

THE INTERNATIONAL JOURNAL OF HUMANITIES & SOCIAL STUDIES

Meaning of Policy and Misuse of Authority Related to Legal Officer's of Legal Responsibility in Handling Financial System Crisis

Yanuar Prawira Wasesa

Ph.D. Candidate, Department of Law, Brawijaya University, Indonesia

Moch. Bakri

Professor, Department of Civil Law, Brawijaya University, Indonesia

Moh. Fadli

Associate Professor, Department of Law, Brawijaya University, Indonesia

Istislam

Associate Professor, Department of Law, Brawijaya University, Indonesia

Abstract:

In 2008, exactly on 19th of September 2008, the world is experiencing a crisis that affects many countries including Indonesia. Century Bank case is defined as the result of world crisis. Finance Department handles various differences of opinions regarding the prevention and crisis handling of financial system to give an elaboration about the decision from Stability Committees of the Financial System (KSSK) on behalf of Century Bank. Some efforts have been done by Republic of Indonesia to overcome a crisis by issuing three Government Regulations in lieu of Law (Perppu) at once. Various policies issued in the crisis time if it does not have a certain basis can cause a law problem towards policy makers in finance. As the result, alleged existence of criminalization towards that policy. In a point of view of law enforcer, that action cannot be defined as policy criminalization if the policy-making mechanism is made on the basis of pre-defined norm. Freedom of act is given to the government officer since their function is to conduct public welfare, which is different from the function of judiciary to finish the dispute. Besides, since the function of the government has to service the growing public interests, either social or economy field. So, in this case of financial crisis, there is no limit yet between meaning of policy and misuse of authority related to Legal officers of Legal responsibility in handling financial system crisis, this is clarified by the Constitution Number 9 Year 2016 about Prevention and Financial System Crisis Handling not explicitly give the law protection for policy makers and there is no clear limit about misuse of authority meaning.

Keywords: Financial crisis, law enforcer, policy maker, misuse of authority

1. Introduction

On April 9th, 2018 District Court in South Jakarta granted a pre-trial suit done by non-governmental organization named Indonesian anti-corruption community (MAKI) towards Corruption Eradication Commission related to an investigation on behalf of Century Bank case. In the ruling, District Court of South Jakarta declared that Corruption Eradication Commission doing the investigation in the case of Century Bank by noting Boediono, Muliaman D. Hadad, and Raden Pardede as mentioned in indictment on behalf of defendant Budi Mulya.

Century Bank case had been running in 10 years since 2008 up to 2018 and never finished until this time. Pre-trial ruling Number: 24/Pid.Pra/2018/PN.Jkt.Sel on April 9th, 2018 proved that Century Bank case caused variety of difference opinions in society. Misbakhun from Golkar faction states that Budi Mulya is not a main perpetrator of corruption crime in the process of bailout Century Bank. According to M. Misbakhun, Budi Mulya is charged related to a Short-term Financing Facility (FPJP) to Century Bank. The case of Century Bank bailout does not just cause the debate who else besides Budi Mulya who should be legally responsible related to the bailout granting to Century Bank. That case causes a problem about the extent of the boundary between policy and authority misuse can be held accountable.

Based on Finance Department of Republic of Indonesia, as one of the countries which its financial system interacting with global finance, it is not out of the pressure and threat of crisis. Those pressures and threats are signed by these things:

- Financial market situation in the IV/2008 quarter was sharply depressed as the reaction towards negative news after the fall of Lehman Brothers and other global finance.
- Domestic Capital Markets are experiencing turmoil and stock prices plunge, shown by declining in the composite stock price index (IHSG) sharply.
- A great pressure occurs in a market of government securities/SUN, reflected from increasing in yield or a sharp decline in the price of Rupiah.

- Credit Default Swap (CDS) Indonesia increased significantly. This indicates country risk in Indonesia is being high.
- Scarcity and liquidity difficulties in financial markets cause interbank lending does not work, the panic of market participants, and the lower trust among actors in the money market.
- Foreign exchange reserves down 12% from USD 57.11 billion per September 2008 to USD 50.18 billion per November 2008.
- Rupiah depreciated 30.9% from Rp. 9.393 per January 2008 to Rp. 12.100 per November 2008 with high volatility.
- A sharp Rupiah depreciation causes foreign investors do "redemption" or dispose/sell SUN in a high amount approximately Rp. 20 trillion in the period of August-November 2008.
- Banking Pressure Index(issued by Danareksa Research Institute) and Financial Stability Index (issued by BI) are entering the threshold of the crisis. Banking Pressure Index per October 2008 is 0.9 or higher than normal threshold 0.5. Meanwhile, Financial Stability Index per November 2008 is 2.43 or above maximum indicative point 2.0.
- There is a big potential capital flight from depositors of the bank. This is because in Indonesia there is no fully bank customer guarantee system in full.

