

Modes of Bank Fund Transfer Crime in Digital Transactions

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ABSTRACT

Fund transfer is a form of banking service the public uses in carrying out their financial transactions. The digitalization era demands the role of bank institutions to improve their services through various forms, including e-banking, phone banking, Automated Teller Machine (ATM), transfers through real-time gross settlement systems, and others. The rise of banking crimes that occur today is caused by financial traffic that occurs very quickly through bank institutions with rapid mobility accompanied by high technology, which impacts financial traffic flow to be disguised so that it is difficult to trace it. Bank institutions are inseparable from the financial system, as a system of financial markets and a system of financial intermediaries. Along with the ease of financial transactions through the transfer of funds, many modes of crime emerged in the banking world. The modes of crime in banking are more focused on the phenomenon of victimless crimes with elements of *mens rea*. Legal norms regarding fund transfer transactions have been regulated in Law Number 3 of 2011 concerning Funds Transfer and Bank Indonesia Regulation Number 14/23/PBI/2012 concerning Funds Transfer. This research is normative juridical with a conceptual approach and statute approach. The research found that the mode of crime of digitalization requires ideal law enforcement in handling it so that trust in banks can be maintained.

Keywords: *Banking Crime, Financial Digitization, Fund Transfer.*

1. INTRODUCTION

Banking activities that are very vulnerable to crime have forced banks to continue to apply one of the main principles in banking, namely the prudential banking principles. Current bank developments tend to ignore prudential banking principles to achieve a high target market portfolio for profit. The target achieved is to gain the largest possible market share by eliminating fair business competition. The rise of banking crimes today is caused by financial traffic that occurs very quickly through bank institutions with rapid mobility, accompanied by high technology so that the flow of financial traffic can be disguised which is difficult to trace.

Even though law enforcement is finally able to uncover crimes in the banking sector, many bank institutions are still made as a means of crime. Bank institutions are inseparable from the financial system. According to Frederic S. Mishkin, the financial system is divided into two: the system of financial markets and the system of financial intermediaries [1]. The financial system can be defined as the collection of institutions, markets, laws, regulations, and techniques by which securities are traded, interest rates are set, and financial

services are produced and offered to all parts of the world [2]. One of the banking crimes in the digitalization era is fund transfer transactions. On the one hand, this transaction facilitates business acceleration; on the other hand, it becomes a mode of crime in the financial sector.

Banking crimes involving banking individuals have resulted in a deteriorating good reputation, both in the national and international context. Even more challenging, criminal acts using banking systems and facilities allow criminal acts of inter-jurisdiction to be committed across countries, making it difficult for law enforcers to take action.

Established on the elaboration above, in this paper, the authors examine the problems related to the parties involved in the crime mode of transferring funds in digitalization transactions through banks and the legal arrangements for fund transfers, as a mode of digitalization crimes.

2. METHOD

According to Soerjono Soekanto, there are two types of legal research: normative legal research and empirical or sociological legal research [3]. This research type is normative legal research, a legal research method based

on secondary data [4]. Some mention normative legal research as research that focuses on analyzing legal norms and placing legal norms as the object of research [5]. In this study, the researcher uses a normative legal research method by examining the norms governing fund transfer transactions. The transfer of funds has been regulated in Law Number 3 of 2011 concerning Funds Transfer and Bank Indonesia Regulation Number 14/23/PBI/2012 concerning Funds Transfer. The approach used in the study comprises the statute approach and the analytical and conceptual approach.

3. RESULT AND DISCUSSION

3.1 Fund Transfer in Banking Activities

The transfer is a bank service activity to transfer a certain amount of funds by an order from the trustee intended to benefit a person appointed as a transfer recipient. Bank Indonesia facilitates transfer transactions through two forms of activity, namely Traffic Giro (TG) and Real-Time Gross Settlement (RTGS). Traffic Giro (TG) is an interbank transfer service using a clearing facility. Transfer documents are compiled together with other documents to be exchanged between banks at Bank Indonesia through the clearing process. The clearing is a means of calculating interbank notes carried out by the administering bank to expand and expedite demand deposit traffic. Calculating interbank rights and obligations are carried out by Bank Indonesia or a bank appointed in a particular area.

