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Meaning of Authority of Policy-Making Officials of Bail Out Century And Legal Responsibility In Constraining The Financial Crisis

Yanuar Prawira Wasesa [1], Moch. Bakri[2], Moh. Fadli[3], Istislam[4]
1. Doctorate Candidate at The Faculty of Law, Brawijaya University, Malang
2. Professor of Agrarian Law, Brawijaya University, Malang
3. Lecture of Constitutional Law, Brawijaya University, Malang
4. Lecture of Administrative Law, Brawijaya University, Malang
*Email of the corresponding author: yanuarpwasesa69@gmail.com

ABSTRACT

At the end of December 2008 Bank Century recorded a loss of Rp 7.8 trillion. The Bank is granted funding of Rp 1.55 trillion on February 3, 2009. The bail granting or bail out to Bank Century is a decision of the Financial System Stability Committee (KSSK) formed based on Government Regulation in Lieu of Law (Perppu) Number 4 2008 on the Financial System Stability Net which later established Bank Century as a failed bank with systemic impact. Determination of failed bank with systemic impact by policy-making officials is considered an abuse of authority if the policy creates a legal and political debate. However, this policy cannot be judged by the discipline of law or its implementer apparatus (*overheidbeleid*) which is an area of administrative law regardless whether there is a validity of substance of those policies or not. Policies issued in urgent and emergency conditions are generally not in accordance with or even against the written rules. Therefore, the policies issued in emergency conditions cannot be assessed or measured by regulatory products under normal circumstances. One of the consequences is an emergence of allegation of criminalization of the policy. In the view of law enforcer, such action cannot be qualified as criminalizing the policy if part of the policy-making mechanism is established on the basis of predetermined norms. The Supreme Court as the highest judicial institution has a different attitude in deciding a case related to government policy. Based on law and regulations, the Supreme Court pleaded guilty to policy-making officials who misused authority and provided clarity of responsible legal subjects if there is a state loss, namely to policy-making officials and parties that caused the bank to fail.

Keywords: bail out, failed bank, systemic, policy-making officials, abuse of authority.

A. INTRODUCTION

The case of Bail out of Bank Century not only raises the debate that should be legally responsible other than Budi Mulya with regard to the bail out to Century Bank. On April 9, 2018 the South Jakarta District Court granted part of the pre-trial lawsuit by a non-governmental organization called the Indonesian Anti-Corruption Society (MAKI) to the Corruption Eradication Commission related to the investigation of the Bank Century case. The Bank Century case has been running for 10 years from 2008 to 2018 and has never been completed until now. The Pretrial Decision Number: 24 / Pid.Pra / 2018 / PN.Jkt.Sel on April 09, 2018 proves that the Century Bank case raises various kinds of dissent in society. The case also raises the question of the extent to which the boundaries between policy and abuse of authority can be held accountable.

The Ministry of Finance of the Republic of Indonesia responded to various disagreements regarding the prevention and handling of the financial system crisis and provided an explanation of the decision of the Financial System Stability Committee (KSSK) of Century Bank which is inseparable from the global financial crisis in 2008. It starts from the failure of mortgage payment in The United States in which crisis not only destroys the banking system in the United States, but also extends to the countries in Asia including Indonesia.

On the other hand, the step of economic rescue during the financial crisis of 2008, the Government of the Republic of Indonesia has issued three Regulations in Lieu of Law (Perppu) as well as Perppu No. 2 of 2008 concerning Amendment of Act of Bank Indonesia (BI) and Perppu Number 3 of 2008 concerning Amendment of Act on Deposit Insurance Corporation (LPS) which was issued on October 13, 2008 and lastly Perppu Number 4 Year 2008 regarding Financial System Stability Net (JPSK) which was published on October 15, 2008.

The Perppu on Financial System Stability Net (JPSK) regulates the authority of the State, Government and Bank Indonesia and other State Institutions, also issued in times of crisis. Perppu consisting of 31 articles that essentially regulate the prevention and handling of financial crisis system include handling difficulties of liquidity and solvency of banks and non-bank financial institutions that have a systemic impact.

The role of the State or Government together with the central bank is done by granting bail out sourced from the State Budget (APBN), as the last net or as ultimum remedium (last effort) if the three nets that are previously published do not run effectively. On October 15 2008, the material of Perppu of Financial System Stability Net (JPSK) issued by the Government only regulates the fourth net namely the attempt of Prevention and Crisis Management while the previous three nets have been regulated in a law itself that has been existed before.

Any policies issued in times of crisis if they do not have a firm legal basis it may cause legal problem to the policy makers in financial field. Policymakers have not got a firm legal protection for the steps taken in saving the economy. One of the consequences is the allegiation of existence of criminalization of the policy. In the view of law enforcer, such action cannot be qualified as criminalizing the policy if part of the policy-making mechanism is established on the basis of predetermined norms. A policy is said to have a legal flaw if it is considered contrary to law and principles of good governance.

