Bank Participation in Managing Environmental Recovery Guarantee Funds in Order to Realize the Sustainable Development Goals

Tri Handayani[1], Lastuti Abubakar[2]
[1,2] Universitas Padjadjaran, Bandung - Indonesia
tri.handayani@unpad.ac.id

Abstract- **This article examines the SDGs agenda, that is Indonesia committed to harmonize all aspects of doing business with the SDGs purposes. Bank as one of the funding sources for large companies, had an impact from this agenda into a loan mechanism. The SDGs agenda also brought the changes in a several banking services. By giving a credit to a potential customer, banks are concerning to the priority industries (industries of energy, agriculture, infrastructure and Micro Small and Medium Enterprises (MSME). Those industries are the main targets of sustainable economic development in Indonesia. The Financing that conducted by Bank has to integrate all the aspects of environmental protection, social and risk management in order to avoid, prevent and minimize the negative impacts that will influence bank activities. The bank also concerns to develop their services due to realize the SDGs Agenda. This Article attempts to answer the legal problems of how the banks to participate in managing Environmental Recovery Guarantee Funds in order to realize the SDGs and how The Environmental Recovery Guarantee Funds used as a preventive phase as already mandated by UU PPLH.**

Keywords-The Environmental Economic Instruments, Banking participation, Sustainable Development Goals.

I. INTRODUCTION

The economic activity is essentially involve the universe, to managed and to produce a useful product for humans. One of the targets of sustainable development is to overcome the problems of pollution and environmental pollution caused by business activities. The regulatory development is needed and important to be done, espescially about the policies that related to environmental economic instruments. The importance of an economic instrument in environmental management has been emphasized in the Rio Declaration. The regulation regarding environmental management that is consisting an economic instruments as referred in Government Regulation No 47/2017 give an important role to realize the sustainability of the environment. Referring to the Article 1 point 1 Government Regulation 47 of 2017, which explained that the Environmental Economic Instruments is a set of economic policies to encourage the central government, local government, or Everybody toward Environmental Conservation Function. Different issued by the OECD, which explains the forms of environmental economic instruments, namely: charges and taxes, marketable (tradable) permits, refund system deposits, subsidies. [1]

The importance of economic instruments for environmental policy is emphasized in the Rio Declaration and Agenda 21, where it is emphasized that the use of economic instruments is a tool for the government to promote the internalization of environmental costs. Internalization of environmental costs carried out by insert pollution costs and /or environmental damage in calculating production costs or the costs of a business and / or activity (Article 4-point d). Through the internalization of environmental costs and applying the principle that perpetrators of pollution or environmental damage are a way that is currently considered the most efficient. They provide ways to increase government capacity to deal with environmental and development issues in ways that are cost-effective, promote technological innovation, influence consumption and production patterns, and provide important funding sources.

For developing countries, the separation of environmental policy from economic policy is an effort to achieve sustainable development. Where living standards are very low, poverty is the main source and victims of environmental degradation, where resource exploitation nature is used as an engine of economic growth. In these conditions, environmental policies cannot be separated from economic policies and development strategies. The commands and controls require non-easy measures such as capital, government revenues, management skills in every government and corporation, administrative capabilities and law enforcement. Those factors, which is still very weak presence in developing countries and the need to conduct systematic reforms. The Government of Indonesia regulates the Environmental Recovery Guarantee Fund, the funds prepared by a business area and/or activity for the quality recovery of the environment that is damaged and /or polluted due to its activities.

The Environmental Recovery Guarantee Fund is used to carry out the following activities: The Environmental emergency relief efforts in the business and /or activity caused by the company and / or its activities; and recovery of the post-operation environment in the business area and/or activities caused by the business and/or activities. The guarantee fund will be used for the environmental permit holders tackling environmental emergencies in the area of its business. In addition, it is also to restore the environment after operations in certain business areas. Even so, the funds do not exempt the obligation of business holders to prevent pollution due to their business operations. [2]

Based on Government Regulation 46 of 2017, the Environmental Recovery Guarantee Fund is provided in the form of:

1. Term deposit;
2. Joint savings;
3. Bank guarantee;
4. Insurance; and /or
5. The others that appropriate with laws and regulations.

