Misuse of Customer Funds as A Banking Crime in Jayapura City

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Article Info
Received: 2022-08-12
Revised: 2023-02-21
Accepted: 2023-03-31

Keywords:
Misuse, Customer funds, banking crime.

Abstract
Misuse of customer deposits as a banking crime is a very worrying and detrimental problem for both customers and the bank concerned. The aim of this research is to analyze, understand and explain that misappropriation of customer deposits is a banking crime and the government should implement a customer deposit guarantee model. The method used is normative and empirical, namely research that examines the literature and applicable laws and regulations using descriptive characteristics, then analyzes it carefully and thoroughly in accordance with the research objectives and looks at the reality that occurs at the research location. The results of the research reveal that misuse of customer deposits by bank leaders, bank employees and stakeholders is a banking crime based on Article 48 paragraph (2) of Law Number 10 of 1998. Legal protection for customers by providing a model implemented by the government to safeguard customer deposits namely the Law on Deposit Insurance Corporation (LPS), Law no. 24 of 2004 which has two functions, namely guaranteeing bank customer deposits and clearing or handling failed deposits as well as synergy between Bank Indonesia and the Financial Services Authority (OJK).

1. Introduction

Banking legal protection is something that must be prioritized to protect the interests of the parties involved. One form of policing is basically law enforcement. Conceptually, law enforcement is the act of harmonizing the relationship between values and attitudes which are outlined in stable rules and realized as the final step in changing values in order to create, preserve and

support peaceful social life.

Apart from that, the concretization and efforts to conceptually implement the law make it clear that society has certain views about what is good and what is bad in social life. These opinions are always expressed in certain pairs, such as pairs of values of public interest and personal interest. In the police, these pairs of values must be harmonized and explained more concretely, because these values are usually abstract. A more concrete explanation is realized in the form of legal norms which contain regulations, prohibitions and permits. These rules become guidelines or benchmarks for what behavior or attitudes are considered appropriate or appropriate. The purpose of this behavior or attitude is to create, maintain and maintain peace.

Law enforcement efforts cannot be separated from the legal ideals promoted in each society in the form of various positive legal rules, institutions and legal processes (government bureaucracy and the behavior of community members).

Edwin Sutherland wanted to use these words to show that crime is also a phenomenon that occurs in the upper levels of society, the causes of which cannot be explained traditionally, such as poverty or individual pathological factors.[1]

In implementing the law, there are three factors that must be taken into account: legal certainty (rechtssicherheit), conformity (zweckmassigkeit), and justice (gerechttigkeit). Legal certainty is everyone's desire to know how to apply or apply the law in certain events. Legal certainty means that everyone can demand that the law be enforced and enforced fully, and that every violation of the law can be prosecuted and punished in accordance with the law.

Apart from that, law enforcement must provide benefits or provide benefits to the community, and ultimately justice is needed by the community who have an interest in implementing or enforcing the law, so justice is also taken into account. In legal protection of banking transactions, you must pay attention to the three points above. In dealing with banks, customers, especially deposit customers, have not been guaranteed adequate legal protection before the enactment of the Deposit Insurance Corporation Law Number 24 of 2004. Law Number 10 of 1998 concerning Amendments to Banking Law Number 7 of 1992 does not directly regulate customers. protection. In Chapter V. Paragraphs 1, 2, 3 and 4 of Article 29 of the Decree, namely. provisions regarding bank supervision and supervision, stipulate that Bank Indonesia can increase bank supervision and supervision.

As a banking development and supervisory institution in Indonesia, Bank Indonesia has a big role in protecting and ensuring that customers do not experience losses due to wrong bank actions. Bank Indonesia must be more active in carrying out its duties and authority to supervise the implementation of statutory provisions by all banks operating in Indonesia. Effective and good

[1] H. Setiyono, (2003). *Kejahatan Korporasi Analisis Viktimologi dan Pertanggungjawaban Korporasi Dalam Hukum Pidana*. Edisi Kedua, Cetakan Pertama, Bayumedia Publishing, Malang, h. 36.

supervision is a preventive step in minimizing cases of customer loss due to bank actions.

