

Criminal liability for banking crime perpetrators who make false records of customer deposits (decision study number: 2644/ Pid.B /2021/PN Mdn)

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ABSTRACT

The security of customer funds in banks is often problematic due to the actions of bank employees themselves, where bank employees directly involved with customer funds commit acts of embezzlement in their positions by embezzling customer funds. The problem formulated in this study is as follows: What are the legal regulations regarding Banking Crimes that make false records of Customer Deposit Funds according to the applicable laws and regulations in Indonesia? and What are the legal considerations of the Judge at the Medan District Court in imposing criminal sanctions on perpetrators of the crime of false records Case Number: 2644 / Pid.B / 2021 / PN Mdn? This study aims to discuss the criminal liability of perpetrators of false record crimes. The type of research used in this study uses normative legal research. The data collection techniques used are library research and field research. The data analysis conducted in this study was qualitative. The results of the study found that criminal liability for bank employees who commit the crime of false recording can be punished using the provisions of Article 49, paragraph (1) of the Republic of Indonesia Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking. The provisions of Article 49 of the Banking Law contain legal certainty because this article has been specifically designed for the crime of false recording, and the provisions of the Article expressly regulate the prohibition of false recording and provide threats of criminal sanctions for violators. The results of the analysis of Decision Number: 2644 / Pid.B / 2021 / PN Mdn concluded that the criminal sentence imposed on the Defendant by the Medan District Court was 5 (five) years in prison and a fine of IDR 10,000,000,000.00 (ten billion rupiah) with the provision that if the fine is not paid, it will be replaced with charges for 4 (four) months. According to the author, this sentence contains the principle of law enforcement and is in accordance with the provisions of Article 49 of the Banking Law.

Keywords: criminal liability, bank employees, false records

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RESEARCH & PUBLISHING



1. INTRODUCTION

The development of the world towards globalization encourages Indonesia to adapt to compete with other countries in the international arena. To face the development of the national economy that is always moving fast, competitive, and integrated with increasingly complex challenges and an increasingly rapid financial system, it is necessary to adjust policies in the economic sector, including banking. The development of the national economy today shows a direction that is increasingly integrated with the regional and international economy, which can support but can also have less favorable impacts. Meanwhile, the development of the national economy is always moving fast with increasingly complex challenges (Loayza & Soto, 2002).

A healthy, strong and efficient banking system needs to be realized in achieving stability and sustainability of the financial system and encouraging national economic development. For this reason, Bank Indonesia has compiled the Indonesian Banking Architecture with the aim of creating Good Corporate Governance, which is a process and structure used to direct and manage a company's business towards increasing growth and accountability, forming an effective and efficient banking regulatory and supervisory system, realizing a complete infrastructure to support the creation of a healthy banking industry, encouraging operational efficiency of the banking system, and, no less importantly, realizing empowerment and providing protection for consumers who use banking services (Ali, 2010).

As a financial intermediary institution, the relationship between banks and their customers is based on two interrelated elements: the law and trust. A bank can only operate and develop its operations if the public trusts it to invest its funds in banking products. Based on this public trust, banks can mobilize funds from the public to be placed in banks and redistributed as credit and other banking services (Gonzalez-Vega, 1998).

The security of customer funds deposited in a bank is an important part of the legal relationship, considering that in reality, funds deposited in a bank can be lost, either due to the actions of bank employees embezzling the funds or by other parties breaking into the savings funds. Considering that there is a legal relationship, if the bank employees embezzle the customer's savings funds, this will be an important part of the scope of banking crime. The security of customer funds is often threatened in banks because of the actions of bank employees themselves, where bank employees who directly interact with customer funds are often tempted to commit embezzlement in their positions by embezzling customer funds.

Deviations that lead to an act and/or "crime in the banking sector" have terms and definitions and a fairly broad scope, are not identical and/or the same as "banking crimes" because both have different definitions and scopes from the material dimensions and regulations. If a banking crime is interpreted as any act that violates the provisions regulated in Law Number 7 of 1992, as amended by Law Number 10 of 1998, a crime in the banking sector is interpreted as any act that violates the provisions regulated in and outside the provisions of the Banking Law.

