

Consumer Protection Laws For Bank Customers

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Abstract: Indonesia development is followed by continuous technological progress with economic development. Therefore, financial services institutions, i.e banking sector, need to follow the development. As one of financial institutions in Indonesia, bank is as an intermediary institution for parties with excess liquidity. It protects its consumers or customers to avoid the crime in line with the advancement of internet technology (cybercrime). This study aims to determine legal protection of victim customers against ATM card duplication crime. Law No.10 year 1998 on customer protection is a guarantee of legal certainty given by bank to customer as basically this law protects customer. Bank as business perpetrator is obliged to serve its customer properly and honestly and provide the correct, clear and honest information about the condition and guarantee of the services provided. The liability of the bank in the event that customer suffers a loss is performed by handling and resolving various complaints to avoid the protracted problems that occur. Customer complaints handling is made at predefined and generally applicable time standards.

Keywords: Bank Customer, Legal Protection, Constitution

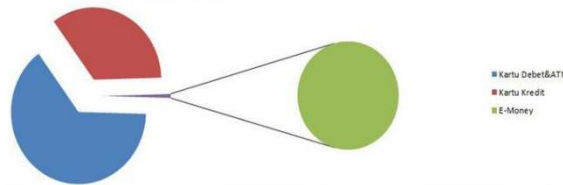
1. Preliminary

Rapid development of technology brings not only positive but also negative impact, one of which is the development of crime in the virtual world known as Cybercrime. This of course also affects the use of ATM technology emerging the potential of such crimes. To ensure the transaction process using ATM can be performed properly and correctly, the security technique used is to use a personal identification number (PIN) that only people who know the PIN number can perform transactions at the ATM (Fisher, 2005).

The protection of bank customers' funds in Indonesia is set forth in Law No. 7 of 1992 as amended by Act number 10 of 1998 on banking (Pliha, 2007). The bank's liability to customers, especially those experiencing loss of funds, is also regulated in Bank Indonesia Regulation (PBI) no. 7/6 / PBI / 2005 dated January 20, 2005 on "Transparency of Bank Product Information and Use of Customer Personal Data"; PBI No. 7/7 / PBI / 2005 dated January 20, 2005 on "Completion of Customer Complaints"; and PBI No.8 / 5 / PBI / 2006 dated 30 January 2006 on "Banking Mediation". All of the regulations are the forms of Bank Indonesia realization to adjust banking business activities with provisions in the Law of Client Protection which requires equality between business perpetrator, in this case the bank, and the customer i.e the customer (Undang-Undang, 1998).

The highest figure contributed by ATM / debit cards with the number of penetrating circulation 127.8 million units. While the number of credit cards in circulation now just 17.4 million. As for non-cash payment instrument in the form of e-money alias electronic money

circulating in the community now amounts to 51.2 million units. Was when the ATM cards are in circulation, the number is about 83 million units (www.halomoney.co.id).



Source: Adapted, Bank Indonesia

Fig. 1. Transactions with Payment Instruments Using Card (APMK) 2016

Transact with tools card payments (APMK) such as debit cards, ATM / debit, electronic money is also a credit card or e-money, the more popular Indonesian society. The latest data from Bank Indonesia noted that the total value of transactions by means of payment cards (APMK) until December 2016 reaching Rp 5623.91 trillion.

The transaction value was recorded by wearing APMK ATM / Debit card, which reached Rp 5,623 trillion. A total of Rp 2,355 trillion of cash withdrawal transactions wear ATM / Debit card. While transactions using credit cards during 2016 exceeded USD 281 trillion. Lastly, transactions using electronic money or e-money reaches Rp 7.06 trillion in 2016 (www.halomoney.co.id).

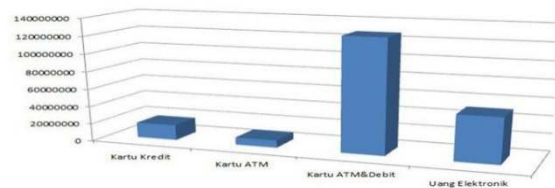


Fig. 2. number of transactions Tool Noncash 2016 justify.

