

Analysis of Banking Criminal Cases Based on The Perspective of Law Number 10 of 1998 Concerning Banking

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ABSTRACT

This study aims to analyze banking crimes based on the perspective of Law Number 10 of 1998 concerning Banking with a focus on cases of embezzlement of customer funds by bank employees. The method used is a literature study through a review of laws and regulations, scientific journals, articles, and related court decisions. The case of the loss of customer funds in the name of Sigit Prasetya at Bank BRI is the main focus in analyzing the elements of the crime and the relevant forms of legal responsibility. The results of the analysis show that banking crimes often occur due to the weak implementation of the principle of prudence and internal bank supervision. Although the main perpetrators are individual bank employees, civil liability can still be directed at the bank as a corporation. This emphasizes the importance of strengthening regulation and supervision in maintaining public trust in the banking system.

Keywords: *Banking, Criminal Acts, Embezzlement of Customer Funds, Law Number 10 of 1998, Legal Responsibility.*

1. INTRODUCTION

The provision of financial services within the community is one of the service products that is highly needed. These service products, in the form of financial services, are manifested through banking. In order to become a service provider company, banking institutions subsequently establish legal relationships with their customers. In this context, banks sell service products which are then consumed by the public as a form of product consumption.

Law then becomes essential to protect the interests of the relationship between the two parties. It serves as a tool to ensure the balance between rights and obligations, and to regulate agreements that arise from the mutual consent of the involved parties. Since banking services are closely related to society, the main capital that must exist within the banking system is trust, in order to carry out business activities optimally. Therefore, it can be said that two elements bind the relationship between the customer and the bank: law and trust [1].

To build trust in customers, the important role of employees in a banking company is absolutely necessary. The main thing that must be implemented by every worker in the banking sector from the board of commissioners, directors, to bank staff is to adhere to the prudential principle to achieve security objectives. A lack of implementation of the prudential principle and weak supervision can lead to abuse of authority by bank employees, which ultimately harms customers. This is what underlies the occurrence of various economic crimes in the banking sector. Various economic crimes that frequently occur in banking environments can undoubtedly disrupt the balance in the relationship between the bank and its customers [2].

Various forms of crime that have developed in the banking sector include the embezzlement of customers' funds. For instance, a case involving the disappearance of customer funds at BRI Bank under the name Sigit Prasetya amounting to Rp. 400,000,000 (four hundred million rupiah), which was committed by the bank's teller. Sigit also stated that the withdrawal of the Rp. 400,000,000 was carried out using the teller code belonging to Rika Dwi Merdekawati.

In reality, such crimes have occurred frequently, but they have not received significant public attention. Generally, the public only recognizes money laundering as the primary banking crime. In fact, the crime of customer fund embezzlement is more dangerous and harmful to society compared to the impact of money laundering. The embezzlement of customer funds can directly harm the public, as the funds entrusted to the bank are reduced from the actual amount that should be available. Meanwhile, money laundering crimes only use banking institutions as a tool to conceal the origin of funds derived from criminal acts.

In fact, in its development, Indonesian law does not recognize a specific definition of customer fund embezzlement by a bank. For years, banking crimes have been handled using the Indonesian Criminal Code (KUHP). However, as technology has evolved, crimes within the banking sector have also transformed. Therefore, the policy authorities in this case, the lawmakers issued regulations governing banking, namely Law Number 7 of 1992 concerning Banking, which was later refined by the enactment of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 on Banking. Through this law, the previously described case will be analyzed.

2. LITERATURE REVIEW

2.1 *Legal Basis for Banking in Indonesia*

Law Number 10 of 1998 is an amendment to Law Number 7 of 1992 concerning Banking, which is the main basis for regulating the national banking system. This law aims to create a healthy, efficient banking system that is able to support national economic growth. In a legal context, this law clarifies the position of banks as public trust institutions, and emphasizes the importance of the prudential banking principle in every banking activity. One important point emphasized is the need for banks to maintain the confidentiality of customer data and not abuse their authority [3].

