Deposit Insurance Agency Between Legal Protection and Banking Crime

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Article Info

Received: 2024-05-10
Revised: 2024-09-06
Accepted: 2024-12-30

Keywords: *Deposit insurance agency, Legal Protection, Banking Crime.*

Abstract

This research was conducted with the aim of, among other things, wanting to know, understand and explain the role of deposit insurance institutions between legal protection and banking crime. To obtain accurate and scientifically accountable data, normative and empirical juridical research methods are used. The research results reveal that banking transactions are something that should be prioritized so that the interests of the parties can be protected. In law enforcement, these pairs of values need to be harmonized and explained more concretely because these values are usually abstract. Suggestions for utilizing legal tools for bank fraud are carried out using various modus operandi, in the form of deviation from Bank Indonesia Liquidity Assistance (BLBI) by disbursing it in the form of fictitious credit and bank balance mark-ups. Bank Indonesia has a big responsibility to protect and guarantee clients from losses caused by wrong bank actions as the institution that forms and supervises the banking system in Indonesia. To ensure that all banks operating in Indonesia implement statutory provisions, Bank Indonesia must be more active in carrying out its duties and authorities. Good and effective supervision helps reduce client losses due to bank actions.

1. Introduction

The banking industry is an important part of the national economy to maintain progress and unity. To prevent the banking and monetary crisis of 1998 from recurring, stability of the banking industry is very important. Trust in banking institutions is very important. This trust can be obtained by providing legal certainty in bank regulation and supervision, as well as by guaranteeing bank customer deposits to increase bank business continuity.[1]

According to J.E. Sahetapy and B. Mardjono Reksodiputro between crime and societal behavior, space and time, are talking about crime and criminals, I conclude that crime contains certain connotations, is a relative meaning and naming, contains variability and dynamics and is related to actions or behavior. (either active or passive), which is considered by the majority or minority of society as an anti-social act, a violation of the scale of social values and/or legal feelings that live in society in accordance with space and time.

On another occasion J.E. Sahetapy stated that the perception of what is called crime is a controversial debate, such as what is called beauty or beauty can give rise to debate or it is said that beauty is in the eye of the beholder. The safest way to study crime problems can be taken by avoiding discussions about various theories, each of which has its own benchmarks or outlook as well as its own implicative assumptions.

Efforts were made by the government by issuing various policies in the bank customer deposit guarantee program and to perfect the program in question, most recently the government issued Law Number 24 of 2004 concerning the Deposit Insurance Corporation which was promulgated on September 22 2004 in the State Gazette of the Republic of Indonesia Number 96 2004 and came into effect on 22 September 2004.

Bank guidance and supervision is very important for Bank Indonesia because the Banking Law and the Bank Indonesia Law do not explicitly regulate consumer protection. Edward W. Reed and Edward K. Gill stated, "Commercial banks are the most heavily regulated businesses", showing the importance of bank supervision. A small percentage of businesses are inspected and scrutinized by regulatory bodies to ensure that they comply with various laws and administrative provisions. This setup and surveillance shows how half-public they are. Millions of people keep deposits in public banks, which can be withdrawn at any time; they have the authority to deny or grant credit to individuals and businesses; and they are involved in providing funds to the state. Because of these things, banks function to meet society's needs and are regulated to ensure this primary function is carried out well.[2]

People in villages and cities basically don't understand the world of banking, they only think about being a customer at a bank and their money will be stored safely. When a customer feels aggrieved and their money has disappeared from their deposit or ATM, they immediately come angrily to the bank, without thinking long enough to cause a commotion in a bank.

[1] Abdullah Azhar, et al. (1997). *Banking Institutions.* Gramedia, Jakarta, p. 12
[2] Abdurahman A., (1991). *Banking Laws and Regulations in Indonesia*. Gratifi Main Library, Jakarta, p. 49.

Customer deposit guarantees are created to maintain the bank's reputation and public trust. The banking crisis has increased public trust in financial institutions, especially due to frequent bank burglary cases, such as what happened to Bank Global. However, the government continues to try to rebuild public trust by issuing policies that guarantee customer deposits.