2. Research Methodology

The present research is conducted in Surabaya with Juridical Empirical research is to conduct the implementation of the provision of regulation legislation factually on certain legal event occurring in society. This research is descriptive that describes the implementation of a legislation to solve a problem. Steps taken by bank when receiving complaints or reports from customers about the problem of loss of funds on account due to the use of ATM cards are also discussed.

3. Results And Discussion

3.1 Implementation of Legal Principles to Bank Customers In Customer Protection

Legal Platform to Be Used By Customer When He Is Impaired By Bank. The legal basis to be used by customers on banks is based on Law no. 10 Year 1998 on Banking. In this case the Bank's legal basis is Law No. 10 of 1998 on Banking contained in Article 1 number 12, namely financing based on banking principles and Article 1 point 13, namely the principle of customer

protection. Banking in Indonesia tries to fulfill the rights and obligations as a bank generally based on the terms and conditions based on the banking system in the supervision of Bank Indonesia(No, 10AD).

Banking rights in Indonesia to protect its customers include the following:

- a. To customers who want to open an account, bank has the right to know the identity and background of the customer in accordance with Know Your Customer (KYC) principle.
- b. In credit, the bank regains the money lent to the customer and the proceeds of the proceeds obtained by the debtor.

Bank's obligation to protect their customers is to manage the funds placed in the bank's customers as well as possible and always responsible to provide the funds back if the customer wants to take it back.

Law no. 10 Year 1998 does not determine the legal basis that can be used by the customer if he is disadvantaged by the bank as basically if a customer enters a banking service system, he will be faced with the options provided by the bank itself. In other words if the customer is a savers it means he/she will receive interest from his savings, and if the customer is a debtor customer then he/she must pay off the debts with the bank. If he does not pay off his obligations, then based on his agreement, bank can confiscate the collateral submitted to the bank.

Legal protection for banking customers basically arises due to lack of good bank management due to ineffective granting and supervision of credit, management system applied does not support bank operations, which resulted in the bank difficulty to perform its operations that banks are liquidated by the government(Nasution, 1994). This liquidation implementation is detrimental to customers, especially depositors' customers, where they cannot take their funds from banks that are liquidated in cash. In this position the customer has been disadvantaged and in claiming his rights he must submit to the terms of the government.

Related to the prosecution on the basis of unlawful acts (Article 1365 Civil Code) and breach of contract, the depositors will spend big amount of funds and long duration of time to prosecute for the implementation of the prosecution process. Thus, if the depository customer makes a claim against the bank on the basis of the act against the law and breach of contract, he/she will certainly lose funds and time. Therefore, sometimes he/she gives up to the provisions - the provisions taken by Bank Indonesia. While in fact the depositor funds deposited by customer in the bank have been re-liquidated, the return of these funds takes a long time, thus harming the economic behavior of depositors.

Unprotected condition of customers as bank customers is began since the first time customer related to the bank. The relationship is not balanced. When a customer becomes a creditor in the form of demand deposits, time deposits, certificates of deposit, savings or other equivalent forms, no collateral whatsoever provided by the bank to the customer, except the bank's trust capital.

The position of the customer is very weak compared to the position of the bank. There are at least two legal relationships between banks and coffers that are considered not fair. First, when the bank acts as a creditor, the customer provides legal protection in the form of delivery of collateral documents, such as land certificates, to ensure the repayment of customer debt. Second, the client has no control over the bank's asset document to guarantee the bank's debt to the customers in the form of demand deposits, time deposits, savings or other forms. Bank is only armed with "trust" from customers. The protection of customers is given inadequately.

Banking Act (UUP) regulates the issue of protection to customers vaguely. This is reflected in the authority of Bank Indonesia in conducting Bank supervision. This means that the protection of customers cannot be separated from efforts to maintain bank continuity in the

national banking system. Its protection is not explicitly regulated. This means the bank failure is feared to create an uneasy customer community.

Whatever the position of the customer against the bank, it does not impose the Bank. Bank is always in protected banking standard agreement in the form of unilateral clauses from the bank. In essence, the customer is subject to all bank guidelines and regulations, whether applicable or will be enforced and then no longer questioned whether or not there is a customer agreement.

Back to the original discussion about the legal basis that can be used by the customer when he is disadvantaged by the bank, in the present study as the scope of the author's discipline in the field of civil law, it can be questioned in this discussion further whether the provisions regarding default and legal violation can be imposed on the bank. From the descriptions as explained above, it can be understood that customer is individual or legal entity that interacts with banking sector, either as a depository customer or as a debtor.

