

Transformation of Additional Bank Indonesia's Capital Adequacy Ratio (CAR) into State Collecting Rights BLBI



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ABSTRACT: The escalation of the monetary crisis in 1997/1998 had an impact on the banking industry in Indonesia, most of the banking industry ran out of money (bokek) so that the existence of banks became insolvent banks. Bank Indonesia, which functions as the last monetary gateway, issued monetary policy with the Liquidity Assistance Fund (BLBI) scheme, which was a bailout fund for Bank Indonesia for insolvent banks affected by the 1997/1998 monetary crisis.

Bank Indonesia's liquidity assistance scheme to obligors (recipients) has resulted in Bank Indonesia's capital adequacy ratio (CAR). Bank Indonesia's Capital Adequacy Ratio (CAR) is in free fall. Bank Indonesia is undercapitalized. The government covered Bank Indonesia's lack of capital, not with cash and in full, but with government bonds (SUN), the nominal value of this SUN is equivalent to the amount of BI Liquidity Assistance (BLBI) provided by Bank Indonesia to obligors. SUN is subsequently used by Bank Indonesia as a means of Bank Indonesia's Capital Maintenance Notes (CMN). The Capital Maintenance Notes are then compensated with the transfer of the claim rights (cessie) to the obligor (the BLBI receiving bank), by Bank Indonesia, to the Government.

BLBI, which was originally a monetary policy, turned into fiscal policy, changed the legal status of BLBI collection rights, became a government asset in the form of state receivables, but historically the settlement costs which also used SUN have come down short. Fiscal policy, regarding the settlement of collection rights (cessie) turned out to be more expensive than the total collection rights (cessie), on the other hand, with the maturity of government bonds (SUN) used as a CMN facility, resulting in a sustainable government burden, at least this burden continues for up to five presidents and will continue in the administrations of subsequent presidents. This paper study uses a normative approach which is expected to be able to answer the epistemological problems of the theme of this article, which is entitled Transformation of the Addition of the Capital Adequacy Ratio (CAR) of Bank Indonesia into BLBI State Collection Rights.

KEYWORDS: BLBI, Bank of Indonesia, Monetary

A. INTRODUCTION

1. BLBI Bank Indonesia Bills

BLBI is Bank Indonesia's invoices to banks that are in the capacity of Bank Indonesia as part of the government that functions as a Lender of the last resort in accordance with Article 32 paragraph (3) of Law Number 13 of 1968 concerning Banks, and has been amended several times, most recently by Law No. 3 of 2004, concerning the Central Bank that the Central Bank provides funds to banks to cover liquidity difficulties encountered. BLBI is also useful as an implementer of the Government guarantee program for the payment of obligations of commercial banks based on Presidential Decree No. 26 of 1998 and payment of obligations to foreign countries in the form of interbank debt areas and trade finance based on Presidential Decree No. 120 of 1999.

Bank Indonesia (BI) can provide liquidity credit to banks to overcome liquidity difficulties in an emergency.¹ and that...as lender of last resort the Central Bank can provide liquidity credits to banks to overcome liquidity problems to banks to overcome liquidity difficulties encountered in an emergency.² In the event that a bank experiences difficulties that endanger its business continuity, Bank Indonesia may take other actions in accordance with the applicable laws and regulations. In his explanation, it is stated that BI can take steps to save a bank experiencing problems that endanger its business continuity, before the revocation of its business license and/or liquidation action. The rescue measure was carried out on banks as public trust institutions.³

¹ Djiwandono, J. Soedrajat, 2002, *Mengelola Bank Indonesia Dalam Masa Krisis*, LP3ES, Jakarta, hlm. 72

² Undang-Undang Nomor 13 Tahun 1968 tentang Bank Sentral, Pasal 29 ayat (1) dan Pasal 32 ayat (3), serta Penjelasan Umumnya.

³ Pasal 37 ayat (2) huruf b UU No. 7 Tahun 1992.

