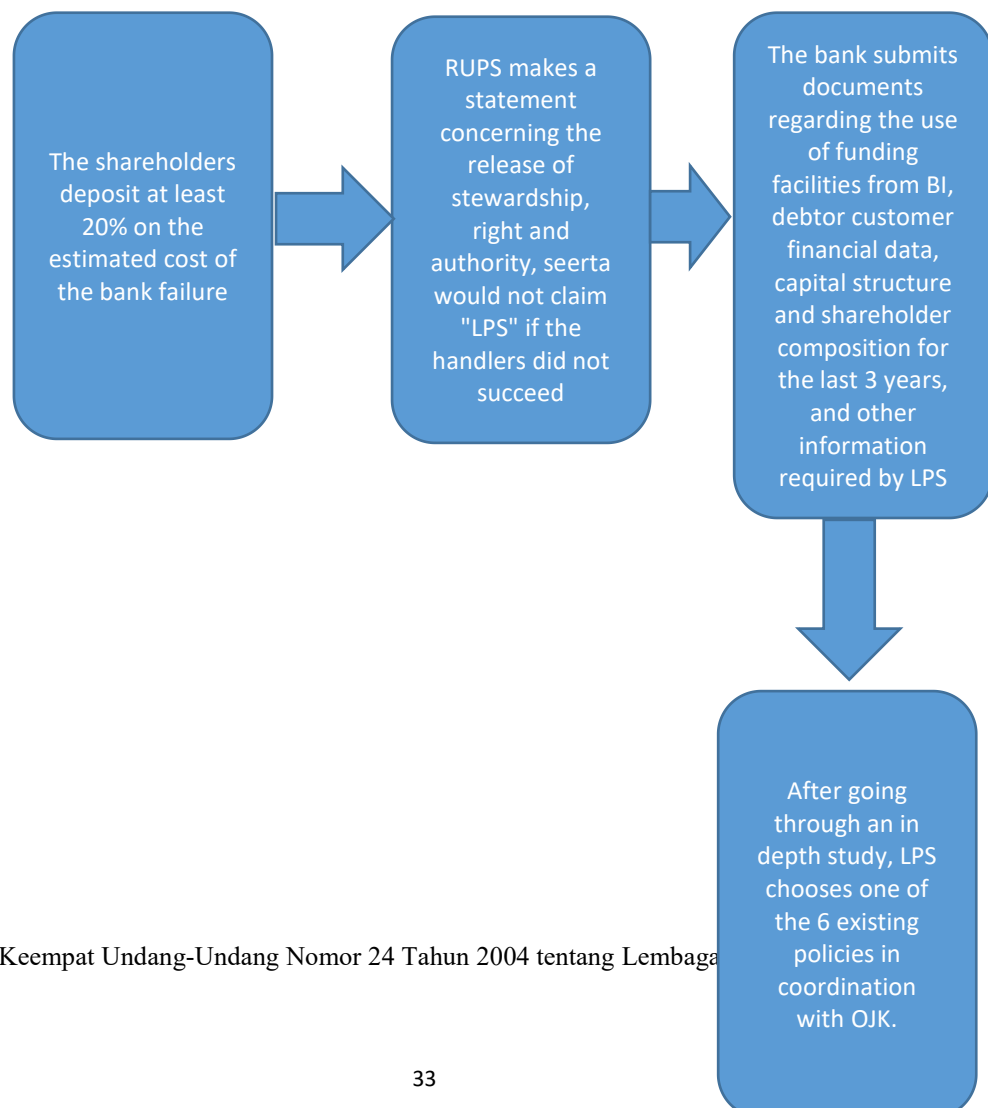
³¹ Pasal 26 Undang-Undang Nomor 24 Tahun 2004 tentang Lembaga Penjamin Simpanan.

systemic impact, LPS cannot choose to save or not to save. LPS must save the bank concerned in two ways, namely:

a. Deposit Capital By Shareholder

The stages in this method include the following:³²

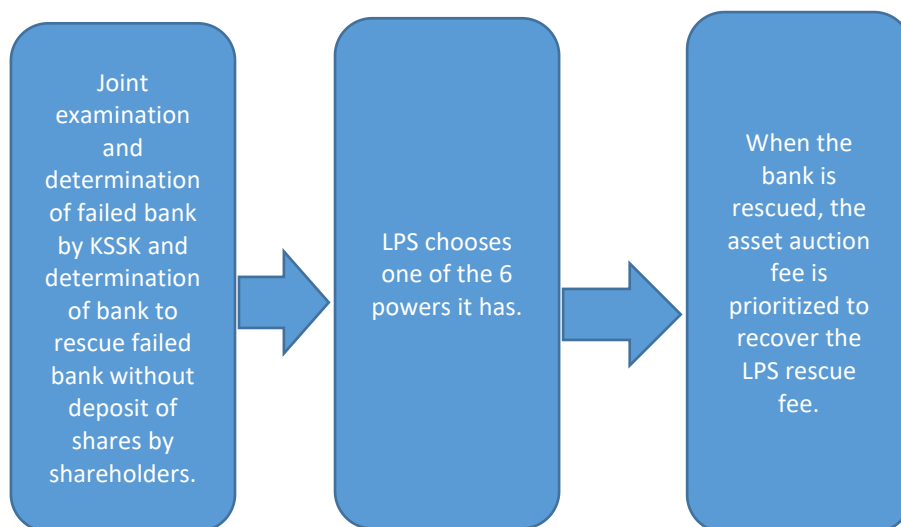
Chart 2.2 The flow of bank rescue failed to have a systemic impact with the deposit of capital by shareholders.