In every reciprocal work there are always 2 (two) kinds of legal subjects, each of which the legal subject has the right and duty in reciprocity in the execution of the covenant they have made. In an agreement, including banking service, there is possibility that either party does not enter into an agreement or does not fulfill the contents of the agreement as agreed upon by them. If either party does not implement what is agreed or obligation under the agreement they have committed, the party is performing default or breach of contract, which means that it does not fulfill the achievement that is agreed upon in the agreement.

Wirjono Prodjodikoro states: "Default is the absence of an achievement in the law of covenant, meaning that the matter must be executed as the contents of an agreement. Perhaps in the Indonesian language it can be used the terms of execution of promises for achievement and lack of execution of promises to breach of contract".

More strictly Mariam Darus Badruzaman stated that "If in a debtor's engagement by mistake does not implement what is promised, the debtor is default". From the description, default is clearly understandable. To determine whether a person (the debtor) is guilty of having committed a default, the circumstances of how the person is said to be default has to be determined.

R. Subekti, argues that default (omission or negligence) of a debtor include 4 (four) types:

1. Not doing what he or she is willing to do.
2. Implement what is promised, but not as promised.
3. Implement what is in agreement, but too late
4. Imposing something which according to the agreement should not be implemented.

The basis for thinking about the default is whether depository customer make a default claim against the bank that has harmed him. He/she can not be as basically the position of the customer is as a debtor not a creditor so that the right of prosecution of default is issued from the creditors ie the banking. Furthermore, whether the act against the law can be imposed on banks that have harmed its customers is also discusses.

The regulation of unlawful acts is stated in article 1365 of the Civil Code which reads "Every act that violates the law, which carries harm to others, obliges the person who because of his misconduct to issue the loss is to compensate the loss".

From article 1365 Civil Code data is said that the action is against the law if fulfill the requirements of the element:

- a. The act must be against the law
- b. The act must cause harm
- c. The act shall be done by mistake / omission
- d. Among the deeds and losses that arise there must be a causal relationship.

Article 1366 of the Civil Code states that "Every person shall be responsible not only for the harm caused by his actions but also for the harm caused by his negligence or lack of caution".

Based on the above reasons, if the customer feels aggrieved by the bank he can file a lawsuit the bank has committed acts against the law under article 1365 Civil Code. However, the customer must be able to prove that the bank has committed a legal act that harms her as a customer.

3.2 The Role of Customer as Customer

Discussing the role of customers in the banking sector we can also directly understand that the role of the customer is basically related to the activities of banking services. Thus the role of customers in the banking sector, then it is also defined as the role of customers in filling the field of business of the banks. The business field of the Bank can be divided into the following categories :

1. Business field of commercial banks

- a. Receiving deposits, especially in the form of demand deposits and deposits.
- b. Giving credit primarily to short-term credits with dependents of securities, crops, goods, as well as to the carrying documents and storage documents representing the goods, as well as the valuable paper counts representing the goods.
- c. Providing medium-term, long-term or corporate credit with the terms and conditions set by Bank Indonesia.
- d. Moving money, either by telegram or letter notification, or by giving a point draft between its offices. Withdrawal of existing credit balances of correspondents, made by telegram or money order or by check.
- e. Receiving and reimbursing the money in a current account, execute an order for transfer of money, receive payments from invoices on paper and perform calculations with or between third parties.
- f. Discounting
 1. A money order and a letter of order with two persons or more responsibly in a coherent manner and with a validity period not later than the custom in the trade.
 2. Notes and other trade papers which are no longer valid than the customs in trade, whether withdrawn by credit guarantee or by guarantee of transport documents.
 3. Treasury paper on state expenses.
 4. Debt with repayment within six months and as long as the discount is co-responsible.
 5. Mandate or warrant pays on state coffers for auction rendemen.
- g. Buy and sell
 1. Notes accumulated by a bank whose validity period lasts no longer than in trading .
 2. Treasury paper on state expenses.
 3. Debt securities listed on an official stock exchange on state expenses or interest / settlement are guaranteed by the state.
- h. Purchase and sell checks, notes, other trade papers, and payments by mail and telegram, whose validity period is no later than the custom of trading, and there is a common guarantee for that.
- i. Provide bank guarantees (bank guarantee) with sufficient dependents.
- j. Renting a place to store valuables.
- j. Carry out other business that is commonly done in a form of commercial bank.