Placement of Guarantee Funds for Environmental Recovery in the form of term deposits and joint savings must be deposited in government banks appointed by the Minister, ministers / heads of non-ministerial government institutions, provincial Regional Governments, or district / city Regional Governments. Then the proof of placement of the Guarantee Fund for Environmental Recovery as referred to is submitted to the Minister, the minister / head of the non-ministerial government institution, the Provincial Government, or the Regency /City Government in accordance with its authority. The minister in charge of each Business and/or Activity in accordance with their authority will regulate the mechanism, procedure for calculation, and determination of the amount of the Environmental Recovery Guarantee Fund.

The legal issues to be reviewed are: (1) how banks participate in managing Environmental Recovery Guarantee Funds in order to realize the SDGs? (2) The Environmental Recovery Guarantee Funds is a preventive phase as already mandated by UU PPLH. Therefore, it is also necessary to study more about how the position of the environmental recovery guarantee funds in the practice in order to create environmental protection and management?

II. RESEARCH METHOD

This research is conducted by normative juridical research method, which is focused on the examining the application of the rules or norms in positive law.[3] This research also used the positivist legis conception approach. This concept views the law as identical with written norms created and promulgated by authorized institutions.[4] The descriptive-analytical method is making a systematic, factual, and accurate description of the facts. Therefore, this study examines and describes legal aspects of issues relating to banking law and SDG's. Rules-regulations, principles, and norms in banking law shall be the focus on this study. In addition research method of this study not only uses a legal history approach and comparative law but also uses secondary data and was obtained through documentary and literature study, then the data was collected and analyzed qualitatively

III. FINDING AND DISCUSSION

1. *Banks Participation in Managing Environmental Recovery Guarantee Funds in Order to Realize the Sustainable Development Goals*

The Sustainable Development Goals (SDGs) of the 2030 Agenda are that all countries will mobilize efforts to end all forms of poverty, combat inequality and address climate change, while ensuring that no one is left behind. SDGs are initiated as a response to the success of the Millennium Development Goals (MDGs) and aim to go further to end all forms of poverty. This new goal is unique because they call for action by all countries, poor, rich, and middle income to improve welfare while protecting the planet.1 They realize that poverty alleviation must go hand in hand with strategies that build economic growth and answer various social needs including education, health, social protection, and employment opportunities, while addressing climate change and environmental protection.

Banks take an important role in the society. As an intermediary institution, banks can also take a role to help and develop a sustainable economy, yet empower people to build a better future. Banks as an agent of trust certainly prioritizes the principle of trust that given by customers and the rest of people in Indonesia to serve their best interests and act responsibly. A role of the bank that is considered successful is to be able to realize long-term prosperity for the society and be inclusive by using its natural resources in a sustainable manner. Therefore banks can take an important role through products, services, and relationships between banks and customers and the public to support and accelerate fundamental changes in the economy and lifestyle that prioritize the principle of sustainability to achieve shared prosperity for present and future generations.

The role of banks should be based on several principles that issued by UNEP-Fi and in collaboration with several other international organizations. "The Principle for Responsible

Banking" is the Principles that have been developed by 28 banks from five continents, and on behalf of the UNEP-FI membership, 12 civil society organizations, including Oxfam International, 2 Degrees Investing Initiative and World Wide Fund (WWF) which jointly to develop principle that specifically designed for banks. The principles for responsible banking were announced in Paris on November 2018. The purposes of these principles are to harmonize the banks role with the Sustainable Development Goals (SDGs) and the Paris Climate Agreement. They provide guidance for how to be responsible banks and be followed up on how to achieve this. They encourage banks to continue to increase their contributions towards a sustainable future. These principles will help banks to gain the opportunity of changes in the economy and society nowadays by creating value for the community and shareholders, and helping banks build trust with investors, customers, employees and society. The principle for responsible banking, are consist of: [5]:

a. Alignment; Strategic Alignment is needed to respond on the current environmental and social challenges. This makes the Bank must integrate itself to conditions such as this starting with decision making on the availability of funds that are specifically addressed to face this challenge. Strategic alignment means consistency between the bank's value creation model and the SDGs, The Paris Climate Agreement, and other relevant national, regional or international frameworks, which articulate globally agreed goals and challenges for building a more sustainable future. This indicates that the bank accepts joint responsibility to shape and participate in securing our future. Aligning strategies with individual needs makes banks need to consider a person's economic or financial needs by analysing the potential risks of negative impacts on people's rights to live well in the future.

