
Banking Responsibility to Customers

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Abstract:

Banking business is a trust where customers will keep their funds to the banks. Saving funds in the bank of course has the aim to support business activities which are undertaken by customers or employers. The precautionary principle must be executed by the bank to gain the trust from the customers.

The Banking law no. 10 in the year of 1998 clearly said that the bank must be run properly and correctly as well as said clearly about the function of banks in carrying out banking activities. This research uses normative juridical research methodology.

This study examines the accountability of banks to customers, therefore the customers will be protected and the most important accountability is preferred to its customers.

Keywords: banking responsibility.

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1. Introduction

Business activities in Indonesia are ongoing and will continue, to promote sustainable development. A very strategic national development is carried out by the government supported by the private sector, so the existence of banking is very necessary. Legal certainty in the banking sector is indispensable in the business activities. The entrepreneurs who save their funds in banks to support their business activities need to get legal protection against banking activities for the sake of business continuity.

The existence of banking institutions aims to support the implementation of national development in order to improve equity, economic growth and national stability towards improving the welfare of the people (Suryanto, 2016; Suryanto and Thalassinos, 2017). This shows that banks have an important role not only in moving the wheels of the national economy, but it is also directed to be able to support the implementation of national development.²

In carrying out its business activities the entrepreneurs will often involve the parties, especially banking to sustain its business. In supporting the business, the bank will be involved by the entrepreneurs whether as financing supporters, as a place to store corporate funds or as a place to transfer funds or as a place to make payments to business partners of the company. According to Banking Law no. 10 in the year of 1998, a bank (Article 1 paragraph 2) is a business entity that collects funds from the public in the form of savings and distributes to the community in the form of credit and / or other forms in order to improve the lives of many people.³

Bank business is a trust, customers with high confidence will save their funds to the banking. This trust should be held firmly by the Bank in accordance with the mandate of the banking law. Banking in carrying out its business activities in addition to submitting and obeying the Law no. 10 in the year of 1998 on banking is also subject to the Law no. 40 in the year of 2007 About Limited Liability Company, why should be subject to the law no. 40 in the year of 2007? because banking is a legal entity in the form of Limited Liability Company (PT), the provisions concerning Limited Liability Companies are regulated in the law.

Applying prudential principles in order for the bank to remain in a healthy, stable and able condition in fulfilling its obligations thus it is expected to foster public confidence in the banking industry, with the growing confidence in the banking industry to enable banks to take an active role in carrying out the banking functions. Trust between the banking with the customer must be maintained to keep the wheels of business activities running properly. There are several banking problems that

² Hermansyah, 2009, *Hukum Perbankan Nasional Indonesia*, Jakarta; Kencana, hal 41.

³ UU No. 10 Tahun 1998 Tentang Perbankan.

arise, so there is a perception from the public that they do not believe in banking. This is evidenced by the loss of customer funds in banks such as the cases experienced by PT. Surya Artha Nusantara Finance (PT.SANF) where the funds deposited in Bank Tabungan Negara can disappear without the knowledge of the customer. "Banks should be very careful and prudent, because the banking business is a trust business, so do not let the loss of customer confidence in the banking industry," Faisal Santiago said.⁴

The loss of customer funds proves that there are some banks that carry out their activities by not using the principle of prudence. In this case, Bank BTN is a government bank that is certain that the bank is under the control of the government as the majority shareholder, it can be imagined how the management of private banks on the basis of their owners is the community. A strict supervisory role must be undertaken by the government, in this case addressed to the Financial Services Authority (OJK) to oversee banking activities. If the trust of the community to the banks is lost, it is certain that economic factors will be halted and national development will be hampered.

2. Literature Review

What is meant by Bank according to the Law no. 10 of 1998, concerning Banking?; Bank is a business entity that collects funds from the public in the form of savings and distributes it to the community in the form of credit and or other forms in order to improve the standard of living of the people, in addition, the bank is a legal entity. To provide credit facilities to its customers or the public.⁵ In banking we recognize the principle of protection, the protection principle implies that between the debtor and the creditor must be protected by law. However, the need to get the protection is the debtor, because the debtor is on the weak side.⁶

The banking industry as a financial institution is often faced with fundamental problems. Not only to deal with internal issues related to fundamental issues but also to internal issues concerning minimizing the control of various risk management that may and will occur in the banking environment, related to credit risk, market risk, operational risk, liquidity risk, legal risk, reputation risk And compliance risk.⁷

Ethics that must be considered in conducting banking business activities, the existence of laws that become the signs that outline the rules of the game for every society without exception, so that social, political, economic and other aspects of

⁴<http://www.beritasatu.com/bank-dan-pembiayaan/433873-dana-nasabah-hilang-direksi-btn-harus-bertanggung-jawab.html>

⁵Faisal Santiago, (2012) *Pengantar Hukum Bisnis*, Jakarta; Mitra Wacana Media, hal, 43.

