



Bank's Legal Responsibility for Creating Term Deposits That Are not Recorded in the Bookkeeping System

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Abstract. Banking is one of the fastest growing business and can support national economy so trust can be the most valuable thing in this business. Bank as a fundraiser, they provide various type of fund placement eg deposits. In this journal will discuss about time deposits. Time deposits placement is an example of contractual relationship between the Bank and the customer and evidenced by the issuance of time deposits bilyet who held by customers as depositors. Based on Financial Services Authority (OJK) regulations Number 10/POJK.03/2015 on the Issuance of Deposit Certificates by Banks in Article 9 section (1), that Banks are required to record the first ownership of time deposits in the form of bank draft. This process is a form of the bank's responsibility in applying the principles of prudence and trust. In case Number 170/Pdt.G/2021/PN Mks, BNI customers filed a lawsuit against BNI Branch of Makasar for defaulting on the placement of time deposits. However, in this case, the panel of judges decided that the defendant was exempt from responsibility to fulfill the plaintiff's demands.

Keywords: Time Deposits, Contractual Relationship, Legal Responsibility.

1 INTRODUCTION

Along with advancements in the field of work that deals with services and the services sector, strategy and support as a service company in promoting economic success in Indonesia are crucial for businesses to be able to draw in new business and keep hold of their current clientele. Banking is one industry that actively contributes to the development of the national economy. Banks are organizations that play a crucial strategic function in the economy. Every banking activity must be effectively supervised and guided in order for banks to fulfill their strategic function. This is necessary in light of the fact that sound financial institutions' movement combined with efficient direction and supervision would enable Indonesian banking to compete effectively, sustainably, fairly, and effectively safeguard and manage public funds in the global economy.

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Banks are commercial organizations that raise the standard of life for a large number of people by collecting savings from the general public and distributing those savings to the public in the form of credit or other means. The definition of a bank as stated in State Gazette of 1992 Number 31, Supplement to State Gazette Number 3472, Article 1 of Law No. 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking (hereinafter referred to as the Banking Law) is:

“Everything pertaining to banks, including their establishments, commercial endeavors, and procedures and means by which they conduct their operations.”

Regulation of financial institutions such as banks in the development of banking laws. financial law is a body of laws that governs all facets of a financial institution's operations. These rules govern the activities of banking institutions. The components that make up banking law are interconnected, complex systems that function as a whole to accomplish a single, overarching objective.

The banking industry is crucial to the country's economy and plays a major part in keeping the wheels turning. The free movement of money is essential to this economic activity. Current banking regulations in Indonesia are governed by Indonesian banking legislation. In the process of collecting public funds, banks offer a variety of products to satisfy consumer demand while keeping up with the latest technological advancements and the demands of a global economy that is becoming more sophisticated. Apart from that, these products aim to improve people's welfare and store wealth, so banking services are needed to fulfill this. Savings, deposits, and current accounts are examples of fund placement products. Deposits are a type of funding source that is among the best offerings from the bank. Because deposits have a grace period, they yield higher interest rates. One month, three months, six months, twelve months, or even twenty-four months may be the guaranteed grace period for placement. The precise withdrawal time is the primary feature of time deposits, or deposits, which is why they are also known as five fixed deposits. When the deposit is due as scheduled, interest will be paid each month on the day of payment or all at once.

Presently, there are several instances of term deposits being promoted to clients with the expectation of gains, but the bank's bookkeeping system never records these deposits. A case was reported by Bank Negara Indonesia (BNI) located in the Makassar region. The case started when a Bank Negara Indonesia (BNI) marketing representative encouraged clients to create accounts. This marketing staff member assured clients that they will receive more benefits in addition to 8.25 percent interest. After the customer receives permission, the employee deposits the money in the business account first, and then gives the customer the deposit slip. Nevertheless, the deposit slip was never entered into the bank's bookkeeping system when the customer sought to withdraw the money. Therefore, the customer demanded compensation from BNI for the loss of deposit funds.

Deposit service transactions are governed by a contract between the bank—in this case, BNI—and its clients, not the employees of the bank. The consumer is demanding that the bank show responsibility; however, as this transaction was handled by

BNI Bank marketing personnel and was not documented in the bank's records, BNI was unaware that it had previously taken place.

The issuance of deposit slips kept by depositors serves as proof of the contractual relationship between the Bank and clients in fund placement transactions involving deposits, and the presence of BNI employees marketing deposit products is the corporation's legal obligation. Concerning client trust in financial organizations, one of the most important legal issues is legal accountability when depositing money.