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- 1) Bank Indonesia may provide guarantees for foreign loans and/or international trade financing made by banks.⁴
- 2) The government guarantees that the payment obligations of commercial banks to deposit holders and creditors will be fulfilled.⁵

The government provides guarantees for the payment obligations of Rural Banks.⁶ National banks that are healthy, but are experiencing short-term liquidity problems so that they can be assisted ; Banks that are clearly unhealthy should be attempted mergers or acquisitions with other healthy banks. If this effort is not successful, it should be liquidated in accordance with the applicable laws and regulations by securing as much as possible the depositors, especially small depositor.⁷

2. BLBI Billing Solution

The solution to the BLBI bill finally led to the resolution of problems with BLBI problems, solving and resolving BLBI problems concerning the financial relationship between the Government's Fiscal Policy and Bank Indonesia's Monetary Policy, through political decisions. The decision of the DPR RI dated November 1, 2000, which was then followed up by a working team that was formed consisting of elements of the government, BI, BPK and the Attorney General's Office, was stated in the document: "The Principles of the Mutual Agreement between the Government and BI dated November 17, 2000".⁸

The principles of the agreement were drawn up referring to the experiences of other countries in resolving monetary crises, but the principles of settlement are not the same. The principles that have been achieved in the main points of the agreement are that:

- 1) The amount of BLBI is Rp. 144.536 trillion, which resulted in a reduction in BI's CAR, became the responsibility of the Government. Fulfillment of the Government's obligation to increase BI's CAR,⁹ Amounting to Rp. 144.536 trillion to Bank Indonesia, not with cash, but with "Government Debt Instruments (SUN)". This was agreed by the government and BI through the "Mutual Agreement" document dated February 6, 1999.
- 2) The government did not pay the interest on the debt securities, it was proposed to be replaced with the concept of "Perpetual Promisory Notes" (PPN) which was later refined to become "Redeemable Perpetual Notes" (RPN) by considering "burden sharing" between the government and BI. In both VAT and RPN, the time period and interest rate which is the principal in the stipulated "Promisory note" areas a "promise to pay" which generally must be sold in the capital market or the free market.¹⁰

3. CAR Versus SUN

Based on the concept of the International Expert Team led by Paul A. Volcker, the VAT or RPN documents should be replaced with Capital Maintenance Notes (CMN) to restructure the BLBI debt securities of Rp. 144.536 trillion plus Rp. 14.5 trillion (additional BLBI after January 1999) . BI bears Rp. 24.5 trillion. This agreement was followed up by BI by issuing BI debt securities to the government in the amount of Rp. 24.5 trillion¹¹ for the following reasons:

- 1) This debt restructuring, taking into account the position of BI's capital adequacy in order to strengthen BI's capital in the long term, the proposed amount of BLBI up to January 29, 1999 is Rp. 144.5 trillion Additional BLBI 29 Jan – 17 May 1999 Rp.14.5 trillion, to Rp. 159.0 trillion
- 2) BI bears Rp. 24.5 trillion CMN, issued (net) with Bank Indonesia debt securities to the Government.
- 3) Number of CMN Rp. 134.5 trillion (net), borne by the government, paid with Government Securities (SUN), without principal interest.
- 4) At CMN is not implemented "period" and "flower" on the grounds that the repayment of principal and interest depends on the position of a comparison (ratio) of capital BI to the obligations of monetary

Concept of CMN's get a reaction that is strong enough of the CPC as an auditor authorized BI where CMN that does not exist The term and the interest rate charged will not be sold in the capital market, so the value of CMN as securities is considered not in accordance with general accounting principles. These SUNs are ultimately held by Bank Indonesia, and are not sold to the capital market. The policy of increasing CAR in the form of SUN raises the question of why the government's obligation to increase paid-in capital at Bank Indonesia has implications for the burden of losses, not that the addition of CAR is the Government's obligation. This problem is seen from the point of view of Fiscal policy, with the addition of CAR, the Government has carried out the

⁴ Pasal 2 ayat (1) Keputusan Presiden No. 120 Tahun 1998

⁵ Pasal 1 Keputusan Presiden No. 26 Tahun 1998

⁶ Pasal 2 ayat (1) Keputusan Presiden No. 1998 .

