

Analysis of the Application of Banking Principles Related to Loss of Priority Customer Funds (Case Study of PT. Bank Rakyat Indonesia Tbk Takengon Branch Office)

Shely

Universitas Dr. Soetomo, Indonesia

E-mail: shelyjauw@gmail.com

Abstract

The basic foundations in the world of banking have a great influence on the economy in Indonesia so that it will have an impact on banking activities. In essence, the function of banking is to unite public funds consisting of savings and redistribute public funds in the form of credit so as to improve the community's economic order as explained in Law Number 10 of 1998 concerning Banking. There are four types of banking principles, namely the fiduciary relations principle, the prudential principle, the secrecy principle, and the know-how customer principle. These four banking principles will be closely related to the cases that have been passed by PT. Bank Rakyat Indonesia Takengon Branch in relation to the case of missing priority customer funds. This article aims to know, understand, and analyze banking laws, especially the application of the principles related to the loss of priority customer funds. The research method uses normative legal research as it is based on laws and conceptual legal research. The results of research from this legal science journal are that there are actions that are not in accordance with applicable legal provisions and this case is directed at PT. Bank Rakyat Indonesia Takengon branch that does not heed or apply banking principles regarding the loss of priority customer funds. Thus, the analysis of cases of loss of priority customer funds is not only reviewed in terms of banking principles, but also the accountability of the bank. The research method uses normative legal research as it is based on laws and conceptual legal research. The results of research from this legal science journal are that there are actions that are not in accordance with applicable legal provisions and this case is directed at PT. Bank Rakyat Indonesia Takengon branch that does not heed or apply banking principles regarding the loss of priority customer funds. Thus, the analysis of cases of loss of priority customer funds is not only reviewed in terms of banking principles, but also the accountability of the bank. The results of research from this legal science journal are that there are actions that are not in accordance with applicable legal provisions and this case is directed at PT. Bank Rakyat Indonesia Takengon branch that does not heed or apply banking principles regarding the loss of priority customer funds. Thus, the analysis of cases of loss of priority customer funds is not only reviewed in terms of banking principles, but also the accountability of the bank. The results of research from this legal science journal are that there are actions that are not in accordance with applicable legal provisions and this case is directed at PT. Bank Rakyat Indonesia Takengon branch that does not heed or apply banking principles regarding the loss of priority customer funds. Thus, the analysis of cases of loss of priority customer funds is not only reviewed in terms of banking principles, but also the accountability of the bank.

Keywords Bank; Banking Principles; Customer Funds



INTRODUCTION

In this day and age, Indonesia's development is increasing rapidly in various fields. This is the ideal of the proclamation of independence of the Indonesian state which seeks to create a prosperous society. In order to achieve this goal, the main role is in the economic sector, namely the banking sector. Banks have an important position in trade transactions to make payments in regional and international zones. The existence of world economic life makes an inseparable milestone in the world of banking.

The definition of banking is contained in article 1 number 1 of Law Number 10 of 1998 concerning Banking, which states that "banking is everything related to banks, including institutions, business activities, and methods and processes in carrying out their business activities". When connected with current funding issues, it is implied that almost all payment transactions always utilize banks as financial institutions that guarantee the continuity of the business they run.

Banking institutions are institutions that serve as intermediaries for customers who have excess funds (surplus of funds) and there are also other customers who need funds (locks of funds), this will show that the funds needed are not small to run a business.(Hermansyah, 2009)The growth and development of banking shows a better direction in terms of operational and institutional terms. People who make deposits at the bank and are collected by the bank every year continue to increase. This proves that the regulations made by the government can create a profitable position for the bank with efforts to increase the mobilization of funds from the public.