Based on the background of the description above, there are two focuses of study in this research, namely: contractual relationships in the placement of funds in the form of deposits made by customers with the bank and legal responsibility from BNI for the placement of customer funds which are claimed to be recorded in the bank's books.

2 METHODOLOGY

The normative method is the approach employed in this study. Many legal factors uncovered in the literature review can be sharply described and analyzed using the normative method, according to certain experts. Legal materials in the form of relevant ideas, conceptions, legal regulations, and legal principles were used in the research. The statutory approach, the conceptual approach, and the case approach are the approaches employed in normative method research. This method will be applied to legal analysis and justification without altering legal science's status as a normative discipline. Data collection in research is very important in writing, so in this study the data collection used was using library study techniques or "collecting by library" and purposive sampling. The final stage in this research is to analyze legal materials to obtain a final argument in the form of an answer to the research problem.

3 RESULT AND DISCUSSION

3.1 Contractual Relationship in Placing Funds in the Form of Deposits by Customers with the Bank

In Indonesian law, the phrase "agreement" or "contract" has the same meaning as it does in the Netherlands, where there is no distinction made between the terms "contract" and "overeenkomst." "Agreement" is the term used in Black's Law Dictionary, and its definition is as follows:

"a coming together of minds; a coming in opinion or determination; the coming together in accord of two minds on a given proposition. The union of two or more minds in a thing done or to be done; a mutual assent to do a thing agreement is a broader term; e.g. an agreement might lack essential element of a contract."

Meanwhile, the meaning of contract which comes from the English word "contract" in Black's Law Dictionary is defined as follows:

“An agreement between two or more persons which creates an obligation to do or not to do a particular thing. Its essentials are competent parties, subject matter, a legal consideration, mutuality agreement, an mutuality obligation the writing which contains the agreement of parties, with the terms and conditions, and which serves as a proof of the obligation.”

Aside from the law itself, which can give rise to an agreement, one of the two existing legal parts is a contract or agreement, according to Johanes Ibrahim Kosasih. A legal connection that imposes responsibilities on one or more legal subjects is known as an agreement. A father's duty to support his wife's children is one example of an engagement established by law (Johanes & Hassanain, 2021). The contractual connection serves as the foundation for the parties' accomplishment of their goals in line with the terms of the fully and honestly agreed-upon agreement. If an agreement satisfies both requirements for validity, it will only be legally binding. The agreement's goal must, first and foremost, have a suitable or appropriate basis. According to Munir (2007), the agreement needs to have legal features as the second requirement. According to Article 1320 of the Civil Code, an agreement must have the following four requirements in order to be deemed valid: 1) people who bind themselves agree; 2) the power to make an agreement; 3) a specific thing; and 4) a lawful purpose (Rahim, 2022).

Deposits are a type of deposit held by the bank on behalf of its clients, subject to withdrawal restrictions that are agreed upon in advance. This indicates that a written agreement detailing the terms of the deposit of funds, accompanied by a Deposit Bill serving as verification of the funds' placement, has been made between the customer and the bank. This indicates that the customer's fund placement arrangement with the bank is embodied in the Deposit Bill. The bank's role as a borrower of funds is completed once the conditions for the lawful placement of client deposit money are met. The structure of this connection is delineated by multiple regulations of the relevant bank, as well as basic requirements that clients must fulfill. Agreement law forms the foundation of the legal connection that exists between banks and their clients in contractual partnerships. The concepts of privity of contract and the Civil Code's rules pertaining to the legality of agreements serve as the foundation for the provisions found in contract law (Johanes and Yohanes, 2018). In order to put a deposit at PT Bank Negara Indonesia (Persero), Tbk., the customer must first complete out a written deposit application form and submit it directly to a bank official (customer service). The terms and conditions of the term deposit are outlined on the deposit form, and if the customer signs it, the deposit will be terminated. Subsequently, the client completes a Signature Sample Card, which will be utilized as a means of authentication and reference when comparing signatures during the application and deposit processing processes to guarantee the authenticity of the depositor. by the creditor all by themselves.

Even though the agreement uses a standard agreement, BNI Bank does not disregard debtors' rights when creating deposit fund placement agreements. The application of the balance principle in the deposit fund placement agreement between the

customer and BNI Bank is made possible by the standard agreement's form, which has not undergone any significant changes from previous deposit fund placement agreements. That the standard agreement must only contain legible letters, writing, symbols, diagrams, signs, terms, phrases, and/or short, understandable sentences in Indonesian. In the event that the debtor discovers any ambiguity, customer service is required to explain any terms, phrases, sentences, and/or symbols, diagrams, and signs that the debtor does not yet understand, either orally prior to the standard agreement or in writing within the standard agreement.