Law No. 10 of 1998 also provides clear authority to supervisory authorities, such as Bank Indonesia (and now OJK), in regulating and supervising banking activities. This regulation covers administrative to criminal aspects in the case of violations committed by the bank, both by its management and employees. Therefore, this legal framework is an important basis in handling banking criminal cases, ranging from criminal acts of embezzlement, misuse of customer funds, to violations of the principle of prudence that lead to systemic losses [4].

2.2 *Criminal Acts in the Banking Sector*

Banking crimes are all forms of violations of the law committed by banking actors in carrying out their activities, which can harm customers, the bank itself, and the financial system in general. The types of banking crimes are very diverse, including embezzlement of funds, manipulation of financial reports, hacking of customer accounts, and money laundering practices. Law No. 10 of 1998 provides a strong legal basis for prosecuting these perpetrators, both through administrative and criminal sanctions, depending on the level and impact of the violations committed [5].

In practice, banking crimes often involve elements of abuse of authority and weak internal control systems. Cases such as the loss of customer balances, theft of banking data, and collusion between banks and external parties are worrying phenomena. Therefore, law enforcement based on Law No. 10 of 1998 is very important to maintain the integrity of the banking system and restore public trust in financial institutions.

2.3 The Role of Supervisory and Law Enforcement Institutions in Handling Banking Crimes

In dealing with banking crimes, the role of the Financial Services Authority (OJK), Bank Indonesia (BI), and law enforcement officers such as the Police and the Prosecutor's Office is very strategic. OJK functions as a supervisor and regulator of the financial services industry, including banks, and has the authority to provide administrative sanctions and legal recommendations if serious violations are found. Cooperation between these institutions is very important in uncovering, handling, and preventing complex and sometimes cross-regional banking crimes. In addition, law enforcement officers have a role in the investigation and prosecution process of perpetrators of banking crimes. However, in practice, law enforcement in this area still faces challenges, such as a lack of technical understanding of the modern financial system and a lack of valid digital evidence. Therefore, it is necessary to strengthen the capacity of officers and increase synergy between institutions to ensure that law enforcement is effective and provides a deterrent effect for perpetrators of banking crimes [6].

3. METHODS

The research method used in this study is the literature study method, namely by reviewing and analyzing various relevant library sources such as laws and regulations, law books, scientific journals, articles, and court decisions related to banking crimes and Law Number 10 of 1998 concerning Banking. This approach is used to gain a deep understanding of the legal basis, forms of banking crimes, and their handling mechanisms according to positive legal provisions in Indonesia. Through literature studies, this study aims to compile a comprehensive and critical analytical framework for banking crime cases by referring to applicable legal provisions and their implementation in practice.

4. RESULTS AND DISCUSSION

4.1 Case Analysis

In accordance with the previously described case, the customer named Sigit Prasetya lost a sum of money after depositing a balance of IDR 400,000,000 at Bank BRI. The balance disappeared within seconds after the deposit, and it was later discovered that the withdrawal had been carried out by a bank teller who is currently being detained in connection with another case involving the misappropriation of IDR 2.3 billion from other customers.

Based on this case, it has become a criminal banking offense, which can be analyzed from the perspective of Law Number 10 of 1998 concerning Banking, particularly Article 49 paragraph (1), which states:

Members of the board of commissioners, directors, or bank employees who intentionally:

1. Make or cause the existence of false entries in accounting records or in reports, or in business activity documents or reports, transaction reports, or bank account records;
2. Omit or fail to include, or cause the omission of entries in accounting records or in reports, or in business activity documents or reports, transaction reports, or bank account records;
3. Alter, obscure, conceal, delete, or remove entries in accounting records or in reports, or in business activity documents or reports, transaction reports, or bank account records, or who intentionally alter, obscure, remove, conceal, or destroy such accounting records, shall be subject to imprisonment for a minimum of 5 (five) years and a

maximum of 15 (fifteen) years, and a fine of no less than IDR 10,000,000,000.00 (ten billion rupiah) and no more than IDR 200,000,000,000.00 (two hundred billion rupiah).