As stipulated in Article 49 paragraph (1) letter a of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, it is clearly regulated that members of the board of commissioners, directors or bank employees who intentionally: "Make or cause false records to be made in the books or in reports, or in documents or reports on business activities, transaction reports or accounts of a bank."

From the above article, it can be seen that Law Number 10 of 1998 concerning Banking specifically regulates the crime of false records committed by bank employees. This banking-related crime often occurs when banks create false records. This is often associated with the misuse of personal data by bank employees.

However, based on the author's research of several court decisions related to the crime of false records committed by bank employees, it appears that many perpetrators were punished using the provisions of Article 374 of the Criminal Code (KUHP) without the provisions of Article 49 (2) (a) of Law Number 10 of 1998 concerning Banking. In contrast, in the banking sector in Indonesia, the Banking Law is *lex specialis*, while the Criminal Code is *lex generalis*. According to the author, in terms of law

enforcement against perpetrators of the crime of embezzlement in office committed by bank employees, it should refer to the provisions of Law Number 10 of 1998 concerning Banking, which specifically regulates crimes in the banking sector.

The criminal threat against perpetrators of the crime of false recording is regulated in Article 49 paragraph (1) letter c of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking Law Number 10 of 1998 concerning Banking, which in essence the perpetrator is threatened with imprisonment of at least five (5) years and a maximum of 15 (fifteen) years and a fine of at least IDR 10,000,000,000.00 (ten billion rupiah) and a maximum of IDR 200,000,000,000.00 (two hundred billion rupiah).

The banking crime case involving the false recording of customer savings that occurred in Medan City is in Decision No. 2644/Pid. B/2021/PN Mdn, where the Defendant was an employee of PT. Bank Maybank Indonesia KCP Setia Budi Medan with Customer Service and Marketing positions with tasks to open account new Maybank bank customers and offers programs and products available at Maybank.

The defendant committed a false criminal record action by offering programs or products that are not in the Maybank Bank system, persuading customers, and providing papers that have been filled in with customer data in the form of prints that have been edited by the accused for signing as proof of a fictitious program/product investment. The Defendant types alone in the section mutation transaction account book savings on behalf of the customer (victim), while the transaction No truly happens as well as in book writing form or font savings on the part mutation No in accordance with the existing system at Bank Maybank Setiabudi.

Then Defendant without permission and not to the knowledge of customers owner account moving, transferring and withdraw, the customer funds. Regarding the defendant moved, transferred, and withdrew customer funds ordering action false statements made by the Defendant the customer account owner. (Two hundred and seven million two hundred and twenty-two million rupiah).

From the aforementioned case, the author believes that criminal banking actions that record false savings funds of customers in the Medan City area still often happen in Indonesia, especially in the city of Medan, which can damage the general public's trust in banking. Therefore, a deeper study of laws is needed to research the responsibility of the perpetrator.

Which become problem in study This is How arrangement law about Action Criminal Banking that does recording false to Customer Savings Funds according to Regulation What legislation applies in Indonesia?, and how? consideration law Judge at the Medan District Court in giving sanctions criminal to perpetrator action criminal recording false Case Number : 2644/ Pid.B /2021/PN Mdn .

2. METHODS

Type of research used in the study This study uses juridical normative. The data collection techniques used are literature and research studies. Data analysis was carried out in this study using qualitative methods, namely, by analyzing past data developed in the form of opinions or responses obtained from the library. The data were then analyzed to obtain data that could answer the problem in this study.

3. RESULTS AND DISCUSSION

3.1 Legal Regulations Regarding Action Criminal Banking That Does Recording False Regarding Customer Savings Funds According to Regulation Legislation in force in Indonesia

Banking activities involve the wealth and livelihoods of many people, especially customers who deposit their money in the bank. However, embezzlement by bank employees continues to occur. Therefore, research is needed to conduct a legal review of the phenomenon of embezzlement by bank employees, as defined by Law Number 10 of 1998 concerning banking.