By seeing the crisis condition in the world in 2008, on September 19th 2008, The rescue steps were done by Government of Indonesia by issuing three government regulation in lieu of law (Perppu) at once, namely, Perppu Number 2 Year 2008 about changes to Indonesian Bank (BI) legislation and Perppu Number 3 Year 2008 about changes of the law of the deposit insurance agency (LPS) which issued on 13th October 2008 and the last Perppu Number 4 year 2008 about financial system safety net (JPSK) consisting of 31 articles whose contents are organizing the crisis in the form of provision of emergency facilities financing facility and capital increase through Capital Participation (PMS).

The role of state or Government with the central bank is done by giving the bailout sourced from state budget revenues (APBN), as the last net or ultimum remedium (last effort) if three previous issued nets did not run effectively. On 15th October 2008, material of three government regulation in place of the financial system safety net legislation issued by government is only organizing the fourth nets which are prevention and crisis handling. Meanwhile, the previous three nets have been regulated in a separated law. The first net is regulated on sector law in the field of financial institutions. (The constitution Number 10 Year 1998 about changes of constitution number 7 Year 1992 about banking,¹the constitution number 11 year 1992 about pension fund,²and the constitution Number 40 Year 2014 about insurance³, the second net is organized in the constitution Number 7 Year 2009 about the enactment of government regulation in lieu of constitution into constitution on amendment to constitution number 24 Year 2004 about deposit insurance agency,⁴while the third net about Short-term Financing Facility (FPJP) has been organized in the constitution number 23 Year 1999 about Indonesian Bank.⁵

Various policies have been applied at the moment of crisis and if there is no law basis, it will cause law problem towards the policy makers in finance. The policy makers have not got the definite legal protection about the steps done in saving the economy. One of the results is raising a presumption of the policy. Each policy made may probably result in objections from those who feel harmed by the decision. So, a policy can be maintained from the existence of the parties who feel harmed, and then each policy must be placed far away from legal defect/onrechtmatig. One of the examples shows there is a debate between meaning of policy and misuse of authority associated with the legal liability of policy-making officials in dealing with the financial system crisis with regard to bailout of Century Bank.

Granting the bailout to Century Bank is a decision of stability committees of the financial system (KSSK) formed based on government regulation in lieu of law Number 4 year 2008 about financial system safety net which then sets Century Bank as a failed bank that have a systemic impact. Bailout policy in Short-term Financing Facility (FPJP) is the decision of Stability Committees of the Financial System (KSSK) collegially not for Indonesian Bank only.

Bailout policy in Short-term Financing Facility (FPJP) is a state decision/staat beleid cannot be seen from criminalistics or apparatus/overheidbeleid included in the law of state administration and regardless of whether or not the substance of the policy is true. The policy applied in urgent and emergency time is commonly not in line with the written regulation since that policy cannot be measured by the regulation product in a normal condition.

Supreme Court as the highest judicial institutions has a different action in deciding a case related to the government policy. For instance, Indonesian Bank liquidity dispensing case (BLBI), where the Supreme Court at that time is chaired by Bagir Manan who admitted that BLBI is a government policy, yet Supreme Court states that the former governors are guilty because Indonesian Bank liquidity dispensing case (BLBI).

¹Undang-Undang No. 10 Tahun 1998 tentang Perubahan Atas Undang-Undang Nomor 7 Tahun 1992 tentang Perbankan (Lembaran Negara Republik Indonesia Tahun 1998 Nomor 182, Tambahan Lembaran Negara Nomor 3790).

²Undang-Undang Nomor 11 Tahun 1992 tentang Dana Pensiun(Lembaran Negara Republik Indonesia 1992 Nomor 37, Tambahan Lembaran Negara Nomor 3477).

³Undang-Undang Nomor 40 Tahun 2014 tentang Perasuransian (Lembaran Negara Republik Indonesia 2014 Nomor 337, Tambahan Lembaran Negara Nomor 5618).

⁴Undang-Undang Nomor 7 Tahun 2009 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Menjadi Undang-Undang tentang Perubahan Atas Undang-Undang Nomor 24 Tahun 2004 tentang Lembaga Penjaminan Simpanan (Lembaran Negara Republik Indonesia 2009 Nomor 8, Tambahan Lembaran Negara Nomor 4963).

⁵Undang-Undang Nomor 23 Tahun 1999 tentang Bank Indonesia (Lembaran Negara Republik Indonesia 1999 Nomor 66, Tambahan Lembaran Negara Nomor 3843).