Meanwhile, interbank clearing is the exchange of notes (cheques, bilyet giro, credit notes, and debit notes) between banks whose calculation results are completed at a particular time. The clearing is regulated by Bank Indonesia, both regarding the time and place of implementation. Meanwhile, Clearing participants are commercial banks within the clearing area.

Real-Time Gross Settlement (RTGS) refers to interbank transfer services in real-time; hence, the money transferred will be immediately received in the destination account. This kind of transfer system appears as an electronic fund transfer system in which the settlement of each transaction is carried out in real-time. Since being operated by Bank Indonesia on November 17, 2000, BI-RTGS has played an essential role in processing payment transaction activities, particularly for processing payment transactions that include the High-Value Payment System (HVPS), namely transactions of IDR 500 million and above and are urgent. HVPS transactions currently account for 90% of all payment transactions in Indonesia, so that they can be categorized as a national payment system that has a significant role (Systemically Important Payment System).

In addition to RTGS and clearing previously described, banks also provide fund transfer services that can be performed via internet banking, phone banking, Automated Teller machines (ATM). However, in the service using i-banking or ATM, daily transactions are

limited. Judging from the condition, it can be said that the fund transfer service has provided many conveniences for customers in transacting. However, it is still unfortunate because currently, the transfer of funds is one of the banking activities used as a means of crime mode involving related parties and bank institutions. It has an impact on substantial losses for the economy of a country. Therefore, understanding the transfer of funds, legal loopholes in the transfer, and the mode of transfer crime of funds are parts of banking law that must be reviewed to provide knowledge and understanding for all stakeholders. This is done to prevent violations that can harm many parties, banks, financial institutions, and customers.

3.2 Parties Involved in Banking Crime Mode: The Evolution of White-Collar Crime

There are two terms often used in criminal acts committed or occurring in the banking world. The terminology refers to "Banking Crime" and "Criminal Acts in the Banking Sector." Banking crime implies that the crime is solely committed by the bank or an insider within the bank itself; meanwhile, criminal acts in the banking sector are a more neutral and broader term because they can include crimes committed by people outside and inside the bank. The term "crime in the banking sector" is intended to accommodate all types of unlawful acts related to activities in carrying out bank business. There is no proper understanding of criminal acts in the banking sector. There is a popular definition that banking crimes transform criminal acts that make the bank a means (crimes through the bank) and the target of the crime (crimes against the bank) [6].

The dimensions of banking crime can be in the form of a person's crime against a bank, a bank's crime against another bank, or a bank's crime against an individual; thus, banks can be both victims and perpetrators. In terms of the spatial dimension, banking crimes are not limited to a particular space; they may happen across territorial boundaries. Likewise, banking crimes may occur instantly and may also last for a long time in terms of the dimensions of form. In terms of the scope of occurrence, banking crimes may occur in the entire scope of life in the banking world or are closely related to banking activities and, more broadly, including other financial institutions. Meanwhile, the provisions that may be violated, both written and unwritten, also include customary norms in the banking sector, but criminal sanctions must still be regulated for all of that. In terms of perpetrators, banking crimes may potentially be committed by individuals or legal entities (corporations).

Mochammad Anwar, in his book entitled "Crime in the Banking Sector," also distinguishes between the definition of a banking crime and that of criminal acts in the banking sector. The difference is based on the regulation's treatment of actions that have violated the law related to running the bank's business. Furthermore, it is stated that banking crimes consist of acts that violate the provisions of Law Number 7 of 1992 concerning

Banking in conjunction with Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking. In this law, it is determined that criminal acts in the banking sector consist of actions related to activities in carrying out the main business of the bank for which criminal regulations can be treated outside of Law Number 7 of 1992 concerning Banking in conjunction with the Act Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, such as the Criminal Code, Special Criminal Law Regulations, Law Number 11 of the National Program for Formulation of Standards (PNPS) of 1963 and Law Number 32 of 1964 concerning Foreign Exchange Traffic.

