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The Authority of the Indonesia Deposit Insurance Corporation (LPS) to File Bankruptcy Petitions Against Controlling Shareholders of Non-Systemic Failed Banks

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Abstract: This article examines the legal authority of the Indonesia Deposit Insurance Corporation (Lembaga Penjamin Simpanan/LPS) to file bankruptcy petitions against controlling shareholders of non-systemic failed banks. The issue arises from the need to recover state funds used in bank resolution while simultaneously upholding fundamental principles of corporate and insolvency law, particularly limited liability and legal certainty. Using normative juridical research, this study analyzes statutory provisions governing deposit insurance, banking supervision, and bankruptcy, complemented by doctrinal analysis and relevant legal principles in financial regulation. The article argues that the authority of LPS to initiate bankruptcy proceedings against controlling shareholders constitutes a special legal mechanism that departs from the general concept of shareholder immunity. Such authority is designed to prevent moral hazard, ensure accountability of bank owners, and protect public interests embedded in the stability of the financial system. In the context of non-systemic failed banks, this mechanism reflects a policy choice to prioritize efficient recovery of resolution costs without triggering broader systemic risk. However, the exercise of this authority raises several legal challenges. First, ambiguities remain regarding the scope and limits of LPS's standing before the Commercial Court, particularly in establishing a direct causal link between the actions of controlling shareholders and the bank's failure. Second, the interaction between the LPS Law and the general Bankruptcy and Suspension of Debt Payment Law creates potential tensions concerning procedural safeguards and the principle of due process. Third, inconsistent interpretation of shareholder liability may undermine predictability in judicial practice. This article concludes that while the authority of LPS to file bankruptcy petitions against controlling shareholders of non-systemic failed banks is legally justifiable as a *lex specialis* regime, its implementation requires clearer statutory standards and more consistent judicial interpretation. Strengthening these aspects is essential to balance public financial protection with the rule of law and shareholder rights.

Keyword: Indonesia Deposit Insurance Corporation, Bank Failure, Controlling Shareholders, Bankruptcy Law, Bank Resolution.

INTRODUCTION

Bank failures constitute a significant legal and financial risk in modern banking systems, particularly in jurisdictions where banks play a central role in economic development and public trust. In Indonesia, the collapse of a bank does not merely represent the failure of a private business entity, but also poses broader implications for financial stability, depositor protection, and state fiscal exposure. Banks operate using public funds collected from depositors, and their failure may trigger losses that ultimately require state intervention. Consequently, bank failures must be understood not only as economic events but also as legal phenomena that necessitate special regulatory and institutional responses (Konoras, 2014).

The Indonesian banking sector has experienced several episodes of bank distress, most notably during the Asian Financial Crisis of 1997–1998. These events exposed structural weaknesses in bank governance, supervisory mechanisms, and legal accountability of bank owners (McLeod, 2006). As a response, Indonesia gradually developed a comprehensive bank resolution framework aimed at preventing systemic contagion while ensuring protection for depositors. One of the central pillars of this framework is the establishment of the Indonesia Deposit Insurance Corporation (Lembaga Penjamin Simpanan/LPS), which serves as both a deposit insurer and a bank resolution authority (Engbith, 2022).

The establishment of LPS marked a shift from ad hoc government bailouts toward a rule-based mechanism for handling failed banks. Under its statutory mandate, LPS is entrusted with guaranteeing deposits and resolving failed banks in a manner that minimizes losses to the state and preserves confidence in the financial system (Engbith, 2022; Napitupulu, 2022). In carrying out this mandate, LPS is granted extensive powers, including the authority to take over management, liquidate assets, and pursue legal actions against parties responsible for bank failure. Among these powers, the authority to file bankruptcy petitions against controlling shareholders of failed banks particularly non-systemic failed banks raises complex legal questions that intersect banking law, corporate law, and insolvency law.

Non-systemic failed banks occupy a unique position within the bank resolution framework. Unlike systemic banks whose failure may endanger the entire financial system, non-systemic banks are resolved primarily with the objective of cost efficiency and recovery of resolution funds (Easterbrook & Fischel, 1996; Kim, 2015). In this context, the law emphasizes accountability of bank owners and management, especially controlling shareholders who possess decisive influence over bank policies and risk-taking behavior. The authority of LPS to initiate bankruptcy proceedings against such shareholders reflects a policy choice to internalize the costs of bank failure and to prevent moral hazard arising from excessive risk-taking without corresponding liability (Sharma, 2001).

Controlling shareholders are widely recognized as key actors in bank governance. Unlike ordinary shareholders, controlling shareholders have the power to influence strategic decisions, appoint directors and commissioners, and shape the overall risk profile of a bank (Siems & Alvarez-Macotella, 2015). In the banking sector, this influence carries heightened responsibility due to the fiduciary nature of banking activities and the extensive regulatory obligations imposed on banks. Misconduct, negligence, or abuse of control by controlling shareholders may directly contribute to a bank's insolvency, whether through related-party transactions, imprudent lending practices, or violations of prudential standards (Usanti, 2023).

Despite the central role of controlling shareholders, traditional corporate law principles emphasize limited liability, shielding shareholders from personal responsibility beyond their capital contribution. This principle is fundamental to corporate autonomy and investment incentives (Alya & Neltje, 2022; Wijayanta, 2018). However, in the context of bank failures, strict adherence to limited liability may conflict with public interest considerations, particularly when public funds are deployed to protect depositors. As a result, banking law increasingly recognizes exceptions to limited liability, allowing regulatory authorities to pursue controlling

shareholders where their actions have materially contributed to a bank's failure (Mayes & Wood, 2009).