Freedom of action is given to government officials because the function of government is to conduct general welfare, which is different from the function of the judiciary that resolves the dispute. In addition, because of the government's function that has to face the demands of serving the increasing public interest, both in the social and economic fields. The policy as a legal action of a government official is a wish intended to produce legal consequence in the field of administration. Any policy made may result in the objection of those who feel disadvantaged by the decision. In order that a policy can be sustained from a lawsuit by parties who feel disadvantaged, any policy should be spared from legal defects (*onrechtmatig*).

Provision of bail fund or bail out to the Century Bank raises the pros and cons in society, also the economists to members of the House of Representatives. Groups that are pro or con, each has its own grounds and reasons. For those who are contrary to Century Bank's bailout policy argues that the policy can be criminalized because there are certain interests behind the disbursement of funds to Century Bank and there are some requirements that do not met in the bailout process. Bank criminal offenses in this case include abuse of authority in the provision of the Short Term Financing Facility or FPJP.

The step in the rescue of Bank Century starts from the Financial System Stability Committee (KSSK) which establishes Bank Century as a failed bank with systemic impact through the Decision of Financial System Stability Committee (KSSK) Number 04 / KSSK.03 / 2008 and requests the Deposit Insurance Corporation (LPS) to handle in accordance with the Law of the Deposit Insurance Corporation.[1]

The authority of the Financial System Stability Committee (KSSK) starts from Perppu no. 4 of 2008 on Financial System Stability Net (JPSK), which regulate the Financial System Stability Net (JPSK) objectives, of functions and tasks the Financial System Stability Committee (KSSK). Granting bail or bail out to Bank Century is a decision of Financial System Stability Committee (KSSK) formed based on Regulation in Lieu of Law (Perppu) No. 4 of 2008 on the Financial System Stability Net which then sets the Century Bank as a failed bank with systemic impact. The bailout policy in the Short-term Financial Assistance (FPJP) is the decision of the Financial System Stability Committee (KSSK) collegially not only by Bank Indonesia only.

The policy of bail fund or bailout in the form of Short-term Financial Assistance (FPJP) is a state decision or *staat beleid* that cannot be assessed by criminal law discipline or implementer apparatus (*overheidbeleid)* which is the jurisdiction of state administration despite there is a substance validity of the policy or not. Policies issued in urgent and emergency conditions are generally not in accordance with even against the written rules. Therefore, policies issued in emergency conditions cannot be assessed or measured by regulatory products under normal circumstances.

Acts deemed to be an abuse of authority are indeed acts within the territory of the State Administration Law as well as the Criminal Law. Abuse of authority becomes a gray area between the disciplines of State Administration Law and Criminal Law discipline, so that the term *policy criminalization* emerges. Is the bailout policy for Century Bank decided by the Financial System Stability Committee (KSSK) motivated by the abuse

[1] Tim Asistensi Sosialisasi Kebijakan Pencegahan dan Penanganan Krisis Sistem Keuangan, *Buku Putih..., op.cit.,* hlm.9.

of authority in a collegial manner or is there any misuse of authority committed by individuals in the Financial System Stability Committee? The case of the Bank Century bailout funds is a case approach in this study.

The Supreme Court as the highest judicial institution has a different attitude in deciding a case related to government policy. Regardless of differences of opinion concerning valid or invalid Pretrial Decision Number: 24 / Pid.Pra / 2018 / PN.Jkt.Sel on April 9 2018 where the Corruption Eradication Commission was ordered by the South Jakarta District Court to make Boediono and his colleagues as suspects. On the other hand, in the provision of Article 45 of Law Number 23 of 1999 concerning Bank Indonesia states: "The Governor, Deputy of Senior Governor and / or Bank Indonesia's officials cannot be punished for taking a decision or policy in line with their duties and authorities as referred to this law as long as conducted with a good intention."The provision of Article 45 of Act Number 23 of 1999 concerning Bank Indonesia is not in accordance with the facts that occur in the community.

Based on the background of the as study above, then the problem can be formulated follows:

1. Is Bank Century's determination as a systemic failed bank a policy or misuse of authority by policy-making officials (the Financial System Stability Committee)?
2. If there is a loss of state who is responsible for that state loss?

B. RESEARCH METHOD

The type of this research is normative legal research[1] based on an analysis of the rule of law, either law in the sense of legislation, or the law in the sense of court decisions[2]. The various approaches in legal research, namely the approach of legislation (statute approach), case approach, historical approach [3]

As a normative juridical research, this study uses secondary data source (secondary legal material). Secondary legal materials are materials that provide an explanation of primary legal materials, such as draft of laws. For these secondary data sources, researcher uses a number of legal materials in literary form. As for the legal material of bibliography, this literature research is a type of data obtained through an inventory which includes three forms[4] qualified as Primary Legal Material, namely legal material which consist of the basic norms contained in the Constitution of the Republic of Indonesia, Law on Banks, Bank Indonesia, the Deposit Insurance Corporation (LPS) and the Financial System Safety Net , and the decision of the Financial System Stability Committee (KSSK)[5], Secondary Legal Material, namely the legal material that explain the primary legal materials, which include meeting note taker either meeting of Financial System Stability Committee (KSSK) or the Special Committee meeting of Bank Century, books, articles and papers in journals, magazines, newspapers and the internet discussing the problems of Century Bank[6], and Tertiary Law Material, namely legal material that provide guidance and explanation of primary and secondary legal materials, such as dictionaries (Law, Bahasa Indonesia and English).[7]