Steps that Bank Indonesia can take if a bank experiences difficulties that threaten the continuity of its business are listed in Article 37 to save the bank, including: shareholders increase capital, shareholders replace directors and/or directors of the bank, the bank issues distressed book loans or financing based on sharia and uses its capital to cover bank losses, the bank carries out a merger or consolidation with another bank for all its liabilities, the bank sells some or all of the bank's assets and/or liabilities to another bank.

However, if the actions mentioned above are not sufficient to deal with the difficulties faced by the bank and/or according to Bank Indonesia could threaten the bank's condition regarding the banking system, then the leadership of Bank Indonesia can cancel its operating permit. Article 24 of the Bank Indonesia Law states that in carrying out its responsibilities for bank regulation and supervision, Bank Indonesia is obliged to establish regulations, grant and revoke licenses for certain bank institutions and business activities, carry out bank inspections, and impose sanctions on banks in accordance with applicable legal regulations.

Apart from that, it needs to be understood that bank crimes or banking crimes are always closely related to economic activities or activities related to commercial life. Clinard and Yeager explain the following regarding the illegal activities of corporations, in this case banks: "In general there are two positions that can be used to explain corporate crime, namely the rational model and the organic model, the first model or approach requires prioritizing the search for profit, while the second model , the organic model, places more emphasis on the relationship between the company and its economic and political environment.

Due to the fact that customer protection is not expressly regulated in the Banking Law and the Bank Indonesia Law, bank guidance and supervision is a very important thing to be carried out by Bank Indonesia on an ongoing basis. Regarding the importance of bank supervision, it is interesting to pay attention to what was stated by Edward W. Reed and Edward K. Gill, as follows: "Commercial banks are the most regulated business. Few businesses are inspected as often and as thoroughly by regulatory bodies to determine whether they are operating in accordance with various laws and administrative requirements. This regulation and supervision shows its semi-public nature. Commercial banks hold the deposits of millions of people, which can be withdrawn at any time; they can deny or grant credit to individuals and businesses; and they are involved in providing money to the state. Because of these factors, banks are at the mercy of the people and are regulated to ensure that these basic functions are carried out well."

Here banking seems to have special characteristics compared to business in general. This is reflected in his character; Banks are intermediary institutions which, in their commercial activities, collect funds from the public in the form of savings and distribute them to the public in the form of credit or in other

forms to improve people's living standards, taking into account banking principles. In this way, banks are directly related to the interests of the wider community (public interest). Therefore, it is appropriate for elected authorities to closely monitor all banking activities so that the public continues to believe that banks are safe and sound financial institutions.

The aim of establishing the Deposit Guarantee Law is to provide legal protection and certainty to saving customers, with the hope of creating public trust in banking and minimizing risk or moral damage.

LPS is responsible for guaranteeing bank customer deposits and resolving or processing bank bankruptcy. These provisions apply to forms of savings guaranteed by the Deposit Insurance Corporation (LPS) in the form of demand deposits, deposits, investment certificates, time deposits and/or other equivalent forms. However, the guarantee value for each customer deposit at one bank is up to IDR 100,000,000 (one hundred million rupiah). Guarantee claims must be paid by LPS to deposit customers and banks whose licenses have been revoked after matching and checking the appropriate deposit data. Payment of eligible deposits is no later than 90 (ninety) working days after the bank license is revoked and payment is no later than 5 (five) working days from the start of the audit.

The concept of calculating payments through compensation or loan offset (set-off) is accommodated in this law, as stated in Article 18 which states that: "In the event that a depositing customer at the same time has an obligation to the bank, payment of the guarantee claim is made after Saving customers' obligations to the bank are first calculated based on statutory regulations."

Guarantee claims are declared not payable if based on the results of reconciliation and/or verification: details of the customer's deposit are not recorded at the bank, the deposited customer receives an unfair profit; and/or deposit customers are parties who worsen the bank's situation. To guarantee the level of customer trust in banking, deposits that are guaranteed are current accounts, deposits, investment certificates, deposits and/or other similar forms whose rewards can be paid by LPS after being checked first.