Funds have a crucial role, because without funds, banks cannot develop. There is a connection regarding income from the public in the form of savings funds which will determine the amount of funds optimized by the bank in the form of lending, securities, and others. According to Thomas Suyatno, sources of funds are divided into three types, namely funds available from the bank itself, funds obtained from the wider community, and funds received from financial institutions, such as banks or non-banks.(Hermansyah, 2009)

According to article 1 number 16 of Law Number 10 of 1998 concerning Banking it states that "customers are parties who use bank services". Customers are divided into two types, namely deposit customers and debtor customers as stipulated in the Banking Act. Depositing customers are customers who deposit funds at a bank based on an agreement in a bank agreement. Meanwhile, debtor customers are customers who get credit programs based on sharia principles or other principles with an agreement in a bank agreement. Legal protection for customers who have deposited funds at certain banks with the aim of protecting their funds to avoid a risk of loss.(Hermansyah, 2009)

According to James F. Engel, customer satisfaction is defined as a material consideration related to the purchase of a product or service that can provide results that equal or exceed the expectations of the customer, while dissatisfaction will arise from the results received that do not match the customer's expectations.(Engel & et.al., 1992)From the above understanding, it explains that the role of the customer in the banking industry is very important and is always closely related to the funds deposited by customers at the bank so that the bank can utilize these funds in carrying out bank operations or business activities

based on the principle of trust. If public trust in a bank decreases, this will affect the banking system, for example customers can withdraw their savings due to loss of trust in a bank. (Tyaswati, 2021)

The case experienced by Abdul Jalil Yusuf who kept his funds at Bank Rakyat Indonesia (hereinafter referred to as BRI) The Takengon Branch Office is a commercial bank which in carrying out its business activities generally carries out business activities in general and is based on sharia principles in its business by heeding the four banking principles. In this case, the balance of Mr. Abdul's funds, which suddenly decreased in his three savings accounts, indicates that there are no elements of the four banking principles that should be applied to the BRI Takengon Branch Office, namely the fiduciary relations principle, prudential principle, secrecy principle, and know how. customer principle.

DISCUSSION

Scope of Indonesian Banking Law

According to Muhamad Djumhana, banking law is a series of legal principles that regulate economic activity as a whole covering all aspects, essence and existence, as well as in other fields. (Djumhana, 2003) Basically, banking law is a very complex system with an orientation to its main objectives and will also face a larger system, such as having a relationship with economic law. Banking as one of the financial institutions plays an important role in the success of national development programs in order to achieve income equity, create economic growth, and maintain national stability towards improving the welfare of the people. (Astutic, 2019) Based on the above understanding, banking as a financial institution has a function in the success of the program, especially developing national development in order to achieve appropriate income so that an increase in the economy arises, and maintains national stability towards people's welfare.

Banks collect funds from customers to be used as financing including assets owned to generate profits, for example in terms of extending credit, depositing funds, and other businesses based on an attitude of responsibility to customers. Banks and customers have an inseparable relationship, related to the trust of customers who believe the bank will protect their savings and also the existence of a legal relationship that will occur with the interaction of both parties between the bank and the client of the bank concerned. (Dinatha & Dharmawan, 2021) According to Johnson Pang, the responsibilities of a bank can be clarified in the following six events, namely: (Fuady, 1999)

- a) Receive cash payments and customers are required to pay for documentation including checks, money orders, remittances, and others;
- b) Giving back deposit funds to customers placed in the bank, if the customer requests it;
- c) Providing loan funds to customers;
- d) Maintain confidentiality regarding accounts from customers based on the principle of bank secrecy, unless otherwise stipulated by law;
- e) The bank has a moral obligation to customers who have two accounts to make these accounts separate from one another;



- f) If the bank wants to close a customer's account, it should have reasonable reasons for closing the account.

Every business activity carried out by the Bank must always comply with all policies in applicable laws and regulations based on good faith. The main key for a bank to develop or not will be seen in public trust. If the bank does not yet have the trust of the public, this will prevent the bank from continuing its business activities. In banking law in Indonesia there are four banking principles, as follows:(Imaniyati, 2010)

1) Fiduciary Relations Principles

The principle of trust is a principle that is related between the bank and the bank's customers. Banks in controlling public savings funds are based on the principle of trust, so that each bank is expected to be able to maintain the health of its bank, starting from nurturing and maintaining the trust of the public. The principle of trust is stated in article 29 paragraph (4) of the Banking Law.