The technique of analysis in this research is qualitative juridical analysis where the legal material obtained, reviewed, arranged systematically and presented in the form of a descriptive sentence. Further it is analyzed based on applicable laws and regulations or opinions of experts or rules, theories, legal doctrines.

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[1] 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. Johnnny Ibrahim, Teori & Metode Penelitian Hukum Normatif, (Malang : Bayumedia Publishing, cet pertama April 2005), hlm. 47.

[2] Ronald Dworkin, *Legal Research*, (Deadalus: Spring, 1973), halaman.250

[3] Bambang Sunggono, *Penelitian Hukum Normatif*, Bandung: CV. Mandar Maju, 2000, hlm.76.

[4] 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.

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

[6] *Ibid*, hlm. 46.

[7] *Ibid*, hlm. 47.

C. RESULT AND DISCUSSION

1. Conformity of Meaning of Policy and The Abuse of Authority in Bailing out Century Bank by Policy-making Officials

1.1 Chronology of Century Bank Case

On November 13, 2008 Bank Century experienced a state of being unable to pay the requested funds from customers or generally referred to as losing the clearing of this situation to create a panic or rush in the withdrawal of funds at Century Bank. Subsequently on November 14, 2008, Bank Century's management reported the incident and submitted an application to get an emergency funding facility to the Financial System Stability Committee (KSSK) then on November 20, 2008 Bank Indonesia (BI) determined the Bank Century's status to fail.

In the development of the Deposit Insurance Corporation (LPS) has given the fund (bailout), amounting to 6.7 trillion with the details as follows: from November 14, 2008 to November 18, 2008 there is a short-term funding facility (FPJP) from Bank Indonesia Rp 689.39 billion is used for the need to repay the interbank loans amounting to Rp 28.2 billion, and the need for third party funds (DPK) of Rp 661.1 billion.

Pros and cons continue to emerge since the emergence of policy of LPS to provide grants (bailout) of Bank Century. The settlement of PT. Bank Century Tbk is still not finished yet, which is only limited to political settlement. From the above case it can be understood that corruptive behavior of bankers will ultimately burden the government's finances through bail-out policy by LPS. Referring to the calculations by Bank Indonesia, until the end of 2009 the Deposit Insurance Corporation (LPS) has paid the handling fee of PT. Bank Century Tbk Rp. 6.76 trillion.

One of Finance Commission of the House of Representatives members stated that at the time of granting bailout to PT. Bank Century Tbk, LPS seems to deliberately change the rules to accommodate the provision of bailout funds of Rp. 2.2 trillion to PT. Bank Century Tbk. According to the members of the House of Representatives, the Regulation of Deposit Insurance Corporation (LPS) no. 5 of 2006 states that the addition of capital cannot be given to bail liquidity needs. However, due to the need for bailout funds to cover the liquidity of PT. Bank Century Tbk, LPS Regulation no. 5 of 2006 was amended by LPS Regulation number 2 year 2008 on December 5, 2008, and on that date the second bailout of Rp. 2.2 trillion was disbursed to PT. Bank Century Tbk.

Deposit Insurance Corporation (LPS) has financial limitations, and therefore in the end all financial obligations to be borne by the Deposit Insurance Corporation (LPS) will be the State's obligation if the Deposit Insurance Corporation (LPS) finance is not possible to resolve them properly. Deposit Insurance Corporation (LPS) can function to regulate the security and health of banks in general, besides the Deposit Insurance Corporation (LPS) can also function as a supervisor conducted by monitoring the balance, lending practices and investment strategies with a view to see signs of financial distress that lead to the bankruptcy of the bank.

1.1 Conformity of the Meaning of Authority Abuse in Bail out Determination of Century Bank by Policy Maker Officials

Every Government Official in this matter is the policy maker official, in carrying out its duties it is required to continually base its decisions and actions on an applied legislation. Decisions and / or actions of Government Officials who are actually protected by the principle of freedom of action[1] in providing public services to the public, often overshadowed by concerns when decisions and actions allegedly affected the state's losses and qualified as criminal acts, so that the creativity and innovation of the government apparatus in the administration of the government was further restricted. If there is a suspicion of abuse of authority by Government Officials, law enforcer officers directly bring it into the realm of criminal law or corruption criminal act depending on the extent of the level of the offense. It is often found also the element of "harm the state's finances" made the initial allegation to indict an official without previously mentioned the form of violation.[2]

In this research context the author tries to capture and explore chronology related to the investigation case of bailout bank Century, where DPR forms Special Committee (Pansus), which is temporary. The results of the

[1] Saputra, M. Nata, *Hukum Administrasi Negara*. Jakarta: Rajawali Press, 1988, hlm. 15.
[2] HR, Ridwan, *Hukum Administrasi Negara*. Jakarta: RajaGrafindo Persada, 2006, hlm. 376.

analysis, there is indeed an increase in the process to the investigation. Even from the results of the progress report, the Commission targets two former Deputy Governors of BI, Budi Mulya and Siti Fadjrijah, as suspects.[1] Both are allegedly responsible for the policy of providing Short Term Funding Facility (FPJP) to Century.