b. Impact; The purpose of the Bank as a party that helps develop a sustainable economy and empowers people to build a better future. To realize this goal banks need to take steps such as identifying, assessing, and increasing the impact on people and the environment resulting from their activities, products and services. There is a need to combine sustainability and risk-related impacts based on the three sustainability dimensions (environmental, social and economic) into business decisions strategic level, portfolio and transactions.

c. Stakeholders; the bank is an important part of our economic and social system. Banks should be partnering with stakeholders (such as peers, investors, suppliers, clients, regulators, employees, policy makers, scientists, academics, civil society, trade unions and communities). The bank can proactively consult with stakeholders to ensure bank profits from their subject's knowledge and expertise and enable the correct definition of a community's goals. This encourages legitimacy and capacity to identify positive and negative impacts. Stakeholders who are actively involved can ensure all relevant interests are considered and the bank will not face challenges.

d. Governance and Target Setting; By fulfilling commitments to these principles, it enables banks to position themselves credibly, align with the needs of the community and in doing so can build trust and credibility for their actions. To achieve its commitments based on these principles, banks need to implement effective governance procedures related to sustainability, including establishing clear roles and responsibilities, preparing an effective management system and allocating adequate resources.

e. Transparency and Accountability: Bank responsible to employees, investors, and the community as a whole. Signing the principles for responsible banking shows a clear commitment to be part of the solution to current and future challenges. Banks need to set targets and public disclosure to be able to show the transformative changes of banks and to assess bank contributions to society and progress do.

The above principles concluded that banks in taking an important role are required to consider the principle of sustainability, by harmonizing social, economic and environmental aspects either in terms of giving credit and providing services or offering their products. Those principles are developed due to reform the Banking Industry Regulation, with a purpose to promote green credit growth among banking financial institutions and applied to banks policy, especially to commercial banks. Banks shall promote green credit as a main strategy, support the growth of green economy, and create a minimum low-carbon and recycled model through business innovation. The Banks should manage environmental and social risks, and in doing so, Banks can optimize credit structure, improve bank services and contribute to the transformation of economic growth pattern.

Banks shall effectively to identify, assess, monitor, control or mitigate environmental and social risks in business operations, to develop Environmental and social risk management systems, strengthen the process and the credit policies, The Environmental and Social risks as used in the

Guidelines refer to potential impact and risks brought to the environment and communities by banks' clients and their primary supply chains through construction, production and operational activities, which include such Environmental and Social issues as energy consumption, pollution, land, health, safety, resettlement, eco-system protection, climate change, etc. Thus, the bank role in realizing SDGs can be done by implemented all the principles for responsible bank to their activities. Promoting the services to get another income that come from the fee based income.

2. *The Position of the Environmental Recovery Guarantee Funds in the Practice in Order to Create Environmental Protection and Management*

The Environmental recovery guarantee funds as referred to in government regulation 46/2017 are funds that must be provided by the industry which will be used for reclamation guarantees, post-mining guarantee funds, B3 waste management insurance, and others (in accordance with laws and regulations in the technical sector related). The guarantee fund for environmental recovery is a compulsory obligation according to the Government regulation 46/2017. Those funds must be deposit in state-owned banks that appointed by the Minister/head of non-ministerial government institutions or a province, district/ cities government.

Therefore, the banks have an important role to participate in managing those funds. The Responsible Bank is about the banks activity based on integrity and trust, to ensure sustainable growth for the present and future generations. The Bank's endeavor to provide products and services designed in a manner to meet customer requirement as well as to contribute towards social-economy developments. The Banks have a dedicated Environment Risk Group that works proactively with the business team and clients to identify and address any social / environmental concerns in the life cycle of the projects being financed. The banks are need to internationally accepted credit risk management framework for determining, assessing and managing environmental and social risks in their project finance transactions.

In addition to giving loan, banks can participate in realizing the SDGs within lead all the products and services for the better and a sustainable future. The environmental recovery guarantee fund, it will be use for the Environmental emergency relief as an effort to recovery the environment that caused by the business and /or the activity; the funds will use for the environment recovery post-operation especially for business area and/or their activities. Referring to the clause of Article 24 of Government Regulation 46/2017, it explained the environmental recovery guarantee fund does not release the obligation for the industries from the pollution prevention phase and/or destruction of the environment as a result from their businesses and/or their activities. From this clause, it can be shown that the opportunity for banks to develop their business activity is wide open. One of Bank Services is the Bank business activity that related to Custodianship with Management (Trust). According to the Government regulation No. 46 of 2017 which is stated that the environmental recovery guarantee fund could be made into several bank products, such as: term deposits, joint savings, bank guarantees, etc. The government regulation regarding the environmental recovery guarantee funds are provides an opportunity for state banks to improve their playing fields and get the benefit from fee-based income.

