

## ABSTRACT

State money restitution securing upon BLBI policy is performed by the Government through out court settlement to the obligor or impaired bank owner/BLBI receiver. The said settlement model contains 3 models of agreement, namely Master Settlement and Acquisition Agreement (MSAA), Master Refinancing and Note Issuances Agreement (MRNIA), Promissory Note. The legal reference of such policy are Republic of Indonesia People Assembly Council No.X/MPR/2001 and Acts No.25 of 2000 about national Development Program, and President's Instruction No.8 of 2002 about Legal Conclusion Granting to the Debtor who has completed his/her liability or to give legal sanction to the debtor who has not completed his/her liability as referred to shareholders liability completion by means of Release and Discharge (R&D) issuance.

R&D clause as written in the Master of Settlement and Acquisition Agreement (MSAA) causes a problem since it contents civil law construction, especially alliance (or agreement) law and criminal law construction in which can be slightly assumed that the R&D clause in the said MSAA seems to be an effort to liberate the shareholder from all claims, including criminal claim.

Noticing the BLBI case settlement pattern as mentioned in the MSAA that contains R&D clause then it is obvious that its settlement effort is based on alliance law. The provisions related to the issue of agreement (contract) or alliance is regulated in III B.W. Book in which it is said that the basis of agreement entering is a consensus as described in chapter 1320 of B.W. MSAA is performed due to the said process, namely the consensus held between the government that is represented by BPPN in this matter and the shareholders' obligor who hold BTO/BBO (Bank Take Over/Suspension) status.

The meaning of R&D clause in MSAA agreement and its limitations must take the provision stated in III B.W. Book namely chapter 1320, chapter 1337, chapter 1339 relevant to chapter 1340 of B.W., chapter 23 of A.B. into consideration. It may also follow the doctrines and teachings such as condition abuse and injustice teaching. Whereas the characteristic of R&D clause regulated in the said MSAA is workout agreement bank obligor to the Government which is similar to contract obligation developed in Anglo Saxon countries. MSAA shall be legal and binds all relevant parties so long as it is subject to the provision stated in III B.W. Book.

Keyword: R&D Clause – Agreement – III B.W. Book provision