⁷ Petunjuk-petunjuk dan Keputusan Presiden pada Sidang Kabinet Terbatas Bidang Ekku Wasbang dan Prodis pada tanggal 3 September 1997.

⁸ Mengurai Benang Kusut BLBI, Jakarta: Bank Indonesia

⁹ Pasal 62 (3) UU BI. Apabila modal menjadi kurang dari Rp. 2.000.000.000.000,00 (dua triliun rupiah) sebagaimana dimaksud dalam Pasal 6 ayat (1), Pemerintah wajib menutup kekurangan tersebut yang pelaksanaannya dilakukan setelah mendapat persetujuan Dewan Perwakilan Rakyat.

¹⁰ Agus Pandoman, 201, *BLBI Extraordinary Default*, PT Jawaara Bisnis, Yogyakarta, hlm.12

¹¹ Kemudian pada tanggal 2 April 2001, kesepakatan ini oleh Menteri Keuangan dimintakan pendapat dan konfirmasi Komisi IX DPR, tetapi sampai saat ini konfirmasi itu belum diberikan.

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obligations stipulated in the Bank Indonesia Law. And Bank Indonesia can operate again, the crisis of capital adequacy ratio can be overcome with SUN.

4. The Politics Law Crisis year 1997/1998

Policy to maintain the value of the rupiah was supported by monetary tightening through fiscal policy (restraining routine spending), monetary policy (stopping buying of SBPU by BI at the end of July 1997 and increasing SBI interest rates to more than double the third week of August 1997), and with the monetary-fiscal policy, transferring deposits of various SOEs and foundations into Bank Indonesia Certificates (SBI), this is the beginning of the negative impact of monetary turmoil on the banking sector.¹²

The process of the occurrence mismatch of a banking liquidity and the path taken by banks to the provision of BLBI, starting from the process of saving customer funds by their owners, driven by uncertainty due to monetary turmoil, is as follows.

- 1) At the initial stage of the process of securing customer funds from banks that are considered weak to strong, banks that experience large withdrawals of customer funds face this liquidity shortage problem by seeking interbank loans.
- 2) After this resource is exhausted, banks start using their own funds that are with BI. Bank demand deposits with BI experienced depreciation due to this withdrawal, starting with funds above the Statutory Reserves obligation. However, because withdrawals continued when the turmoil became systemic, these withdrawals resulted in a reduction in the banking reserve requirement.
 - 3) Due to continued withdrawals, the banks that do have to service the withdrawal of customer funds actually finance the withdrawal of the customer's funds by experiencing negative balances – or debit or balances overdraft – in their current accounts with BI.
- 4) Violation of Statutory Reserves, especially when the debit balance contains a heavy penalty, if it is not paid, it will become a bank debt to BI. The number of banks violating the statutory reserve requirement swelled during the crisis. For example, in August 1997, violations of the statutory reserve requirement, meaning that the current accounts of banks with BI fell below 5 percent of third party funds, occurred for 14 banks on the date of the announcement of the floating of the rupiah (14/8/97) and became 51 at the end of August 1997. At first there was a violation of the Statutory Reserves requirement, but due to the continued withdrawal of bank funds, some banks experienced debit balances or negative balances in their current accounts with BI. Banks that experienced negative balances at the end of 1997 were 29.
- 5) Apart from negative balances in bank checking accounts with BI, another form of BLBI was bailout funds used to finance expenses related to the revocation of business licenses for 16 banks in November 1997. This is a consequence of the government's promise to provide protection to small depositors in banks whose business licenses were revoked in accordance with the Government Policy of September 3, 1997. In order to revoke the business licenses of the 16 banks, BI financed the refund of depositors' funds up to Rp. 20 million for each account. The funds are BI bailout funds to the government. In the third week of February 1998, refunds of depositors' funds at liquidated banks were also made to owners of accounts above Rp. 20 million. This refund of customer funds is also financed by BI bailout funds to the government.
- 6) In the process of saving funds by the owner, funds are issued from banks that are considered weak (does not provide a guarantee of security of funds) to banks that are considered strong, known as flights to safety. In this connection, state banks, large private banks and foreign banks which are seen as safe places to store customer funds obtain additional liquidity for losses of banks that are considered weak.
- 7) In the process of saving these funds, some of them are also exchanged into dollars (often called flights to quality), either stored in the country or transferred abroad as part of the capital flight.
- 8) The interbank money market has become more fragmented, banks that still have excess daily liquidity are not willing to release their liquidity in the interbank money market. This group takes precautionary measures by holding on to their liquidity. Excess liquidity is only released to other banks that he really knows with very high interest rates.
- 9) The segmentation of the interbank money market makes it difficult for Bank Indonesia to manage liquidity and control the payment system. Interest rates between banks that do not experience liquidity problems are not too high, and vice versa with interest rates between banks that have liquidity problems. In September 1997, while banks had to pay interest rates as high as 200 percent per annum, even higher to obtain funds to cover their liquidity shortfall. However, the JIBOR interest rate has not increased too high. This created problems in the implementation of the monetary program between the monetary authorities and the IMF in late November and during December 1997.