Drawing from the aforementioned explanation, it can be concluded that the format for an agreement to open a deposit account or place funds is a standard agreement, with the clauses pertaining to these types of agreements at Bank BNI accounting for the fundamental requirements that must be fulfilled. One of them, Financial Services Authority Circular Letter Number: 13/SEOJK.07/2014, should be carefully read to ensure that the standard agreement's terms are reasonable and enforceable and that neither the client nor BNI Bank will be negatively impacted by the clauses.

3.2 Bank's Legal Responsibility for Placing Customer Funds That Are Not Recorded in the Bank's Books

Banking activities are closely related to the implementation of payment systems and their recording, which also includes interbank payment systems and systems for recording transactions carried out by banks in bank records which are collected in bank books. A system for recording every transaction carried out by the bank to support the smooth running of operational activities.

Recording in bank bookkeeping means collecting regularly collected data about the receipt or distribution of funds included in banking transactions in a collection of records in the form of a book called bank bookkeeping. Currently, the activity of recording funds in banking transactions is not only done manually, but can also be done by automation or electronically.

Deposits are a place for customers to invest in the form of securities owned by deposit owners (depositors). Each depositor will be given interest in return for their deposits. For banks, the interest given to depositors is the highest interest, when compared with checking or savings deposits, so that deposits are considered by some banks to be expensive funds. The advantage of banks by collecting funds through deposits is that the money can be stored for longer, considering that deposits have a relatively long term and the frequency of withdrawals is also rare. In this way, banks can freely use credit from the placement of these funds.

1. specifically in recording the placement of funds in the form of deposits, the complete activity of recording customer deposit funds consists of three types, namely: Manual Recording: Where the process is carried out manually by being present at the relevant banking institution and recording the fund placement

activity in making documents and scripts. In this activity, bank officers record manually and the clearing process will be carried out directly.

2. Semi-Automatic Recording: For semi-automatic recording, this is done by automating the bill, while for scripts it is done manually. So it can be said that the activity of placing deposit funds is carried out semi-automatically.
3. Automatic Recording: For automatic recording activities, all recording of both deposit slips and letters is carried out automatically. So it can be done quickly and without taking up much time.

Based on the Financial Services Authority Regulation Number 10/POJK.03/2015 regarding the Issuance of Deposit Certificates by Banks, Article 9 paragraph (1) stipulates that Banks are obliged to record the initial ownership of deposits in the form of securities or without securities, and in paragraph (3), it is reiterated that the management of recording ownership and changes in ownership of Deposits in the form of non-securities is carried out by the LPP for and on behalf of the Bank. This means that the bank is required to record the placement of funds in the form of deposits, whether in the form of securities or without securities, in the bank's books. Recording or banking accounting is the proper and mandatory way to do it because generally, the activity of placing customer funds is intended for payment through the opening of checks, promissory notes, and drafts. So, if there is no recording of deposit placement transactions in the bank's system, this will harm the customer or depositor because there are risks that may occur, one of which is that the deposit funds cannot be withdrawn.

Case Number 170/Pdt.G/2021/PN Mks is a lawsuit for default filed by Hendrik (Plaintiff I) and Heng Pao Tek (Plaintiff II), customers of Bank BNI Makassar Branch who opened a BNI TAPLUS account and had a number of Deposit Certificates at Bank BNI Makassar Branch. Against PT. Bank Negara Indonesia Central Jakarta on behalf of PT. Bank Negara Indonesia South Sulawesi Region (Defendant I) and Melati B Sombe (Defendant II). The basis of the lawsuit is filed on the grounds of breach of promise or breach of contract committed by Defendant I and Defendant II for not fulfilling their obligation to provide the deposit funds owned by the Plaintiffs according to the nominal amount stated in the Deposit Certificates according to the intended time frame.

Based on this, the basis of the lawsuit is referred to the provisions of breach of promise or default as stipulated in Article 1238 of the Civil Code which stipulates that "The debtor is declared to be in default by a letter of demand, or by a similar deed, or based on the force of the agreement itself, namely when this agreement results in the debtor being deemed to be in default with the lapse of the stipulated time."

In addition, the Plaintiffs' basis for filing a lawsuit against Defendant I, even though the recording and management of the deposit funds were carried out by Defendant II, is based on the provisions of Article 1367 paragraph (1) of the Civil Code, which stipulates that "A person is not only responsible for the losses caused by his own actions, but also for the losses caused by the actions of the persons for whom he is responsible or caused by the goods under his supervision."