2) Prudential Principles

The principle of prudence is a principle that conducts business activities such as raising funds and distributing funds to the public must be based on the precautionary principle. The purpose of implementing this precautionary principle is so that the bank is always in good health carrying out its business activities and complying with the legal regulations in force in the banking world. The precautionary principle is stated in article 2 and article 29 paragraph (2) of the Banking Law.

3) Secrecy Principle

This confidentiality principle is regulated in articles 40 to 47A of the Banking Law. The principle of confidentiality is a principle that regulates that banks are required to keep confidential information about depositors and their deposits as set forth in article 40 of the Banking Act. However, this regulation also stipulates that the obligation to keep confidential is exempted for tax purposes, the interests of the judiciary in criminal and civil cases between banks and customers, and settlement of bank debts that have been submitted to the Agency for Accounts Receivables and Auctions / Committee for State Receivable Affairs (UPLN). /PUPN), as well as in the context of exchanging information between banks.

4) Know How Customer Principles

The principle of knowing your customer is a principle that is applied to customers to know and know the customer's identity, monitor transactions that have been carried out, including reporting any suspicious transactions. The know your customer principle is explained in Bank Indonesia Regulation Number 3/10/PBI/2001 concerning Application of Know Your Customer Principles. The purpose of implementing the know your customer principle is to strengthen the role of financial institutions, especially policies in supporting the practices of financial institutions, minimizing the opportunity for financial institutions to be used as a venue for crimes or illegal activities by customers, and maintaining the reputation of financial institutions.

Loss of Customer Funds Injures the Principles of National Banking

Cross-sectoral issues in the financial services sector include moral hazard, not optimal protection of consumers of financial services (bank customers), and disruption of financial system stability, it is necessary to monitor the operations of banking activities. (Astutik & et al., 2019) Based on the description above, states that traffic problems in the financial services sector include moral hazard (moral deviation) and disturbances to financial system stability, so it is necessary to supervise banking activities. If supervision has been carried out properly, it will create a healthy banking environment. However, in fact, supervision at one of these government banks was ineffective, because there was a case that made a priority customer named Abdul Jalil Yusuf very disappointed with the loss of balances in his three savings accounts.

Abdul Jalil Yusuf as a businessman engaged in travel services for Umrah and Hajj pilgrimages since 2017. In this case, Abdul Jalil Yusuf as Plaintiff and PT. Bank Rakyat Indonesia Tbk Takengon Branch Office as the Defendant. The Plaintiff kept the congregation's funds at the Defendant's place, namely Bank Rakyat Indonesia (BRI) Takengon Branch Office with three account numbers at once. The plaintiff was registered as a customer at the defendant's place since November 24, 2004 and has been registered as a priority customer since 2015.

On March 20, 2020, the Plaintiff wishes to transfer Rp. 5,200,000, - through an Automated Teller Machine, but when making a transfer it is not possible, because the balance is insufficient. Then, the Plaintiff contacted one of the employees of the Takengon Branch BRI office, namely Mrs. Dewi, however, Mrs. Dewi advised the Plaintiff to come to the Takengon Branch BRI office on Monday, March 23 2020. The response from the bank employee indicated that the service was not responsive, even though the Plaintiff are priority customers whose customers should receive special and exclusive services, moreover the Plaintiff's complaint is the alleged loss of balance in the Plaintiff's savings account.

On March 23, 2020, the Plaintiff came to the BRI Takengon Branch Office and met with Mrs. Mimi and printed the three savings books, it turned out that all the balances in the savings had decreased. Then, Ibu Mimi reported this incident to her co-worker named Mr. Kiswah. Mr. Kiswah checked the Plaintiff's mobile phone and the result was that there was no error from the Plaintiff, because the Plaintiff had never given any code to anyone else.