The authority of LPS to file bankruptcy petitions against controlling shareholders of non-systemic failed banks represents one such exception. This authority operates as a *lex specialis* within the broader legal system, departing from general bankruptcy rules that typically limit standing to creditors (Konoras, 2014). By granting LPS standing before the Commercial Court, the legislature seeks to strengthen enforcement mechanisms and enhance recovery of state losses arising from bank resolution. Nevertheless, this authority also raises concerns regarding legal certainty, due process, and the proper boundaries of state intervention in private economic affairs. Legal uncertainty persists regarding the scope and limits of LPS's authority, particularly in establishing the legal nexus between shareholder conduct and bank insolvency. Questions arise as to whether bankruptcy proceedings against controlling shareholders require proof of fault, causation, or bad faith, and how such standards should be applied by the courts (Redwood, 1995). Furthermore, the interaction between the LPS Law and the general Bankruptcy and Suspension of Debt Payment Law presents potential normative conflicts, especially in procedural matters and the protection of debtor rights (Sharma, 2001).

Against this background, this article addresses the following research questions. First, what is the legal basis and scope of the authority of the Indonesia Deposit Insurance Corporation (LPS) to file bankruptcy petitions against controlling shareholders of non-systemic failed banks?. Second, how does this authority align with fundamental principles of corporate law, particularly limited liability and shareholder protection?. Third, what legal challenges and implications arise from the implementation of this authority in judicial practice?

The objectives of this article are threefold. First, it aims to analyze the statutory and doctrinal foundations of LPS's authority within Indonesia's bank resolution regime. Second, it seeks to assess the legal justification for imposing bankruptcy liability on controlling shareholders in non-systemic bank failures. Third, it intends to identify potential legal issues and propose recommendations to enhance legal certainty, fairness, and effectiveness in the application of this authority.

This article is structured as follows. Following this Introduction, Part II outlines the research methodology and legal approaches employed. Part III discusses the theoretical and conceptual framework, focusing on state intervention, limited liability, and shareholder responsibility in banking law. Part IV examines the legal status and mandate of LPS within the Indonesian financial regulatory system. Part V analyzes the statutory basis and procedural aspects of LPS's authority to file bankruptcy petitions against controlling shareholders. Part VI addresses the legal liability of controlling shareholders and evidentiary challenges. Part VII discusses key legal issues and challenges arising from the implementation of this authority. Finally, Part VIII concludes the article by summarizing the findings and offering recommendations for legal and regulatory reform.

METHOD

This study employs normative juridical research as its primary method. Normative juridical research focuses on the analysis of legal norms, principles, and doctrines as they are formulated in legislation, judicial decisions, and authoritative legal sources. The purpose of this method is to examine the coherence, consistency, and legal implications of norms governing the authority of the Indonesia Deposit Insurance Corporation (Lembaga Penjamin Simpanan/LPS) to initiate bankruptcy proceedings against controlling shareholders of non-systemic failed banks. This approach is appropriate because the issues addressed in this article concern the interpretation and application of statutory provisions rather than empirical behavior or quantitative data.

Several complementary approaches are applied within this normative framework. First, the statutory approach is used to examine relevant laws and regulations governing banking, deposit insurance, and bankruptcy. This includes an analysis of the LPS Law, the Banking Law, and the Bankruptcy and Suspension of Debt Payment Law, as well as related financial sector regulations. Through this approach, the study identifies the legal basis, scope, and limits of LPS's authority within the existing legislative hierarchy.

Second, the conceptual approach is employed to analyze key legal concepts and doctrines that underpin the issue under study. These include the doctrines of limited liability, shareholder responsibility, piercing the corporate veil, *lex specialis*, and state intervention in the banking sector. By engaging with legal theory and scholarly interpretations, this approach provides a normative foundation for assessing whether the extension of liability to controlling shareholders is legally justified and conceptually coherent.

Third, a comparative approach is applied where relevant to enrich the analysis and provide broader context. This approach involves examining selected foreign jurisdictions and international standards relating to shareholder liability and the role of deposit insurance agencies in bank resolution. Comparative analysis is not intended to transplant foreign legal models directly but to identify common principles, best practices, and alternative regulatory solutions that may inform the development of Indonesian banking law.

The study relies on three categories of legal materials. Primary legal materials consist of statutes and regulations, including laws on banking, deposit insurance, financial supervision, and bankruptcy, as well as relevant court decisions. Secondary legal materials include academic books, peer-reviewed journal articles, commentaries, and reports by international organizations that provide doctrinal analysis and theoretical perspectives. Tertiary legal materials, such as legal dictionaries and encyclopedias, are used to clarify legal terminology and support conceptual understanding.

The analytical method applied in this research is qualitative and prescriptive. Legal materials are systematically interpreted using legal reasoning to assess normative consistency, identify legal gaps, and evaluate the implications of existing rules. The analysis aims not only to describe the law as it stands but also to offer reasoned arguments and recommendations for improving the legal framework governing bank resolution and shareholder liability.

