

CHAPTER I

INTRODUCTION

1.1. Background

Towards the end of the year 2019, banking loans growth slowed. From Bank Indonesia records, loans growth in August 2019 was only 8.6%, this is the lowest growth in 2019. Deputy Director of PT Bank Negara Indonesia Tbk (BNI), Herry Sidharta assessed that the credit slowdown was due to national conditions that tended to be counterproductive to economic growth. To overcome these problems, restructuring is still the main option for banks in overcoming non-performing loans because the national economic conditions is deemed to have not improved. This condition resulted in a slowdown in credit growth to the threat of liquidity to the placement of corporate funds in banks.

This phenomenon proves that the role of bank is very important in the wheels of the country economy. Indonesian banking is an interesting part of the economy to watch. The bank is a fast-growing financial institution in Indonesia, especially since the financial deregulation package in 1983. As a major financial institution in the financial market, banks have a great influence on the economy in Indonesia¹. The financial sector is the most vulnerable sector compared to other sectors. However, the financial sector is also a sector that conducts relatively more revitalization and policy changes compared to other sectors. This is in line with

¹ Sri Adiningsih dkk, Satu Dekade Pasca-Krisis Indonesia. Badai Pasti Berlalu? (Jakarta, Penerbit Kanisius, 2008), p.47

economic theory that the financial sector is a sector that has clear indicators of policy success and has a relatively faster policy gap than the real and fiscal sectors². Because of the importance role of bank in the country's economy, the performance of banking operations must be maintained continuously. Moreover, one factor that can affect bank performance is loan. Since 2004 there has been a quite spectacular war of consumer credit in national banking. Banking is very aggressive in offering consumer credit and communicating it through print and electronic media. In general, banks offer easy requirements, speed of approval processes, low interest rates (competitive) to the lure of prizes³ Consumption loans is a facility that gives customers easy access to something, whether it's a car, motorcycle, house and various consumer goods. This financing facility is purely based on the level of debtor income and the analysis is very simple because it is only based on repayment capacity sourced from the income of the debtor. The greater the repayment capacity of a debtor, the greater the consumption credit facility received. However, it cannot be denied that in reality, some prospective debtors deliberately mark up their income in order to obtain a larger consumer credit facility. This is done with the hope that in the future the debtor will receive an increase in income. Therefore, in carrying out lending activities to debtors, each bank applies its own model to assess and evaluate the debtor's business feasibility, in accordance with Bank Indonesia standards that have been modified in accordance with the risk management of each bank. This risk management policy is a written direction in implementing risk

² Ibid, p.32.

³ Mangasa Augustinus Sipahutar, *Persoalan-Persoalan Perbankan Indonesia*, (Jakarta, Penerbit Gorga Media, 2007), p.25.

management which must be in line with the bank's vision, mission and business strategy. This drafting process must be coordinated with related functions or work units⁴.

As times goes by, the rapid growth in technology has also spread to the financial sector. In Indonesia, based on the calculation of the Financial Services Authority (OJK), there are still 100 million Indonesians who need loans of up to US \$ 70 billion. They consist of fishermen, farmers, craftsmen and others. The presence of fintech lending is considered to create social justice for society that don't have access to bank, or who do not get conventional funding. For this reason, Financial Authority Service has also encouraged fintech lending to increase capacity and encourage more and more other players⁵. Nevertheless, the role of banks has not been replaced by other financial institutions, because its market share is far greater than that of other financial institutions⁶. Banking as a financial institution has strategic value in a country's economy. The institution is intended as an intermediary between parties who have excess funds and those who lack funds. Bank financial institutions are engaged in lending activities and various services provided by banks serving financing needs and launching payment system mechanism for all economic factors⁷. Banking as a business-oriented financial institution conducts business-oriented financial institutions to conduct various transactions. The main banking transactions are raising funds (funding) and

⁴ Ikatan Bankir Indonesia, Tata Kelola Manajemen Risiko Perbankan, (Penerbit Gramedia Pusat, 2016), p.3.

⁵ <https://www.cnbcindonesia.com/tech/20190930151522-37-103187/fintech-lending-secercah-harapan-bagi-para-unbankable> accessed 22:16 , 3 October 2019.

⁶ Jonker Sihombing, Butir-Butir Hukum Perbankan p. 6.