On the one hand, Law Number 24 of 2004 concerning the Deposit Insurance Corporation is intended to provide legal protection for customers in cases where bank operations are closed due to management errors. On the other hand, the implementation of this law could lead to business crimes in the banking sector because it does not rule out the possibility that bankers and other bank owners will do the same thing because they believe that the government will pay bank customers' deposits.

Utilizing legal tools to break into banks includes deviating from Bank Indonesia Liquidity Assistance (BLBI) by sending money in the form of fake credit and covering bank balance sheets. The Law on Deposit Insurance Institutions can also be exploited by bank business actors by falsifying customer data on deposits in bank liabilities, or possibly carrying out the concept of compensation/loan offset ("set-off") with fictitious credit at the bank, or customer data. deposits are not recorded on the bank's balance sheet and are allocated elsewhere in the form of securities. The risk of crimes committed by bank business actors who carry out acts of manipulation, resulting in customer data not being stored and customer deposits not being guaranteed, the Deposit Insurance Corporation (LPS) cannot pay claims according to the procedures in the law in question.

The enactment of the Law on Deposit Insurance Corporation aims to provide legal protection for depositors and provide legal security, so that it is hoped that it can increase public confidence in the banking industry and reduce moral or state budget risks. The Deposit Insurance Corporation (LPS) guarantees bank customer deposits with two objectives: guaranteeing bank customer deposits and resolving or handling failed banks. The rules governing the types of deposits guaranteed by the Deposit Insurance Corporation (LPS) can be in the form of current accounts, time deposits, certificates of deposit, savings, or other similar forms. The value of deposits guaranteed for each customer at one bank may not exceed IDR 100,000,000. (one hundred million rupiah).

The banking business operates in the financial services sector, which is not free from various criminal acts, whether committed by parties outside the bank, people inside the bank, or between the two according to a conspiracy. Many factors must be considered when discussing crime, giving rise to different perspectives. Crime cannot be discussed by focusing on just one problem which is the cause, because crime is an event that has multi-dimensional factors that cause it and has a relative meaning.

2. Research Method

Normative and empirical research methods, namely research that relies on statutory regulations as a legal umbrella, literature and written materials are then analyzed systematically and directly review the conditions that occur in the field.[3]

3. Result and Discussion

Crime is an antisocial act, not only found in developing societies, but also in advanced societies (with more sophisticated technological equipment). Crime is not only in the real world, but also in the virtual world with a form that is different from the conventional face

of crime because it has been refined in such a way. The existence of a crime is identical to the existence of humans themselves, although it is possible that the form or type of crime in each society is different.

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Expanding the understanding of business crime is a necessity for business practice, in minimizing various modes of business crime, firstly to understand business crime and the place of fraud and criminal prosecution more fully, secondly to build improved methods and institutions for its prevention and management. It is further emphasized that business crimes encompass a wider range of wrongful or evil acts which are nevertheless detrimental and in addition undesirable because they result in coercion, incompetence, negligence, carelessness, lack of training, lack of clarity of regulations, chance, technical violations, or sheer evil thoughts. , not just a calculated fraud and motivated by greed or covetousness. Business crime, which is increasingly global in nature, remains limited by the following:

a. Even though crime is growing increasingly international, becoming more complex and sublime, in fact it still has elements of "criminal masterminds" or also called "actor intellectualis".
b. Regarding changes in the meaning of modus operandi (method) and locus operandi (place), and even fern pus operandi (time), in crimes that have been influenced by the global climate. The meaning and manner, place and time of global crimes are very different from the meaning of ordinary conventional crimes.
c. In the path of creating social problems, crime is almost always at the end point. In other words, most crimes, including contemporary crimes, arise from the position of mere resultants that will disappear if the cause changes. Everywhere there is evidence of a connection between increasing incomes and the emergence of "zones of social instability", one of the impulses of which is crime.

To safeguard the interests of all parties, it is important to protect banking transactions legally. Legal protection is a law enforcement effort. Conceptually, concretization and law enforcement efforts explain that humans in their social life have certain views about what is good and bad, and that conceptual law enforcement is an activity of combining strong values in strong, embodied rules and attitudes of action as an elaboration. final stage value. Certain pairs, such as the public and private value pairs, always hold this view.

Because these values are usually abstract, these value pairs must be described and explained in more detail in law enforcement. Legal rules, which include commands, prohibitions, and permissibility, provide a more in-depth explanation. Rules form standards for attitudes and behavior that are considered appropriate. The purpose of these actions is to create, maintain, and maintain peace.