³² Bagian Keempat Undang-Undang Nomor 24 Tahun 2004 tentang Lembaga

b. No Capital Deposit By Shareholders³³

Chart 2.2 The flow of bank rescue failed to have a systemic impact without capital contributions by shareholders .



The difference is when the failed tub saved by LPS is successful. Then some of the shares are returned for bank rescue costs to LPS 100% if using the 20% shareholder deposit method. Therefore, the

³³ Bagian Kelima Undang-Undang Nomor 24 Tahun 2004 tentang Lembaga Penjamin Simpanan.

rescue costs that are returned to the LPS are 80% or less than 80% according to the capital deposit by the shareholders. The LPS then chooses one of the following policies:

1. Control all assets,
2. Conducting temporary equity participation,
3. Sell or transfer assets,
4. Transferring management to another bank,
5. Conduct a merger, and
6. Review, cancel, amend, and terminate ongoing contracts.

According to several failed bank handling policies that had a systemic impact, the handling of Century Bank which later changed to Bank Mutiara was a handling policy that received a lot of public attention. Based on KSSK Decree Number 04/KSSK.03/2008. Century Bank is designated as a failed bank with a systemic impact. After receiving a letter from KSSK to control the assets and conduct an inspection, LPS decided to divest Century Bank shares to J Trust Ltd, which is a financial institution based in Tokyo, Japan. In other words, LPS used policy number two in dealing with Century Bank when it became a failed bank with a systemic impact. In addition, this policy is the most frequently used policy by LPS in dealing with failed banks that have a systemic impact compared to other policies. Moreover, if the bank that will be saved does not have good prospects in the future.

Starting from 2008 until now even during the Covid-19 pandemic, there has not been a bank that failed as badly as Century Bank. During the Covid-19 pandemic, LPS noted that there were 6 to 7 that entered the category of failed banks, but they could still be handled directly and returned to normal conditions and had no impact on other banks due to good coordination between KSSK members covering BI, OJK MOF, and LPS.

Since the birth of Law Number 9 of 2016 concerning Crisis Prevention and Management, the LPS authority system has been increasing. The added authority in question is in dealing with Systemic Banks, namely the bank that has the lowest level of soundness of a composite rating of 3 or this bank can also be called the one that has a condition between a healthy bank and an unhealthy bank.

As a member of the KSSK, LPS has the authority to safeguard and prevent financial crises. KSSK is a committee that has a function in preventing and handling the Indonesian economic Financial System Crisis.

KSSK membership consists of:

1. The Minister of Finance as member and coordinator,
2. The Governor of Bank Indonesia as a member,
3. Chairman of the OJK Board of Commissioners as a member,
- and
4. Chairman of the LPS Board of Commissioners as a member.

KSSK has the authority, namely:³⁴

1. To make decisions regarding the governance of the Financial System Stability Committee and the secretariat of the Financial System Stability Committee,
2. Establish a task force or working group to assist the implementation of the tasks of the Financial System Stability Committee,
3. Establish criteria and indicators for assessing the condition of Financial System Stability,
4. Assessing the condition of Financial System Stability based on input from each member of the Financial System Stability Committee, along with supporting data and information,
5. Establish coordination steps to prevent Financial System Crisis by taking into account the recommendations of each member of the Financial System Stability Committee,
6. Recommend to the President to decide on changing the status of Financial System Stability, from normal conditions to Financial System Crisis conditions or from Financial System Crisis conditions to normal conditions,
7. Recommend to the President to decide on steps to handle the Financial System Crisis,
8. Submit the handling of solvency problems of Systemic Banks to the Deposit Insurance Corporation,

³⁴ Pasal 6 Undang-Undang Nomor 9 Tahun 2016 tentang Pencegahan dan Penangan Krisis Sistem Keuangan.

9. Determine steps that must be taken by members of the Financial System Stability Committee to support the implementation of the handling of Systemic Bank problems by the Deposit Insurance Corporation,
10. To determine the purchase decision by Bank Indonesia of Government Securities owned by the Deposit Insurance Corporation for Bank handling, and
11. Recommend to the President to decide on the implementation and termination of the Banking Restructuring Program.

Under normal financial system conditions, KSSK only carries out several activities, including the following:

1. Evaluation of the financial system,
2. Conduct meetings at least once a week,
3. Make recommendations to members to take action in order to maintain financial stability,
4. To exchange information.

It is different if under abnormal conditions, the KSSK can hold an emergency meeting to prevent a financial system crisis as stipulated in Article 45 paragraph 3 of Law Number 21 of 2011. The agreements produced by the KSSK can immediately be made into policy through the approval of the DPR.

Therefore, in dealing with financial crisis problems starting from systemic banks to failed banks, the coordinating function of KSSK

members must be prioritized. Both LPS, OJK, and Bank Indonesia have almost the same authority in dealing with these problems. The coordinating function is a shared responsibility as well as the main key in creating policies that can save Indonesia from the financial crisis. This can prevent every institution/institution from being able to hinder the process of handling and resolving bank problems, whether systemic or failed banks.