Bank Century's rescue as a failed bank that is considered potentially having a systemic impact causes "controversy" because it is suspected that there is an aberration, the Parliament asked the Commission examined the allegiation of aberration. In another observation, the formation of this Special Committee was based on Law number 6 Year 1954 on the Rights of Parliament Questionnaire.

The decision to rescue Bank Century has the legal basis of Perppu No. 4 of 2008 on Financial System Stability Net, where the Perppu is the legal umbrella of meetings conducted by the Financial System Stability Committee (KSSK) to take an action to rescue Century Bank. Perppu Number 4 of 2008 is only used on November 20-21 2008. it is before that date the decision of Bank Century rescue based on Bank Indonesia.

The debate over the existence of engineering of making regulations in order to save the Bank Century is not appropriate. Since the issuance of Government Regulation Number 4 Year 2008 regarding Financial System Stability Net (JPSK) is a mandate of Law Number 3 Year 2004 regarding Amendment to Law Number 23 Year 1999 concerning Bank Indonesia. In anticipation of the global financial crisis, there are three (3) Perppu namely Perppu of JPSK, Perppu of Amendment of Bank Indonesia and Perppu of Amendment of Law.

Optic of Authority Abuse of Determination of Policy-making Officials in the Case of Bail Out of Bank Century in the Perspective of State Administration Law. Abuse of authority is a concept of administrative law that greatly cause misunderstanding in understanding it. The parameter of "purpose and intention" of authority provision in determining the occurrence of abuse of authority is known as the specialty principle (*specialiteitsbeginsel*).[2] Referring to Law number 30 Year 2014 on Government Administration (UUAP) the provisions in the material of such content does not provide an explicit definition related to abuse of authority.

The issuance of Law Number 30 Year 2014 on Government Administration provides attribution of authority to the State Administrative Court (PTUN) to receive, examine and decide whether there is an element of abuse of authority or not in the decisions and / or actions of Government Officials.

In the context of the optical of the authority abuse of the determination of the policy maker officials in the case of the bailout of Bank Century in the perspective of state administrative law, the question then arises; does the criminalization of the policy of authority abuse and unlawful conduct in the process of stipulating the policy of granting FPJP? On the other side of the Supreme Audit Agency (BPK) revealed a number of ulcers in an effort to save the Bank Century. The results of the investigation audit of that country's high institution, it finds allegations of misuse of authority of judgment by Bank Indonesia (BI) and Financial System Stability Committee (KSSK).[3]

The abuse of authority has resulted in very large financial losses. The element of corruption that occurred in the case of Century Bank is split into two (2) things namely abuse of authority and violation of regulations. Abuse of authority by Bank Indonesia where Bank Indonesia is late in determining Bank Century as a bank under the supervision of Bank Indonesia, the amendment of BI Regulation, approval of FPJP grant, and the concealment of information about why Century Bank could have a systemic impact.[4]

The abuse of authority is made consciously by transferring the purpose that has been given to that authority based on personal interests, either for his own benefit or for others [5] can even occur with certain groups of groups who are defended by their interests through policy abuse. Acts categorized as abuses of authority or

[1] Indriyanto Seno Adji, Bank Century dan Utang Politik, diakses 9 Januari 2018. http://nasional.kompas.com/read/2012/11/29/09491274/Bank.Century.dan.Utang.Politik.
[2] Minarno, Nur Basuki. *Penyalahgunaan Wewenang dalam Pengelolaan Keuangan Daerah yang Berimplikasi Tindak Pidana Korupsi*. Surabaya: Laksbang Mediatama, 2011, hlm. 97.
[3] http://nasional.kontan.co.id/news/ada-penyalahgunaan-wewenang-di-century-1, Diakses 13 Januari 2018
[4] *Ibid.*
[5] Hadjon Philipus M. et.al, *Hukum Administrasi dan Tindak Pidana Korupsi*, Yogyakarta: Gadjah Mada University Press, 2011, hlm. 22.

against this law, the character of his actions included in the realm of state administrative law, in addition to criminal law.[1]