Based on the provisions stipulated in Article 49 paragraph (1), it can be used as a reference to prosecute perpetrators of criminal acts related to the above case. Lawmakers, in formulating this article, attempted to accommodate the development of crimes involving customer fund breaches by no longer using the term "letter," but instead replacing it with the terms "report" and "document." This change was made because the term "letter" has a limited meaning, referring only to physical documents that are handwritten, printed, or typed using a typewriter. Meanwhile, the use of the terms "report" and "document" has a broader meaning and significance, making it more relevant to technological developments, where records are generally in the form of electronic data.

The case involving the loss of a sum of money belonging to Sigit Prasetya began with the actions committed by Rika Dwi Merdekawati, a BRI Bank teller, with the intent of unlawfully appropriating the customer's funds. As this case is considered a recent incident, the analysis will be adjusted to similar cases involving the breach of customer funds by individuals working within the banking sector. In executing her intention, the perpetrator of the bank customer fund breach falls under the category of violating the bank's procedural system, which also constitutes a banking crime. These violations often involve almost the entire internal structure of the bank, including bank employees. The perpetrators, who are part of the internal banking circle, often involve hierarchical relationships between superiors and subordinates, indicating that such violations of bank procedures occur at various levels, from lower-level staff to high-ranking employees. The typical characteristics of these procedural violations include:

1. Illegal Withdrawal or Withdrawal of Funds from The Bank

Bank employees carry out actions to withdraw funds from the bank that are contrary to the applicable bank procedure system, namely the withdrawal of funds is disbursed without the knowledge or permission of the customer or the bank. Based on the analysis of the Sigit Prasetya case, it can be seen that there was an attempt to withdraw customer funds by bank employees without permission from the customer or the bank. Looking at a similar case to Sigit, namely in the case of Estee and Fiveri Yenti, the process of withdrawing and withdrawing customer funds was carried out online. This explains that the process of withdrawing funds is not carried out physically or directly, but through the assistance of a computer system where the money is withdrawn online and transferred to another party's account. Meanwhile, the process of withdrawing funds physically or directly by bank employees can be reviewed in the case of Endang Sri Wahyuningsih. Endang Sri Wahyuningsih withdrew funds directly using her hands when filling the ATM cartridge.

2. Falsification of Banking Financial Data

Falsification of data or reports related to finances is carried out by bank employees to cover up fictitious transactions or actions to withdraw funds from the bank, so that other bank employees or customers do not know that there have been fictitious transactions that have occurred. The falsification of data or reports is carried out in such a way that other bank employees or customers think as if there had never been a withdrawal of funds from the bank. This can be seen in the case of Estee and Endang Sri Wahyuningsih, namely the falsification of financial reports by Tjoeng Ik Thin and Endang Sri Wahyuningsih to cover up bank and/or customer funds that had decreased at that time. The occurrence of falsification of financial reports or data has the effect that bank or customer funds have never decreased.

3. Superior Approval Related to Crimes by Bank Employees

Crimes committed by bank employees are almost dominated by the process of approval from superiors, both in cases where the approval is given based on negligence or intentional factors. The approval process from superiors is needed by bank employees with lower positions, because this is based on the existence of a supervisory system established by each bank. Superior approval is a form of supervision from superiors towards subordinates, so that any errors or losses can be prevented as early as possible. Therefore, every behavior or action taken by subordinates requires approval from superiors. For example, bank employees with lower levels are required to request approval for actions related to bank operations from their superiors, including actions related to violations of the bank's procedure system. The role of superiors in every activity by bank employees is very important, especially by bank employees who commit crimes. The existence of approval from superiors can be interpreted that the actions of their subordinates have been properly examined according to applicable procedures, so that the next process or approved action can be carried out by the bank employee concerned. The role of superiors in bank crimes and/or violations of bank procedural systems does not only include giving approval to their subordinates, but can also act as the person who gives orders to their subordinates to commit crimes.