Article 1 number 2 of the Republic of Indonesia Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking states that a bank is a business entity that collects funds from the public in the form of savings and distributes them to the public in the form of credit.

Banks are legal institutions established to support the implementation of increasing equitable national development, economic growth, and national stability to improve the standard of living of the people. The strategic function of banking has been adjusted to Article 4 of Law No. 7 of 1992 in conjunction with Law No. 10 of 1998 concerning Banking, which states that banking in Indonesia has the objective of supporting the implementation of national development to increase equitable economic growth and national stability towards improving the welfare of the people (Budiyono, 2011).

Regarding the definition of bank employees, it can be found in the Explanation of Article by Article in the Republic of Indonesia Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, namely in the Explanation of Article 47 paragraph (2), it is stated that what is meant by bank employees are all officials and employees. Furthermore, it is also stated in the Explanation of Article 48 paragraph (1), what is meant by bank employees are bank officials who are given the authority and responsibility to carry out bank operational tasks, and employees who have access to information regarding the bank's condition.

When reviewed according to Law Number 10 of 1998 concerning Banking, bank employees are obliged to apply the principle of prudence in conducting business activities in the banking sector. Therefore, if bank employees neglect this, they can be subject to criminal penalties, as explained based on the criminal provisions of Article 49 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking. Article 49 of Banking Law.

Article 1 number 2 of Law Number 7 of 1992 concerning banking, as amended by Law Number 10 of 1998, states that a bank is a business entity that collects funds from the public in the form of savings and distributes them to the public in the form of credit and/or other forms to improve the standard of living of the people. It can be understood that as a business entity, a bank has a main business in the form of collecting funds that are (temporarily) not used and then distributing these funds back to the public for a certain period.

Banking is the lifeblood of the economy. Therefore, discussing violations in the banking sector cannot be separated from discussions of economic crimes. Generally, economic crimes are unlawful acts committed for or with economic motives (Profit, 2000). Therefore, it can be understood that banking crimes are a type of business crime, namely crimes arising from business practices.

The security of customer funds deposited in a bank is an important part of the legal relationship, considering that in reality, funds deposited in a bank can be lost, either due to the actions of bank employees embezzling the funds or by other parties breaking into the savings funds. Considering that there is a legal relationship, if the bank employees embezzle the customer's savings funds, this will be an important part of the scope of banking crime. The security of customer funds is often threatened in banks because of the actions of bank employees themselves, where bank employees who directly interact with customer funds are often tempted to commit embezzlement in their positions by embezzling customer funds.

Long before, Munir Fuady (1996) had expressed his opinion that banking crime is increasing nowadays, and its modus operandi is becoming more sophisticated. In fact, mafia syndicates, both domestic and international, are involved in some cases. Furthermore, more than 90% of banking crimes are committed through collaboration between outsiders and insiders. Uniquely, these insiders consist of young urban Indonesian professionals with the same characteristics: youth, intelligence, agility, workaholic, ambition, high positions, income, and high aspirations. They even use computers to commit crimes. Then, what is often referred to as computer crime, which is one of the crystals of white-collar crime, became popular (Fuady, 2018).

Banks in their business activities with a healthy banking system, banking activities need to be based on several legal principles, namely (Usman, 2001): 1) The Principle of Economic Democracy, confirmed in the amended Articles of the Banking Law. This article states that Indonesian banking in conducting its business is based on economic democracy by using the principle of prudence; 2) the principle of trust is a

principle which states that banking business is based on a relationship of trust between the bank and its customers; 3) the principle of confidentiality is a principle that requires or obligates banks to keep confidential everything related to the finances and other things of bank customers which according to banking world custom (must) be kept confidential; 4) the principle of prudence is a principle which states that banks in carrying out their business functions and activities are obliged to apply the principle of prudence in order to protect the public funds entrusted to them.