Although the policy is determined as a criminal act of corruption, the KPK must carefully prove the existence of malicious intent (*mens rea*) for the implementation of *actus reus* (acts that contain criminal acts, such as abuse of authority and unlawful acts). Thus in the above description approach, besides viewing from the optics of state administrative law as a form of abuse of authority, to certain situations or circumstances as specified in the basic rules, also see the gap of violation of corruption crime caused by misunderstanding of free authority, free authority or discretionary power include the Authority to decide on its own and the authority of interpretation of obscured norms (*vage normen*).[2]

Abuse of Authority by the Policy-making Officials in the Case of Bail Out of Bank Century in Criminal Legal Perspective. The criminal act of corruption has been regulated in Law Number 31 Year 1999 Jo of Law Number 20 Year 2001 Concerning the Eradication of Corruption. In Article 3 of the Anti-Corruption Eradication Act describes:

> *Any person with the purpose of profiting himself or others or a corporation, misuses the authority, opportunity or means that are available to him because of a power or position which could be detrimental to the state's finance or the economy of the state, is liable to a life imprisonment or a minimum imprisonment of 1 one) year and a maximum of 20 (twenty) years and a fine of at least Rp. 50.000.000, - (fifty million rupiah) and at most Rp. 1.000.000.000, - (one billion rupiah).*

In the following it describes the elements contained in Article 3 above:

a. The element of “everyone”

   The word of each person or in the Criminal Code is the language of "whosoever" refers to *natuurlijk person* (personal person) dan *rechts person* (legal entity). Based on Decision of the Supreme Court Number: 892 K / PID / 1983 on December 18, 1984 related to the definition of "whoever" in the case of corruption, including authorized officials, private parties, and legal entities.

b. Element “for the purpose of benefiting itself or others or a corporation”

   In Article 3, the element “benefiting itself or another person or a corporation” is the purpose of the perpetrator of the criminal act of corruption.

c. Element “Misusing the authority, opportunity or facility that are available for him because of his power or position”

   In order to achieve the purpose of benefiting itself or another person or a corporation in Article 3 it has determined the manner that has been conducted by the perpetrator of the criminal act of corruption, namely: by misusing authority, by misusing the opportunity or by misusing the facility, in the power or position of perpetrators of criminal acts of corruption.

d. Element “harm the state finance or state economy”

   The definition of “harm” is equivalent to become loss or diminishing, so the meaning of the element “harming the state's finances” is equivalent to being a loss of state finances or diminishing state finances.

The KPK stated that there were indications of unlawful acts and abuse of authority that result in state financial losses. There are at least 5 indications of corruption in the case of Century Bank bailout, namely:

1. Determination of Century Bank as a failed bank with systemic impact is not done based on data and complete information from Bank Indonesia.[3]

[1] *Ibid.*
[2] *Ibid. Op.cit*, hlm. 6.
[3] Garda Maeswara, *Opera van Century*: Kunci Rahasia di Balik Skandal Bank Century, Yogyakarta: MedPress, 2010, hlm. 120.

2. Handover of handling Century Bank to LPS through Coordination Committee (KK). In fact, the Coordination Committee has not been established under the law. This affects the legal status of the KK's existence, which may result in any policies taken to be invalid.[1]

3. The handling of Century Bank by LPS is not supported by the calculation of estimated cost of handling. KK does not discuss the addition of Temporary Capital Injection (PMS) so that the budget for handling Century Bank has no legal basis.

4. Making payment of third party funds during the Bank Century stated in the supervision of Rp. 938.6 billion.

5. The embezzlement of foreign currency cash funds amounted to US $ 18 million and the split of 247 negotiable certificates of deposit (NCD).[2]

Indications 1 to 3 are included in categories of unlawful acts and abuse of authority resulting in state losses. The act also violates the Corruption Act while the last 2 indications (the fourth and fifth indications) are the inappropriate use of Temporary Capital Injection (PMS) and the imposition of loss of Century Bank embezzled by the owner.

2. Legal Responsibilities of Policy-making Officials and other Parties in Handling the Financial System Crisis

2.1 Legal Responsibility of the Policy-making Officials and other Parties in the Century Bank Case

Criminal Accountability for Policy-making Officials in the Century Bank Case. Century Bank bailout caused a tremendous upheaval, where public opinion and the government are divided into 2, there are pros and cons. For the parties involved in discussing this bailout policy, they consider that the decisions they have taken are appropriate. In terms of rescue efforts, Bank Century was taken over by the Deposit Insurance Corporation (LPS) by providing a bailout fund of Rp. 6.7 trillion. The policy taken is the best option in the current situation and condition in order to safeguard the public interest.[3]

Opinion against the decision on the bailout of Century Bank, some of them come from the KPK, BPK, and DPR RI. Those parties questioned whether the bailout to Century Bank was the right decision or otherwise wrong, because there are allegations of abuse of authority causing the state losses. If this policy is wrong, it is worth investigating whether this bailout is a corruption category, and wherever the funds are distributed, so that the parties involved can be criminalized.