⁶*ibid*, hal, 39.

⁷Sentosa Sembiring, 2012, *Hukum Perbankan*, Bandung; CV.Mahdar Maju, hal 58.

behavior and construction go on to the right track, the rule of law must be enforced so that each party in the life of the community and the state including life in the banking world can enjoy a peaceful, safe, and orderly life that does not interfere with each other and harm between each other.⁸ A deviant act that leads to violations of the law is a criminal act of banking, a mitigation effort that is carried out by processing the law against a suspect of bank managers committing criminal acts under the banking law number 10, in the year of 1998 concerning banking. The regulatory policy approach is the preliminary process of a series of all crime prevention activities in the banking sector and is the most strategic stage of criminal policy. Regulatory policy is the legislative authority in terms of determining and formulating what can be criminal acts, which includes unlawful acts.⁹

Criminal liability is a despicable act by people who should be held accountable to the author for acts committed. With account for the reprehensible acts on the author, whether the author is also censured or not. In the first case the maker is of course convicted, whereas in the second case the author of course is not punished.¹⁰ Someone or criminal punishment will not be held accountable or punished if it does not commit a criminal act and the criminal acts should be against the law, but even though he commits a criminal act, it is not always that he could be convicted. A person committing a criminal offense will only be convicted if he/she is legally and convincingly proven guilty.¹¹ Criminal liability in a foreign language referred to as "toereken-baarheid," "criminal responsibility," "criminal liability," criminal liability herein are intended to determine whether a person can be accounted whether it is criminal or not to the act he/she did.¹²

3. Problems

Eliminating customer funds without the knowledge of the owner is a criminal act committed by the banks. The principle of care in managing banks play a very important role in maintaining public trust (customers) of banking. The loss of public funds will be a bad precedent for business, it is a fact that Bank is a very important instrument in business activities. The bank manages the public funds for its business activities but the fact can be lost due to the person of the bank who removes the fund.

⁸ *Op cit*, hal 3.

⁹ Barda Nawawi Arief, 2007, *Masalah Penegakan Hukum dan Kebijakan Hukum Pidana Dalam Penanggulangan Kejahatan*, Jakarta; *Kencana Media Group*, hal 80.

¹⁰ Roeslan Saleh, 1982, *Pikiran-pikiran Tentang Pertanggung jawaban Pidana*, Jakarta; *Ghalia Indonesia*, hal 10.

¹¹ *ibid*, hal 75.

¹² S.R Sianturi, 1996, *Asas-asas Hukum Pidana Indonesia dan Penerapannya*, Jakarta: *Alumni Ahaem-Peteheam*, hal 245.

4. Research Methods

The formulation of the problem shows that the research is done by approach of normative juridical approach. Where the normative jurisdiction is to examine a legal problem and make the settlement through the applicable legislation. The specification of this study is descriptive analysis to provide an overview of the real facts along with an accurate analysis of laws and regulations that can be used as material analysis or analysis related to banking and legal accountability of banking.

5. Results and Discussion

Banking provisions related to customer deposit funds in accordance with banking laws and other provisions:

1. Article 73B paragraph (1) of Law no. 10 of 1998 concerning Banking which states every bank is obliged to guarantee public fund which is stored in the bank concerned.
2. Article 10 of Bank Indonesia Regulation no. 16 year of 2014 said that the operator shall be liable to the consumer for any losses arising from the misconduct of the management and the organizer.

It is clear that in this case, the banking law states that it is mandatory to guarantee the public funds deposited with the bank concerned, and it is said that the organizer is liable to the consumer for any losses incurred by the misconduct of the board and the organizer. Bank liability is very clear in both articles. The banks should be responsible for eliminating public funds.

The irresponsibility of the banks will certainly harm customers and result in huge losses, therefore the banks may be subject to criminal and civil liability. Criminal liability will result in the detention of the employees who commit banking crime. Inspections and investigations will be conducted by the law enforcement agencies in search of evidence that results in harm to customers. While the liability of civil liability is the responsibility of the banks to replace the losses that occur to customers.

In Article 49 paragraph (2) letter b Act no.10 year of 1998 about banking said that a member of the Board of Commissioners, Board of Directors or a deliberate bank clerk fails to implement the measures necessary to ensure compliance with the provisions of this law and the provisions of other laws applicable to the bank, shall be punishable by imprisonment of at least 3 (three) years and not later than 8 (eight) years And a fine of at least Rp. 5.000.000.000 (five billion rupiahs) and at most Rp. 100,000,000,000 (one hundred billion rupiahs).