From the definition above, it can be concluded that there are two different concepts, namely:

Criminal acts of banking refer to any act that violates the provisions as stipulated in Law Number 7 of 1992 concerning Banking in conjunction with Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking.

Criminal acts in the banking sector refer to any act that violates the provisions as stipulated in Law Number 7 of 1992 concerning Banking in conjunction with Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, the Criminal Code and Special Criminal Law Regulations, such as Law Number 3 of 1971 concerning the Criminal Acts of Corruption, Law Number 11 of the Program for Formulation of Standards of 1963 concerning Subversion and Law Number 7 of 1995 concerning Crimes Economic Crime.

About banking crimes, it can be said the crimes referred to in this case can be classified into two types, *mala in se* and *mala prohibita*. *Mala in se* refers to crimes traditionally considered evil and immoral or also known as “acts against conscience” – for example, murder, rape, and physical assault of another person [7]. Having a distinguished meaning, *mala prohibita* refers to an act which is primarily considered a crime because it is prohibited by positive law. Technological developments provide benefits for many people but not only a few of these people abuse the existing technology. These technologies are used as tools or means to create new modes of committing crimes, for example, crimes using credit cards [7].

Mala prohibita offenses (*malum prohibitum* - a singular term referring to a particular type of crime) refers to an act that is considered “wrongful” simply because there is a law against it. If no provision prohibits, then *mala prohibita* offenses cannot be said to be a wrongful act. *Mala prohibita* offenses are often classified as “victimless crimes,” for example, prostitution, drug abuse, and gambling which are acts that make it challenging to identify who the real victim is [7]. When viewed thoroughly, *mala prohibita* refers to a postulate “*nullum delictum nulla poena sine praevia lege poenali*” - there is no criminal act or no crime without a previously

governing criminal law. Technological developments benefit many people, but not only a few of these people abuse the existing technology.

These technologies are used as tools or means to create new modes of committing crimes, for example, crimes using credit cards [8]. According to Jeffrey Robinson in his book entitled “The Laundryman,” criminals in the Al Capone era around Chicago disguised their money from gambling, prostitution, extortion, and illicit liquor sales, by opening laundry services. The term money laundering itself began to be used when the Watergate scandal occurred in 1973. The use of the term in new courts occurred in 1982 in America, which then spread throughout the world. Willem Bongers was the first to develop a theory of crime regarding Crime in the Streets and Crime in the Suits. The concept became the initial reference for white-collar crime promoted by Sutherland [9].

Learning about white-collar crime will lead one to the previously mentioned above, namely that crime is no longer always interpreted as an act committed by people with a lower-middle-class economy or low education. In the concept of white-collar crime, the crime refers to criminal acts committed by people with a well-established economy and high socio-economic status [10].

In the authors’ opinion, it can be said that most of the parties involved in the mode of transfer of funds here are people with a well-established economy and high social status, and it is impossible for bank insiders to do so. Criminal acts in banking have occurred in the past and are still common, especially in Indonesia.

3.3 Transfer of Funds as a Mode of Digital Crime

The criminal mode of transferring funds initially began with the traditional mode by sending or transferring money through an informal channel mechanism that was carried out based on trust. However, this mode is starting to become obsolete considering the development of more up-to-date funds methods. Moreover, the traditional transfer mode is more straightforward for law enforcement to track. Then, the mode of transferring money or funds that use technological advances takes place, namely the mode of transfer of funds or what is known as *cuckoo smurfing* or it can be said that the crime of transferring funds is currently only an ordinary transfer crime using the latest technological tools (old crimes, new tools). The mode is an attempt to obscure the origin of the source of money by sending an amount of money from the proceeds of crime or criminal acts such as corruption, drug sales, and other criminal acts through the accounts of third parties who do not realize that the funds they receive are “proceeded of crime.”