Regardless of the different opinions that are concerning whether it is right or not of pre-trial ruling Number: 24/Pid.Pra/2018/PN.Jkt.Sel on 9th of April 2018 in which Corruption Eradication Commission is ordered by a high court to put Boediono and his friends as suspects. While in the article 45 the constitution Number 30 Year 1999 about Indonesian Bank states: "governor, senior deputy governor, or Indonesia's Bank officer cannot be jailed since they run the policy in a right track and as long as it is done in a good intention"

Misuse of authority must be proved by a bad intention (*mens rea*) towards the execution of acts that misuse of authority (*actus reus*). Proving a bad intention is not easy since there is a subjective factor from policy makers who are joined in stability committees of the financial system such as Governor of Indonesian Bank, Minister of Finance, Deposit Insurance Agency (LPS) at the time they decide to give Short-term Financing Facility (FPJP) to Century Bank. Based on the problem stated above, the researcher wants to examine the limit clarity on the meaning of policy and authority misuse in the handling of financial system crisis.

2. Research Method

This research is a normative legal research.⁶This is based on the analysis towards legal norm, either in the meaning of the constitution or court ruling.⁷In relation to the normative research, the approaches can be used such as⁸statute approach, conceptual approach, analytical approach, comparative approach, historical approach, philosophical approach, and case approach. Yet, this one is more focusing on the statute approach in which the objects of the study are various legal rules.

As the normative-juridical research, then this research used a secondary data source (secondary legal material). It is the material that gives the elaboration about primary legal material, like Bill.

For this secondary data source, the researcher used a number of legal materials in the form of literature. This literature research is a kind of data got through the inventory including three forms⁹ and it was qualified as follows:

- Primary legal materials are legal materials consisting of basic norm stated in the Basic Constitution of Republic of Indonesia, Constitution about banking, Indonesian Bank, Deposit Insurance Agency (LPS) and financial system net and financial system committee decision (KSSK).¹⁰
- Secondary legal materials are legal materials that give elaboration about primary legal material in the form of minutes of meeting, either financial system committee decision (KSSK) or the meeting of the Century Bank committee, books, articles and papers in the journal, magazines, newspapers, internet which explain about Century Bank case.¹¹
- Tertiary legal materials are legal materials which give an instruction and elaboration towards primary and secondary legal materials, for example, dictionary (legal, Indonesian language and English).¹²

These legal materials were searched and gathered by using literature study,¹³either through electronic media or all other literary media. Analysis method used in this study was qualitative-juridical method in which legal materials obtained from research, reviewed first then arranged systematically and presented in the form of descriptive sentences.

3. Results and Discussion

3.1. Meaning of Policy in Handling Financial System Crisis

Regulation in lieu of law (Perppu) Number 4 Year 2008 about financial system safety network. State life could not always run normally, these abnormal circumstances could not be solved in the usual ways but extraordinary by using emergency actions, because there was an element of compulsion or emergency and temporary.

There were two conditions that justify the emergency in the Constitution of the Republic of Indonesia, first, Article 12 this emergency was related to state of war or threat of war.¹⁴Second, Article 22 the emergency was based on the Article 22 was a basic of making the Constitution (extraordinary rules), not for doing emergency action (extraordinary measures), named as Government regulation in lieu of law (Perppu).¹⁵

One of abnormal conditions happened in Indonesia crisis condition in 2008 and Century Bank case, Indonesian Bank independence tested.¹⁶ Based on the regulation on Article 22 Paragraph 4 the Constitution of Indonesian Bank, Bank of Indonesia was given an authority discretionally deciding the policy to grant emergency financing facility (FPD) which its

⁶ Menurut Johny Ibrahim, Metode Penelitian Hukum Normatif adalah suatu prosedur ilmiah untuk menentukan kebenaran logika keilmuan dari sisi normatifnya; Logika keilmuan yang ajeg dalam penelitian hukum normatif, yaitu ilmu hukum yang obyeknya hukum itu sendiri. Johnny Ibrahim, Teori & Metode Penelitian Hukum Normatif, (Malang : Bayumedia Publishing, cet pertama April 2005), hlm. 47.

⁷ Ronald Dworkin, Legal Research, (Deadalus: Spring, 1973), halaman.250

⁸ Johnny Ibrahim,....Op.Cit. hlm. 131.

⁹ Bahan-bahan hukum primer adalah seluruh hukum perundang-undangan yang berlaku dan atau yang pernah berlaku. Sementara itu yang dimaksud dengan bahan hukum sekunder adalah seluruh karya akademik mulai dari yang deskriptif maupun yang berupa komentar-komentar penuh kritik yang akan memperkaya pengetahuan orang tentang hukum positif yang tengah berlaku (Ius Constitutum) dan/atau yang seharusnya (demi dipenuhi rasa keadilan) juga dipositifkan (Ius Constituendum). Lihat : Soetandyo Wignyo Subroto, Op. Cit, hlm. 11.

