Actualization of Implementing the Principle of Caution by Banks in Efforts to Minimize Fraud in Providing Prime Customer Services by Bank

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Abstract. The banking industry is essential to a country's economic development, and this necessitates the utilization of banking services. One such service is premium customer service, which includes cash pick-up services for customers. This study delves into a case involving cash pick-up services that have resulted in financial losses for customers due to fraudulent activities perpetrated by bank insiders. The goal of the study is to produce concepts, conclusions, and remedies to deal with the problem of client losses associated with cash pick-up services. It employs a normative legal research technique due to the ambiguity of the requirements in Article 20A of Law Number 4 of 2023 on the Development and Strengthening of the Financial Sector. The study's findings indicate that confidence, bank prudence, and legal certainty form the philosophical cornerstone of client interactions in banks' premium customer service. The structure of legal protection for customers against losses arising from premium customer service is, as a preventive measure, to enter into agreements related to premium customer service and to explain that customers have an effective complaint mechanism if they face risks or losses in their relationship with premium customer service. In addition, the involvement of the Deposit Insurance Corporation or a fund insurance system is also considered important to protect customer funds. The expected findings are the existence of agreements in the context of picking up cash to the customer's location based on the principle of bank prudence, which includes preventive and repressive clauses in order to reduce risk and achieve legal certainty.
Keywords: Prudent Banking Principle, Bank, Customer, Risk.

1 Introduction

In the development of Indonesia's economy as a developing country, the role of In order to drive the ways in which economic activity is dynamic towards the advancement and wellbeing of the entire society, law must safeguard, control, and organise economic life. [1]. Law influences economic life by providing regulations for actions within economic activities. All things pertaining to banks are included in the term "banking," including institutional features, commercial operations, and procedures and methods used in carrying them out. This is outlined in both in Article 1, Clause 1 of Law Number 4 of 2023 for the Development and Strengthening of the Financial Sector and in Law

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Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking. In order to raise people's standards of living, close economic gaps, and create a prosperous, developed, and honourable Indonesia, this law seeks to strengthen the financial sector's role in fostering equitable, sustainable, and inclusive economic growth [2].

Fundamentally, A fiduciary relationship forms the foundation of the relationship between a bank and its depositors. Since public monies are deposited in banks primarily on the basis of confidence, it is necessary that each bank continuously maintains its health by preserving public trust [3]. In this context, It is clear that the public's desire to deposit money in banks is solely motivated by their belief that the money will be there for them in an emergency expected returns. If depositors' trust in the bank diminishes, it may result in the withdrawal of funds by the depositors from the bank.

In order to enhance the development of banks in providing more optimal service quality, banks offer services not only through digital facilities but also through conventional services, such as premium customer service in the context of cash collection at the customer's location. This service refers to the mobile cash service activities conducted by banks to assist customers who are unable to visit the bank to deposit their funds. This is stipulated in Article 1, Clause 7, letter a of Bank Indonesia Regulation Number 13/27/PBI/2011 Addresses Changes to Bank Indonesia Regulation Number 11/1/PBI/2009 Concerning Commercial Banks, which states that [4]: "Cash Service Activities, hereinafter referred to as CSA, are cash activities aimed at serving individuals who have become bank customers, including, among other things, Mobile Cash Services. These are cash service activities that move from place to place using transportation means or at specific non-permanent locations, such as mobile cash units, floating cash units, or non-permanent bank counters."[5].

The provisions of this article regulate the ease with which clients can carry out cash deposit transactions. However, this convenience has the potential to cause issues in practice. Banks are required to keep up with the times by directing transactions towards digital means. On the other hand, banks still provide cash collection services because these services are needed by customers who, due to their busy schedules, cannot deposit their funds themselves. Additionally, this service also serves as a promotional tool to encourage customers to deposit funds in the bank.

Before the implementation of the aforementioned service, the bank and the customer should ideally have entered into an agreed-upon contract and signed a Cooperation Agreement Letter (SPKS). The agreement letter outlines the duties and rights outlined in the bank's cooperation agreement with its clients. However, in practice, this service often presents risks due to fraudulent actions committed by bank employees. This impacts the security of funds as well as the responsibility of the bank or the bank officers performing the cash collection service. The risks associated with premium customer service activities, particularly in the implementation of the cash collection service mentioned above, fall under the category of fraud risk. Fraud risk refers to the risk related to the possibility of losses due to dishonesty, fraud, moral depravity, and reprehensible behavior by bank officials, employees, or customers [6]. Therefore, the bank must prioritize customer service with a principle of prudence in order to ensure legal certainty for its customers.