This can be based on the position of LPS, OJK, and BI which are equal in the KSSK, namely as members who have voting rights. The legal position indicates that one institution should not injure the authority of one institution to another. The Minister of Finance as the coordinator as well as the member who has no KSSK vote is tasked with ensuring that each KSSK member works in accordance with their respective tupoksi which prioritizes the coordinating function in handling bank problems, especially failed banks.

B. The Influence of POJK Number 18 of 2020 on the Authority of LPS in Overcoming Failed Banks During the Covid-19 Pandemic

In addition to having an impact on the health sector, the Covid-19 pandemic has also had an impact on the economy. Based on data quoted from the International Monetary Fund (*IMF*) that Indonesia's economic growth is projected to be at minus 1.5%.³⁵ Of course, this also has an

³⁵ Hadijah Alaydrus, IMF:Pangkas Proyeksi Ekonomi Indonesia Jadi Minus 1,5 Persen di 2020,Breaking News 14 Oktober 2020, diakses 12 Oktober 2021,

impact on the banking sector. To overcome these problems, OJK(Otoritas Jasa Keuangan) issued POJK No.18/POJK.03/2020 concerning Written Orders for Handling Bank Problems.

POJK Number 18 of 2020 concerning Written Orders for Handling Bank Problems is a derivative regulation (*delegated legislation*) of Government Regulation in Lieu of Law Number 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling the Covid-19 Pandemic and/or in Facing Threats that endanger the National Economy and/or Financial System Stability. The existence of this POJK is intended to implement Article 23 paragraph (2) which states that OJK has special authority to issue written orders to banks and other financial service institutions to maintain financial stability during the Covid-19 pandemic and prevent financial system crises.

The written order is in the form of the authority of OJK to order banks and other financial service institutions to carry out mergers, consolidations, and takeovers in order to maintain financial stability and prevent financial crises. The banks referred to in the provisions of Article 3 paragraph 2 of the POJK are BUK (Conventional Commercial Banks) and BUS (Shari'ah Commercial Banks) which have the lowest composite rating of 3.

Table 1. 2 : Bank Soundness Level

Category ³⁶	Explanation
Composite Rating 1	Very Healthy
Composite Rating 2	Overall Healthy

<https://ekonomi.bisnis.com/read/20201014/9/1304743/imf-pangkas-proyeksi-ekonomi-indonesia-jadi-minus-15-persen-di-2020-ini-alasannya>

³⁶ Pasal 9 Ayat 2 Peraturan Bank Indonesia Nomor13 Tahun 2011 tentang Penilaian Tingkat Kesehatan Bank.

Composite Rating 3	Between Healthy and Unhealthy
Composite Rating 4	Unhealthy
Composite Rating 5	Very Unhealthy

The assessment of the soundness of a bank's Composite Rating 1 to Composite Rating 5 is based on several components, including the following:³⁷

1. Risk profile (*risk profile*),
2. Good Corporate Governance,
3. Profitability (*earnings*), and
4. Capital.

Examinations conducted on the bank's soundness level are carried out every semester every year. Starting from the first semester in June and the second semester at the end of December and at any time when needed.

Contextually, the BUK and BUS referred to in this POJK have not been concretely explained whether BUK and BUS have a composite rating of three with good governance factors and are very far from being categorized as failed banks or banks that have a composite rating of 3 with management factors bad and very likely to become a failed bank.

The criteria for failed banks are as follows:³⁸

- a. The Minimum Capital Adequacy Ratio (KPMM) is equal to or greater than 8% (eight percent) but less than the CAR ratio according to the Bank's risk profile that must be met by the Bank .
- b. The core capital ratio (tier 1) is less than a certain percentage set by OJK ,

³⁷ POJK Nomor4 Tahun 2016 tentang Penilaian Tingkat Kesehatan Bank Umum

³⁸ BPK, "Penangan Bank Gagal Berdampak Sistemik", (BPK, 2017): 4, <https://jdih.bpk.go.id/wp-content/uploads/2017/07/Penanganan-Bank-Gagal-Berdampak-Sistemik>.

- c. The ratio of Statutory Reserves (GWM) in rupiah is equal to or greater than the ratio stipulated for Statutory Reserves in rupiah that must be met by Banks, but based on OJK's assessment the Bank has fundamental liquidity problems ,
- d. The ratio of non-performing loans (Non Performing Loans/NPL net) or the ratio of non - performing loans (Non-Performing Financing/NPF net) is more than 5% (five percent) of total loans or total financing ,
- e. Bank soundness level with a composite rating of 4 (four) or a composite rating of 5 (five) and/or ,
- f. Bank soundness level with a composite rating of 3 (three) and governance with a governance factor rating .

Some of the requirements above have alternative properties, which means that if any of the above conditions are met, the bank can be categorized as a bank under intensive supervision by the OJK. Failing bank is a bank that is experiencing financial difficulties and endangers its business continuity and is declared no longer able to be rehabilitated by the LPP in accordance with its authority .