RESULT AND DISCUSSION

Theoretical and Conceptual Framework

a. State Intervention Theory in the Banking Sector

State intervention in the banking sector is grounded in the recognition that banks are not ordinary commercial entities. Unlike most corporations, banks operate by collecting funds from the public and transforming them into credit, thereby performing a vital intermediary function within the financial system. This function places banks at the core of economic stability and public confidence, justifying a higher degree of regulatory oversight and state involvement. The failure of a bank may generate externalities that extend beyond private contractual relationships, potentially undermining financial stability and imposing significant costs on the state. State intervention theory posits that government involvement is necessary when market mechanisms fail to adequately manage systemic risk, information asymmetry, and moral hazard (Sharma, 2001). In banking, depositors typically lack the capacity to monitor bank risk-taking behavior, while shareholders may have incentives to pursue excessive risk due to limited liability. Consequently, the state intervenes through prudential regulation, supervision, and resolution mechanisms to protect depositors and maintain financial stability.

In the context of bank failure, state intervention becomes even more pronounced. Resolution authorities are empowered to override ordinary corporate and insolvency rules to ensure an orderly resolution process. The establishment of deposit insurance institutions, such

as the Indonesia Deposit Insurance Corporation (LPS), reflects this theoretical foundation. LPS is not merely a passive insurer but an active resolution authority endowed with coercive powers, including asset disposition and legal enforcement (Raz, 1979). These powers illustrate the transition from laissez-faire corporate autonomy toward a public-interest-oriented regulatory regime in the banking sector.

b. The Doctrine of Limited Liability and Its Exceptions

The doctrine of limited liability is a fundamental principle of corporate law. It provides that shareholders are not personally liable for corporate debts beyond the value of their capital contribution (Board, 2010). This doctrine serves important economic functions, including encouraging investment, facilitating capital accumulation, and promoting entrepreneurial risk-taking. Limited liability also reinforces the separate legal personality of the corporation, a cornerstone of modern company law.

However, the application of limited liability in the banking sector is not absolute. Banking law increasingly recognizes that strict adherence to shareholder immunity may be incompatible with the public nature of banking activities. When banks fail, the losses are often borne not only by private creditors but also by deposit insurance schemes and, ultimately, the state. This creates a strong justification for limiting the protection afforded by limited liability, particularly for shareholders who exercise effective control over bank operations. Exceptions to limited liability emerge where shareholders abuse their control, act in bad faith, or cause harm through unlawful or negligent conduct (Engbith, 2022). In banking regulation, such exceptions are reinforced by statutory obligations imposed on controlling shareholders, including fit and proper requirements, governance responsibilities, and compliance with prudential standards. Where controlling shareholders breach these obligations and contribute to bank failure, imposing liability beyond capital contribution becomes a matter of legal accountability rather than punishment. Within this framework, the authority of LPS to pursue bankruptcy against controlling shareholders of non-systemic failed banks represents a calibrated exception to limited liability. It reflects the view that shareholders who benefit from control must also bear corresponding risks, particularly where public funds are used to resolve the bank.

c. Piercing the Corporate Veil in Financial Institutions

The doctrine of piercing the corporate veil constitutes one of the most significant exceptions to limited liability. It allows courts or regulators to disregard the separate legal personality of a corporation and hold shareholders personally liable where the corporate form is misused. Traditional grounds for veil piercing include fraud, undercapitalization, commingling of assets, and abuse of corporate control.

In financial institutions, the threshold for piercing the corporate veil is often lower due to the systemic importance of banks and the regulatory obligations imposed on their owners. Controlling shareholders in banks are not passive investors but active participants in governance and strategic decision-making (Bainbridge, 2019b). Their influence over lending policies, risk management, and related-party transactions may directly affect the solvency of the bank. Banking law increasingly incorporates veil-piercing principles through statutory mechanisms rather than relying solely on judicial discretion. Regulatory frameworks authorize resolution authorities to impose liability on controlling shareholders when their actions materially contribute to bank failure. This approach enhances legal certainty and reduces the evidentiary burden typically associated with civil litigation.

In the Indonesian context, the authority of LPS to file bankruptcy petitions against controlling shareholders functions as a regulatory form of veil piercing. Instead of requiring proof of classical fraud, the law focuses on responsibility and causation in relation to bank

failure. This reflects a shift from fault-based liability toward risk-based accountability, consistent with modern financial regulation.

d. Lex Specialis Principle in Bank Failure Resolution

The principle of *lex specialis derogat legi generali* provides that specific legal rules prevail over general ones in cases of conflict. This principle is central to understanding bank failure resolution, which operates under a specialized legal regime distinct from ordinary corporate insolvency law. General bankruptcy law is primarily designed to resolve private debtor-creditor relationships, whereas bank resolution law pursues broader public objectives, including financial stability and depositor protection. Bank resolution frameworks typically grant special powers to resolution authorities that would not be available under general insolvency law. These include early intervention, administrative liquidation, asset transfers, and enforcement actions against shareholders and management (Bainbridge, 2019a). The authority of LPS to initiate bankruptcy proceedings against controlling shareholders must be understood within this *lex specialis* framework.

In Indonesia, the LPS Law functions as a special statute that complements and, where necessary, overrides the general Bankruptcy and Suspension of Debt Payment Law. By granting LPS legal standing to file bankruptcy petitions, the legislature has expanded the traditional concept of creditor standing in insolvency proceedings. This expansion is justified by the public funds expended in bank resolution and the need to recover losses efficiently.