In Article 50 of Law no. 10 year of 1998 about banking said that affiliated parties who deliberately fail to implement the measures necessary to ensure compliance with the provisions of this law and other laws applicable to the bank shall be punishable by imprisonment of at least 3 (three) years and not later than 8 (Eight) years and a fine of at least Rp. 5.000.000.000 (five billion rupiahs) and at most Rp. 100,000,000,000 (one hundred billion rupiahs). The affiliated party is referred to; Members of the board of commissioners, supervisors, directors or their proxies, officers or employees of the bank into a single entity; There are not executed by the Board of Directors as stipulated in the banking law:

1. Article 29 paragraph (2); Banks are required to maintain bank soundness in accordance with the provisions of capital adequacy, asset quality, quality management, liquidity, profitability, solvency, and other aspects related to the business of the bank, and shall conduct business activities in accordance with prudential principles.
2. Article 29 paragraph (4); For the interest of the customer, the bank is required to provide information concerning with the possibility of the risk of loss in connection with the customer transactions conducted through the bank.
3. Article 37B; Each bank is required to guarantee public funds deposited with the bank concerned.

Why are the Directors affiliated? because it is related to the Law no. 40 in the year of 2007 on Limited Liability Company, it is said as follows:

1. Article 97 paragraph (1) of Law no. 40 in the year of 2007 regarding Limited Liability Company;The Board of Directors is responsible for the management of the Company as referred to in Article 92 paragraph (1).
2. Article 92 paragraph (1); The Board of Directors performs the Company's management for the benefit of the Company and in accordance with the purposes and objectives of the Company.

It can be said that in running its business activities the Bank is in the form of a Limited Liability Company (PT: Perseroan Terbatas) that is subject to and complies with Company Law No. 40 in the year of 2007. In the Law of a Limited Liability Company it is said that the company's organs are; General Meeting of Shareholders, Board of Directors and Commissioners where in carrying out their duties are mutually affiliated. Here looks how the bank accountability in case the bank has a problem. Legal liability should ultimately be given to the board of directors and commissioners and their employees if they do not execute the decision taken in the General Meeting of Shareholders as a guide to run the bank business.

Legal protection is made by the state not merely a tool of social engineering, but more than that, namely to uphold justice and protect the dignity of humanity. Not a few of the rights of humanity entrusted to the law to be protected or protected,

because without any protection from this law, it will be many deeds patterned violated especially in banking.

The interests of the people in the banking sector, as well as the regulation of other aspects related to the administration of state, or administration *entrusted to the organizers of power that are in fact evidence of the existence of the functioning of the law.*

The law contains norms of protection of the interests of the people such as justice, freedom of choice, fair treatment, humane treatment, the right to welfare and decent work, including law enforcement. If the organizer of power implements the duties set forth by this law in accordance with the will of the law, then this means organizing the ideal objectives already inherent in the legal state such as safeguarding and protecting human life from harm, at least it has been said that legal hope has been fulfilled.

"It is the duty of the rulers to oversee that one should perform his work in a position to be achieved in accordance with his abilities, including in the enforcement, of the law as a well-ordered system of positive rules to govern the whole state."¹³ There are six community interests (social interest) that are protected by law, which includes:

1. public interest for public safety, such as security, health, and welfare, guarantees for transactions and income;
2. for social institutions, including protection in marriage, politics such as freedom of speech, economy, and banking within it;
3. the public against moral damages, such as corruption, gambling, cussing against God, illegal transactions that are contrary to good morals, or rules that limit the actions of trust members;
4. community interest in the maintenance of social resources, such as rejecting legal protection for abuse of rights;
5. public interest in general progress, such as the protection of property rights, free trade and monopoly, industrial independence, and new discoveries;
6. the interests of society in individual human life, such as the protection of a decent life, freedom of speech, and choosing a position.¹⁴

Protecting the interests of the community (social interest) by law, especially from unscrupulous banking criminal behavior, such as the perpetrators of criminal act of eliminating the customer's funds, harming the state's finances, then the law is required that can provide compliance and welfare for the people.

¹³Roscoe Pond, *An Introduction to the Philosophy of Law*, terjemahan, Jakarta: Bhatara Niaga Media, 1996, hal 56.

¹⁴Sudikno Mertokusumo, 1999, *Mengenal Hukum: Suatu Pengantar*, Yogyakarta: Liberty, hal. 71

In the case of appreciating the interests of the law, it will produce legal conceptual products for the interests of the law that are related to the objectives of the law which is formally realized, and a concrete form of the function of law.