However, in its ruling, the Panel of Judges stated that the exceptions from the Defendants could not be accepted. This is because the evidence provided by the defendant's side is not sufficient to meet the requirements for accepting the lawsuit. Defendant I argued that Defendant I has no legal relationship with the Case Object, namely in the form of 3 (three) Deposit Certificates, as alleged by the Plaintiffs. More specifically, the Defendant explained that the Plaintiffs were only recorded as TAPLUS Business Individual Savings Account holders, with the details as follows: Account Number 5858855557 in the name of Hendrik recorded in Defendant I's account opening system since October 10, 2019, Account Number 2788899878 in the name of Heng Pao Tek recorded in Defendant I's account opening system since December 23, 2019.

Banking activities do not always go as expected, so it is not impossible for unwanted things to happen and result in losses, both to the bank and customers. The same is true for deposit placement activities that experience problems. When problems occur in the activity of placing funds in the form of specific deposits in cases that cause customers to suffer losses, the Bank has implemented Standard Operating Procedures to accept complaints or claims from customers which are then followed up by the Bank. According to Kranenburg and Verg regarding official accountability, there are two underlying theories, namely as follows (Ridwan, 2011) :

1. Fautes personnelles theory, namely the theory which states that losses to third parties are borne by the party because their actions have caused losses. The burden of responsibility is directed at humans as individuals.
2. Fautes de services theory, namely the theory which states that losses to third parties are borne by the agency of the official concerned. According to this theory, responsibility is assigned to positions.

In Case Number 170/Pdt.G/2021/PN Mks, Defendant I cannot be held responsible because the decision handed down by the Panel of Judges states that the lawsuit cannot be accepted, so the main point of the case is whether or not there is a legal relationship between Defendant I and the The plaintiff cannot provide further evidence. Apart from that, the basis for Defendant I not fulfilling the responsibility demands requested by the Plaintiffs is based on the following reasons.

1. That after carrying out an inspection process on 4 (four) Deposit Bilyet sheets, both on the physical form of the Deposit Bilyet and on Defendant I's system, it was found that the Deposit Bilyet was not an issued product and/or had never been recorded on Defendant I's system, so that Defendant I was unable to withdraw the Deposit Bill. Based on these findings, the Plaintiffs then made a Complaint Report to Defendant I and Defendant I will carry out an in-depth examination of the problem.
2. Based on the Complaint Report from the Plaintiffs, Defendant I then continued the search and investigation process regarding this problem, and several things were discovered, including. The Deposit Bill in the name of the Plaintiffs is not an official product issued by Defendant I and is not registered in Defendant I's system;

Defendant II has admitted to having made, copied and/or duplicated, given and/or changed and/or replaced documents in the name of Defendant I which were not within his authority or responsibility in bad faith to commit Banking Crimes and Money Laundering against the Plaintiffs ; Defendant II was proven to have committed the violation for his personal interests without the knowledge of Defendant I.

3. That due to the losses experienced by Defendant I and as a follow-up effort to assist the Plaintiffs in resolving this problem, on April 1 2021 Defendant I reported Defendant II to the Criminal Investigation Agency of the Republic of Indonesia Police (Bareskrim Polri) on suspicion of Banking Crimes and/or Money Laundering Crimes as intended in Article 49 and Article 50 of Law no. 10 of 1998 concerning Amendments to Law no. 7 of 1992 concerning Banking and/or Article 3 and Article 5 of Law no. 8 of 2010 concerning Eradication of the Crime of Money Laundering, based on Police Report No. LP/B/0221/V/2021/Bareskrim and is currently still in the investigation process at Sub-Directorate II of the Directorate of Economic and Special Crimes, Bareskrim Polri.
4. That up to now the a quo case is still in the investigation process at Sub-Directorate II of the Directorate of Economic and Special Crimes, Bareskrim Polri, as stated in Letter No. B/346/V/RES.2.2/2021/Dittipideksus, dated 20 May 2021 regarding notification of investigation progress. Apart from that, currently the suspect status and detention of Defendant II have also been carried out.
5. That Defendant I never promised and/or offered Deposit Interest of 8.25% (eight point twenty five percent) as argued by Plaintiff I because Plaintiff I was never registered as a Deposit Owner Customer with Defendant I, especially Defendant I. never apply Deposit Interest of 8.25% (eight point twenty five percent). Meanwhile, as acknowledged by Plaintiff I, this was only stated by Defendant II unilaterally without the knowledge of Defendant I. Therefore, Defendant I has no legal relationship with the object of the case, namely 4 (four) deposit slips, as argued by the Plaintiffs.
6. That Defendant I strongly objects to the Plaintiffs' arguments, because Defendant I has never committed any breach of promise/default to the Plaintiffs. Moreover, all the Deposit Bills owned by the Plaintiffs are not official products issued by Defendant I and are not recorded in Defendant I's system. Apart from that, the legal relationship between Defendant I and the Plaintiffs is only a relationship between the Customer and the Bank where the Plaintiffs are registered as Customers. who deposited/saved their funds with Defendant I and were not registered as Deposit Owner Customers with Defendant I, so that Defendant I never had any agreement and/or agreement in any form with the Plaintiffs which had to be fulfilled by Defendant I.
7. That Defendant I stated in the Answer to the Lawsuit that the responsibility of superiors for the actions of employees or subordinates (vicarious liability) based on article 1367 of the Civil Code is not absolute.