The jurisprudence of the Supreme Court of the Republic of Indonesia of 1966 is at least a legal foundation that reinforces the opinion. Policymakers can only be punished for policies that have been taken if it is proven having elements:[4]

a. Abuse of authority (Article 1 paragraph (1) Sub-Paragraph b of Law No. 3 Year 1971 jo Article 3 of Law No. 31 Year 1999);
b. Against the law" (Article 1 paragraph (1) sub-paragraph a of Law No. 3 of 1971 jo Article 2 paragraph (1) of Law No. 31 of 1999); and

[1] Harry Azhar Azis, 23 November 2009, Kasus Century, persoalan hukum atau politik?, http://www.antikorupsi.org/en/content/kasus-century-persoalan-hukum-atau-politik, diakses tanggal 12 Desember 2016.

[2] Badan Pemeriksa Keuangan, 20 November 2009, Laporan Hasil Pemeriksaan Investigasi Atas Kasus PT Bank Century Tbk, http://kkn-watch.blogspot.co.id/2009/12/kkn-watch-laporan-hasil-pemeriksaan.html, diakses tanggal 21 Desember 2016.

[3] Fathudin, Tindak Pidana Korupsi (Dugaan Penyalahgunaan Wewenang) Pejabat Publik (Perspektif Undang-Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan), Jurnal Cita Hukum. Vol. II No. 1 Juni 2015, hlm. 126-127.

[4] Totok Soeprijanto, Apakah kebijakan dapat dipidana?, hlm. 7, http://docplayer.info/21303-Apakah-kebijakan-dapat-dipidana.html, diakses tanggal 12 Desember 2017.

c. Can harm the state finance or state economy (Article 2 paragraph (1) of Law No. 31 of 1999 jo Law No. 20 Year 2001).

In addition to Corruption Act, the perpetrators may also be subject to banking crime[1] regulated under Law no. 10 of 1998 concerning Banking. Based on the Bank Century case, the Coordination Committee (KK) membership consists of three agencies: the Minister of Finance, the Governor of Bank Indonesia and the IDIC. In fact, these three elements make the decision hand over Century Bank to LPS.

Furthermore, according to the researcher the legislator declared the existence of the KK on the LPS Act (September 22, 2004), then retreated to the Law on Amendment of the BI Act (January 15, 2004) and moved again to the LPS Act (September, 22 2004). The existence of KK begins in the Law on Amendment of the BI Act (Memorandum of Understanding), continuing based on LPS Act.

Capital Participation of the Deposit Insurance Corporation (LPS) into the Bank Century is not state finance because it is not derived from the state budget but from the premium received by the Deposit Insurance Corporation (LPS) in order to guarantee deposits of customers in banks. There is no state loss. In 5 (five) years, the Deposit Insurance Corporation (LPS) must release the capital participation. It means that the shares of the Deposit Insurance Corporation (LPS) in Bank Century must be sold to other parties or can be sold to the public through the Capital Market.

In 2014, the government has passed Law Number 30 Year 2014 on Government Administration. This law strictly authorizes the State Administrative Court to receive, examine, and decide on the allegiation of misuse of authority conducted by Government Officials.[2] This regulation is in accordance with specialty principle (*specialiteitsbeginsel*) that authority is given to a government organ with a specific purpose.[3]

If in the decision on a State Administrative Court, it is proven that there is a misuse of authority in the policy, so the public official may be subject to criminal sanctions. This is in accordance with the application of criminal law sanctions as a last effort (*ultimum remidium*), in order to provide legal certainty.[4]

Legal Responsibility to the Party that Cause the Bank Failed. There are two lawsuits addressed to the Party that Caused the Bank Failed namely civil suit and criminal lawsuit. The legal basis of the civil suit is based on the provisions of the Law on the Deposit Insurance Corporation, the Law on Limited Liability Companies, and Article 1365 of the Civil Code related to Unlawful Acts. The Civil Responsibilities based on the Law on LPS is the Deposit Insurance Corporation (LPS), an independent institution, which serves to guarantee deposits of depositors and actively participate in maintaining the stability of the banking system in accordance with their authority.[5] Civil Liability under the Law on Limited Liability Company provides an opportunity to do legal effort for civil remedies for those who feel disadvantaged. This form of responsibility is both internal and external. Internal responsibilities include the responsibility of the Board of Directors to the Company and its shareholders while external responsibility is the responsibility of the Board of Directors to the legal third parties that is legally related to the Company, either directly or indirectly.[6] In Indonesian law, however, the Limited Liability Company's responsibilities use the systems of separate legal entity and limited liability.

In the case of Century Bank, there is an element of error, where there is a combination of deliberate and negligence committed by the Board of Directors of Bank Century. Although the Board of Directors has found out that Antaboga Mutual Fund is not listed in Bapepam-LK, the Board of Directors has intentionally ordered the Branch Office to sell the Mutual Fund. With this element of error, it can be used to state that the Board of Directors is held liable for the adverse consequences happened because of his wrongdoings.