Sudikno Mertokusumo states about the purpose and function of law: *"In its function as a protection of the interests of human law has a goal to be achieved. The main purpose of law is to create orderly order of society, create order and balance. With the achievement of order in society, it is expected that human interest will be protected. In reaching the goal the law is in charge of dividing the rights and inter-individual obligations within the community, dividing authority and regulating ways of solving legal problems and maintaining legal certainty"*.¹⁵

An orderly society is a regular behavior, and adheres to the laws and regulations that live and thrive in society. Order is a state in which society lives in an orderly fashion, which is defined by the balance of a state of society, which has the same rights and obligations without discrimination.

The main legal duties are:

1. divide the rights and obligations between individuals within the community;
2. divide authority;
3. organize how to solve legal problems; and
4. maintain legal certainty.¹⁶

Law is directed entirely as a means to support the development. Whereas that development should be only a means to improve the dignity of humanity. So it is clear that by law we will create or make prosperity for the people.¹⁷

Criminal liability may be applied to the banking system subject to Article 263 of the Penal Code (KUHP):

- 1) Anyone who makes a false letter or falsifies a letter which may incur a right, contract, or debt relief, or which is designated as evidence of something in order to use or order another person to use the letter as if it were true and not falsified, will be threatened if such use could result in a loss, due to counterfeiting of a letter, with a maximum imprisonment of six years.
- 2) Threatened with the same criminal, whoever deliberately uses false or falsified letters as if it were true, if the use of the letter could cause harm.

¹⁵Sudikno Mertokusumo, 1999, *Mengenal Hukum: Suatu Pengantar*, Yogyakarta: Liberty, hal. 73.

¹⁶Faisal Santiago, 2012, *Pengantar Ilmu Hukum*, Jakarta; Cyntia Press, hal 22.

¹⁷Satjipto Rahardjo, 2000, *Ilmu Hukum*, Bandung: Citra Aditya, hal 57.

Subsequent criminal liability under Article 372 of the Criminal Code (Penal Code); Anyone who intentionally and unlawfully owns the goods wholly or partly belongs to another, but who is in his power not because of the crime which is threatened by embezzlement, with a maximum imprisonment of four years or a fine of not more than nine hundred thousand rupiahs.

6. Law enforcement

The challenge of the dynamics of legal events occurring especially in Indonesia is a challenge to the state in its position as a state of law. Conceptual dynamics, application and law enforcement, are elements of the legal system that are continually being addressed, in order to bring about legal standing in the law and benefit the interests of society, nation and state. In responsive law, legal validity is based on substantive justice and rules subject to principles, and wisdom. Discretion is implemented in order to achieve goals. Coercion is more visible in positive alternative forms such as positive incentives or independent liability systems. The apparent morality is "cooperation morality", while legal and political aspirations are in an integrated state. Injustice is judged in substantive measurements and losses and is seen as a growing problem of legitimacy. Opportunities for integration are extended through the integration of legal aid and social assistance.

It is undeniable that legal norms are the means by which society directs the behavior of community members when they relate to one another. When it is alluded to "directing behavior", then the question in ourselves, "where is it directed" ? The norm that directs human behavior is a priority that exists in society itself. It is society that determines these directions and therefore we can see the norm as reflecting the will of society. The will of society to direct the behavior of the members of society is made by making a choice between agreed and unapproved behavior which then becomes the norm in that society. Therefore, the legal norm is a requirement of judgments.¹⁸

All living beings always desire to be protected from their rights and obligations as intelligent sentient beings. Equity in all sectors becomes a basic necessity that immediately gets the way out, so that each field gets protection. One form of protection provided by law is if enforcement is done by law enforcement officers. The definition of law enforcement can be formulated as an effort to implement the law as it should, overseeing its implementation in order to avoid violations, and if there is a violation of law then restore the violated law to be re-established. Satjipto Rahardjo formulates law enforcement as a process for realizing legal desires into reality.¹⁹

7. Conclusion

¹⁸Satjipto Rahardjo, 2000, *Ilmu Hukum*, Bandung: Citra Aditya, hal 57

¹⁹Satjipto Rahardjo, 1983, *Masalah Penegakan Hukum*, Bandung: Sinar Baru, hal 4-5.

Bank liability should be done by the bank against the public funds stored in the bank. Criminal and civil liability is what can be done to protect customers' funds. The Government's participation in overseeing banking activities is the main thing to do. Bank confidence must be maintained and supported by the government for the sustainability of the banking industry and overall economic activity to realize national development in order to create a prosperous society. At the end, law enforcement must be done without any discrimination between banking entrepreneurs and the public at large, do not sharp down blunt upwards, everyone is equal to the law that is the principle of law enforcement that must be run.

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