Details of the transaction details of each of the Plaintiff's savings showing the remaining balance, namely first, the Britama savings with account number 0145-01-008874-50-6 has an initial balance of Rp. 215,715,098.00 and the final balance is Rp. 57,743.00. Second, the Britama Bisnis savings account with account number 0145-01-000259-56-6 has an initial balance of Rp. 216,700,845.00 and the final balance is Rp. 48,513.00. Third, the Britama Bisnis savings account with account number 0145-01-000432-56-2 has an initial balance of Rp. 683,562,622.00 and the final balance is Rp. 16,514.00. The total loss received by the Plaintiff is Rp. 1,115,636,699.00. In fact, most of the funds in these savings belonged to customers of pilgrims or Umrah pilgrims which would later result in problems with the movement of the business and threaten the progress of the Plaintiff's business.



Transactions that occurred without the Plaintiff's knowledge were due to the lack of supervision from the Defendant over the Plaintiff's funds. This shows that the Defendant had neglected to maintain the security and secrecy of the Plaintiff's money so that the main purpose of the Plaintiff kept funds at the Defendant's place, namely to be safe and to avoid theft or other crimes, did not materialize. The plaintiff has made subpoenas three times, namely December 10, 2020, December 19, 2020, and January 4, 2021.

The Defendant seems as if the problem experienced by the Plaintiff is a trivial matter and seems to be trying to avoid responsibility for the loss suffered by the Plaintiff is the full responsibility of the Defendant. In fact, the Defendant only made a refund of Rp. 191,731,442.00 so that the Plaintiff still has a loss of Rp. 923,905,257.00. In accordance with the Supreme Court Decision Number 2/Pdt.G/2021/PN Tkn stipulates that the Defendant has committed an unlawful act and must provide full compensation to the Plaintiff. However, the attitude of the Defendant who wanted to release responsibility for the loss of funds from the Plaintiff's account showed that the Defendant had ignored banking principles which caused losses to the Plaintiff.

In essence, if the customer experiences a loss of deposit funds at the Bank, the Bank is obliged to compensate for the loss suffered by the customer due to an element of negligence. If it can be proven that for the loss of funds there is an element of negligence on the part of the bank as a product provider, the customer as a consumer should be able to sue the bank to replace the funds in the lost account due to an incident that arose outside of the customer's negligence. (Setiono & et al., 2022) Not only was the element of negligence carried out by the Bank, but there were also four banking principles that were not implemented properly in the Abdul Jalil Yusuf case, namely:

1. Fiduciary Relations Principles

The behavior of the Defendant who has not returned the Plaintiff's losses has clearly set aside the principle of trust. This can lead to a loss of public confidence in deposit funds at the Defendant's bank where there is no longer any certainty of security.

2. Prudential Principles

The sudden disappearance of priority customer funds shows that the Defendant has set aside the precautionary principle which resulted in a loss for the Plaintiff in the amount of Rp. 1,115,636,699.00.

3. Secrecy Principle

The events experienced by the Plaintiff related to the reading of the data by the perpetrators of the crime which resulted in the Plaintiff's balance being lost suddenly, shows that the Defendant has clearly set aside the principle of confidentiality.

4. Know How Customer Principles

There are dozens of payment transactions to online shops, including 65 Tokopedia OVO top up transactions worth Rp. 498,321,000.00 and 6 top up Fund transactions worth Rp. 54,976,999.00 and 3 LinkAja top up transactions worth Rp. 10,486,900.00 and 6 XL top-up transactions worth Rp. 604,500.00. For these suspicious transactions, the Defendant should exercise strict supervision, because basically the Defendant knows the business being undertaken by the Plaintiff, namely business in the field of Umrah and

Hajj travel services, while dozens of transactions that have occurred are transactions that are not related to the Plaintiff's business. If the Defendant argues that he supervises or monitors, when a suspicious transaction occurs, the Defendant can make efforts to stop the suspicious transaction, or at least the Defendant should have confirmed the truth of the transaction to the Plaintiff. In fact, the incident that had occurred, the Defendant did not take any precautions until the contents of the Plaintiff's account balance decreased drastically and suddenly disappeared. This shows that the incident occurred due to the negligence of the Defendant and overriding the application of the know your customer principle.