The IMF urged an increase in interest rates because it saw the JIBOR interest rate not moving much because banks in this group did not experience liquidity problems as a result of the perception of fund owners in the community who believed in them. Whereas for small and medium-sized banks, interest rates are very high due to tight liquidity. Some banks are unable to gain access to liquidity from the market, even though they are experiencing problems mismatch liquidity.

¹² Darury, A. Denny dan Djony Edward. *BPPN Gerbage IN Garbage Out*, Jakarta: Center For Banking Crisis (CBC), 2004.

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These banks are basically the ones forced to run to BI to apply for liquidity assistance. Banks in such a position are becoming more and more numerous with the growing monetary crisis. In the end, BI Liquidity Assistance exceeded the Capital Adequacy Ratio (CAR) limit.

The establishment capital of Bank Indonesia is clearly seen in Law No. 23 of 1999 concerning Bank Indonesia. The establishment capital of Bank Indonesia is at least Rp. 2 trillion. (see article 6), if this capital is reduced, then it becomes the government's obligation to deposit the lack of capital (article 62 paragraph 3). In this crisis, Bank Indonesia's liquidity assistance, which in fact exceeds the total paid-up capital, was recorded at Rp 144 trillion. Like the proverb says overdrawn for fame.

The solution to this overdrawn fact has given rise to very varied and different ideas for BLBI settlement by each government regime. And now under the government of President Jokowi, Presidential Decree No. 6 of 2021 has been issued regarding the Task Force for Handling State Collection Rights for Bank Indonesia Liquidity Assistance Funds (BLBI Task Force).

In the dictum of legal considerations, BLBI is Bank Indonesia liquidity assistance provided by the government to corporations or individuals, then the implementation of the recovery is submitted to the National Bank Restructuring Agency (IBRA) which was established based on Presidential Decree Number 27 of 1998 concerning the National Bank Restructuring Agency. In 2004 IBRA was dissolved based on Presidential Decree No. 14 of 2004 concerning Termination of Term of Service and Dissolution of the National Bank Restructuring Agency, then with the end of IBRA's duties all IBRA assets became state property which was managed by the Minister of Finance. In the management of state assets by the Minister of Finance, there are still state claims for the remaining state receivables and property assets to corporations and individuals.

B. NORMATIVE ANALYSIS OF STATE RECEIVABLES.

1. BLBI Collection Rights as State Receivables.

The assumption that BLBI is state receivables: Presidential Decree No. 6 of 2021, assumes that liquidity funds provided to obligors are government-owned funds managed by the Minister of Finance as state assets in the form of state receivables and state property assets that have not been paid and submitted by corporations/individuals to the Government. The BLBI correlation is that the government's state receivables are the conclusion of a historical approach that fails to understand.

On the other hand, there is also the assumption that BLBI is a bailout fund (bill out) from Bank Indonesia, this assumption is based on the legal basis of Law No. 23 of 1999, Bank Indonesia (BI) can provide liquidity credits to banks to overcome liquidity problems. in an emergency. and that...as lender of last resort the Central Bank can provide liquidity credits to banks to overcome liquidity problems to banks to overcome liquidity problems encountered in an emergency.