The aim of guaranteeing customer deposits is to maintain the public's image and trust in the bank. The banking crisis has created public distrust of these financial institutions, especially with the frequent occurrence of bank robberies such as the case of Bank Global. However, the government is still trying to restore public trust with a policy of guaranteeing customer deposits. On the other hand, the Deposit Guarantee Law Number 24 of 2004 is expected to provide legal protection to customers if banking operations are temporarily suspended and/or terminated due to managerial errors. On the other hand, the implementation of this law could also trigger corporate crimes in the banking sector, because it does not rule out the possibility that bankers and other bank owners will repeat these crimes because they believe that the government will pay bank customers' deposits.

Banking is a very important part of the national economy to maintain balance and unity in national economic development. Banking stability is very

necessary to maintain public confidence in banking so that there is no repeat of the 1998 financial and banking crisis. Trust in banking is the most important key and this can be achieved by ensuring legal certainty in bank regulation and supervision and securing bank customer deposits to increase operational continuity. healthy banking.

In the event that an act is carried out or not carried out, it is a criminal act or not committed, based on legal provisions known as the principle of legality: nullum crimen sine lege and nulla poetry sine lege. Crime refers to the nature of prohibited acts with the threat of criminal penalties for violations. Every act that is in accordance with the characteristics of a crime always carries criminal responsibility, if it meets the requirements for responsibility. Criminal punishment is a response to crime in the form of suffering that is deliberately inflicted by the state on the perpetrator.[2]

Imposing a criminal sentence for an act that meets the characteristics of a crime is a dimension of criminal responsibility which in a theoretical framework is known as monistic and dualistic doctrine. Monistic teachings do not separate actions and the doer (doer) of an action, while dualistic teachings separate actions from the doer (doer) of an action.[3]

Customers are good people from small, medium, large and even legal entities who keep their money in the bank to have a sense of security, not otherwise misuse it by irresponsible individuals. It is very unfortunate that this crime still occurs everywhere. both in newly developing areas and in cities, especially in the city of Jayapura, the author sees that there are certain parties who have authority within the bank by abusing their authority to use customer funds either for personal or group interests. The point is to make a profit. Therefore, the efforts that have been made by the government are to issue various banking customer protection program policies and to complement these programs, the government issued Law on Deposit Insurance Corporation no. 24 of 2004 and came into effect on 22 September 2004.

2. Research Method

The method used is normative and empirical, namely research that examines the literature and applicable laws and regulations using descriptive characteristics, then analyzes it carefully and thoroughly in accordance with the research objectives and looks at the reality that occurs at the research location.[4]

3. Result and Discussion

[2] Roeslan Saleh. (1983). *Stelsel Pidana Indonesia.* Aksara Baru, Jakarta, h. 9.
[3] Chairul Huda, (2006). *Dari Tiada Pidana Tanpa Kesalahan Menuju Kepada Tiada Pertanggungjawaban Pidana Tanpa Kesalahan*. Kencana Prenada Media, Jakarta, h.5-6, 15-24.
[4] Peter Mahmud Marzuki. (2010). *Penelitian Hukum*. Kencana Prenada Media, Jakarta, h. 27.

As a party that really needs trust in carrying out every business, specifically the party that directly manages funds obtained by the public, it is appropriate for the bank and parties related to the bank, for example bank administrators, bank employees, other parties affiliated with the bank and bank shareholders. itself carries out each of its duties and obligations with full responsibility and all its actions must be based on the principle of prudence and carried out in accordance with applicable regulations.

In order to maintain the trust that has been entrusted to the public and to prevent fraud or even criminal acts or misappropriation of funds, it is necessary to have the principle of responsibility and the principle of prudence that must be implemented. Basically, every bank administrator, bank employee, party affiliated with the bank and bank shareholders are obliged to comply with all applicable laws and regulations and all provisions relating to the bank's prudential principles as well as other provisions relating to the attitude and behavior of the management. bank, bank employees, parties affiliated with the bank and the bank's shareholders themselves.