¹⁰ Soerjono Soekanto dan Sri Mamudji, Penelitian Hukum Normatif Suatu Tinjauan Singkat, (Jakarta: PT. Raja Grafindo Persada, 1983), hlm. 13.

¹¹ Ibid, hlm. 46.

¹² Ibid, hlm. 47.

¹³ Rianto Edi, Metode Penelitian Sosial dan Hukum, (Jakarta : Granit, 2004), hlm. 61.

¹⁴ Ibid, hlm. 53.

¹⁵ Bagir Manan, Peraturan Pemerintah Sebagai Pengganti Undang-Undang, Dalam Varia Peradilan Tahun XXV No. 295 Juni 2010, hlm. 5-6.

¹⁶ Zulfie Diane Zaini, Indepensi Bank Indonesia dan Penyelesaian Bank Bermasalah, Bandung : CV Keni Media, 2012, hlm. 212.

funds became a burden on the government. Policy decided by Indonesian Bank on the global crisis was keeping the financial system stability, market trust, and avoiding bank closure.

All the decisions were one set of efforts to respond quickly the rapid global crisis development. Based on the perspective towards disturbing external factors, there was still a wrong perception from some people such as political actor about Indonesian Bank independence. But it was a wrong perspective. Since there was an independence of Indonesian Bank, Bank of Indonesia would be stronger to keep better monetary stability, while better monetary stability condition was a profit and achievement for the government. Yet, unfortunately, in the Constitution of Indonesian Bank, there was no explanation if intervention happened, which party authorized to do legal action.

Besides Perppu Number 2 Year 2008, government also issued Perppu Number 4 Year 2008 about financial system security network to overcome financial crisis. This Perppu only covers the preventive action and crisis handle. Because, the regulation and supervision of financial institutions had been managed in the Constitution related to financial institutions, the organization of payment system, granting Short-term Financing System Facility had been managed in the Constitution of Deposit Insurance Agency and Perppu LPS. To reach the purpose, a stability committee of the financial system was formed and had Minister of Finance and Indonesian Bank Governor as the members supported by secretariat. Then, by issuing Perppu Number 4 Year 2008 about financial system security net (JPSK), it was expected that the availability of safety instruments of national financial system stability would be more complete.

Pros and Cons of issuing Perppu Number 4 year 2008 about financial system security net. Its publication Number 4 Year 2008 led to the rejection of the factions of the House of Representative on the grounds that the existence of the Financial System Stability Committee (KSKK) gave a big role to Minister of Finance. In the Financial System Stability Committee, the domination of Minister of Finance is very strong, the great power made the Minister of Finance difficult to be controlled by the House of Representative. Indeed, the role of the House of representative remains in the determination of budget, but the practice is very difficult. Immunities in the provision of Article 29 of Perppu Number 4 Year 2008, by the People's Legislative Assembly shall be deemed to be a denial of the principle of accountability and good governance which may result in moral hazard. But the current government through the Minister of Justice and Human Rights, Andi Mattalata states that the provisions of Article 29 Perppu Number 4 Year 2008 actually proposed to give courage to government officials who took the decisions embedding crisis. If the provision of Article 29 was removed, it was not an issue because state officials if implementing procedures in accordance with the rules would not cause legal problems.

In addition to the problem of impunity, another issue that had been objected to the factions of the House of Representatives was Perppu No. 4 Year 2008 was considered to have taken over the budget right of the House of Representatives. If Perppu No. 4 Year 2008 was continued, the government had violated the Constitution Year 1945 which guaranteed the right of budget to the legislature.

Related to the existence of Perppu No. 4/2008 concerning Financial System Safety Networking (JPSK) there was a polemic between those who agreed with the existence of Perppu No. 4 Year 2008 and those who rejected Perppu No. 4 Year 2008. Based on the Constitution of 45 of Article 22 states that: "Perppu must obtain approval from the Parliament in the next session, if the DPR does not approve it, then Perppu must be revoked or canceled, but if the DPR approves it then the Perppu is set to Act. ". So if DPR did not approve then Perppu must be revoked. Parliament at the plenary session on December 18th, 2008 had formally rejected Perppu No. 4 Year 2008. Conversely, Erman Rajagukguk, Professor of the Faculty of Law of the University of Indonesia stated: "The letter sent by the Chairman of the House to the President does not include the words do not approve or accept Perppu Number 4 Year 2008. "The speaker of the House of Representatives in his letter simply stated: " Agreeing to ask the government to immediately submit the Bill on Financial System Safety Net (JPSK) before January 19th, 2009. "

Since there were no words to refuse in the letter of the Chairman of the House, the decision of KSSK dated November 21st, 2008 requesting the Deposit Insurance Agency (LPS) to include capital in Century Bank remains valid. Perppu was officially rejected by the House of Representatives in plenary session on September 30th, 2009 after KSSK decided to give bailout of Century Bank.