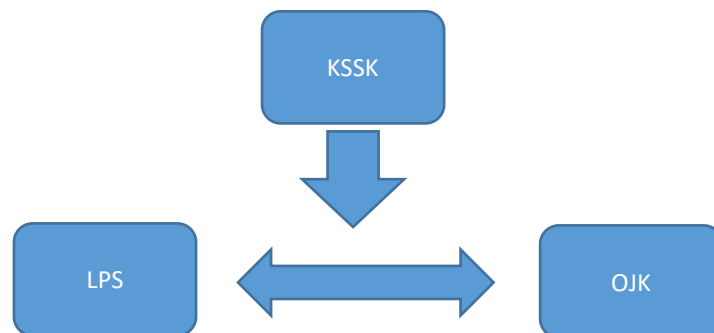
Ideally, the resolution of these problems is not only through consolidation, acquisition, and merger because this is the authority of the IDIC as stipulated in article 26 letter a of the IDIC Law which includes:

1. Master all assets,
2. Conducting temporary equity participation,
3. Sell and transfer assets.
4. Transferring management to another bank.
5. Conducting mergers,

6. Review, cancel, amend and terminate ongoing contracts

Moreover, the existence of this POJK aims to strengthen the function of the KSSK (Financial System Stability Committee) which consists of the Ministry of Finance, Bank Indonesia, OJK, and LPS as stated in article 23 paragraph 1 of POJK Number 18 of 2020. In addition, the POJK it is not explained in a concrete way regarding the specific problems of Banks that have a composite rating of soundness 3. Whether the problem in question is a solvency problem or a liquidity problem. If the problem in question is related to solvency, the LPS should have the authority to handle the problem after receiving an order from KSSK in coordination with OJK in carrying out joint examinations.

Chart 2.3 : Coordination Flow of KSSK, LPS, and OJK



Some of the actions that both of them can take include the following:³⁹

1. Requesting the bank management to maintain the bank's financial condition so that there is no material decline in assets and/or an increase in liabilities of the Systemic Bank,
2. Request the bank management to support the implementation of the transfer of assets and liabilities of the Systemic Bank, and/or

³⁹ BPK, “Penangan Bank Gagal Berdampak Sistemik”, (BPK, 2017): 4, <https://jdih.bpk.go.id/wp-content/uploads/2017/07/Penanganan-Bank-Gagal-Berdampak-Sistemik>.

3. Facilitate LPS in marketing the assets and/or liabilities of the Systemic Bank and facilitate prospective beneficiary banks to conduct due diligence in the event that the assets and/or liabilities of the Systemic Bank will be transferred.

If this is still not resolved. Thus, the bank's full handler is given to LPS after being appointed at the KSSK meeting with the status of the bank changing from a systemic bank to a failed bank. Some of the powers that the LPS can exercise include the following:

1. Take over all matters and authorities of the GMS which includes ownership, management, and other interests.
2. The bank administrator cannot sue the LPS if the tasks performed are in accordance with the prevailing laws and regulations.

After the LPS has taken over all the rights and authorities of the Systemic Bank, the LPS may take the following actions:

- a. control, manage, and take ownership actions on assets belonging to or which are the bank's rights and/or bank obligations;
- b. make temporary capital participation;
- c. sell or transfer bank assets without the approval of the debtor customer and/or the bank's obligations without the approval of the creditor customer.
- d. Transferring bank management to other parties;
- e. Merging or consolidating with other banks;
- f. Transferring bank ownership; and

g. Reviewing, canceling, terminating, and/or changing the bank contract that binds the bank to a third party, which according to LPS is detrimental to the bank.

The handling of solvency problems of Systemic Banks by LPS is carried out by:⁴⁰

1. Transfer part or all of the assets and/or liabilities of the Systemic Bank to the beneficiary Bank,
2. Transfer part or all of the assets and/or liabilities of the Systemic Bank to the Intermediary Bank, or
3. Handling the Bank in accordance with the Law on IDIC .

In contrast, if the problem referred to in the POJK is a liquidity problem, the solution is quite simple, namely the bank concerned submits a loan application to BI in order to obtain a liquidity loan so that the bank's liquidity can be maintained. However, if the bank is still not rescued and must be liquidated, the sale assets of the liquidated bank will be contributed to salaries, operational costs, and costs incurred by the IDIC.

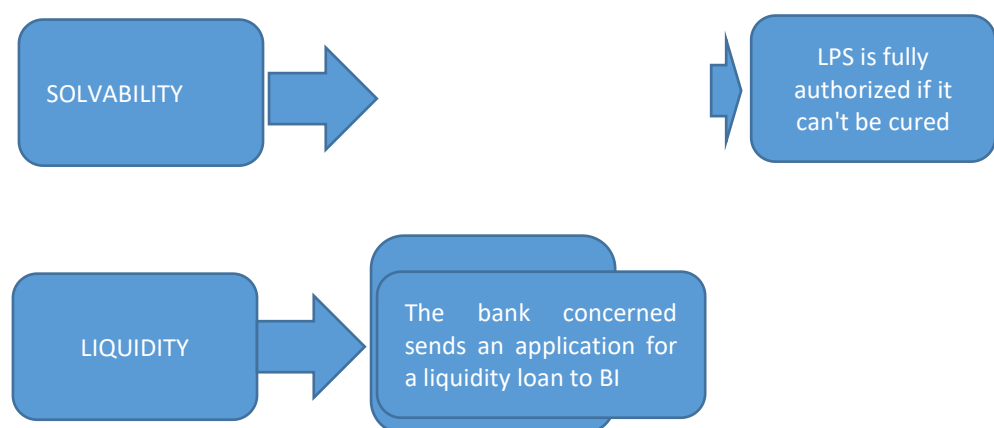
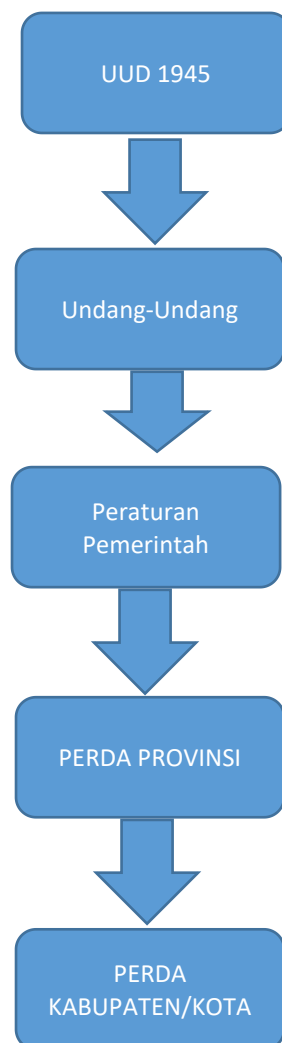