Nevertheless, the application of *lex specialis* does not eliminate the relevance of general legal principles such as due process, proportionality, and legal certainty. Courts must balance the special authority of LPS with the rights of controlling shareholders, ensuring that bankruptcy proceedings are conducted fairly and based on clear legal standards. Failure to achieve this balance may undermine confidence in the legal system and discourage responsible investment in the banking sector.

Legal Status and Authority of the Indonesia Deposit Insurance Corporation (LPS)

a. Institutional Position of LPS under Indonesian Law

The Indonesia Deposit Insurance Corporation (Lembaga Penjamin Simpanan/LPS) is a public legal entity established under Indonesian law to safeguard depositor interests and maintain confidence in the banking system. LPS was formally created pursuant to Law No. 24 of 2004 as an independent institution responsible for deposit insurance and bank resolution (Engbith, 2022). Its establishment reflects a legislative response to the structural weaknesses revealed by previous banking crises, particularly the need for a permanent, rule-based mechanism to manage bank failures without excessive reliance on government bailouts. Institutionally, LPS occupies a distinct position within Indonesia's financial regulatory architecture. While it operates independently, LPS functions as an integral component of the financial safety net, alongside Bank Indonesia and the Financial Services Authority (Otoritas Jasa Keuangan/OJK) (Hartini et al., 2025). This independent status enables LPS to exercise its statutory powers free from political or commercial influence, while coordination mechanisms ensure alignment with broader financial stability objectives. The legal personality of LPS allows it to own assets, enter into contracts, and initiate legal proceedings in its own name (Engbith, 2022).

b. Functions and Powers of LPS in Handling Failed Banks

Under Indonesian law, LPS performs two core functions: deposit insurance and bank resolution. The deposit insurance function guarantees eligible deposits up to a specified limit, thereby protecting depositors and preventing bank runs. Beyond this protective role, LPS is entrusted with extensive resolution powers when a bank is declared failed by the relevant

supervisory authority. In handling failed banks, LPS is authorized to take over management, restructure liabilities, sell assets, and implement liquidation measures (Engbith, 2022). These powers enable LPS to resolve banks in a manner that minimizes losses to the deposit insurance fund and preserves financial stability. Importantly, LPS may also pursue legal actions against parties deemed responsible for the bank's failure, including directors, commissioners, and shareholders. This enforcement authority reflects a shift toward accountability-based resolution, emphasizing the recovery of losses rather than mere closure of insolvent banks (Mayes & Wood, 2009).

c. Distinction Between Systemic and Non-Systemic Failed Banks

Indonesian banking law draws a clear distinction between systemic and non-systemic failed banks. A systemic failed bank is one whose collapse could trigger widespread disruption to the financial system, while a non-systemic failed bank is deemed unlikely to generate systemic contagion (Hartini et al., 2025). This classification plays a critical role in determining the resolution strategy and the extent of state intervention. Systemic failed banks are typically resolved through extraordinary measures, including government participation and coordinated actions aimed at preserving financial stability. In contrast, non-systemic failed banks are resolved primarily through cost-efficient mechanisms, with an emphasis on minimizing the financial burden on the state and the deposit insurance fund (Board, 2010; Engbith, 2022). This distinction reflects the application of proportionality in bank resolution, ensuring that resolution tools are tailored to the scale and impact of the bank's failure.

d. Legal Consequences of Declaring a Bank as Non-Systemic Failed

The declaration of a bank as non-systemic failed carries significant legal consequences. Once such a determination is made, LPS assumes full authority to implement resolution measures in accordance with its statutory mandate (Engbith, 2022). The focus of resolution shifts toward liquidation, asset recovery, and enforcement actions against responsible parties, including controlling shareholders.

For controlling shareholders, the non-systemic classification may expose them to heightened legal scrutiny and potential liability. Unlike systemic cases, where broader stability concerns may limit enforcement actions, non-systemic resolution prioritizes accountability and recovery of losses (Gordon & Ringe, 2015). LPS may exercise its authority to file bankruptcy petitions against controlling shareholders to recover funds expended during the resolution process. This mechanism operates as a legal tool to internalize the costs of bank failure and deter future misconduct.

From a legal perspective, the non-systemic classification reinforces the application of *lex specialis* principles in bank resolution. The LPS Law, as a special statute, prevails over general corporate and insolvency rules to the extent necessary to achieve resolution objectives (Tejo et al., 2025; Wijayanta, 2018). Nevertheless, the exercise of such authority must remain consistent with fundamental legal principles, including due process and legal certainty. Courts play a crucial role in ensuring that the extraordinary powers granted to LPS are applied proportionately and within clear legal boundaries.

Legal Basis for the Authority of LPS to File Bankruptcy Petitions Against Controlling Shareholders

a. Statutory Foundation under the LPS Law

The legal authority of the Indonesia Deposit Insurance Corporation (Lembaga Penjamin Simpanan/LPS) to file bankruptcy petitions against controlling shareholders of failed banks is primarily grounded in the LPS Law. Law No. 24 of 2004 explicitly mandates LPS to resolve failed banks and to recover losses incurred during the resolution process (Engbith, 2022). This

mandate reflects a legislative intent to ensure that the financial burden of bank failure is not disproportionately borne by the state or deposit insurance fund.