On September 15, 2000, the United Nations (UN) adopted a convention relating to the UN Convention against Transnational. Organized Crime. This convention

is followed by most members of the United Nations, including Indonesia. Indonesia signed this convention on December 12, 2000, and ratified it on April 20, 2009 [11]. With the ratification of the convention, Indonesia is obliged to prepare legislation to implement the contents of the convention. Indonesia should be well-prepared to face every threat of transnational organized crime and international crimes that threaten social, economic, political, security, and world peace that may occur as classified in the convention.

Increasingly, the problem of crime in the banking world involves a process in the flow of funds carried out using a fund transfer process. The government specifically issued policies related to fund transfer in the form of Law Number 3 of 2011 concerning Funds Transfer in CHAPTER XII in Articles 79 to 88, which regulates criminal provisions against people or corporations who abuse these fund transfer activities. In addition, regulations regarding fund transfers are further contained in Bank Indonesia Regulation Number: 14/23/PBI/2012 concerning Funds Transfer.

The cases of the crime of digitalized funds transfer are explained as follows:

There were skimming cases that occurred, especially in Bali. In this case, the Directorate of Special Criminal Investigation (Ditreskrimsus) of Bali Regional Police arrested 45 perpetrators of skimming crimes on the Island of the Gods. Of the 45 cases, 22 cases were successfully uncovered from 2018 to 2021. Of these, 2 cases occurred in 2018, 5 in 2019, 13 in 2020, and 2 in 2021. The perpetrators of these crimes consisted of 19 Bulgaria citizens, 12 Romanian citizens, 2 Polish citizens, 2 Filipino citizens, 1 Ukrainian citizen, 1 Turkish citizen, and 8 Indonesian citizens [12].

There was a criminal act of fraud and or embezzlement in office and or money laundering. The verdict against EA, whose real name is Ronia Ismawati Nur Azizah (FS wife, the defendant). The defendant EA was found guilty by the South Jakarta District Court on April 28, 2015, with three months in prison minus the prison term. The Panel of Judges considered that EA was legally proven to have committed the Criminal Act of Money Laundering by accepting a transfer of a sum of money from her husband. According to the Public Prosecutor, at least from March 1, 2013, to September 16, 2013, there were 28 book-entries from FS's account to EA's with approximately IDR 1 billion [13].

The case of money laundering and identity fraud committed by AG (husband of MD, the defendant in the case of burglary of Citibank customer funds amounting to IDR 40 billion). The perpetrator was charged with Article 6 paragraph (1) letters a, b, d, f of Law Number 25 of 2003 concerning Amendments to Law Number 15 of 2002 concerning the Criminal Act of Money Laundering jo Article 65 paragraph (1) of Criminal Code. In the second indictment, the perpetrator proved to have violated Article 5 paragraph (1) of Money Laundering Law jo Article 65 paragraph (1) of the

Criminal Code so that the perpetrator was sentenced to four years in prison and a fine of IDR 350 million by the South Jakarta District Court Judge [14].

From the several cases mentioned above, the authors consider that the consideration of the issuance of the government policy is due to fund transfer activities in Indonesia, which have shown an increase, both in terms of the number of transactions, the nominal value of transactions, and the type of media used. Along with the increase in transactions, some problems will occur in the development of fund transfer media. Therefore, there is a need for a legal arrangement that guarantees security and smoothness in fund transfer transactions and provides certainty for parties involved in organizing fund transfer activities.

4. CONCLUSION

From the research findings elaborated, a conclusion can be drawn. The parties involved in the crime mode of transferring funds in digitalized transactions are a group of people or individuals who can be said to have an established economy and high social status. In addition, there is a possibility that the internal bank itself committed the crime. In this case, crimes in banking have occurred in the past and are still happening frequently. Regarding the transfer of funds as a digital crime mode, the government specifically issued policies related to fund transfers in Law Number 3 of 2011 concerning Funds Transfer and is also regulated in Bank Indonesia Regulation Number 14/23/PBI/2012 concerning Funds Transfer. The legislation related to fund transfers is expected to minimize the occurrence of bank fund transfer crimes in digitalized transactions and strengthen network security. Hence, it is not easily misused by parties related to banking activities.

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