4. Control by Bank Employees Over Illegal Funds

The next stage of the process which is also the final stage of the series of crimes committed by bank employees. After the disbursement of funds or withdrawal of funds has been successfully carried out, the bank employee will then take safe actions to be able to control or own the funds. One of the actions that can be taken by the bank employee in order to control or own the funds from the crime is to transfer funds to a personal account or another party as happened in the case of Estee and Fiveri Yenti which is also similar to the case of Sigit Prasetya.

4.2 Corporate Accountability of Banks

Further examining the case of Sigit Prasetya, in this case, Bank BRI refused to take responsibility and considered the incident that befell Sigit to be a personal matter between him and a former BRI employee, which resulted in the loss of his IDR 400 million balance. So, can the bank simply avoid responsibility for the incident? Corporate criminal liability of the bank for crimes committed by its employees can actually be interpreted to mean that the bank is criminally liable for the mistakes or violations of its employees. Since legal entities can be held criminally accountable, this condition can be applied and supported by laws and regulations that have been violated by the bank as a corporation. The scope of laws and regulations in Indonesia related to the criminal liability of banks as corporations includes the Indonesian Criminal Code (KUHP) and the Banking Law.

The bank, as a corporation, deserves to be held criminally liable for any unlawful gains obtained through criminal acts. However, criminal acts committed by shareholders, management, or employees that do not result in any benefit to the bank should not fall under the category of crimes committed by the bank as a corporation. Instead, such acts should be considered as the individual criminal responsibility of the shareholder, management, or the bank employee involved. In relation to the wrongdoing committed by the bank employee that resulted in losses to both the bank and the customer, legal action that can be taken includes filing a civil lawsuit against the bank employee for the losses suffered by the customer.

This civil lawsuit aims to hold the bank as a corporation civilly liable so that it can compensate the customer for their financial losses. Compensation to the customer serves to recover financial losses caused by the bank employee. The customer may file a civil lawsuit to demand civil liability from the bank as a corporation for the criminal act committed by its employee, because the

legal relationship established through the act of depositing funds in the bank is a legal relationship between the bank as a corporation and the customer. Therefore, it is reasonable for the customer to sue for civil liability so that their funds can be fully returned. Moreover, Article 1367 of the Indonesian Civil Code (KUHPER) stipulates that an employer is responsible for any wrongdoing committed by its subordinates in the execution of the employer's orders. When associated with crimes committed by the bank's employees, the bank, as the employer, is responsible for the damages caused by its employees.

CONCLUSION

The analysis of the case involving Sigit Prasetya as the victim, who lost a certain amount of funds stored in his BRI Bank account, becomes quite clear when viewed from the perspective of Law Number 10 of 1998 concerning Banking and by examining similar cases that have occurred in the past. From this analysis, it can be concluded that the bank procedures carried out by bank employees, which result in banking crimes, tend to exhibit the following characteristics: Banking crimes are always accompanied by violations of the bank's procedural systems; the perpetrators always require the involvement of other employees who have authority within the bank's procedural system so that their actions are not immediately detected; other bank employees involved in the procedural flow may not necessarily share the same intent as the criminal perpetrator; the modus operandi used by the perpetrator aims to withdraw or disburse funds illegally by violating the bank's procedural system, including but not limited to falsifying data in banking documents.

Regarding violations of the bank's procedural system, the bank as a corporation cannot be held criminally liable, considering that Article 49 of Law Number 10 of 1998 only limits criminal responsibility to individual actors and not to the banking corporation itself. Therefore, for losses suffered by bank customers, the form of accountability that can be demanded from and pursued against the bank as a corporation is civil legal liability.

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