These two assumptions gave birth to a contraction of legal norms on the settlement of State Receivables

- a) If the first assumption is used as a reference for debt-based default with the government as the creditor and the private sector as the debtor, then the right to collect on state receivables against defaulted obligors has executorial power.
- b) If the second assumption is used as a reference fails to pay based on buying and selling Cessie (right to claim), then the right to collect is subject to the provisions of norms factoring in the scope of commercial law / business and this transaction is categorized as a trade letter (commercial paper)

2. Settlement of BLBI Claims

The legal event of adding BI CAR by the Government, gave rise to the issue of the transfer of receivables (cessie) from Bank Indonesia to the Government, containing two overlapping policies as follows:

- If only the Government had deposited the additional CAR with cash, could the deposit be requested back, through compensation for the transfer of claim rights. If this choice occurs, the Government will not actually increase BI's CAR.
- This presupposition analogy appears in the reality where the addition of Bank Indonesia's CAR carried out by the Government uses SUN. The interest expense and repayment of SUN should naturally be borne by the Government. The facts show that the Government's addition of BI CAR is compensated by the submission of BLBI collection rights. This legal action shows an achievement in doing something not to do anything about the deposit of additional CAR, where the Government Securities deposited by the Government to Bank Indonesia, are returned by Bank Indonesia to the Government in the form of BLBI collection rights.
- The solution is submitted to IBRA. Efforts to settle state receivables by IBRA are then carried out with the same legal action, namely selling receivables belonging to Take Over Banks (BTO) and Frozen Operation Banks (BBO), to third parties, both individuals and legal entities, mostly the cessie deed of sale and purchase is carried out. . First, transferring the bank's obligations to the controlling shareholder's (PSP) obligations. The government together with the shareholders of the Frozen Operation Bank (BBO) and the Frozen Bank for Business Activities (BBKU), signed a master settlement and acquisition agreement (MSAA) and a master refinancing agreement and not issuance agreement (MRNIA). The purpose of the two agreements is to return BLBI, either through asset settlement or cash payment through BPPN.¹³

¹³ Hassanain Haykal. *Perjanjian Penyelesaian Kewajiban BLBI Dalam Bentuk MSAA Dan Pergeseran Hukum Privat Ke Hukum Publik Dalam Penerapan Klausula R & D*, Disertasi, Fakultas Hukum Universitas Parahiyangan, Bandung, 2007.

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- 1) Second, convert BLBI at take over banks (BTO) into temporary capital transfer.
- 2) Third, transfer the debt to the controlling shareholder bank through the settlement of the controlling shareholder's obligations (PKPS). The trick is to sign a debt acknowledgment deed (APU).

C. CONCLUSIONS

1. Bank Indonesia Capital Adequacy Ratio.

Capital Adequacy Ratio (CAR) is an indicator of the health of a bank's capital, to measure the adequacy of capital owned by a bank to support assets that contain or generate risks, such as financing provided. Capital assessment is an assessment of the bank's capital adequacy to cover current risks and anticipate future risks. The Capital Adequacy Ratio (CAR) shows how much the bank's capital has met its needs and as a basis for assessing the prospects for the continuation of the bank's business. The greater the Capital Adequacy Ratio, the greater the resilience of the bank concerned in dealing with the depreciation of bank assets arising from problematic assets.

Talking about CAR, it is generally associated with the reference to the minimum capital adequacy ratio set by Bank Indonesia for national banks. On the other hand, there has never been a reference that talks about how big the Bank Indonesia Capital Adequacy Ratio is. So to find the answer to this problem, a normative approach is needed Invite Bank Indonesia. The minimum capital (CAR) for the establishment of Bank Indonesia is explained in Article 6 of Law No. 3 of 2004 concerning Amendments to Law of the Republic of Indonesia Number 23 of 1999 concerning Bank Indonesia (UU BI), regarding the authorized capital of Bank Indonesia, if there is no change can be explained as follows:

- Bank Indonesia's capital is determined to be at least Rp2,000,000,000,000.00 (two trillion rupiah).
- The capital as referred to in paragraph (1) must be increased so that it becomes a maximum of 10% (ten percent) of all monetary liabilities, with funds originating from General Reserves or from asset revaluation proceeds.
- The procedure for adding capital from the General Reserve or from the results of asset revaluation is stipulated by a Board of Governors Regulation.