In line with the provisions of Government Regulation No. 46/2017 which explained that the Bank that appointed by the government to manage the environmental recovery guarantee fund, then the existence of the bank as a trustee is an appropriate platform. Through trusts, these funds are an obligation of the industry actors priority will be deposited later can by the designated bank, then this is a provision that is similar between the regulatory trust regulations guarantee fund environmental restoration that is equally focused the role that can be assumed is in the portion of TIER IV and TIER III. Most state owned banks here fall into the Tier III and Tier IV bank categories. Banks that are in the Tier III and Tier IV categories have been given specificity by OJK regulations to conduct their business activities related to Custodianship with Management (Trust).

The Placement of Environmental Recovery Guarantee Funds for can be use the trust management form Bank, there are as many as 3 staten owned banks that have business units related to trust management activities, Bank Mandiri, Bank BNI, Bank BRI and 1 private bank, namely OCBC NISP. POJK Trust explained about the parties that involved in a trust activity carried out by the Bank. This activity is based on an agreement, where the parties involved are settlor, trustee and beneficiary. Settlors are parties who own and deposit their assets to be managed by a Trustee (Article 1 number 4 POJK Trust). Trustee is a bank, which carries out trust activities, and the beneficiary is the party who receives benefits from trust. To use trust Bank due to managing environmental recovery guarantee funds can be simulated as follows:

Settlor : Corporation on Behalf The environment
Trustee : Banks that is appointed by the government: the Minister, the minister/ head of a non-ministerial government

institution, the Provincial Government, or the Regency / City Government.
Beneficiary : The Environment.

Seeing the description of the parties above there will be a question, can the "environment" be the legal subject and involved such as that agreement? Referring to Prof. Munadjat Danusaputro opinion, he explained that " whole environment is as a legal subject, it's everything that is not possible to be targeted by property rights both individual and group ownership." Therefore the environment can be placed both as a settlor and beneficiary of a guarantee fund for environmental recovery. Why is it so? Because, when the guarantee funds of environmental recovery is required to be available by law, by looking at the purpose of the article on the Government Regulation of these funds then when the funds have been issued and deposited in a bank appointed by the government means that these funds are no longer the property of the company or industry.

Thus, in this trust agreement scheme, it is the environment that can be a settlor as well as a beneficiary. He has the right to receive these funds when the funds are needed for the purpose of overcoming environmental emergencies in the business area and / or activities caused by the business and / or activities. Thus, using of bank trust in managing the guarantee fund for environmental recovery is one of the steps that can be taken so that the management of the guarantee fund for the restoration of the environment becomes more optimal. Through trust activities, these funds can be deposited and managed by bank trusts with authority restrictions based on POJK trusts which state that the trustee can act to manage the funds and to on behalf of the settlor. Settlor can save the guarantee fund for environmental recovery in the form of term deposit, or joint saving. In such conditions, the management of environmental recovery guarantee funds is in the right and safe party, besides that the Bank as a trustee gets fee-based income which will ultimately gave an impact on strengthening the capital of the bank. Thus, the Bank can participate to support the creation of SDGs while also contributing to strengthening the national economy.

The funds deposited with the bank were not included in Bankruptcy Remote. So, if you are concerned about an event that can shake the bank, then the funds will be returned to the owner of the funds (Settlor) or referred to other bank trust according to the order of the settlor. Therefore, the steps of business and business permit holders are very appropriate.

IV. CONCLUSION

The conclusions in this study were: (i) banks participation in managing environmental recovery guarantee funds in order to realize the SDG can be done by implemented all the principles for responsible bank to their activities. (ii) Referring to the Government Regulation No. 46 of 2017 concerning Environmental Economics Instruments that requires the participation of banks especially in terms of managing the environmental economics guarantee funds which is provided in the form of, time deposits, joint savings, bank guarantees, or insurance policies. Based on the implementing regulations, it can be seen that the bank participation in creating sustainable business activities can be done through green credit and managed the environmental recovery guarantee fund. The legal issues to be reviewed are.

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