The debate on pros and cons of Perppu No. 4 Year 2008 ended by revoking Perppu No. 4 Year 2008. Law of the Republic of Indonesia Number 11 Year 2015 concerning Revocation of Government Regulation in Lieu of Law No. 4 Year 2008 concerning Financial System Safety Net should be based on consideration of the provisions of Article 22 Paragraph (3) of the 1945 Constitution of the State of the Republic of Indonesia.

Duties, Functions, Powers and Responsibilities of the Financial System Stability Committee. These were the tasks and authorities of the Financial System Stability Committee (KSSK). First, the Financial System Stability Committee (KSSK) had the duty to coordinate in the context of monitoring and maintaining financial system stability. Then, they also handle the financial system crisis, dealing with banks that experienced systemic problems. Begin the stability of the financial system under normal conditions as well as financial system crises.

In carrying out the functions and tasks to establish policies in the context of crisis prevention, steps undertaken by KSSK including: Evaluate the scale and dimensions of liquidity and/or solvency problems of banks/LKBB suspected Systemic Impact, Establish liquidity problems and/or solvency problem bank/LKBB systemic impact or no Systemic Impact and Establish any banks/LKBB problem handling measures deemed necessary in the context of crisis prevention and handling. While the steps for crisis handling, KSSK might undertake the following steps: Banks experiencing liquidity and/or solvency difficulties which individually had systemic impacts or Banks which individually had no systemic impact but together with other bank systemic impacts, under crisis conditions and LKBB which experienced systemic impact solvability issues.

The authority of KSSK was regulated in the provisions of Article 6 of Constitution Number 9 Year 2016 on the Prevention and Handling of Financial System Crisis.

- Establish decisions on governance and secretariats of the Financial System Stability Committee (KSSK),
- Authorize to form task forces or working groups to assist in the performance of the tasks of the Financial System Stability Committee (KSSK).
- Establish coordination measures to prevent the financial system by considering the recommendations of each member of the Financial System Stability Committee (KSSK).
- Provide recommendations when the president will decide the steps to handle the financial system crisis.
- Authorization in determining purchasing decisions by Indonesian Bank on state securities owned by the Deposit Insurance Agency for bank handling.

Policy cannot be criminalized. Constitution No. 9 Year 2016 on Crisis Prevention and Response the financial system has provided a mandate in the prevention and handling of the financial system crisis established a Financial System Stability Committee. So, any decision of the Financial System Stability Committee is the responsibility of the Financial System Stability Committee. In addition, Constitution Number 9 Year 2016 on the Prevention and Handling of the Financial System Crisis also provides a clear legal protection for the stakeholders involved in the decision-making process. Forms of legal protection in this case means unless there is an element of misuse of authority, namely: in the form cannot be prosecuted either civil or criminal over the implementation of duties, functions, and authority under the law. This means that legal protection is provided during the decision maker in making decisions in accordance with the mandate, In regard to the duties and functions. However, if the person performs the duties based on the Constitution facing a lawsuit related to the performance of the duties and authorities of the Financial System Stability Committee, then the person concerned will obtain legal assistance from the agency he or she represents. Assistance or legal assistance (to be provided) to officers performing duties in line with the powers laid down in this Constitution or regulated by other Constitutions.

Policies may be criminal. J.E. Sahetappy considers that the policy of Century Bank determination as a failed bank to have systemic impact and the provision of Short Term Financing Facility (FPJP) can be criminalized and brought to justice for trial. Opinions of Prof Supanto, S.H., M. Hum, Professor of the University of Surakarta, Governor and Deputy of Bank Indonesia may be convicted of his decision. Because even in the rules, it says there is "good faith" but all there are conditions that must be met. If it is not fulfilled it can be said to misuse the authority and against the law. Each policy has its rule of law. If it violates the Constitution on which a criminally potentially violating law can still be punished.¹⁷

4. The Meaning of Misuse of Authority in Handling Financial System Crisis

Up to now, the Corruption Eradication Commission has brought the Century Bank case to the Jakarta Corruption Court by indicting Budi Mulya on the basis of the primary charge of Article 2 Paragraph (1) jo. Article 18 of the Constitution of the Republic of Indonesia Number 31 Year 1999 concerning the Eradication of Corruption as amended by Constitution Number 20 Year 2001 concerning Amendment to Constitution Number 31 Year 1999 concerning the Eradication of Corruption jo. Article 55 Paragraph (1) of the Criminal Code jo. Article 64 Paragraph (1) of the Criminal Code.