Chart 2.4 : Types of bank problems

⁴⁰ BPK, “Penangan Bank Gagal Berdampak Sistemik”, (BPK, 2017): 4, <https://jdih.bpk.go.id/wp-content/uploads/2017/07/Penanganan-Bank-Gagal-Berdampak-Sistemik>.

The explanation in POJK Number 18 of 2020 is different from the explanation in PLPS Number 3 of 2020, Law Number 24 of 2004, or even Perpu Number 1 of 2020 which is the *causal* of this POJK. Moreover, POJK is the last derivative regulation in Indonesian laws and regulations.

Chart 2. 6 : Hierarchy of Indonesian Legislation.



POJK Number 18 of 2020 which is a direct and final derivative of PERPU Number 1 of 2020. This means that it is not possible to provide further explanation in the POJK. Thus, the authors conclude that the POJK has significant regulatory differences with PLPS Number 3 of 2020 and Law Number 24 of 2004 which regulates the authority of LPS in dealing with failed banks. Here are some points of difference in POJK Number 18 of 2020, PLPS Number 3 of 2020, Law Number 24 of 2004, and the OJK Law.

No.	Article	Sounds
1.	41 verse 1	OJK informs the LPS about troubled banks that are in the process of restructuring by the OJK as referred to in the laws and regulations.
2.	42	The Deposit Insurance Corporation can carry out inspections of banks related to their functions, duties and authorities, and coordinate with OJK in advance.
3.	43	OJK, Bank Indonesia, and the Deposit Insurance Corporation are required to build and maintain an integrated information exchange facility.
4.	44 ayat 1	FSSK/KSSK membership consisting of: a. The Minister of Finance as member concurrently coordinator , b. Governor of Bank Indonesia as a member , c. Chairman of the Board of Commissioners of the

		OJK as a member , and d. Chairman of the Board of Commissioners of the Deposit Insurance Corporation as a member.
5.	45 ayat 1,2,3, dan 4	In essence, the four institutions must always coordinate in dealing with bank problems to maintain banking financial stability.

Table 1.3 : Article 41-45 of the OJK Law

PLPS Number 3 of 2020 concerning Implementing Regulations of Government Regulation Number 33 of 2020 concerning Implementation of the Authority of the Deposit Insurance Corporation in the Framework of Implementing Steps for Handling Financial System Stability Problems also explains the coordination between LPS and OJK in handling failed banks.

No	Article	Sounds
1	47	The LPS method in dealing with failed banks and the analysis used takes into account: 1. Economic Conditions, 2. Complexity of Bank Problems, 3. Investor Availability, 4. Effectiveness of Handling Bank Problems.
2	48	LPS coordination in obtaining data and

		joint inspection with OJK.
3	49	Explanation of the LPS authority in line with article 26 of the LPS Law.
4	50	Transfer of assets to the beneficiary bank.
5	51	Transfer of assets to the beneficiary bank
6	52	Explanation of the LPS authority in line with article 26 of the LPS Law.
7	53	<p>Handling of failed banks through bank liquidation by:</p> <p>a. request OJK to revoke the business license of Banks Other than Systemic Banks,</p> <p>b. make payment of guarantee claims to depositors from banks other than systemic banks whose business licenses have been revoked, and</p> <p>c. carry out the liquidation process for Banks Other than Systemic Banks whose business licenses have been revoked in accordance with the provisions of laws and regulations relating to the implementation of bank liquidation.</p>
8	54	Alignment with other laws and regulations.
9	55	LPS can terminate the handling through a

		KSSK decision if the financial condition changes to normal conditions.
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Table 1. 4 Articles in PLPS Number 3 of 2020 which explain the authority of IDIC in dealing with failed banks.