2. Business Field of State-Owned Banks
 - a. Bank Negara Indonesia 1946, with task preference in the industrial sector.
 - b. State merchant bank, with task preference in the mining sector.
 - c. Bank Bumi Daya, with task preference in plantation and forestry sectors.
 - d. Bank Rakyat Indonesia with the following tasks:
 1. To assist the development of cooperatives, especially in agriculture and fisheries.
 2. Assist farmers and fishermen who are not yet incorporated in the cooperative to develop their businesses in agriculture and fisheries, and encourage and guide towards cooperative and cooperative business principles.
 3. Assist the people who are not yet incorporated in the cooperative and run the activities in the field of handicrafts, people's industry, small-scale enterprises and trade.
 - e. Providing assistance to state enterprises in the framework of the implementation of agrarian politics.
 - f. Provide assistance to government efforts in rural development.
 - g. Fostering and supervising village banks, village banks, market banks and other similar banks based on guidance and leadership of Bank Indonesia.
3. Business Field of State-Owned Savings Bank
 - a. Accept deposits primarily in the form of savings
 - b. Refueling his funds primarily in solid paper.
 - c. Able to provide credit for the execution conducted under the guidance of Bank Indonesia. The amount of such credit shall be granted only up to an amount in proportion to all deposits stipulated by Bank Indonesia.
 - d. Financing payments in the form of loans to home buyers.
4. Other Bank Business Fields.
 - a. Private Savings Bank Business Field Private bank sectors are basically the same as the state-owned bank's saving business, only the private sector.
 - b. Private Development Bank Business Field The field of private development bank business in general is also equal to the field of business of state-owned development bank.
 - c. Foreign Bank Business Field The field of business of a foreign commercial bank is equal to the business field of a state-owned commercial bank, noting that:
 1. Not allowed to accept the money savings.
 2. Can give credit to:
 3. International trade
 4. Industrial and production sectors.
 5. Field of business that allows to carry out foreign investment or mixed business with foreign capital.
 6. Efforts in other fields, insofar as the relevant field has credit needs, but this requirement is not or insufficiently met by the existing national banks.

Such a rapid development in the banking sector is inseparable from the role of customers as a party that uses bank services, because if there is no trust from customers to the bank then of course the bank can not perform its function as a protection and channel of funds from the community.

But it can not be denied that not infrequently customers as parties who use the services of banks are often ignored its rights. Due to the lack of protection against customers when dealing with banks is a problem that is often complained continuously.

3.3 Legal Protection Against Bank Customers Viewed From Law no. 10 Year 1998 on Coverage of Customers

Legal protection of our customers cannot be separated from Law no. 10 Year 1998 on the protection of customers, because basically this law is used for the protection of customers, including clients in general. UU no. 10 Year 1998 Nothing is not talking about its customers in it, but because of Law no. 10 Year 1998 is only telling the customer simply does not give effect to the banking itself so that felt less give protection to its customer. But the administrative law no. 10 Year 1998 provides protection to its customers. But the administrative law no. 10 Year 1998 gives the consequences of action taken by BI against the bank violates the provisions of Law no. 10 Year 1998, while the customer is not given the opportunity to take action from the provisions of Law no. 10 of 1998. Such action can only be done on the basis of Law no. 10 Year 1998.

The helplessness of customers in dealing with business actors is clearly very detrimental to the interests of the community. Customer protection is any effort that ensures legal certainty to provide protection to customers.

The client protection law is the entire legal principles or rules that govern and protect the customer in relation and problem with the provider of goods or services. 1

Trust is the core of banking so a bank must be able to maintain the trust of its customers. Legal protection for bank customers as customers in terms of the Client Protection Act lies in the existence of obligations for banks to heed the procedure of making standard clauses both form and substance in terms of making credit / financing agreements, and opening of bank accounts by customers.