[3] Peter Mahmud Marzuki. (2010). *Legal Research*. Kencana Prenada Media, Jakarta, p. 27.

Important factors in law enforcement include the law itself, the parties who form or implement the law, the means or facilities that support law enforcement, and society, namely the place where the law applies and is applied, and cultural factors, namely the law as a work product, copyright , and tastes that are based on human desires in everyday life.

Law enforcement efforts are not influenced by the legal values held by the community concerned in various positive rules, legal institutions, and processes (behavior of government bureaucracy and citizens).

Legal certainty (rechtssicherheit), expediency (zweckmassigkeit), and justice are three components that must be considered in enforcing the law.

Legal certainty is everyone's will regarding how the law should be applied or apply in certain events. Legal certainty means that everyone can demand that the law be implemented, that these demands will be fulfilled, and that anyone who violates the law will be prosecuted and subject to sanctions in accordance with the law.

Next, law enforcement must be profitable or beneficial to the community, and finally, the community wants justice. It is very important that the implementation or enforcement of the law pays attention to justice. To protect banking transactions legally, the three components above must be considered.

Prior to Law Number 24 of 2004 concerning the Deposit Insurance Corporation, legal protection for customers in transactions with banks, especially deposit customers, was not sufficient. Law Number 10 of 1998 concerning Banking, which was amended from Law Number 7 of 1992 concerning Banking, does not provide direct protection to customers. Chapter V. Article 29 paragraphs (1), (2), (3), and (4), which are provisions governing bank guidance and supervision, provide consequences for Bank Indonesia to carry out bank guidance and supervision more efficiently.

Bank Indonesia has a big responsibility to protect and guarantee clients from losses caused by wrong bank actions as the institution that forms and supervises the banking system in Indonesia. To ensure that all banks operating in Indonesia implement statutory provisions, Bank Indonesia must be more active in carrying out its duties and authorities. Good and effective supervision helps reduce client losses due to bank actions.

Article 37 regulates actions that can be taken by Bank Indonesia if a bank faces problems that could endanger its business continuity. These actions include increasing capital, replacing the bank's board of commissioners and/or directors, writing off bad credit or financing books based on sharia principles and calculating bank losses with its capital, and carrying out mergers or conglomerates.

Implementing Law Number 24 of 2004 concerning the Deposit Insurance Corporation, there is a dichotomy between legal protection for deposit customers and the potential for banking crime. This dichotomy arises because the guarantee provided by the Deposit Insurance Corporation (LPS) is for all forms of deposits in banks that have had their business licenses closed or are said to be failed banks. Bank failures in banking cases in Indonesia since the first closure in 1997 until the last, the trigger was internal banks and bank business actors who committed various business crimes. Various problems can be described as follows:

a) Bank Indonesia Liquidity Assistance (BLBI) Triggers Bank Closure. Bank Indonesia Liquidity Assistance (BLBI) is provided by Bank Indonesia to banks to maintain the stability of the payment system and banking sector, so that it is not disturbed by a liquidity mismatch between receipts and withdrawals of funds at banks. Bank Indonesia Liquidity Assistance (BLBI) is one of Bank Indonesia's policy tools as the Central Bank in order to carry out its three main functions, namely maintaining monetary stability, payment system stability, and maintaining banking system stability. This liquidity assistance is Bank Indonesia's role as lender of last resort, to overcome the liquidity

difficulties it faces in emergencies regarding credit risk or financing risk based on sharia principles, management risk and market risk. In practice, there have been various deviations in the policy of distributing Bank Indonesia Liquidity Assistance (BLBI) due to weaknesses in the bank guidance and supervision system, and weaknesses in management of the distribution of Bank Indonesia Liquidity Assistance (BLBI).