Issues related to premium customer services, particularly cash collection, are often caused by bank employees who represent the bank. Bank employees include all officers and staff, including those with contractual or outsourced status. Bank employees act as intermediaries between the bank and its customers, as they are the ones who directly handle and carry out the customers' financial transactions [7].The conduct and behavior of bank employees in providing services to customers during transactions are not explicitly regulated neither in the terms of the customer-bank agreement, nor in the legislation. This can be observed from the provisions of Article 20A of the Financial Sector Development and Reinforcement Law (PPSK Law) in conjunction with the Banking Law, which principally outlines the obligation for banks to apply the principle of prudence in their business activities. However, the researcher notes that the explanation of this article specifies that the principle of prudence is only applied in the provision of credit. This certainly leads to multiple interpretations and triggers misconduct by bank employees, especially in cash collection services. The bank, which is supposed to manage its business based on trust and prudence, is often exploited by internal individuals, causing harm to customers, employees, and the bank itself. Therefore, legal certainty for customers receiving premium customer service facilities is essential to ensure the security of customers' funds. The background information stated above allows the following questions to be developed: What is the nature of legal regulation regarding customer transactions that receive cash collection services by banks under the positive law in Indonesia? How is the legal protection for customers transacting through cash collection services by banks against fraud committed by bank personnel based on the principle of prudence.

2. Methods

Based on its goals, Soerjono Soekanto divides legal research into two categories: Legal study that is both normative and empirical [8]. Normative legal research is the research methodology used in this paper, which involves looking at primary, secondary, and tertiary legal materials [9]. Normative legal research is a subset of legal research that assesses written law from a variety of angles, taking into account formality, the binding force of a law, theory, history, philosophy, composition and organisation, content and breadth, coherence, specific articles, and overall explanations [10]. The legal approach and the conceptual approach are the two methods that are employed.

3. Result and Discussion

The position of banks becomes highly crucial when they actively contribute to the expansion and advancement of a nation's economy. This means that financial institutions and other businesses have an obligation to assist national socioeconomic and political stability while also fulfilling the demands of society in order to achieve socioeconomic well-being. Article 4 of Law Number 10 of 1998 about Amendments to Law Number 7 of 1992 concerning Banking expressly reflects this philosophical foundation and reads as follows: "Indonesian banking aspires to promote the

implementation of national development towards enhancing equality, economic growth, and national stability, leading to the improvement of the welfare of the people."
In fulfilling its primary role as a financial intermediary, the banking sector holds significant importance. Therefore, it is essential for banks today to gain trust and confidence from the public towards the banking industry. The essence of banking services, especially through premium customer service activities such as cash collection at the customer's location, lies in considering aspects such as convenience, security, responsibility, agreements, protection, technology, and supervision.
In this context, the Financial Services Authority Regulation Number 57/POJK.03/2016, which deals with how commercial banks apply risk management, is cited in Article 1, Numbers 2 and 3. Providing Premium Customer Services, it is mentioned that:
Paragraph 2: "A Premium Customer is an individual who meets specific criteria or requirements set by the Bank to access services or use Bank facilities with certain privileges compared to other ordinary customers."
Paragraph 3: "Premium Customer Services, hereinafter referred to as PCS, are part of the Bank's business activities in providing services related to products and/or activities with specific privileges for Premium Customers."
From these provisions, it can be observed that cash collection at the customer's location is one of the flagship services provided to customers who meet specific criteria established by the bank, or in other words, this service is provided to priority customers. This activity is carried out by bank officers or employees who visit the customer's location directly, including companies, government institutions, or schools considered potential by the bank. In the banking context, the officers collecting funds not only await the arrival of potential customers but also actively seek out new customer prospects.
The purpose of this action is to facilitate customers in the deposit process and simultaneously attract public interest in becoming customers of the respective bank. In this regard, banks should properly draft clear agreements with customers regarding the terms and conditions of premium customer services, especially in cash collection services, to provide legal certainty to customers regarding service fees, withdrawal schedules, the responsibilities of both the bank and the customer in case of issues, and dispute resolution procedures.
Regarding premium customer services in this context, it can also be seen in Law Number In conjunction with Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector, Law Number 10 of 1998 amends Law Number 7 of 1992 pertaining to Banking, specifically in Articles 49 and 52. In principle, these articles demonstrate seriousness in imposing penalties for mishandling customer funds and the obligation of Bank Indonesia to enforce regulations, reflecting the firmness in law enforcement regarding the implementation of premium customer services, particularly in cash collection at the customer's location. Additionally, in Law Number 21 of 2011 of the Financial Services Authority (OJK), regarding cash collection services at the customer's location, Article 1 number 15 defines consumers as parties placing their funds through cash management services, and Article 28 confirms the protection of consumers as customers by providing information, education, and preventive measures against losses.