Legal protection for bank customers as clients has the right to make customer complaints, and to use banking mediation forums to obtain a simple, cheap, quick dispute resolution in banking. If the rights and obligations of PT. Bank Sumut Syariah is in line with the Law of Client Protection, it will be able to run banking activities within the bank including right to security, the right to choose products, the right to obtain clear and accurate information and the right to be treated truthfully and honestly. And the obligation is to follow the instructions of information and procedures that run the bank. 2

In the Law no. 10 of 1998 On the Protection of Clients mentioned in article 1 paragraph (1) "Client protection is any effort to ensure the legal certainty to provide Protection to customers".

In paragraph (2) of the same article is declared "Customer is any user of goods and / or services available in society, whether for self-interest, family, other people or other living beings and not for trading".

The issue of this term of customer protection is due to economic activities. Economic disparities are detrimental to the various parties involved in economic activity. Indonesian society is none other than as the most disadvantaged customers. It should be straightened out the mistaken assumption that the economic actors are only made up of the government. Customer alignment is actually a tangible manifestation of popular economy. In the adverse trading practices of customers, such as the determination of the price of goods, and the inappropriate use of exoneration clauses, the government must consistently take sides with customers who are generally the average person.

Featured of glasses of banking laws regarding the completion of troubled banks. Exit policy mechanism is not through the process of revocation of a business license in advance but Bank Indonesia handed over to the Agency Indonesian Bank Restructuring (IBRA) to disehatkan. If the restructuring fails, IBRA suspend the operations of the bank, pay liabilities tubs and take over the assets of the bank. After all Rights and Obligations resolved then do the business license revocation and liquidation. While the exit mechanism are made to follow the provisions of

troubled bank liquidation in accordance with Government Regulation (PP) No.25 year 1999. According to this government regulation can not be rescued banks already revoked its business license and then ordered the directors hold a General Meeting of Shareholders (AGM) to form Team liquidation of legal entities and dissolve the bank no later than 60 days after the revocation of business licenses(Wonok, 2013).

Liquidation Team is responsible for the maintenance of the entire assets of the bank. Furthermore, the search results are used to pay the bank's liabilities to creditors in this order: employee salaries payable; court fees in court; auction fees payable; the tax payable in the form of bank tax and the tax levied bank and office expenses. If there are remaining funds then made payments to depositors.

Weakness customer protection rules the storage and, at that time *sesungguhnya* can be covered by Act No. 13 year 1968 concerning the Central Bank, which is no longer valid. Because in the legislation we are given the possibility to form a kind of buffer institution funds on behalf of customers save money when a bank *terlikudasi*. We can read pada explanation of Article 30 Constitution of the which states that in order to develop the banking, then if the situation has been allowed, to better ensure the third party money entrusted to banks, may be held a deposit insurance with the aim of ensuring public confidence in the *masyarakat*. Now, through Law No. 10 year 1998 on the Amendment of Act No. 7 year 1992 on Banking, requires that each bank shall establish an escrow deposits.

Through the provisions of Act No. 24 year 2004 concerning the Deposit Insurance Agency (LPS) in Section 8 requires all banks that do business in the region of the Republic of Indonesia became a member of the Deposit Insurance Agency (LPS).

Talking about the legal protection of our customers can not be disassociated with Law No. 8 year 1999 on consumer protection, because basically the law is used as for the protection of consumers, including as customers in general. UU no. 10 year 1998 is not nothing to talk about customers in it, but because the Law No. 10 year 1998, only to be told the customer simply did not leave due to the bank itself so felt less provide protection to its customers.

But the administration of Law No. 10 year 1998 provides protection to customers. But in the administration of Law No.10 year 1998 provides BI consequences of actions by the banks violated the provisions of Law No. 10 year 1998, while customers are not given the opportunity to take action on the provisions of Law No. 10 year 1998. Such action can only be done on the basis of Law No. 8 1999.

The legal protection for customers as consumers have the right to conduct customer complaints, as well as the use of mediation forum banking to obtain the settlement of disputes in the field of banking in a simple, cheap, fast. If the rights and obligations of liquidated banks are in line with the Consumer Protection Act will be able to carry out banking activities within the bank. Among them are the right to safety, the right to choose a product, the right to obtain clear and accurate information and the right to be treated properly and honestly. And obligation is to follow the instructions of information and procedures that run the bank.