⁷ M Djumhana, Hukum Perbankan di Indonesia, (Citra Aditya, Jakarta 1993), p.1.

channeling (lending) in addition to other banking transactions in support of collecting and distributing funds is to provide other bank services (services)⁸. The first function of a bank is to collect funds from the public in the form of deposits. The community trusts banks as a safe place to make investments, also save funds (money). People with excess funds really need the existence of banks to store their funds safely. The security of funds (money) that is deposited in the bank by the community is a very important factor for the community. In addition to feeling safe, another destination is a place to make investments. People will feel safer if the money is invested in the bank. By depositing the money in the bank, the customer will also get a profit in the form of return on the deposit, the amount of which depends on the policies of each bank. Return is a reward obtained by the customer for the amount of funds deposited in the bank. Rewards given by banks can be in the form of savings interest for conventional banks or as a result given by Islamic banks. In collecting third party funds, banks offer savings products, among others in the form of demand deposits, savings, time deposits, and other allowed deposits.⁹ Banking institutions are also referred to as institutions that carry out the intermediary function, which bridges the needs of units that have excess funds with units that need funds. Most of the income from commercial banks is sourced from lending activities to units in need¹⁰.

⁸ Trisadini Prasasti Usanti, *Prinsip Kehati-hatian pada Transaksi Perbankan*, (Airlangga University Surabaya 2013), p. 1

⁹ Ismail, *Manajemen Perbankan; Dari Teori Menuju Aplikasi*, p.5.

¹⁰ *Ibid*, p. 179

Regarding this matter, Zulkarnain Sitompul ¹¹ mention that; "Lending is a strategic function owned by banks and this function is also often the cause of bankruptcy." Concerning of credit, in the banking sectors, loans problem, which installments are not paid in accordance with what has been previously agreed on the deadline for repaying credit installments. Non-performing loans, occur due to several factors, namely internal factors originating from debtors such as declining business conditions, business failures, serious financial difficulties, family problems or because of the bad character of the debtor itself. While external factors causing problem loans, for example, macroeconomic impacts, events outside the debtor's power such as war and natural disasters. In addition, problem loans can also occur due to mistakes from the bank that is not careful in getting to know its customers. ¹² Banks must be able to be wise in providing loans or credit to the public so in this case the bank must pay attention to the principles of lending or lending. The principle of credit distribution is the principle of trust, grace period, degree of risk, risk, achievement / credit object ¹³.

Not just a matter of credit risk, banks are also vulnerable to Money Laundering. At first glance, it seems that money laundering is not detrimental to society, but actually money laundering has caused widespread losses and affects to the economy sectors. In addition, the crime of money laundering also has the potential to undermine the financial sector as a result of the large amount of money involved in

¹¹ Zulkarnain Sitompul, *Problematika Perbankan* p. 186.

¹² Siswanto Sutojo, *The Management of Commercial Bank*, (Cetakan kesatu, Damar Mulia Pustaka, Jakarta 2007), p.171.

¹³ M. Djumhana, *Hukum Perbankan Indonesia*, (Bandung: Citra Aditya Bakti, 1997), p.394

these activities. Financial institutions that rely on their assets on funds that are the proceeds of crime can face liquidity hazards. This can happen, because of the large amounts of money that have been washed and recently placed in a bank can suddenly disappear from the bank without prior notice, because the owner does it via electronic transfer (wire transfer)¹⁴. The development of this mode of money laundering practices and the increasing amount of money processed illegally is inseparable from the influence of globalization in all aspects of life. Globalization not only stimulates legitimate transnational economic activities, but also triggers illegal economic activities. The emergence of information, communication, transportation and global financing intermediation networks, not only allows business people to adopt various aspects of the organization and operationalization of international management, but is also negatively used by criminals¹⁵.

Criminals exploit economic globalization in such a way by utilizing the advances in information, technology and communication systems used by financial institutions to transfer money quickly and easily and almost leave no trace at all. Appears so-called megabytes of money in the form of symbols on computer screens that work 24 hours a day, 7 days a week, and can be moved again from time to time so that it cannot be monitored by law enforcement officials. This has led to the emergence of a dynamic financial turnaround in cyberspace, money can no longer be touched but can only be seen in the form of data that raises the phenomenon of cyber laundering which is very dangerous because it is difficult to track. In addition

¹⁴ Sutan Remy Sjahdeini, *Seluk Beluk Tindak Pidana Pencucian Uang dan Pembiayaan Terorisme*, (Jakarta: Pusat Utama Grafiti, 2004), p.19.

¹⁵ Guy Stessens, *Money Laundering A New International Law Enforcement Model*, (Combridge: Cambridge University Press:2000),p. 135

to the danger of this crime for its emphasis on the legitimate aspects of business which is causing unfair business competition. These principals will not pay attention to tax obligations and other obligations, they only enjoy the existing access to profit and launder their money¹⁶.