[1] Riesia Darma Bachriani, Aspek Kejahatan Tindak Pidana terhadap Dunia Perbankan di Bank Century, Jurnal Ilmiah Ilmu Hukum QISTIE Vol. 7, No. 2, Nov 2014, hlm. 95.
[2] Pasal 21 Undang-Undang No. 30 Tahun 2014 tentang Administrasi Pemerintahan (Lembaran Negara Republik Indonesia Tahun 2014 Nomor 292).
[3] Fathudin, Tindak Pidana…, *op.cit*., hlm. 129.
[4] *Ibid*, 130.
[5] Abu Azam, Anallsis Hukum Islam terhadap Lembaga Penjamin Simpanan (LPS) bagi Nasabah Penyimpan Dana Menurut Undang-Undang Nomor 24 Tahun 2004 tentang Lembaga Penjamin Simpanan, Jurna1 Hukum dan Pembangunan Tahun ke-41, No.2, Apri1-Juni 2011, hlm. 215.
[6] Kurniawan, Tanggung Jawab Direksi dalam Kepailitan Perseroan Terbatas Berdasarkan Undang-Undang Perseroan Terbatas, Mimbar Hukum Volume 24, Nomor 2, Juni 2012, hlm. 224.

In contrast, there are some cases that have been decided by *inkracht* regarding Criminal lawsuit to the Party that Cause the Bank Failed, namely the Crime of Banking[1], Money Laundering Crime[2] and General Crime (fraud and/ or embezzlement, falsification of letters and using false letters)[3].

2.2 Forms of Legal Protection from Criminal Lawsuit for Policy-making Officials

In the responsibility of the policy-making official in the field of administrative law, there are 4 (four) possible causes, namely because his action make a decision that is contrary to the law and regulations, abuse of authority and arbitrary and contrary to the general principles of good governance.

The administrative court has the authority to decide in advance whether the actions of the government have resulted in decisions contrary to legislation, or there has been misuse of authority, or contrary to the general principles of good governance. Criminal laws are granted after legal remedies with administrative, civil or other laws are carried out.

The provisions which directly state to provide legal protection for policy-making officials are in Article 48, which contain:

(1) Unless there is an element of abuse of authority, members of the Financial System Stability Committee, the secretary of the Financial System Stability Committee, members of the secretariat of the Financial System Stability Committee, and officials or employees of the Ministry of Finance, Bank Indonesia, the Financial Service Authority and the Deposit Insurance Corporation cannot be prosecuted, both civil and criminal for the implementation of functions, duties and authorities based on this Act.

(2) In the case of a member of the Financial System Stability Committee, secretary of the Financial System Stability Committee, a member of the secretariat of the Financial System Stability Committee, and an officer or employee of the Ministry of Finance, Bank Indonesia, the Financial Service Authority and the Deposit Insurance Corporation carrying out duties under this Act to face lawsuits related to the execution of duties and authority of the Financial System Stability Committee then the concerned obtains legal assistance from the agency it represents or assigns it to.

Furthermore, Article 49 states:

> The decisions established by the Financial System Stability Committee and / or the execution of such decisions by every members of the Financial System Stability Committee under this Act are lawful and binding every parties.

2.3 Reorganizing the Rule of Legal Accountability against Policy Maker Officers in Maintaining the Financial System Crisis

Harmonization of Related Laws and Regulations. In the framework of implementing the PPKSK Law, it needs a synchronization of law and regulation, namely revoking irrelevant laws and regulations, laws and regulations that must adapt and prepare the necessary law and regulation.

In addition, the need of harmonization between Law number 51 of 2009 on the Second Amendment to Law Number 5 Year 1986 regarding State Administrative Court, Law Number 48 Year 2009 regarding Judicial Power, and Law Number 30 Year 2014 on Government Administration.

Article 2 letter (c) of Law number 5 of 1986 jo Article 2 sub-article 3 of Law number 9 of 2004 stipulates that decisions on administrative measures that still require the approval of the authoritative official are exempt from the scope of the Decision of the State Administrative Court as the object of dispute. On the contrary, Law

[1] *Ibid*, hlm. 34.
[2] *Ibid*, hlm. 35-36.
[3] *Ibid*, hlm. 36.

number 48 Year 2009 on Judicial Power, particularly Article 20 paragraph (2) letter b states that the Supreme Court has the authority to re-examine administrative regulations based on the 1945 Constitution of the State of the Republic of Indonesia which is not in accordance with the Constitution. In other words, it can be concluded that if the discretion cannot be reviewed by the State Administrative Court due to the approval factor, then the policy should be reviewed by the Supreme Court.[1]

However, Article 21 of Law number 30 of 2014 provides that the Administrative Courts have the authority to receive, examine, and decide whether there is an element of abuse of authority by Government Officials. The decision of the State Administrative Court may be appealed to the State Administrative High Court. This stage of appeal becomes the last stage, where the verdict issued is final and binding.

If it is based on Law number 30 Year 2014, bailout policy of Century Bank can be settled through the Administrative Court. However, unfortunately the law does not exist, when Century Bank bailout occurred. Therefore, the harmonization of the Law on the policy will play an important role in the future to ensure legal certainty for both the authorities and the public.