This refers to the limits of responsibility of superiors for actions or actions carried out by employees or subordinates as explained by M. Yahya Harahap, S.H., who provides the following explanation: "Starting from the provisions of Article 1367 paragraph 3 of the Civil Code, linked to developing legal theory and practice, so that employers can be held responsible for compensation/losses for unlawful acts committed by subordinates."

4 CONCLUSION AND SUGGESTION

4.1 Conclusion

The customer relationship in deposit placements made by customers is a contractual relationship. A contractual relationship is a relationship based on an agreement in accordance with the provisions required in Article 1320 of the Civil Code which must be fulfilled in the fund placement agreement. This contractual relationship adheres to several legal principles, including the legal principle of privity of contract, as regulated in Article 1340 of the Civil Code where the agreement to place funds is only for related parties, namely the bank as the debtor and the customer as the creditor. Fulfillment of the legal requirements for placing deposit funds by customers places the bank's position as a borrower of funds. The form of this relationship is outlined in various regulations of the bank concerned and general conditions that must be complied with by customers.

BNI's legal responsibility for placing customer funds that are not recorded in the bank's books is contained in case Number 170/Pdt.G/2021/PN Mks, which is a breach of contract lawsuit filed by Hendrik as Plaintiff I and Heng Pao Tek as Plaintiff II, against PT. Bank Negara Indonesia Central Jakarta c.q. PT. Bank Negara Indonesia Makassar Region as Defendant I and Melati B Sombe as Defendant II. In this case, Defendant I did not disburse the deposit funds belonging to Plaintiff I and Plaintiff II, even though the four deposit slips had matured and the deposit funds should have been disbursed by Defendant I according to the maturity date stated on the four billets. The Plaintiffs filed a lawsuit against Defendant I even though the person who recorded and managed the deposit funds was Defendant II based on the provisions of Article 1367 paragraph (1) of the Civil Code which stipulates that:

"A person is not only responsible for losses caused by his own actions, but also for losses caused by the actions of people who are his dependents or caused by goods under his control."

It can be said that Defendant II is the legal representative of Defendant I in providing services for placing funds belonging to Plaintiff I and Plaintiff II in the form of deposits, so that for actions carried out by Defendant II, Defendant I can be held responsible in accordance with the provisions of Article 1367 paragraph (1) Civil Code.

The Panel of Judges stated that the lawsuit was unacceptable so that Defendant I could not be held responsible. This decision was based on an examination of 4 Deposit Bilyet sheets which showed that the Deposit Bilyet was not a product issued and was not recorded by Defendant I's system. Defendant I stated that the responsibility of superiors for the actions of employees or subordinates (vicarious liability) based on Article 1367 of the Civil Code is not absolute and refers to the limitation of a superior's responsibility for actions or actions carried out by employees or subordinates due to non-fulfillment of several conditions.

4.2 Suggestion

The need for customers to be more thorough and active in asking about each Bank product and service and to understand well the procedures, terms and conditions of each financial product and service provided by the Bank. It is recommended that customers who wish to place funds be present directly at the Bank so that all ongoing processes can be ensured that they have gone through all appropriate procedures and have been recorded in the Bank's bookkeeping system to avoid all forms of fraud by Bank personnel.

In order to provide legal certainty, legal protection and legal balance for customers who save funds in the form of deposits, BNI Bank should not only focus on good service but also focus on the process of recording customer deposit funds. Recording deposit placements is basically to provide a sense of security for customers holding deposits so that employees as representatives of Bank BNI are obliged to convey all details regarding deposit products correctly and transparently.

In academics, it is hoped that this research can increase knowledge and provide developments in Banking Law relating to deposit placement agreements.

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