The LPS Law empowers LPS to take legal action against parties whose acts or omissions have contributed to a bank's failure, including shareholders exercising control. Although the law does not always expressly use the term "bankruptcy petition," its provisions authorize LPS to pursue all necessary legal measures to recover resolution costs. This broad formulation allows LPS to utilize bankruptcy proceedings as an enforcement mechanism when controlling shareholders are unable or unwilling to satisfy their financial obligations voluntarily. In the context of non-systemic failed banks, this authority serves a corrective and deterrent function. It reinforces the principle that shareholders who enjoy control over a bank must also bear the consequences of failure resulting from mismanagement or abuse of control (Board, 2010). As such, the authority of LPS to initiate bankruptcy proceedings constitutes a statutory exception to the general principle of limited liability.

b. Relationship with the Bankruptcy and Suspension of Debt Payment Law

The exercise of LPS's authority must be understood in relation to the Bankruptcy and Suspension of Debt Payment Law (Law No. 37 of 2004). Under general insolvency law, bankruptcy petitions may be filed by creditors who can demonstrate the existence of due and payable debts (Tejo et al., 2025). At first glance, this framework appears to limit standing to traditional creditor-debtor relationships.

However, the LPS Law operates as a *lex specialis* within the broader insolvency regime. Where conflicts arise, the specific provisions governing bank resolution prevail over general bankruptcy rules (Rundle, 2012). The financial obligations of controlling shareholders toward LPS arise not from conventional contractual debts but from statutory liability linked to bank failure and resolution funding. This statutory obligation qualifies LPS as a creditor for the purpose of bankruptcy proceedings. Nevertheless, the application of *lex specialis* does not eliminate the relevance of procedural safeguards under general bankruptcy law. The Bankruptcy Law continues to govern procedural aspects such as evidentiary standards, court jurisdiction, and remedies available to debtors. This interaction requires careful judicial interpretation to ensure coherence between the two legal regimes.

c. LPS's Legal Standing before the Commercial Court

Legal standing (legal standing to sue) is a critical element in assessing the legitimacy of bankruptcy petitions filed by LPS. As a public legal entity endowed with legal personality, LPS is expressly authorized to initiate legal proceedings in its own name (Hartini et al., 2025). The LPS Law confirms this capacity by granting LPS the right to pursue claims against individuals or entities responsible for bank losses.

Before the Commercial Court, LPS's standing is based on its statutory role as a resolution authority and fund provider. Funds disbursed by LPS during bank resolution create a legally recognized financial interest that satisfies the creditor requirement under bankruptcy law. This position has been increasingly acknowledged in judicial practice, although inconsistencies remain regarding the interpretation of shareholder liability. From a legal perspective, LPS's standing reflects a functional approach to insolvency law (Birney & Edmonson, 2020). Rather than focusing solely on contractual debt, the court recognizes statutory obligations arising from regulatory intervention. This approach aligns with modern insolvency theory, which accommodates public law claims within private law proceedings (Jackson, 2001).

d. Procedural Requirements for Filing Bankruptcy Petitions

Despite its special authority, LPS remains subject to procedural requirements under bankruptcy law. To file a valid bankruptcy petition, LPS must demonstrate the existence of at

least two creditors and one due and payable debt (Engbith, 2022). In cases involving controlling shareholders, this requirement may pose evidentiary challenges, particularly in establishing the precise nature and amount of the shareholder's liability. Additionally, LPS must establish a causal link between the conduct of the controlling shareholder and the financial losses suffered by the failed bank. While the LPS Law does not always require proof of fault in the traditional sense, courts often demand a minimum threshold of causation to justify personal liability (Dunbar & Sen, 2009). This requirement underscores the importance of clear documentation and regulatory findings in supporting bankruptcy petitions.

Procedural fairness remains a central concern. Controlling shareholders are entitled to due process, including the right to contest the petition and present evidence (Fuller, 2017). The Commercial Court must balance the expedited nature of bankruptcy proceedings with the need to ensure fairness and legal certainty. Failure to do so risks undermining the legitimacy of LPS's enforcement authority.

Legal Liability of Controlling Shareholders of Non-Systemic Failed Banks

a. Definition and Criteria of Controlling Shareholders

In banking law, the concept of a controlling shareholder extends beyond mere ownership of shares. A controlling shareholder is generally defined as a person or legal entity that, directly or indirectly, possesses the ability to determine or significantly influence a bank's management and strategic policies (Ojo, 2016). Such control may arise from majority share ownership, voting rights arrangements, or other mechanisms that confer decisive influence over corporate decision-making.

Indonesian banking regulations adopt a functional approach to control, emphasizing actual influence rather than formal ownership thresholds. This approach reflects the reality that effective control may be exercised through nominee arrangements, affiliated entities, or contractual relationships. In the context of bank resolution, identifying controlling shareholders is essential, as they bear heightened responsibility for governance and risk management decisions that affect the bank's solvency.

b. Forms of Legal Responsibility

1. Civil Liability

Civil liability of controlling shareholders arises when their actions or omissions cause financial harm to the bank or third parties. In non-systemic failed banks, civil liability may be imposed where controlling shareholders engage in unlawful acts, breach fiduciary duties, or violate prudential regulations (Arifin, 2020; Lev, 1965). Examples include related-party lending, asset stripping, and interference with bank management that undermines sound banking practices. Civil liability claims are typically aimed at compensating losses suffered by the bank or the resolution authority. In this context, the Indonesia Deposit Insurance Corporation (LPS) may act as a claimant seeking reimbursement for funds expended during the resolution process. Civil liability thus serves both compensatory and deterrent functions, reinforcing accountability in bank governance.