In relation to the discussion of banking crimes, Leden Marpaung is of the opinion that criminal acts (*Strafbaarfeit*) is an unlawful act that has been carried out intentionally or unintentionally by a person whose actions can be accounted for and which has been declared by law as an act that can be punished (Marpaung, 2012)

In general, criminal acts related to banking businesses often occur in cases where banks make false records. This is often associated with personal data being misused by banks through bank employees. This is regulated in Article 49 paragraph (1) of the Banking Law, which states that members of the Board of Commissioners, Directors, or bank employees who intentionally: 1) make or cause false records to be made in bookkeeping or in reports, or in documents or reports on business activities, transaction reports or bank accounts; 2) eliminate or do not include or cause no recording to be made in the books or in reports, or in documents or business activity reports, transaction reports or bank accounts; 3) change, obscure, hide, delete or eliminate any record in the books or in reports, or in documents or reports of business activities, transaction reports or bank accounts, or intentionally change, obscure, remove, hide or damage such bookkeeping records.

Criminal liability for bank employees involved in the crime of falsifying banking transaction records is an obligation that must be criminally accounted for by bank employees who commit unlawful acts due to errors or deliberate actions (Amanda & Hermansyah, 2020).

It should be noted that criminal responsibility has its limits. Regarding this, Moeljatno argues that the ability to be responsible for a criminal act must fulfill the following elements (Moeljatno, 2008): 1) The ability to distinguish between good and bad deeds, actions that are in accordance with the law and those that are against the law; and 2) The ability to determine one's will according to one's awareness of what is good and right.

Based on the provisions of Article 49 paragraph (1) of the Republic of Indonesia Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, it can be seen that the elements of the crime of false recording in banking, namely those who are threatened with punishment, are from within the bank itself, namely members of the board of commissioners, directors, or bank employees who intentionally: 1) make or cause existence recording false; 2) Eliminate or No enter or cause no he did recording; 3) change, obscure, hide, or remove the existence of something recording.

Related with the explanation above, based on the results interview with Resource person Mr. Abdul Hadi Nasution, SH, MH as a Judge at the Medan District Court expressed his opinion. The provisions of Article 49 of the Law Banking the has load certainty law due to chapter This Already designed special for action criminal recording false, and the provisions of the Article in a way firm arrange prohibition recording fake and give threat sanctions criminal penalties for violators.

3.2 Legal Considerations of Judges at the Medan District Court in Providing Decisions Sanctions Criminal To Perpetrator Criminal Act of Recording False Case Number : 2644/ Pid.B /2021/PN Mdn

3.2.1 Judge's Legal Considerations

Based on search writer to file Decision Number : 2644/ Pid.B /2021/PN Mdn found a number of consideration law in finish case including , among others:

- a. The judge considered the Indictment from the Public Prosecutor where Defendant was charged by the Public Prosecutor with charges in the form of alternative, so that the Panel of Judges with notice of the facts of the law chose direct indictment first as arranged in Article 49 paragraph (1) letter air

conditioning Invite Law of the Republic of Indonesia Number 10 of 1998 concerning change on Invite Invite Number 7 of 1992 concerning Banking, the elements of which are as follows: (i) Members of the Board of Commissioners, Directors, or bank employees; (ii) Intentionally making or causing false records in bookkeeping or reports, or in documents or reports of business activities, transaction reports or bank accounts, changing, obscuring, hiding, deleting, or eliminating records in bookkeeping or in reports, documents or reports, business activities, transaction reports or bank accounts;

- b. The judge then opined that all elements of Article 49 paragraph (1) letters a and c of the Republic of Indonesia Law Number 10 of 1998 concerning amendments to Law Number 7 of 1992 concerning Banking had been fulfilled, so the Defendant must be declared to have legally and convincingly committed the crime as charged in the first indictment of the Public Prosecutor.
- c. The Panel of Judges did not find anything that could eliminate criminal responsibility, either as a justification or excuse; therefore, the Defendant must be held responsible for his actions.
- d. Furthermore, the Judge stated that in order to impose a sentence on the Defendant, it is necessary to first consider the aggravating and mitigating circumstances of the Defendant. Aggravating circumstances are (i) Deeds Defendant unsettling the public; (ii) Deeds Defendant can cause the public to not believe the Bank, particularly against Bank Maybank; and (iii) The defendant enjoyed the proceeds of the crime.
- e. Mitigating circumstances are defendant behaves politely in court, the defendant regrets his actions and promises that it will not happen again, the defendant Still has a baby who really needs attention, and defendant not yet punished.