The existence of banks is very dependent on public trust, even it is said that banks can carry out activities as an intermediary institution optimally when the level of public trust in the existence of banks is always maintained ¹⁷. Agus Yudha Harnoko argued that the relationship between banks and the public is based on fiduciary relationships to banking banks as well as bringing legal consequences as a result of these relationships¹⁸. Basically, in the fiduciary relationship between the bank and the customer there is also an obligation for the bank in the form of fiduciary duty or duty of reasonable care to the customer. This obligation is a sign for banks in carrying out their business activities, which are further realized in the form of prudential banking principles¹⁹. In implementing a partnership between a bank and its customers, banking Act Article 1 number 16 of the Banking Act, the definition of a customer is the party that uses bank services. Bank customers are divided into:

1. Depositing customer is a customer who places funds in a bank in the form of deposits based on a bank agreement with the customer concerned.

¹⁶ Ibid, p. 475.

¹⁷ Trisadini Prasasti Usanti, Prinsip Kehati-hatian pada Transaksi Perbankan, Op.Cit p. 34

¹⁸ Agus Yudha Harnoko, “ Lembaga Jaminan Hak Tanggungan sebagai Penunjang Kegiatan Perkreditan Nasional”. *Tesis*, Program Pascasarjana , Unair Surabaya, 1998, p.44.

¹⁹ Ibid,p. 46.

2. Debtor customers are customers who obtain credit or financing facilities based on Sharia principles or who have been disputed with it based on a bank agreement with the customer concerned.

With regard to customers, in carrying out their activities, the bank has the principle of Know Your Customer as the principle that underlies the legal relationship between the bank and the customer. From the legal relationship formed between the bank and the customer, there are four basic principles underlying it as stated by Nindyo Pramono, in addition to these four basic principles explain the nature of the relationship between the bank and the customer deposit funds, namely²⁰:

1. Fiduciary Principle, Fiduciary Relation.
2. Confidential Principle, Confidential Relation.
3. Prudential Principle, Prudential Relation.
4. Know Your Customer Principle.

Know Your Customer (KYC) Principle is a principle applied by banks to examine and know the identity of customers and monitor customer transaction activities, including reporting if there are suspicious transactions. The purpose of implementing KYC is to recognize the profile and character of customer transactions so that the bank can early identify the suspicious transaction, to minimize optional risk, legal risk, concentration risk and reputational risk²¹.

²⁰ Nindyo Pramono, “ Mengenal Lembaga Perbankan di Indonesia sebuah Pendekatan dari Perspektif Hukum Ekonomi” Penataran Hukum Perdata dan Ekonomi, Fakultas Hukum Gadjah Mada, Yogyakarta , 23-30 Agustus 1999. p.244.

²¹ Ibid, Nindyo Pramono II, p.218.

Inadequate application of Know Your Customer Principle can result in significant financial losses for banks both in terms of assets and liabilities of the bank ²². This principle serves to minimize risk, as banks have inherent risks systematically. Risk loss that occurs in a bank will have an impact not only on the bank concerned, but will also have an impact on customers and the economy as a whole. The impact is called systemic risk which specifically is the risk of bank failure that can damage the economy as a whole and directly impact on employees, customers and shareholders.

The impact of Know Your Customer Principle is quite large on banking activities. Inspiring Authors' understanding and writing about banking topics. As time goes by, problems in banking become dynamic and varied, following space and time that requires special and up-to-date handling to uncover it. In the field of law, it can be mentioned that the Indonesian government has issued a series of regulations in the banking sector with a view to providing benefits to the national economic progress²³. The scope of banking legal arrangements is as follows ²⁴

1. Banking principles, such as efficiency norms, effectiveness of bank health, professionalism of banking actors, the aims and objectives of banking institutions, relationships, rights and obligations of banks.
2. Parties in the banking sector, such as the board of directors and employees, as well as affiliated parties. Regarding the form of legal entity management,

²² Dr. Trisadini P. Usanti & Prof. Dr. Abd. Shomad, Hukum Perbankan, (Kencana ,Cetakan Pertama, 2016), P.29

²³ Kusumaningtuti SS, Peranan Hukum dalam Penyelesaian Krisis Perbankan di Indonesia, (Penerbit Raja Grafindo Persada, Jakarta 2009), p.84.

²⁴ Munir Fuadi, Hukum Perbankan Modern (Bandung: PT Citra Aditya Bakri, 1999) p. 14.

such as PT Persero, Regional Companies, Cooperatives or Limited Liability Companies. Regarding ownership forms, such as private government property, joint ventures with foreign or foreign banks.

3. Specific banking principles are intended to regulate the protection of public interests from banking actions, such as preventing unfair competition, antitrust, customer protection, and others.
4. Regarding the organizational structure related to the banking sector, such as the existence of the Monetary Board, the Central Bank, and others.
5. Which leads to securing the objectives to be achieved by the bank's business, such as courts, incentive sanctions, supervision, prudent banking and others.