2. Bankruptcy Liability

Bankruptcy liability represents a more coercive form of legal responsibility. Where controlling shareholders fail to fulfill their financial obligations arising from statutory liability, LPS may initiate bankruptcy proceedings against them. Unlike conventional bankruptcy cases involving commercial debtors, bankruptcy liability in bank resolution is rooted in public law considerations and statutory obligations rather than purely contractual debt. This form of liability operates as an exception to the principle of limited liability. It

reflects the view that controlling shareholders who contribute to bank failure should not be insulated from personal insolvency when public funds are used to protect depositors. Bankruptcy proceedings enable collective enforcement of claims and facilitate efficient recovery of assets, particularly where shareholders' assets are dispersed or concealed.

c. Causal Link Between Shareholder Misconduct and Bank Failure

Establishing a causal link between the misconduct of controlling shareholders and the failure of a bank is a central element in imposing liability. Legal causation requires demonstrating that the shareholder's conduct materially contributed to the bank's insolvency or significantly exacerbated its financial condition. This may include decisions that increase risk exposure, weaken internal controls, or divert bank resources for personal benefit.

In practice, causation in banking cases is complex due to the multifactorial nature of bank failures. External economic conditions, regulatory lapses, and management errors may all play a role. However, courts and regulators increasingly adopt a "substantial contribution" standard rather than requiring exclusive causation (Board, 2010). Under this approach, it is sufficient to show that shareholder misconduct was a significant factor leading to failure, even if other factors were also present.

d. Evidentiary Standards and Burden of Proof

The evidentiary standards applicable to controlling shareholder liability vary depending on the form of liability pursued. In civil liability cases, the burden of proof generally rests with the claimant, who must establish unlawful conduct, damage, causation, and fault. However, banking regulations may shift or relax this burden where controlling shareholders possess superior access to relevant information (Jayadi, 2021).

In bankruptcy proceedings initiated by LPS, evidentiary requirements focus on the existence of due and payable obligations and the inability of the shareholder to satisfy them. While proof of misconduct strengthens the case, bankruptcy liability may be established on the basis of statutory obligations arising from bank resolution. This regulatory approach reduces evidentiary barriers and enhances enforcement effectiveness. Nevertheless, procedural fairness remains essential. Controlling shareholders retain the right to challenge evidence, present defenses, and seek judicial review. Courts must balance the need for efficient resolution with the protection of individual rights, ensuring that liability is imposed based on clear legal standards and credible evidence (Fuller, 2017).

Legal Issues and Challenges in the Exercise of LPS Authority

a. Conflict between Limited Liability and Public Interest

One of the most fundamental legal issues arising from the authority of the Indonesia Deposit Insurance Corporation (LPS) to pursue controlling shareholders is the inherent conflict between the doctrine of limited liability and the protection of public interest. Limited liability is a cornerstone of corporate law, shielding shareholders from personal responsibility for corporate debts beyond their capital contribution. This doctrine promotes investment and economic growth by reducing the risks associated with ownership.

However, in the banking sector, strict adherence to limited liability may undermine public interest. Banks operate using public funds in the form of deposits, and their failure often necessitates state intervention through deposit insurance schemes. When public funds are deployed to resolve non-systemic failed banks, insulating controlling shareholders from liability may result in socialization of losses while privatizing gains. This outcome conflicts with principles of fairness and accountability.

The authority of LPS to initiate bankruptcy proceedings against controlling shareholders represents a deliberate policy choice to rebalance this tension. By limiting the protective scope

of limited liability, the law seeks to internalize the costs of bank failure and deter excessive risk-taking. Nevertheless, this approach raises concerns regarding the predictability of corporate liability and the potential chilling effect on investment in the banking sector. The challenge lies in ensuring that exceptions to limited liability are applied narrowly, proportionately, and based on clear legal standards (Easterbrook & Fischel, 1996).

b. Due Process and Protection of Shareholder Rights

Another significant challenge relates to due process and the protection of shareholder rights. Bankruptcy proceedings are inherently coercive, involving the potential deprivation of property and legal capacity. When such proceedings are initiated by a state-backed institution like LPS, the risk of imbalance between regulatory power and individual rights becomes more pronounced (Engbith, 2022).

Due process requires that controlling shareholders be afforded fair notice, the opportunity to be heard, and access to effective legal remedies. However, the expedited nature of bankruptcy proceedings and the special authority granted to LPS may constrain these safeguards. In particular, shareholders may face difficulties contesting the factual and legal basis of their alleged liability, especially where regulatory findings are treated as presumptively valid (Fuller, 2017).

The protection of shareholder rights does not imply immunity from liability but demands procedural fairness and transparency. Courts play a critical role in safeguarding these rights by scrutinizing the legal basis of LPS petitions, ensuring that liability is not imposed arbitrarily or without sufficient evidence. Failure to uphold due process may undermine the legitimacy of bank resolution mechanisms and erode confidence in the legal system (Dahlan & Mahfudz, 2023).

c. Legal Certainty and Consistency in Judicial Practice

Legal certainty is a core element of the rule of law, requiring that legal rules be clear, predictable, and consistently applied. In the context of LPS authority over controlling shareholders, legal certainty remains a persistent challenge. The statutory framework governing bank resolution and bankruptcy contains broad and sometimes ambiguous provisions, leaving substantial room for judicial interpretation (Raz, 1979).