b) Customer Trust and Deposit Guarantee, to guarantee the level of customer confidence in banking, deposits that can be guaranteed are in the form of current accounts, deposits, certificates of deposit, savings, and/or other equivalent forms. Furthermore, the claim is paid by the Deposit Insurance Corporation (LPS) after carrying out reconciliation and verification (Article 10, Articles 16 to 20 of the Law on Deposit Insurance Corporation). The formation of the Deposit Insurance Corporation (LPS) is a very expensive burden carried out by the government to foster confidence in the banking sector. The government must reserve funds for the establishment of this institution, set at a minimum of IDR 4,000,000,000,000 (four trillion rupiah) and ranging up to IDR 8,000,000,000,000 (eight trillion rupiah). The establishment of this institution does not guarantee loyal customers to place their funds in Indonesia and use the rupiah currency as legal tender. Political, social and economic instability has triggered a massive flight of funds out of Indonesia. The existence of the Deposit Insurance Corporation (LPS) cannot be used as a guarantee to provide full trust to customers. Customers still have the freedom to place funds anywhere in accordance with the principle of freedom of contract.

c) White Collar Crime and Deposit Insurance in Business Crime. Several things that are worth noting about business crime are that it has an element of "criminal mastermind" or "actor intellectualis", changes in the meaning of modus operandi (method) and locus operandi (place), and even tempus operandi (time), and in the path of creating social problems, crime is almost always at the tipping point. In other words, most crimes, including contemporary crimes, arise from the position of mere resultants that will disappear if the cause changes. Crimes that develop in the era of technology and criminal masterminds are carried out by respectable people, known as white collar crimes with easy targets in the banking sector. Attempts to break into banks are increasingly common, whether the perpetrators are outside or inside the banking system, using technological means or taking advantage of legal loopholes that can be bypassed by criminals.

Intended to perfect bank customer deposit guarantee programs which have been regulated through various government policies, such as Presidential Decrees (Keppres) and Joint Decrees (SKB), the Law on Deposit Guarantee Institutions is intended to create a healthy and stable banking system and provide legal certainty for saving customers to obtain adequate legal protection.

The Law on Deposit Insurance Corporation consists of XVI chapters and 103 articles, consisting of General Provisions; Formation, Status and Place of Domicile; Functions, Duties and Authorities; Bank Customer Deposit Guarantee; Completion of Bank Failed Handling; Liquidation; Organization; Wealth, Financing, and Management; Annual Work Plan and Budget; Reporting and Accountability; Relations with Other Institutions; Data confidentiality; Administrative and Criminal Sanctions; Miscellaneous Provisions; Transitional Provisions; and Closing Provisions. The discussion that the author will examine further relates to hearing guarantees on bank customer deposits (Chapter IV, Article 8 to Article 20 and settlement, handling of failed banks (Chapter V. Article 21 to Article 42) and liquidation (Chapter VI, Article 43 to Article 61) relates to legal protection for deposit customers and banking crimes.

4. Conclusion

With the issuance of Law Number 24 of 2004 concerning Deposit Insurance Corporation, it seems that there is confusion between legal protection for customers and crime in the banking sector. Law enforcement must be carried out consistently in dealing with business crimes, including white collar crimes. Consistent law enforcement will provide legal protection for customers. On the other hand, the issuance of this law creates confusion in dealing with cases of bank failure due to the dualism of the monetary authority (Central Bank and Deposit Insurance Agency), both of which are independent institutions in the financial and banking system. The growth of trust in banking institutions begins with clarity of institutional authority in supervising and developing banking. Regulations regarding deposit insurance should not be imposed by the presence of the Deposit Insurance Corporation (LPS), and should not be managed by the government, and should be separated from the existing financial system. It is appropriate to consider the existence of an insurance institution to deal with the risk of third party deposits, and the Central Bank to resolve cases of failed banks from the assets side only, and not related to the liabilities side in the form of third party or customer deposits. Bank Indonesia has a big responsibility to protect and guarantee clients from losses caused by wrong bank actions as the institution that forms and supervises the banking system in Indonesia. To ensure that all banks operating in Indonesia implement statutory provisions, Bank Indonesia must be more active in carrying out its duties and authorities. Good and effective supervision helps reduce client losses due to bank actions. According to the author, for people in Indonesia, especially for people in Jayapura City who want to become customers and save at a bank, it would be best to be careful in choosing which bank the customer will use, whether the bank is guaranteed by the Deposit InsuranceCorporation or not because of the risk. Losing money or disappearing money from ATMs is a frequent occurrence nowadays, don't be easily provoked by irresponsible parties by offering various products that can harm customers in the future.

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