Article 22 of the Republic of Indonesia Banking Law Number 7 of 1992 as amended by Law Number 10 of 1998 expressly states that parties who have a special relationship/affiliated parties are:

a. Bank officials/employees, managers, supervisors, Directors, members of the Board of Commissioners or their proxies;
b. Legal consultants, public accountants and other consultants where parties provide their services to banks;
c. Commissioners' families, shareholders and their families, directors' families, supervisory families, which according to Bank Indonesia's assessment, participate in the management of the bank.

Therefore, it can be said that the parties sued under this provision are very broad. In short, both parties are involved either directly or indirectly in banking business, such as guardians, supervisors, administrators, bank officers or employees, management members, supervisory members, management members and their agents, and bodies that provide services to the bank, but not limited to public accountants, appraisers, legal consultants and with consultants or other parties who in Bank Indonesia's opinion also influence the management of the bank, such as but not limited to the family of commissioners, the family of supervisory officers, the family of management, the family of management who deliberately do not take the necessary actions to ensure that the bank complies with the provisions of the Banking Law and other laws and regulations that apply to banks.

It should also be noted that such a situation is essentially contrary to the principle of criminal law which states that criminal responsibility can only be imposed on the perpetrator. With regard to the threat of criminal sanctions, both parties involved directly or indirectly in banking activities, such as bank proxies, supervisors, administrators, bank officials or employees, management members, supervisory members, bank members. management and their

representatives as well as parties who provide services to the bank, such as but not limited to, family of commissioners, family of controlling officers, family of directors, family of management who deliberately do not take the necessary actions to ensure that the bank complies with the provisions of the Banking Law and other laws and regulations regarding banks, shall be punished with imprisonment of at least Rp. 100,000,000,000.00 (One Hundred Billion Rupia).

From the provisions of Article 50A, in the author's opinion, it can be seen that the Banking Law is an embodiment or law that adheres to the principle of piercing the corporate veil or that liability can be claimed limited to personal property. This condition is stated in article 3 paragraph (1) of the Limited Liability Company Law 40 of 2007. This is justified by law, because the Limited Liability Company Law no. 40 of 2007, that the provisions as intended in article 3 paragraph (1) do not apply if:

a) failure to fulfill the company's requirements as a legal entity;
b) exploiting the company for personal interests by shareholders;
c) unlawful acts by shareholders;
d) using the company's assets by shareholders so that the company's assets cannot pay off the company's debts.

Conceptually, the core and meaning of law enforcement lies in actions that harmonize relationships between values as outlined in stable rules and in accordance with functional attitudes as a series of final stages of value transformation to create, maintain and maintain peace. The biggest problem in law enforcement is actually the factors that influence it. These factors are:

a. the law itself is the statutory rules;
b. law enforcement, namely the party who makes and implements the law;
c. facilities/facilities that support law enforcement;
d. the society where the law applies/is applied;
e. Culture is the result of work, creativity and feelings in social life.

These five factors are closely related because they are the core of the police and are also a benchmark for police effectiveness. Based on the literature review, legal protection is a process of fulfilling legal desires. Legal desires are the thoughts of law makers which are expressed in statutory regulations. As a means of social protection in the sense that society is protected from crime (rehabilitation), by repairing or restoring its creator, without harming the balance of interests of the individual (creator) and society."

Eradicating crime with the help of criminal law is an important part of law enforcement activities (especially criminal law). Therefore, it is often said that political or criminal justice policies are also part of police policy. It turns out that quite a complex organization is needed to implement the law as an idea.

The state must intervene in the realization of this right by having to establish various bodies for this purpose. We are not talking about legal services or law firms, but about courts, prosecutors, police, prisons and legal entities. Bodies that appear to be independent organizations essentially perform the same function in implementing laws or enforcing laws in society.

Law enforcement must be guided by justice, which is beneficial or guarantees fair interests and legal certainty. Preventive policing is a process by which law enforcement agencies enforce criminal laws aimed at preventing crime, both in the narrow sense of the police's preventive duties and powers, and in the broader sense of all criminal justice agencies.