In practice, courts may differ in their interpretation of key concepts such as “controlling shareholder,” “causal contribution,” and “statutory obligation.” These inconsistencies can lead to divergent outcomes in similar cases, undermining predictability for market participants. For controlling shareholders, uncertainty regarding potential liability complicates risk assessment and corporate governance planning. From an institutional perspective, inconsistent judicial practice may weaken the effectiveness of LPS enforcement actions. Where courts apply divergent standards, the deterrent effect of liability mechanisms is diminished. Addressing this challenge requires clearer statutory guidance, coherent judicial reasoning, and, where appropriate, the development of consistent jurisprudence through higher court decisions.

d. Potential Regulatory Overlap among Financial Authorities

A further challenge arises from potential regulatory overlap among financial authorities involved in bank supervision and resolution. Indonesia’s financial regulatory framework involves multiple institutions, including Bank Indonesia, the Financial Services Authority (OJK), and LPS. While each institution has distinct statutory mandates, their functions may intersect in cases of bank failure.

Overlapping authority may create uncertainty regarding institutional competence and accountability. For example, determinations of shareholder misconduct may involve supervisory findings by OJK, resolution actions by LPS, and judicial review by the courts.

Without clear coordination mechanisms, such overlap may result in duplication of enforcement actions or conflicting legal assessments.

This regulatory complexity poses risks to legal certainty and due process. Controlling shareholders may face multiple proceedings arising from the same factual circumstances, raising concerns of proportionality and fairness. Effective coordination among authorities is therefore essential to ensure that enforcement actions are coherent, efficient, and legally sound.

e. Balancing Enforcement and Legal Safeguards

The challenges discussed above highlight the need to balance robust enforcement of bank resolution objectives with the protection of fundamental legal principles. The authority of LPS to pursue controlling shareholders is justified by compelling public interests, including financial stability and protection of public funds. However, the exercise of this authority must be constrained by clear legal standards, procedural fairness, and judicial oversight.

Strengthening legal safeguards does not weaken enforcement; rather, it enhances legitimacy and sustainability. Clear statutory definitions, transparent procedures, and consistent judicial interpretation can mitigate legal risks while preserving the effectiveness of bank resolution mechanisms. In the absence of such safeguards, the authority of LPS may face resistance and legal challenges that undermine its objectives (Board, 2010).

Comparative Perspective on Shareholder Liability and Deposit Insurance Authority

a. Shareholder Liability in Bank Failures in Selected Jurisdictions

Comparative analysis demonstrates that many jurisdictions have moved beyond a rigid application of limited liability in the banking sector, particularly in cases of bank failure. While limited liability remains a general principle of corporate law, banking regulation in several countries recognizes enhanced accountability for controlling shareholders due to the public nature of banking activities.

In the United States, bank failures are handled under a special resolution regime administered by the Federal Deposit Insurance Corporation (FDIC). Shareholders, especially controlling shareholders, may be held liable where their conduct constitutes unsafe or unsound banking practices. The FDIC possesses statutory authority to pursue civil claims against shareholders and insiders whose actions materially contributed to bank losses. Although bankruptcy proceedings against shareholders are not common, personal liability may arise through civil enforcement and asset recovery mechanisms (Assessment et al., 2014).

In the European Union, the Bank Recovery and Resolution Directive (BRRD) establishes a comprehensive framework for bank resolution. Under the BRRD, shareholders are explicitly required to absorb losses before public funds are utilized. This “bail-in” principle effectively limits shareholder protection and prioritizes public interest over private ownership rights. While shareholder bankruptcy is not the primary mechanism, loss absorption and write-down of equity represent functional equivalents to imposing financial liability.

In the United Kingdom, the resolution regime under the Banking Act 2009 empowers authorities to impose losses on shareholders and pursue enforcement actions against bank owners and directors (Gortsos, 2014). Courts have recognized that shareholders in banks assume heightened responsibilities due to regulatory expectations and systemic risk considerations. These approaches illustrate a common trend: shareholder protection in banks is conditional and subject to public interest considerations.

b. Role of Deposit Insurance Agencies in Insolvency Proceedings

Deposit insurance agencies in various jurisdictions play an increasingly active role in insolvency and resolution proceedings. Their authority often extends beyond deposit

reimbursement to include enforcement actions aimed at recovering losses and holding responsible parties accountable (Streda, 2022).

In the United States, the FDIC acts as both insurer and receiver for failed banks. As receiver, it succeeds to the rights of the failed bank and may bring claims against shareholders, officers, and third parties. The FDIC's role in insolvency proceedings is explicitly recognized by statute, granting it standing before courts and administrative bodies. This dual function has been widely regarded as an effective mechanism for protecting public funds.

Similarly, in the European Union, resolution authorities and national deposit guarantee schemes cooperate closely in insolvency proceedings. While deposit guarantee schemes primarily reimburse depositors, they may also be subrogated to depositor claims, enabling them to participate as creditors in insolvency processes (Imai, 2006). This subrogation mechanism provides a legal basis for deposit insurers to assert claims and influence insolvency outcomes.