Based on several things above, the provisions in article 3 paragraph 2 letter a of POJK Number 18 of 2020 concerning Written Orders for Handling Bank Problems have significant differences with articles 47-55 of PLPS Number 3 of 2020 concerning Regulations for Implementing Government Regulations Number 33 of 2020 concerning Implementation The Authority of the Deposit Insurance Corporation in the Context of Implementing Measures for Handling Financial System Stability Problems , article 24 paragraph 1, article 26, all articles in the fourth and fifth sections of Law Number 24 of 2004 concerning Deposit Insurance Corporation, and articles 41-45 of Law Number 21 of 2011 concerning the Financial Services Authority has significant differences where in some of these regulations concretely and comprehensively mentions the coordinating function between LPS and OJK in dealing with failed banks which is not stated in POJK No. 18 of 2020.

The coordination system between LPS and OJK is very much needed in overcoming the problem of failed banks. The coordination function referred to by the separation of powers is as follows:

No.	Institution	Special Function
1.	LPS	Guarantee of customer deposits, handling of systemic and failed bank problems, and bank

		health checks, and restructuring of intermediary banks.
2	OJK	Bank regulation and supervision.
3	BI	Revocation of permits, monetary functions, payment systems, and <i>lenders of the last resort</i> .
4	Minister of Finance	The function of the fiscal authority.

Table 1.5 Coordination System for Handling Bank Problems

As a supervisory agency that has a supervisory function, OJK is an institution that is the center of coordination for every other institution in carrying out their duties. Like the LPS, which has the authority to formulate, stipulate, and implement policies for systemic banks and failed banks, they must coordinate with OJK and vice versa for OJK with several other institutions.

The paradigm built in the provisions of article 3 paragraph 2 of POJK Number 18 of 2020 concerning Written Orders for Handling Bank Problems seems to position OJK as a single institution who has the authority to deal with bank problems. Although in the POJK it is limited that the banks in question are BUK and BUS which have the lowest composite rating of 3, but in the POJK it is not explained whether banks have a composite rating of 3 with good governance factors so that or with poor governance factors. has the potential to become a failed bank. In addition, these provisions are not in

line with the existing coordination system in the KSSK. Bearing in mind that in the KSSK, the OJK, represented by the Chairman of the OJK Board of Commissioners, only functions as an equal member to the governor of Bank Indonesia and the Chairman of the Board of Commissioners of the Deposit Insurance Corporation.

Based on this, the provisions in Article 3 Paragraph 1 of POJK Number 3 of 2020 create a vacuum *norm*. Norm ambiguity is a situation where the norm already exists but does not have a clear meaning or the norm has interpretations that are too varied so that the norm is vague and difficult to interpret .

To create legal certainty and avoid obscurity of norms , the making of laws and regulations must meet clear elements to avoid mistakes in meaning as stated by Prof. Tjip, there are 4 elements in making laws and regulations to achieve legal certainty, namely:

- A. written,
- B. Based on current facts,
- C. It is formulated in a clear way and does not create gaps in its meaning .
- D. Consistent / not often changed.

The regulation regarding the handling of failed banks, especially in Article 3 Paragraph 1 of POJK Number 3 of 2020 injures the two elements above, which are formulated in an unclear way so as to create gaps in their eating, especially regarding further explanations for BUK and BUS which have a composite rating of 3 health which has good governance. that have good governance or those who have bad governance have the potential to become failed banks.

The OJK should carry out an Executive *Review / Revision of POJK* Number 18 of 2020 by changing the provisions of Article 3 paragraph 2 letter a from a bank that has a composite sound rating of 3 to a bank that has a composite health rating of 2 or clarifies that a bank that has a health rating of a composite rating of 2 composite 3 is a bank with good governance factors. This aims to separate the authority of OJK and LPS or OJK can clarify the provisions of banks having a composite health rating of 3 are non-banks under special supervision and joint examination by LPS in coordination with OJK.

CHAPTER IV

CLOSING

A. Conclusion

From some of the author's analysis of POJK Number 18 of 2020 on Written Order for Handling Bank Problems , Law Number 24 of 2004 on Deposit Guarantor Institutions, Law Number 12 of 2001 on Financial Services Authority, and Deposit Guarantor Institution Regulation Number 3 of 2020 on the Implementation Regulation of Government Regulation Number 33 of 2020 on the Implementation of the Authority of the Deposit Guarantor Institution in Order to Implement Measures to Handle Financial System Stability Problems and from several other papers. Conclusions in this study include the following:

1. The Deposit Guarantor Institution is an independent institution that has special authority in dealing with failed bank problems. The authority has expanded with the issuance of Law Number 9 of 2016

on Prevention and Crisis Management of the Financial System. Lembaga Penjamis Simpanan also has the authority to deal with systemic banking problems. In overcoming these problems, LPS must prioritize the coordination system with other KSSK members such as the Ministry of Finance, OJK, and BI. LPS can save a failed bank after obtaining a written order from KSSK. Failed banks that are saved by LPS are divided into two, namely failed banks that do not have a systemic impact and failed banks that have a systemic impact. When rescuing a Failed Bank does not have a systemic impact, LPS first observes whether the bank has good prospects in the future. If it has good prospects then LPS can do one of the 7 policies that can be done with the approval of the GMS as described in the first discussion. If it does not have a good prospect, then LPS can propose to BI to deal with the revocation of the relevant Bank Business Entity. If the Bank fails to have a systemic impact, then the LPS can pin the bank in two ways, namely through the deposit of rescue capital by the shareholders of at least 20% and without the deposit of capital by the shareholders. The difference is when the bank fails that are saved by the LPS succeed. Then some shares are returned for bank rescue costs to LPS 100% if using the 20% shareholder deposit method. Thus, the rescue costs returned to the LPS are 80% or less than 80% in accordance with the capital deposit by the shareholders.