According to article 37B paragraph (1) of the Banking Act, it explains that "every bank is obliged to guarantee public funds kept at the bank concerned". One of the customer's rights is to guarantee the security of the funds stored in the bank concerned and also to ensure the security of customer funds is also a requirement that must be carried out by the bank concerned. In addition to the above provisions, Article 29 of the Financial Services Authority Regulation Number 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector stipulates that "Financial Service Providers (PUJK) must be responsible for consumer losses arising from errors and/or or negligence of PUJK management, employees and/or third parties working for the benefit of PUJK".

The provisions that have been in force, in fact are not applied in guaranteeing security to customers regarding depositing funds at the bank concerned. When viewed from Mr. Abdul's case, it turns out that there are still many customers who experience a lack of guarantees for the safety of funds kept at the bank, which has resulted in a fantastic loss of customer funds and caused enormous losses.

CONCLUSION

PT. Bank Rakyat Indonesia Takengon Branch Office was negligent in supervising transactions that occurred on the account of the priority customer, namely Abdul Jalil Yusuf, which caused a loss of Rp. 1,115,636,699.00 and hindered the movement of the Umrah and Hajj travel services business undertaken by Mr. Abdul. BRI's attitude at the Takengon Branch Office was not quick to respond to reports from Mr. Abdul and also when he was required to compensate for losses as if he wanted to abdicate responsibility. The actions taken by the BRI Takengon Branch Office reflect an act that ignores banking principles, including the fiduciary relations principle, prudential principle, secrecy principle, and know how customer principle. It is expected that the quality of bank supervision to customers can be improved.

REFERENCES

- Astutik, S. (2019). Role of Financial Service Authorities on Legal Protection of The Sharia Banks Customers in Indonesia. *Rechtsidee*, 6-12.
- Astutik, S., & et al. (2019). Implementation of the Authority of Financial Services Supervision in Legal Protection of Customers Storing Funds in Sharia Banks. *ACHITS*, 464-471.



- Dinatha, G. D., & Dharmawan, N. S. (2021). Perlindungan Nasabah Penyimpan Dan Tanggungjawab Bank Terhadap Hilangnya Uang Yang Disimpan Di Bank. *Jurnal Kertha Negara*, 1067-1078.
- Djumhana, M. (2003). *Hukum Perbankan di Indonesia*. Bandung: Citra Aditya Bakti.
- Engel, J. F., & et.al. (1992). *Perilaku Konsumen*. Jakarta: Binarupa Aksara.
- Fuady, M. (1999). *Hukum Perbankan Modern (Berdasarkan Undang-Undang Tahun 1998) Buku Kesatu*. Bandung: Citra Aditya Bakti.
- Hermansyah. (2009). *Hukum Perbankan Nasional Indonesia*. Jakarta: Kencana.
- Imaniyati, N. S. (2010). *Pengantar Hukum Perbankan Indonesia*. Jakarta: Refika Aditama.
- Setiono, G. C., & et al. (2022). Tanggung Jawab Bank Sebagai Wujud Perlindungan Hukum Bagi Nasabah Kontrak Perbankan. *Jurnal Transparansi Hukum*, 66-79.
- Tyaswati, A. (2021). Pengawasan Perbankan Sebagai Bentuk Perlindungan Hukum Bagi Nasabah Bank. *Jurnal Hukum Dan Dinamika Masyarakat*, 73-87.