3.2.2 Analysis To Legal Considerations of Judges at the Medan District Court in Providing Decisions Sanctions Criminal To Perpetrator Criminal Act of Recording False Case Number : 2644/ Pid.B /2021/PN Mdn

As explained previously, if bank employees neglect matters, they can be subjected to the crime described based on provision criminal Article 49 in Constitution Number 10 of 1998 concerning Change on Constitution Number 7 of 1992 concerning Banking. Article 49 of the Banking Law. It is also understood that a violation of the law that has been done on purpose or not intentionally by someone whose actions are accountable and by law has been stated as something that can be punished.

According to writer that case action criminal banking that does recording false against savings funds customers in Decision Number: 2644/ Pid.B /2021/PN Mdn has proven, because Defendant is employees of PT. Bank Maybank Indonesia KCP Setia Budi Medan with position Customer Service and Marketing with task open account new Maybank bank customers and offers programs and products available at Maybank.

Then, it has been proven that the defendant takes criminal action by recording false actions by offering programs or products that are not in the Maybank Bank system, persuading customers, and providing paper that has been filled in customer data in form prints that have been edited for the accused to sign as proof of following a fictitious program/product investment. Then, the Defendant type alone in the section mutation transaction account book savings on behalf of the customer (victim), while the transaction No truly happened as well as in book writing form or font savings on the part mutation No, in accordance with the existing system at Bank Maybank Setiabudi. In fact in court has proven that defendant without permission and not to the knowledge of customers owner account moving, transferring and withdrawing customer funds Regarding the recording action false statements made by the Defendant the result in loss for customers totaling Rp. 1,672,000,000.00 (one billion six hundred and seven twenty-two million rupiah).

As for the verdict punishment, the sentence imposed on the defendant by the Medan District Court is for 5 (five) years imprisonment and fines amounting to Rp. 10,000,000,000.00 (ten billion rupiah) with provision if fine the No paid, then replaced with criminal hollow for 4 (four) months. According to the author, punishment has the principal enforcement law and is in accordance with the provisions of Article 49 of the Banking Law.

4. CONCLUSION

Accountability answers criminal to bank employees who commit criminal actions by recording false actions can be punished using the provisions of Article 49 paragraph (1) of the Republic of Indonesia Law Number 10 of 1998 concerning Change on Constitution Number 7 of 1992 concerning Banking, as per the provisions of Article 49 of Law Banking the has load certainty law due to chapter This Already designed special For action criminal recording false, and the provisions of the Article in a way firm arrange prohibition recording fake and give threat sanctions criminal penalties for violators. Results of the analysis to Decision Number: 2644/ Pid.B /2021/PN Mdn concluded that verdict punishment criminal that was dropped to The defendant by the Medan District Court is for 5 (five) years imprisonment and fines amounting to Rp. 10,000,000,000.00 (ten billion rupiah) with the provision of a fine for the No paid, then replaced with a criminal hollow for 4 (four) months. According to the writer, punishment has loads of principle enforcement law and is in accordance with provisions of Article 49 of the Law Banking the.

Ethical Approval

Ethical approval was not required for this study.

Informed Consent Statement

Not Applicable.

Author Contributions

YGS & SIN contributed to the conceptualization, research design, data collection, and analysis. They also prepared and wrote the manuscript and served as the corresponding author, coordinating communication during the submission and review processes.

Disclosure Statement

The authors declare no potential conflicts of interest.

Data Availability Statement

The data presented in this study are available upon request from the corresponding author for privacy reasons.

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Notes on Contributions

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