Description of the case made by the Corruption Eradication Commission against Defendant Budi Mulya is based on the result of onsite supervision examination conducted by Indonesian Bank in 2005-2008 shows that Century Bank has experienced structural problems for a long time, Supervisor of Indonesian Bank has recommended to close Century Bank, but Indonesian Bank takes decisive action and seem to cover up the actual conditions and even continue to try saving Century Bank. The condition of Century Bank which is under capital and CAR below 8% is proposed to BI Governor Boediono and Deputy Governor of Indonesian Bank 6 Generals and Sharia Bank Supervisions to determine the status of Century Bank under special supervision.

This is the process of establishing Century Bank into a systemic failing bank. On 20th of November 2008, at the meeting of the Governor of Bank Indonesia, there was a command from the Board of Governors of Indonesian Bank to the Directorate of Banking Research and Regulation (DPNP) that the Board of Governors of Bank Indonesia did not want Century Bank to be designated as a failed bank and handed over its management to LPS to be closed but Century Bank still operated and did not become a failed bank.

Due to concerns, KSSK will not approve the proposal of Century Bank as a failed bank to affect systemic then Budi Mulya (by misusing authority in his position) states disagree with the data attachment submitted by Halim Alamsyah and requested that the data from Halim Alamsyah was not attached. Budi Mulya's request was supported by Miranda Goeltom, because there is only one criterion that had systemic impact on Century Bank and Budi Mulya requested that the attachment of Halim Alamsyah should not be included so it would not be crowded.

Budi Mulya declared to have committed corruption related to the use of Short Term Loan Facility (FPJP) for Century Bank altogether with Boediono, Miranda Gultom, Siti Fadriah, Budi Rochadi, Robert Tantular and Hermanus H. Muslim. They amended Indonesian Bank Regulation Number: 10/26 / PBI / 2008 dated October 30th, 2010 which required a bank must have a Capital Adequacy Ratio of at least 8%. Century Bank per September 30th, 2008 had only 2.35% and Century Bank had been dead.

The Jakarta Corruption Court in the decision Number: 21 / Pid.Sus / TPK / 2014 / PN.Jkt.Pst dated July 16th, 2014 on behalf of Defendant Budi Mulya imposed a 10 year in prison, fine of Rp. 500 million subsidies of 5 (five) months in prison and a court fee of Rp. 10.000, -. On the verdict of Jakarta Corruption Court, Budi Mulya appealed.

¹⁷Tribunnews.com tanggal 16 Mei 2014, diakses tanggal 19 Mei 2018.

In the case of Budi Mulya, the important issue taken into consideration by the Court was the amendment of Indonesian Bank Regulation Number 10/26 / PBI / 2008 replaced by Indonesian Bank Regulation Number 10/30 / PBI / 2008 signed by the Governor of Indonesian Bank Boediono, Budi Mulya had an active role for receiving money from Robert Tantular of Rp. 1 Billion. Indonesian Bank Regulation (PBI) is a legal provision stipulated by Indonesian Bank and binds every person or entity and is published in the state gazette. Indonesian Bank is within the scope of executive power and its position is not equivalent to the Presidential institution. Of course, PBI's legal products cannot be synchronized with the Government Regulation (PP). But when viewed from its function that is as executor of the provisions of the Constitution, then the PBI should be synchronized with the Government Regulation (PP).

Within the State Administration Law is known that there is a regulatory policy¹⁸ (*beleidregel*) or known as *pseudowetgeving*, *spiegelsrecht*.¹⁹ According to Bagir Manan, a more appropriate term is a policy provision. The use of the word "provision" is to distinguish between rules that can connote as one form of legislation such as government regulations or Ministerial regulations.²⁰ The policy regulation (*beleidsregel*) does not alter the legislation (*algemene verbindende voorschrift*) but the material sphere (material sphere) within it, is to elaborate Constitution only (*algemene verbindende voorschriften*).

Amendment to Indonesian Bank Regulation is a policy regulation that cannot be tested *wetmatigheid*, but the policy regulation should be submitted to *doelmatigheid* so that the test stone is the general principles of good governance.

The fact that happened until now Century Bank case still not yet finished in law. On April 9th, 2018, the South Jakarta District Court in the case Number: 24 / Pid.Pra / 2018 / PN.Jkt.Sel decided:

- To grant the Petitioner's pre-trial petition in part;
- Order the Respondent to carry out further legal proceedings in accordance with the provisions of applicable laws and regulations on the alleged corruption offenses of Century Bank in the form of investigating and appointing suspects against Boediono, Muliaman D. Hadad, Raden Pardede, et.al (as set forth in indictment on behalf of Defendant Budi Mulya) or delegate it to the police and or prosecutor's office to proceed with investigation, investigation and prosecution in proceedings at the Central Jakarta Corruption Court;
- Refusing the petition of the Applicant of pre-trial for other and beyond;
- No charge of the case fee to the requested party.