In Japan, the Deposit Insurance Corporation of Japan (DICJ) plays a central role in bank resolution, including capital injections, asset management, and recovery actions against responsible parties (McKnight, 2009). The Japanese framework emphasizes accountability of bank management and major shareholders, particularly where public funds are involved. These comparative examples demonstrate that deposit insurance agencies are no longer passive guarantors but active participants in insolvency and enforcement processes.

c. Lessons for Indonesian Banking Law Reform

Comparative experience offers several important lessons for Indonesian banking law reform. First, enhanced shareholder liability in bank failures is not an anomaly but a common feature of modern banking regulation. Jurisdictions with effective resolution regimes recognize that controlling shareholders must bear losses and potential liability commensurate with their influence and benefits (Bodellini, 2021). Indonesia's approach, which allows the Indonesia Deposit Insurance Corporation (LPS) to pursue bankruptcy against controlling shareholders of non-systemic failed banks, aligns with this international trend.

Second, clarity of statutory authority is essential. Comparative jurisdictions provide explicit legal bases for deposit insurance agencies to act as receivers, creditors, or enforcement authorities. Clear legislative mandates reduce legal uncertainty and strengthen judicial acceptance of enforcement actions. In Indonesia, further clarification of the scope and limits of LPS's authority could enhance consistency in judicial practice and reduce procedural disputes.

Third, proportionality and due process safeguards are critical (Congress, 1991). While comparative regimes prioritize public interest, they also incorporate procedural protections to prevent arbitrary enforcement. Judicial oversight, clear evidentiary standards, and avenues for appeal are integral components of legitimate resolution frameworks. Indonesia's legal system must ensure that similar safeguards accompany the exercise of LPS authority.

Finally, institutional coordination emerges as a key success factor. Effective resolution regimes rely on clear allocation of roles among supervisory authorities, resolution bodies, and courts. Comparative jurisdictions emphasize coordination mechanisms to avoid regulatory overlap and conflicting decisions (Maarand, 2019). Strengthening coordination between LPS, the Financial Services Authority (OJK), and the judiciary would enhance the effectiveness and credibility of Indonesia's bank resolution framework.

d. Toward a Balanced Resolution Framework

The comparative perspective underscores that shareholder liability and active involvement of deposit insurance agencies are essential components of modern bank resolution. However, these mechanisms must be embedded within a coherent legal framework that balances enforcement with legal certainty and fairness (Narula & Singh, 2023). Indonesia's evolving approach reflects a broader global movement toward accountability-driven resolution,

but its success depends on careful legal design and consistent implementation. By drawing on comparative experience, Indonesian banking law reform can refine the authority of LPS, clarify shareholder liability standards, and strengthen procedural safeguards. Such reforms would not only enhance recovery of public funds but also promote responsible bank ownership and sustainable financial stability (Shibut & de Verges, 2020).

CONCLUSION

This article has examined the legal authority of the Indonesia Deposit Insurance Corporation (Lembaga Penjamin Simpanan/LPS) to file bankruptcy petitions against controlling shareholders of non-systemic failed banks. From a doctrinal perspective, the analysis demonstrates that such authority is firmly grounded in Indonesia's bank resolution framework, particularly under the LPS Law as a *lex specialis* that departs from general principles of corporate and bankruptcy law. The statutory mandate of LPS to resolve failed banks and recover resolution costs provides a legal basis for extending liability beyond the corporate entity to controlling shareholders whose actions or omissions materially contribute to bank failure. This approach reflects an evolving understanding of shareholder responsibility in the banking sector, where control and influence entail corresponding legal consequences. The study further finds that the authority of LPS operates at the intersection of public and private law. While bankruptcy law traditionally governs private debtor-creditor relationships, its application in the context of bank resolution serves broader public objectives, including depositor protection and financial stability. The imposition of civil and bankruptcy liability on controlling shareholders constitutes a calibrated exception to the doctrine of limited liability, justified by the public nature of banking activities and the use of deposit insurance funds. Nevertheless, the analysis also reveals persistent legal challenges, particularly in relation to causation, evidentiary standards, due process, and consistency in judicial interpretation.

In terms of policy implications, the findings underscore the importance of accountability-based bank resolution. Allowing LPS to pursue bankruptcy against controlling shareholders of non-systemic failed banks strengthens deterrence against excessive risk-taking and governance failures. It also enhances the recovery of public funds, thereby reducing the fiscal burden of bank failures. However, the effectiveness of this policy depends on its perceived legitimacy and predictability. Unclear legal standards or inconsistent judicial practice may weaken enforcement and undermine confidence among investors and market participants. Based on these findings, several recommendations for statutory and regulatory improvement can be proposed. First, the scope and limits of controlling shareholder liability should be articulated more clearly in legislation to enhance legal certainty. Explicit statutory criteria regarding control, causation, and liability thresholds would assist both regulators and courts in applying the law consistently. Second, procedural safeguards in bankruptcy proceedings initiated by LPS should be strengthened to ensure full compliance with due process, including clear rules on evidentiary burdens and the rights of shareholders to challenge regulatory findings. Third, improved coordination among financial authorities particularly LPS, the Financial Services Authority, and the judiciary is necessary to prevent regulatory overlap and conflicting enforcement actions.

In conclusion, the authority of LPS to file bankruptcy petitions against controlling shareholders of non-systemic failed banks represents a significant development in Indonesian banking law. When exercised within a clear and balanced legal framework, this authority has the potential to promote financial stability, reinforce responsible bank ownership, and protect public funds, while remaining consistent with the rule of law and fundamental legal principles.

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