Crime prevention in the criminal justice system through preventive efforts is not only based on a legal approach, but can be accompanied by sociological, psychological, criminological and cultural approaches. Meanwhile, repressive policing is the process of enforcing criminal law, namely the actions of law enforcement officials after a crime has occurred, by carrying out or not carrying out investigations, prosecuting or not prosecuting, and enforcing or withholding criminal law.

Sanctions Substantive criminal law enforcement against criminal acts, especially banking crimes, is carried out based on the Criminal Procedure Law. Basically, in KUHAP PP Number 27 of 1983 which was amended by PP Number 53 of 2010 "Guidelines for the Application of Criminal Procedure Law" it is formulated that the aim of criminal procedure law is to seek and obtain or at least to access material truth, namely the complete truth.

In any case, including cases where there is an element of harm, this means it is included in the category of actions that contain elements of civil or criminal crime. If there is a party who is harmed, they can sue the party concerned. If it cannot be resolved through mediation, they can be sued in court to obtain justice.

From the results of the research conducted by the author, it can be seen that misappropriation/misuse of customer funds carried out by people involved in the banking world, including bank leaders, bank employees and people who have provided services to the bank, is a category of banking violation under Article 48 paragraph (2) Law no. 10 of 1998. This crime can occur because banks underestimate/underestimate the world of banking and have not anticipated in advance the parties who have the opportunity to commit banking crimes which can ultimately harm customers and the bank itself as seen in several banking cases that were decided in Jayapura Class I A District Court which has permanent legal force that cannot be contested. Therefore, to guarantee and provide protection to customers, the government issued a special law that regulates guarantees for customer deposits, namely Law no. 24 of 2004. This law has two main tasks that cannot be avoided, namely guaranteeing customer deposits and being able to resolve problems if banks fail to carry out their functions and duties as well as maintaining synergy between Bank Indonesia and the financial services authority (OJK). If there are still violations committed then the bank's license can be revoked and it cannot operate again until it obtains permission to operate again and then it can return to normal operations in accordance with applicable legal regulations.

4. Conclusion

Based on the research results presented by the author above, it can be concluded as follows:

Misuse of customer deposits, either directly or indirectly, which has a very detrimental impact on customers and the bank, which can be carried out by bank leaders, bank employees and stakeholders/affiliated parties, is a banking crime based on article 48 (2) of Law no. 10 of 1998. Proactive law enforcement against domestic banks has not been implemented, which has optimally resulted in misappropriation of customer funds by bank employees as seen in several decisions of the Jayapura Class IA District Court in both civil and criminal cases which have permanent and strong legal consequences.

Legal protection for customers by providing a model implemented by the government to protect customer deposits, namely by enacting the Law on Deposit Insurance Corporation (LPS) Law no. 24/2004 which has two functions, namely the protection of bank customer deposits and how to settle them as well as the synergy of relationships with banks and institutional supervision of Bank Indonesia and the Financial Services Authority (OJK).

After drawing the above conclusions, the authors recommend the following steps:

1) To minimize or reduce as little as possible the misuse of customer deposits, it is necessary to obey and comply with legal regulations and good faith and high morals from bank leaders, administrators, employees and affiliated parties of a bank, by prioritizing trust and justice. Likewise, in selecting prospective workers/staff who will work in a bank, there needs to be a strict selection by the team in recruiting new members, both in terms of attitude, behavior and educational background as well as the performance of the candidate by being given tasks and responsibilities as a trial before appointed as employee/permanent staff in the bank.
2) The task of law enforcement officials is to ensure a balance between justice, benefit or benefit and legal certainty in carrying out law enforcement efforts, so as to satisfy justice. Law enforcement must direct laws that are beneficial or provide fair benefits for everyone, and Bank Indonesia and the Financial Services Authority must increase regulation and supervision of state-owned and private banks and take firm action against violations of the law, if they are found to have committed violations. The law can then impose administrative sanctions in the form of cancellation of the business license of the bank concerned.

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