Legal products governing the principle of know your customer are always refined from time to time. In Indonesia, the principle of Know Your Customers is first regulated in Bank Indonesia Regulation (PBI) No. 3/10 / PBI / 2001 concerning Application of Know Your Customer Principles as last amended by PBI No. 5/21 / PBI / 2003. The principle of getting to know the customer in this PBI is "the principle applied by banks to find out the identity of customers, monitor customer transaction activities, including reporting suspicious transactions. Then, in 2009, PBI No. 5/21 / PBI / 2003 concerning the Application of Know Your Customer Principles, perfected by PBI No. 11/28 / PBI / 2009 concerning the Implementation of the Anti-Money Laundering and Prevention of Terrorism Funding Programs for Commercial Banks, which are renewed with PBI No. 14/27 / PBI / 2012. This PBI adopts recommendations issued by the Financial Action Task Force (FATF)

relating to efforts to prevent money laundering and prevent terrorism funding using banking facilities and products. . In line with the role of the Financial Services Authority, in 2017 issued OJK Regulation No.12 / POJK.01 / 2017 concerning the Implementation of the Anti-Money Laundering Program and Prevention of Terrorism Funding in the Financial Services Sector in Financial Institutions to complete Previous Regulation.

The objective of this research is to examine the implications of Know Your Customers Principles in banking nowadays. To see the actual implication, the authors conducted a field study at the Bank Tabungan Negara branch of Bumi Serpong Damai branch. State Savings Bank is a State-Owned Enterprise engaged in the field of reproduction since 1897. Its existence from the era before independence until now is interesting to be examined by the author, besides that, Bank BTN has many advantages, namely the number of branches and products. With a quite varied market share from student savings to business financing, the author can see from various points of view in the implication of Know Your Customer Principle.

This topic is quite interesting in the field of academics, so the author makes the previous research as a reference, namely the thesis on "The Implementation of Know Your Customer Principles in Banking Transactions as Prevention of Money Laundering" (Case Study of BRI Bank Somba Opu Branch 2013) by Muhammad Muallif Heru Wicaksono from the Law Faculty of Hasanuddin University in Makassar, 2016 and a thesis discussing "Implementation of Bank Indonesia Regulation Number 5/21 / PBI / 2003 concerning Know Your Customer Principles

at the Surakarta Branch of State Savings Bank" by Lilix Maya Harini from the Faculty of Law, Eleven March University Surakarta in 2008. The author's research is original and has a novelty element, due to differences in the writer from previous research is the perspective of the law taken, and the research object at the State Savings Bank Bumi Serpong Damai branch, which has never been conducted research in place with the same problem formulation before.

Therefore, in this paper the author analyses the implementation of know your customer principle, in case study of Bank Tabungan Negara, Bumi Serpong Damai branch.

1.2 Formulation of Issue

1. How is the regulation regarding Principle of Know Your Customers Carried Out by Bank Tabungan Negara, Bumi Serpong Damai Branch?
2. How is the application of Know Your Customer in the Bank Tabungan Negara Bumi Serpong Damai Branch?

1.3 Purpose of Study

As citizens who study law, this paper was made to prove the usefulness of current regulations that regulate banking law. It's aiming to investigate the role of Bank, and Government Agencies according to the Banking Law.

It also intended as reference material for academics in the understanding and process of criminal acts of corruption to money laundering as one of the material in criminal law courses By using case studies, interviews and theoretical

analysis which is expected to be used as reading material for law students and the general public.

Thus, the community is expected to be vigilant and foster legal awareness by understanding the importance of preventing, and reporting on criminal acts of corruption and money laundering, which can interfere with legal stability and economic stability.

1.4 Benefit of Study

- a. Academic and Theoretic Function – Aiming to develop knowledge regarding Banking Law also Criminal Law in Money Laundering, Corruption.
- b. Practical Function – As an alternative solutions in the matters of preventing corruption and money laundering at once, understanding banking systematics.

1.5 Research Structure

In this study, the authors divided the chapter systematically as follows:

1. Chapter I: Introduction.

As an opening for this thesis, the writer explain a historical background of corruption and money laundering. Hereinafter, the development of the law which is related to institution that responsible of corruption and money laundering. To define, the writers serve case to illustrate. Furthermore, this

chapter examine the formulation of issue, the function of this research and the goal at the end.

2. Chapter II: Literature Review.

This chapter contains a vital part; the definition, conceptual of law and understanding of problems theoretically also empirically from previous research as well as experts. In addition, the author opinion regarding the topics using literature approach will be complete this chapter.

3. Chapter III: Research Methods.

In this section, research process explained in legal perspective, with the description of legal research, the methods of research, data processing and the analysis for this thesis.

4. Chapter IV: Result and Analysis.

This section is acknowledge the formulation of issue in previous chapter. Methods for analyse and answering the issue using case studies and interviews, as well as theories from chapters two and three

5. Chapter V: Conclusion and Suggestion.

At the last, this chapter closes with conclusion and analysis of this research. The suggestion in author perspective is expected to be use in the future.