From the above explanation, the legal regulation of customer transactions receiving cash collection services by banks under positive law in Indonesia, in principle, encompasses various aspects aimed at ensuring public trust, security, and legal certainty in the implementation of such services.

Generally speaking, agreements form the foundation of the legal relationship between banks and depositors. Consequently, it makes sense that depositor interests would be given legal protection in a manner akin to that which banks are protected by the law. Unquestionably, the government is politically motivated to safeguard the interests of bank clients, particularly depositors. This is demonstrated by the existence of Law Number 8 of 1999 concerning Consumer Protection in addition to rules pertaining to banking.

Sociologically, banks have not fully provided legal certainty to their premium customers. This is due to ongoing complaints from customers and cases such as fraud committed by internal bank personnel, where bank employees violate the funds entrusted by customers in cash collection services. Some banks that have agreements with customers regarding this service also do not fully provide adequate protection regarding fund security and accountability for losses experienced by customers. This may be due to a lack of information about the cash collection service mechanisms, leading to failures or risks impacting customers. Therefore, it is important to emphasize the prudence principle being applied by banks when carrying out their business operations.

eferring to the provisions in Regulation Number 3 of 2023 issued by Bank Indonesia on the protection of its customers, in Article 1 number 3, it is stated that “Bank Indonesia Consumer Protection, hereinafter referred to as Consumer Protection, encompasses all efforts that ensure legal certainty to provide protection to Consumers [11].” The existence of such regulations should have ensured that customers receive legal protection definitively in the event of losses impacting them. In the implementation of cash collection services, one of the efforts to anticipate such risks is the need for the principle of prudence to be applied concretely by entering into agreements with customers that include important aspects related to prudential banking principles by the bank. Furthermore, The goal of the principle stated in Law Number 21 of 2011 governing the Financial Services Authority (OJK)’s Article 28 letter an is to safeguard depositors’ interests and their deposits. Section 28 letter a states that:

“providing information and education to the public regarding the characteristics of the financial services sector, its services, and products.”

This provision can be interpreted to mean that, in the context of implementing the principle of prudence, banks are obligated to provide information regarding the business activities to be conducted along with the risks that may arise at any time. Furthermore, to ensure legal certainty for all parties, it is necessary to formulate clauses that clearly emphasize the application of prudential banking principles in premium customer services and the protection of customer funds. Clearly defining accountability for risk of losses is also important to clarify the parties involved and responsible if risks occur during its implementation.

Regarding the form of protection for customers in the event of fraud in this premium customer service, referring to the legal protection theory articulated by Philipus M. Hadjon, which is as a preventive measure, it can be observed that banks in carrying out premium customer services are obliged to include a written agreement. This agreement should encompass all aspects related to the implementation mechanism of cash collection services, such as the execution procedures, potential risks, protection of entrusted funds to the bank, and the involved parties in the service as a manifestation of applying the bank's prudence principle.

As a kind of repressive protection, the government has implemented Regulation OJK Number 6/POJK.07/2022 regarding Consumer and Community Protection in the Financial Services Sector. This rule requires every bank to have a specialized unit in each bank branch that handles and resolves consumer complaints free of charge. Complaints should be based on actual or potential financial losses experienced by consumers due to bank errors or negligence. According to this regulation, complaints can be made either in writing or orally at any bank branch, regardless of whether it's the place where the customer opened their account or conducted financial transactions [12].

4. Conclusion

Legal protection for customers when conducting transactions using cash pick-up services from banks against fraud committed by banking personnel based on the principle of prudence is not explicitly stated in banking legal norms. Therefore, agreements are considered the foundation of the contractual relationship between banks and customers following standard operational procedures (SOP). The concept of customer protection can be realized through the actualization of implementing the bank's prudence principle by creating a written agreement that is an integral part of premium customer services, especially in cash pick-up services to customers' locations for both parties involved.

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