This pre-trial ruling raises a debate among lawyers. Because this pretrial ruling is seen to cause controversy and it cannot be separated from the authority of the Court which is extended by the Constitutional Court Number: 21 / PUU-XII / 2014 dated April 28th, 2015 which in essence the decision of the Constitutional Court extends pre-trial testing mechanism by adding its object to the determination of suspects, searches and foreclosure

The case of Budi Mulya makes various people with professional background to express their opinions to the judge. The judge who examined and prosecuted Budi Mulya did not believe that the reason for the crisis in 2008 was the main reason for the rescue of Century Bank because of the financial crisis that hit the world in 2008 did not make Indonesia including in the crisis country. The judge decides the defendant Budi Mulya legally and convincingly guilty of committing a criminal act of corruption together and continues. The judge refers, among others, information given by Jusuf Kalla in the trial of defendant Budi Mulya dated May 8th, 2014, where Jusuf Kalla as vice president at that time explained never involved in the bailout policy of Century Bank, the state disagreed with the bailout of Century Bank, the scheme the provision of bailout funds for Century Bank using the blanket guarantee system was also violated and the government decided in October 2008 only a limited guarantee of maximum Rp.2.000.000.000, - (two billion rupiah) for each account. According to the researcher, Pre-Pretrial Decision Number 24 / Pid.Prap / 2018 / PN.Jkt.Slt is a legal consequence of the construction of Century Bank bailout case with defendant Budi Mulya. In the indictment against Budi Mulya mentioned Budi Mulya Together with Boediono, Miranda Goeltom, Budi Rochadi, Siti Fadrijah, and other Indonesian Bank officers. Budi Mulya case has been inkraacht or permanent law enforcement; the court stated the indictment proved. If it does not have enough evidence, those names do not need to be mentioned in the indictment. The Corruption Crime Court, the High Court of Corruption and the Supreme Court usually state that the charges filed by the Corruption Eradication Commission are proven.

The Pre-Judicial Decision in the opinion of Vice President Jusuf Kalla is a strange thing because usually the pre-trial hearing is related to the ongoing case but the pre-trial verdict related to the case that has been decided and then prosecuted through the court.²¹

Investigation on the Century Bank case by the Supreme Audit Board was conducted pursuant to Constitution Number 15 Year 2004 regarding Audit of State Financial Management and Accountability and Constitution Number 15 Year 2006 regarding the State Audit Board. Investigation was also based on a letter from the People's Legislative Assembly sent to the Audit Board which contains requests for investigative audit/examination with a specific purpose to Century Bank. Thus, on the letter of the People's Legislative Assembly, the State Audit Board formulates the objectives of the examination of the Century Bank case as follows: 1) Assess whether Century Bank's supervision by Bank Indonesia is in accordance with the provisions, 2) Assess whether the provision of Short Term Financing Facility (FPJP) by Indonesian Bank to Century Bank is in accordance with the provisions, 3) Assess whether the decision making process of Century

¹⁸H.M. Laica Marzuki, *Perturan Kebijakan (Beleidregel) Hakekat Serta Fungsinya Selaku Sarana Hukum Pemerintahan*, dalam Philipus M. Hadjon et.al , *Hukum Administrasi Negara dan Good Governance*, Jakarta: Universitas Trisakti, 2010, hlm. 55.

¹⁹Bagir Manan (Selanjutnya disebut Bagir Manan V), *Peraturan Kebijakan*, dalam Bagir Manan dan Kuntana Magnar, *Beberapa Masalah Hukum Tata Negara Indonesia*, Edisi revisi, Bandung: Alumni, 1997, hlm. 167.

²⁰Bagir Manan V, *Op.cit*, hlm. 168.

²¹www.kompas.com tanggal 11 April 2008, diakses tanggal 17 Mei 2018.

Bank rescue is in accordance with the provisions and supported by reliable data, 4) Assess whether the use of Short Term Financing Facility (FPJP) and Temporary Equity Participation (PMS) has been in line with the applicable provisions, 5) Assess whether there is alleged violation of provisions in the management of Century Bank that may harm the bank. From the formulation of the purpose of this investigative audit, the Supreme Audit Board conducted an investigative audit and found several things:

- Indonesian Bank is not strict and not prudent in applying the rules and requirements of its own acquisitions and mergers in the Mergers of CIC Bank, Pikko Bank and Danpac Bank;
- Indonesian Bank is not strict in implementing monitoring on Century Bank so that the problems faced by Century Bank since 2004 are not resolved and in the end it is determined as a failed bank having systemic impact and was saved by Deposit Insurance Corporation on November 21st, 2008;
- The Provision of Short Term Financing Facility (FPJP) to Century Bank conducted by Indonesian Bank by changing the terms and execution of its grant is not in accordance with the provisions;
- Determination of Century Bank as a failed Bank having systemic impact is not based on the complete and up-to-date data from Indonesian Bank regarding the actual condition of Century Bank;
- The handover of Century Bank to the Deposit Insurance Agency in accordance with Constitution Number 24 Year 2004 concerning Deposit Insurance Agency (LPS) and Discussion of Additional Temporary Equity Participation (PMS) to Century Bank shall be conducted by the Coordinating Committee (KK) whose institution has not been established based on Laws, which may affect the legal status of the existence of the Century Bank Coordination and Handling Committee by the Deposit Insurance Corporation (LPS);
- The process of handling the Century Bank by the Deposit Insurance Agency (LPS) is not supported by the calculation of the estimated cost of handling, no mention of the complete addition of PMS with the Coordination Committee, the alteration of the PLPS is expected to allow Century Bank to get additional PMS for liquidity needs, and the distribution of PMS to Century Bank since December 18th, 2008 has no legal basis;
- The Bank of Century shall pay the Third Party Funds related to the Bank as long as Century Bank has a special supervision of Rp. 938,645 Million;
- The embezzlement of foreign currency cash funds amounting to USD 18 Million and the split of 247 NCD each has nominal 2 Billion;
- Unfair practices and violations by management of the Bank, Shareholders, Related Parties Bank Management that harms Century Bank.

5. Conclusion

Policy is closely related to authority. Policy is the determination taken by the party who has authority due to a particular situation/problem/change. The legal consequence of issuing the policy is the responsibility of the policy maker. As for policy implementers, as long as the implementation does not deviate from the existing policy, then it cannot be legally justified as the result of the implementation of policy. However, in case of irregularities and legal consequences, the perpetrator of the policy is personally responsible (*Ultra Vires*) for the impact that arises. In the context of the administrative law, this policy must be based on the legality principle (*legiteit beginsel/wetmatigheid van bestuur*) covering three aspects, namely authority, procedure and substance which must be based on legislation, so that the limitations are clear.

6. References

- i. Dworkin, R. (1973). *Legal Research*. Deadalus: Spring.
- ii. Edi, R. (2004). *Metode Penelitian Sosial dan Hukum*. Jakarta: Granit.
- iii. Ibrahim, J. (2005). *Teori & Metode Penelitian Hukum Normatif*. Malang: Bayumedia Publishing, cet pertama.
- iv. Manan, B. (Selanjutnya disebut Bagir Manan V). (1997). *Peraturan Kebijakan, dalam Bagir Manan dan Kuntana Magnar, Beberapa Masalah Hukum Tata Negara Indonesia*. Edisi revisi. Bandung: Alumnus.
- v. Manan, B. (2010). *Peraturan Pemerintah Sebagai Pengganti Undang-Undang. Dalam Varia Peradilan Tahun XXV No. 295 Juni 2010*.
- vi. Marzuki, H.M.L. (2010). *Perturan Kebijakan (Beleidregel) Hakekat Serta Fungsinya Selaku Sarana Hukum Pemerintahan, dalam Philipus M. Hadjon et.al , Hukum Administrasi Negara dan Good Governance*. Jakarta: Universitas Trisakti.
- vii. Soekanto, S. & Mamudji, S. (1983). *Penelitian Hukum Normatif Suatu Tinjauan Singkat*. Jakarta: PT. Raja Grafindo Persada.
- viii. Zaini, Z. D. (2012). *Indepensi Bank Indonesia dan Penyelesaian Bank Bermasalah*. Bandung: CV Keni Media.
- ix. *Tribunnews.com* tanggal 16 Mei 2014, diakses tanggal 19 Mei 2018.
- x. *www. Kompas.com*, diakses pada tanggal 17 Mei 2018.
- xii. Undang-Undang Nomor 11 Tahun 1992 tentang Dana Pensiun (Lembaran Negara Republik Indonesia 1992 Nomor 37)
- xiii. Undang-Undang No. 10 Tahun 1998 tentang Perubahan Atas Undang-Undang Nomor 7 Tahun 1992 tentang Perbankan (Lembaran Negara Republik Indonesia Tahun 1998 Nomor 182).
- xiiii. Undang-Undang Nomor 23 Tahun 1999 tentang Bank Indonesia (Lembaran Negara Republik Indonesia 1999 Nomor 66, Tambahan Lembaran Negara Nomor 3843).

- xiv. Undang-Undang Nomor 7 Tahun 2009 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Menjadi Undang-Undang tentang Perubahan Atas Undang-Undang Nomor 24 Tahun 2004 tentang Lembaga Penjaminan Simpanan (Lembaran Negara Republik Indonesia 2009 Nomor 8, Tambahan Lembaran Negara Nomor 4963).
- xv. Undang-Undang Nomor 40 Tahun 2014 tentang Perasuransian (Lembaran Negara Republik Indonesia 2014 Nomor 337, Tambahan Lembaran Negara Nomor 5618).