Optimization of OJK in Settlement of Dispute. Based on Article 29 of Law number 21 Year 2011 on the Financial Services Authority, OJK may establish a Dispute Settlement Agency in the financial services sector at the Region of Level I (Province) and Region of Level II (Regency). Article 29 states, OJK conducts Customer complaints service.

Consumer Dispute Settlement Body in the Region of Level II as mandated by Article 49 of Law number 8 Year 1999 on Consumer Protection has not been established in all Regions of Level II. This is due to the scarcity of human resources. OJK may conduct trainings for candidates of mediators, conciliators and arbitrators for dispute settlement in the financial services sector (banking and non banking). Article 52 paragraph (1) of Law number Law Number 21 Year 2011 on the Financial Service Authority which states that any individual who violates the provisions of Article 33 paragraph (1), paragraph (2), and / or paragraph (3) shall be punished with imprisonment for a maximum of 6 (six) years and the maximum fine penalty Rp15.000.000.000,00 (fifteen billion rupiah). Paragraph (2) of the article states, if the violation of the provisions of Article 33 paragraph (2) and / or paragraph (3) is done by the corporation, shall be punished with a maximum fine of Rp. 45.000.000.000,00 (forty five billion rupiah) and / or in the amount of loss caused by that violation.

Then Article 53 paragraph (1) states that anyone who intentionally ignores, does not comply, or impedes the execution of OJK authority as referred to Article 9 letter c, letter d, letter e, letter f, letter g and / or Article 30 paragraph (1) a, shall be punished with imprisonment for a minimum of 2 (two) years and a fine of at least Rp. 5.000.000.000,00 (five billion rupiah) or a maximum imprisonment of 6 (six) years and a maximum fine of Rp. 15,000,000,000.00 (fifteen billion rupiah). Paragraph (2) of this article stipulates that if the violation as referred to paragraph (1) is done by the corporation, shall be punished with a fine of at least Rp. 15.000.000.000,00 (fifteen billion rupiah) or at most Rp. 45,000,000,000.00 (forty five billion rupiah).

Furthermore, Article 54 paragraph (1) states that anyone who deliberately ignores and / or does not carry out written orders as referred to Article 9 letter d or duty to use statute manager as referred to Article 9 letter f shall be punished with the minimum imprisonment 2 (two) years and a fine of at least Rp. 5.000.000.000,00 (five billion rupiah) or a maximum imprisonment of 6 (six) years and a maximum fine of Rp. 15,000,000,000.00 (fifteen billion rupiah). Paragraph (2) of this article stipulates that if the violation as referred to paragraph (1) is committed by the corporation, the corporation shall be punished with a fine of at least Rp. 15.000.000.000,00 (fifteen billion rupiah) or at most Rp. 45,000,000,000.00 (forty five billion rupiah).

D. CONCLUSION

The misuse of authority in the case of Century Bank can be seen from two aspects, namely in the context of administrative law and criminal law, especially related to corruption. In the perspective of state administrative law, bailout policies issued in urgent, emergency, and even instant, it is substantially inappropriate, even contrary to written rules. Therefore, this abnormal policy cannot be assessed or measured by regulatory products under normal circumstances, either against the element of abuse of authority or unlawful acts, including the substance of its policy.

[1] Lily Evelina Sitorus, Judicial Review of Administrative Action: Reflection on the Bank Century Bailout Policy, Indonesia Law Review Vol. 6, No. 1, Januari-April 2016, hlm. 91.

In addition to the perspective of administrative law, the case also sees a gap in violation of criminal acts of corruption caused by a misunderstanding of free authority. Abuse of authority in corruption is regulated in Article 3 of Law Number 31 Year 1999 of Jo Law Number 20 Year 2001 Concerning the Eradication of Corruption. Based on the decision of Central Jakarta District Court Number: 21 / Pid.Sus / TPK / 2014 / PN.Jkt.Pst on July 16, 2014 juncto DKI Jakarta High Court Judgment Number: 67 / Pid / TPK / 2014 / PT.DKI on December 3, 2014 juncto Decision of the Supreme Court Number: 861 K / Pid.Sus / 2015 on April 8, 2015, Budi Mulya is declared to have committed illegal act, namely the approval of Short-term Financial Assistance (FPJP) is done in bad intention because to seek self profit and also in rescueing fund of *Yayasan Kesejahteraan Karyawan Bank Indonesia* (YKKBI) found in Bank Century and other actions based on corruption, collusion and nepotism.

The legal responsibility in this Century Bank case may be imposed on the policy-making officials and the party that caused the bank failed. Policy-making officials in this case namely the Governor of BI, the Minister of Finance, and the Deposit Insurance Corporation incorporated in KKSK. For policy-making officials, misuse of authority will be criminally accountable to the extent that it can be proven by bad intention (*mens rea)* and bad action *(actus reus).* As for the party that causes the bank failed, can be a criminal and civil liability.

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