2. That the provisions in the provisions of article 3 paragraph 2 letter a POJK Number 18 of 2020 on the Bank's Written Order Handling Bank's sole authority in issuing written orders in the form of merging, merging, and takeover of BUK and BUS have

significant differences with article 47- 55 PLPS Number 3 of 2020 on the Implementation of Government Regulation Number 33 of 2020 on the Implementation of the Authority of the Deposit Guarantor Institution in Order to Implement Measures to Handle Financial System Stability Problems , article 24 paragraph 1, article 26, all articles in the fourth and fifth parts of the Law Number 24 of 2004 on Guarantor Institutions Savings, and articles 41-45 of Law Number 21 of 2011 on the Financial Services Authority. Therefore, the existence of POJK Number 18 of 2020 creates ambiguity of norms and can affect the authority of LPS in dealing with failed banks that must uphold the coordinative function as mandated in the LPS Law, OJK Law, PLPS Number 3 of 2020, and PPSK Law.

B. Suggestions

Based on the analysis and conclusions above, the suggestions proposed in this study include the following:

1. Executive Review / Revision of POJK Number 18 of 2020 by changing the provisions of article 3 paragraph 2 letter a from a bank with a health level of composite level 3 to a bank with a health level of composite level 2 or clarify that a bank with a health level of composite level 3 is a bank with good governance factors. This aims to separate the authority of the OJK and LPS or OJK can clarify the provision that banks that have a composite level 3 health status are not banks under special supervision and joint inspection by LPS co-ordinated with OJK.

2. Judicial Review to the Supreme Court of POJK Number 18 of 2020, especially the provisions of article 3 paragraph 2 with articles 41 to 45 of the OJK Law and articles 24, 26, all articles of the

fourth and fifth parts of the LPS Law because they have differences with regulations- previous rules .

BIBLIOGRAPHY

Book&Journal

Aflaha Nur Adhina , “Manajemen Krisis Ramdah (Umar bin Khattab Perspektif Sejarah Ekonomi Islam”), Jurnal Sjarah dan Kebudayaan RIHLAH UIN Alauddin Makassar, 2019, <https://scholar.google.com>.

Alaydrus Hadijah, IMF: Pangkas Proyeksi Ekonomi Indonesia Jadi Minus 1,5 Persen di 2020, Breaking News 14 Oktober 2020, diakses 12 Oktober 2021, <https://ekonomi.bisnis.com/read/20201014/9/1304743/imf-pangkas-proyeksi-ekonomi-indonesia-jadi-minus-15-persen-di-2020-ini-alasannya>.

- Bagus, Budiyanto, Pengaruh Resiko Bencana Alam Dan Inflasi Terhadap Stabilitas Bank Di Indonesia Periode 2011-2020, Skripsi UIN Maulana Malik Ibrahim Malang, 2021, <http://etheses.uinmalang.ac.id/28000/>.
- BPK, JDIH, “Penangan Bank Gagal Berdampak Sistemik”, BPK, 2017, <https://jdih.bpk.go.id/wp-content/uploads/2017/07/Penanganan-Bank-Gagal-Berdampak-Sistemik>.
- Fidhayanti, Dwi, “ Urgensi Pembentukan Regulasi Shadow Banking Pada Layanan Pinjam Meminjam Berbasis Teknologi Finansial di indonesia”, (Jurnal Ius Hukum dan Keadilan, 2020). <https://jurnalius.ac.id/ojs/index.php/jurnaliUS/article/view/722>.
- Firdaus Dwi Hidayatul, “Analisis Kebijakan Ekonomi Umar Bin Khattab Perspektif Bisnis Syari’ah”, (Jurnal, STAI At-Tadzhib Jombang, 2013). https://scholar.google.co.id/citations?view_op=view_citation&hl=id&user=7KvzxksAAAAJ&citation_for_view=7KvzxksAAAAJ:u5HHmVD_uO8C.
- Irfani Nurfaqih,” Asas Lex Superior, Lex Spesialis, dan Lex Superior: Pemakanaan, Problematika, dan Penggunaannya Dalam Penalaranan dan Argumentasi Hukum”, Jurnal Legsilasi Indonesia Kemenkumham, 2020, <https://e-jurnal.peraturan.go.id/index.php/jli/article/view/711>.

Kadir , Abdur, 2004, “Hukum dan Penelitian Hukum, Bandung, Citra Aditya Bakti.

Limbong .Riska, “Pengaruh Persepsi Nasabah Mengenai Lembaga Penjamin Simpanan (LPS) dan Tingkat Suku Bunga Simpanan Terhadap Minat Menabung Nasabah Pada Bank Dengan Citra Perbankan Sebagai Variabel Moderasi (Studi Kasus Pada Bank xyz)”, Skripsi, Sekolah Tinggi Ilmu Ekonomi Indonesia *Banking School*, 2017),
<http://repository.ibs.ac.id/206/1/Riska%20Limbong%20%20200912085%\20-%20Skripsi.pdf>.

Metokusumo, Sudkino, 1996 , “*Penemuan Hukum Sebuah Pengantar*”, Yogyakarta, Liberty.