In-Law No. 8 year 1999 on Consumer Protection mentioned in article 1, paragraph (1) "Consumer protection is all the effort that guarantees the legal certainty to provide protection to consumers". In paragraph (2) the same article stated "the consumer is everyone user of goods and / or services available in the community, for the benefit of themselves, their families, other people and other living beings and not for sale". Regarding the issuance of consumer protection terms this is due to the activities of the economy. Adverse economic disparities various parties involved in the economic activity. Indonesia was none other communities as the most disadvantaged consumers. It should be clarified misconceptions stating that economic actors are composed of government.

Method used is descriptive because this study will illustrate and describe the principles or rules and The collection of data used in this paper is through library research(libraryresearch)to get the concept, theory and doctrine, opinion or conceptual thinking and research related to the research paper precursor of this study may also be legislation and other scientific work. Basic data in this research is secondary data include:

Material primary law, namely Law No. 10 year 1998, Law No. 8 year 1998 on Consumer Protection and the Book of the Law of Civil Law.

Materials secondary law, a material that provides an explanation of the primary legal materials such as the opinion of the legal experts (reference books on the agreement, the banking and credit laws and consumer protection).

Tertiary legal materials, ie materials that provide guidance and explanation of the primary and secondary legal materials, such as dictionaries and legal dictionary.

3.4 Legal Principles InRelationship Between Depositors With Banks

Talking about the legal principles in the relationship between depositors and the bank is to discuss the legal actions with all the consequences between depositors and the banking customers. The protection of customers in the banking sector as the debtor protects its customers based on law because every borrowing customer will be tied up in one credit agreement between the customer and the bank(Soebagjo, 2007). Thus, there is no real agreement in the standard form between depositors and the bank. But in practice everyday found a reciprocal relationship between depositors with the bank, whether the depositors in the form of savings or in the form of deposits. The reciprocal relationship can be in the form of interest by the bank to the deposits of the depository customer, as well as the obligations of the client to perform a particular administrative system if he wishes to withdraw the money or keep the money.

Thus, discussing the legal principles in the relationship between depositors and the bank is basically discuss the agreement between depositors and the bank. Such legal principles are not complex, whereby the bank still imposes an obligation to provide a certain interest on the amount of customer deposits and the customer retains the right to withdraw and retain the funds. It's just that the agreement between depositors and banks is not poured in the form of standard agreement, where the depositors are only given evidence or pocket book only. And in fact, the customer does not object to the system being treated by the bank.

3.5 Accountability of the Bank in the event of a Disadvantaged Customer

Efforts to improve and empower customers are with the presence of infrastructure in the bank to handle and resolve various complaints and complaints of customers. The Bank must respond to any customer complaints and complaints. To avoid the protracted handling of customer complaints required a clear standard of time and generally applicable in each bank in settling any customer complaints. If it can not be resolved then it is necessary to provide media that can accommodate the dispute settlement between the customer and the bank. Settlement of bank customer disputes should be able to meet the element of simple, cheap, and fast.

The protection of customers in the banking sector as the debtor protects its customers based on law because every borrowing customer will be tied up in one credit agreement between the customer and the bank. Thus, there is no real agreement in the standard form between depositors and the bank. But in practice everyday found a reciprocal relationship between depositors with the bank, whether the depositors in the form of savings or in the form of deposits.

Bank Indonesia feels the need to prioritize other programs, namely customer complaints handling, transparency of banking product information, and establishment of independent banking mediation institutions. This dilator in the past by the need to immediately provide

protection to bank customers associated with quite widespread customer complaints contained in the mass media.

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Accountability in the bank if the customer suffers a loss by way of peace in the form of a direct complaint to the relevant Bank in case of errors for further processing to be proven for the provision of compensation.

4. Conclusions

Legal protection of bank customers is reviewed from the Law of No.10 years 1998 on the protection of customers is a legal certainty provided by the bank to customers bas it is basically this law that protects the customer as well as customers in general. Based on customer protection law, the bank as a business actor is obliged to serve customers properly and honestly and provide correct, clear and honest information about the condition and guarantee of the services provided.

The liability of the bank if the customer suffers a loss is to handle and resolve various complaints and complaints of customers, to avoid protracted problems that occur. Customer complaints are made at predefined time standards and generally applicable.

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