The provisions of Article 6 of Law No. 3 of 2004. There is a protection clause as an anticipatory instrument as regulated in Article 62 paragraph 3, when there is a lack of capital adequacy (CAR), it is the responsibility of the Government. The responsibilities referred to in paragraph 3 are an instrument of "obligation" ordered by law that must be carried out by the government; "If the capital becomes less than Rp. 2,000,000,000,000.00 (two trillion rupiah) as referred to in Article 6 paragraph (1), the Government is obliged to cover the shortfall, the implementation of which is carried out after obtaining the approval of the House of Representatives".

2. Transformation of CAR into State Receivable

The BLBI incident is related to the juridical consequences of article 62 paragraph 3, which resulted in the erosion of Bank Indonesia's CAR. The amount of money disbursed by Bank Indonesia to the banking industry in the 1997/1998 era skyrocketed to exceed the CAR, thus dragging the Central Bank (Bank Indonesia) into an insolvent bank. of course it will be inversely proportional to the das solen of the Bank Indonesia Law;

- 1) that in order to establish and implement an effective and efficient monetary policy, a sound, transparent, trusted, and accountable financial system is required which is supported by a smooth, fast, precise and secure payment system, as well as bank regulation and supervision that meets the prudential principle ;
- 2) that to ensure the success of the objective of maintaining the stability of the rupiah value, it is necessary to have a Central Bank that has an independent position.

There are two keywords regarding Bank Indonesia's CAR, a healthy, transparent, trusted and accountable financial system financial system and an independent. A sound financial system in the context of the BLBI, was too naive to achieve it, Bank Indonesia's monetary resources were destroyed in overcoming the 1997/1998 crisis, and resulted in the collapse of the CAR, on the other hand, the independent position was eliminated by the actions of the Government. Bank Indonesia's independent elimination, regarding the Government's obligation to increase BI's CAR with Government Securities and the value is equivalent to the liquidity assistance funds disbursed by BI to bail out insolvent banks.

The correlation of SUN as an instrument for increasing CAR, with the help of Bank Indonesia liquidity, has led to a policy transformation. Monetary Policy which was originally the authority of BI, has changed to the Government's Fiscal Policy, where all BLBI funds received by obligors become state collection rights, and BLBI settlements are taken over by the Government. The government becomes a debt collector , and continues in every era of government, with various variations on the idea of using different law enforcement instruments.

The source of BLBI law is the monetary policy of Bank Indonesia, constitutionally granted independent rights and authorized to make regulations. Fiscal policy is the Government's constitutional authority, separate from monetary policy. The reality of the addition of CAR with the SUN instrument, shifting into a compensation tool for BLBI Collection Rights into State Receivables, shows that the Government does not actually increase CAR.

This kind of scheme, taking away BI's constitutional rights, creates a dilemma for the state.

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- 1) Bank Indonesia cannot make a policy to overcome the settlement of extraordinary BLBI defaults. BLBI settlement and collection activities are a BI policy risk.
- 2) The activity of increasing CAR is a risk of Government Policy. The juridical logic has two different risks to the burden of responsibility, because these two institutions have been constitutionally granted independent authority.

D. SUGGESTIONS

In the end, the solution to the BLBI settlement has hacked the passage of time from President to the next President. Putting the results of the author's analysis into a suggestion about what is possible;

- If the addition of BI CAR by the Government, in the form of SUN, is not used as a compensation tool for BLBI collection rights, perhaps the steps to completion will leave a smelly history.
- The thing that may have passed through five Presidents, the settlement of BLBI collection rights as state receivables, has already become a story in this Republic, must change the concept of collection into Government Securities (SBPN), using Cessie legal principles, so that the settlement pattern is not until incised history smells bad (sour smell history).

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