Mamuaja Juanda, “Fungsi Lembaga Penjamin Simpanan Dalam Rangka Perlindungan Hukum Bagi Nasabah Perbankan di Indonesia”, (FH Universitas Sam Ratulang, no.1, 2015): 40,
<https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/7024>.

Marzuki, Peter Mahmud, 2017 , *Penelitian Hukum*, Jakarta, Kencana .

PLPS Nomor 3 Tahun 2020 tentang PeraturanPelaksanaanPeraturan Pemerintah Nomor 33 Tahun 2020 tentang Pelaksanaan Kewenangan Lembaga Penjamin Simpanan Dalam Rangka Melaksanakan Langkah-Langkah Penangan Permasalahan Stabilitas Sistem Keuangan

Rahman, Wisang Bagus, Pengaturan Dan Pengawasan Otoritas Jasa Keuangan Berdasarkan UU Nomor 21 Tahun 2011, (Skripsi UIN Maulana Malik Ibrahim Malang, 2014, <http://etheses.uin-malang.ac.id/361/>).

Ramia, Devi Kesit, “Peran Lembaga Penjamin Simpanan Dalam Meningkatkan Kepercayaan Masyarakat Terhadap Perbankan Syariah (Studi kasus BPRS Aman Syariah Sekampung)”, Skripsi, Institut Agama Islam Negri Metro, 2018, <https://repository.metrouniv.ac.id/id/eprint/734/1/SKRIPSI%20KESIT%20RAMIA%20DEVI%20fix.pdf>.

Chessa Sthefanny. “Kewenangan Lembaga Penjamin Simpanan Dalam Menyelesaikan Permasalahan Solvabilitas Bank Di Luar Bank Sistemik Di Tinjau Dari Undang-Undang No. 9 Tahun 2016 Tentang Pencegahan Dan Penangan Krisis Sistem Keuangan”. Skripsi Universitas Sumatera Utara, 2018. <http://repositori.usu.ac.id/handle/123456789/4556>.

Suherman, Asep, “Peranan dan Tanggung Jawab Hukum Lembaga Penjamin Simpanan Dalam Menangani Failing Bank (Studi Kasus Bank Century)”, Tesis, Universitas Islam Indonesia, 2011, http://eprints.unpam.ac.id/view/creators/Asep_Suherman=3A=2E=3A=3A.html,

Regulation

Keputusan Komite Stabilitas Sistem Keuangan Nomor 04/KSSK.03/2008
tentang Penetapan PT Bank Century TBK Sebagai Bank Gagal
Yang Berdampak Sistemik.

Fatwa Majelis Ulama Indonesia Nomor 14 Tahun 2021 tentang Hukum
Penggunaan Vaksin Covid-19 Produk AstraZeneca.

Peraturan Bank Indonesia Nomor 13 Tahun 2011 tentang Penilaian
Tingkat Kesehatan Bank.

Peraturan Pemerintah Nomor 1 Tahun 2020 tentang Kebijakan
Keuangan Negara dan Stabilitas Sistem Keuangan Untuk Penangan
Pandemi Covid-19 dan/atau dalam Rangka Menghadapi Ancaman
yang Membahayakan Perekonomian Nasional dan/atau Stabilitas
Keuangan

PLPS Nomor 3 Tahun 2020 tentang Peraturan Pelaksanaan Peraturan
Pemerintah Nomor 33 Tahun 2020 tentang Pelaksanaan
Kewenangan Lembaga Penjamin Simpanan Dalam Rangka
Melaksanakan Langkah-Langkah Penangan Permasalahan
Stabilitas Sistem Keuangan.

POJK Nomor 4 Tahun 2016 tentang Penilaian Tingkat Kesehatan Bank
Umum

POJK Nomor 18 Tahun 2020 tentang Perintah Tertulis Penangan
Permasalahan Bank .

Undang-Undang Nomor 24 Tahun 2004 tentang Lembaga Penjamin
Simpanan.

Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan
Perundang-Undangan

Undang Nomor 21 Tahun 2011 tentang Otoritas Jasa Keuangan

Undang-Undang Nomor 9 Tahun 2016 tentang Pencegahan dan Penangan
Krisis Sistem Keuangan.

Website

Kemenkes RI, Data Covid-19 18 Maret 2020.

<https://infeksiemerging.kemkes.go.id>. (diakses 7 April 2022).

Hadijah Alaydrus, IMF:Pangkas Proyeksi Ekonomi Indonesia Jadi Minus

1,5 Persen di 2020,Breaking News 14 Oktober 2020,

[https://ekonomi.bisnis.com/read/20201014/9/1304743/imf-pangkas-](https://ekonomi.bisnis.com/read/20201014/9/1304743/imf-pangkas-proyeksi-ekonomi-indonesia-jadi-minus-15-persen-di-2020-ini-alasannya)

[proyeksi-ekonomi-indonesia-jadi-minus-15-persen-di-2020-ini-](https://ekonomi.bisnis.com/read/20201014/9/1304743/imf-pangkas-proyeksi-ekonomi-indonesia-jadi-minus-15-persen-di-2020-ini-alasannya)

[alasannya](https://ekonomi.bisnis.com/read/20201014/9/1304743/imf-pangkas-proyeksi-ekonomi-indonesia-jadi-minus-15-persen-di-2020-ini-alasannya). (Diakses 7 April 2022).

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