

CHAPTER I

INTRODUCTION

1.1 Background of Topic Selection

First and foremost, it is important to understand that Indonesia is a country that was founded on the 1945 Constitution and is a country that is based on the rule of law in accordance with Article 1 subsection (3) of the 1945 Constitution which states “The State of Indonesia shall be a state based on the rule of law”.¹ With this in mind, it indicates that the law is a binding force and that all the residents and citizens of Indonesia must obey and follow the laws and regulations that have been set in place by the government.

There are 3 basic values according to Gustav Radbruch that must be implemented in a rule of law country which are the theory of legal certainty, theory of legal benefit and the theory of justice² with each of the theories serving a purpose towards the concept of rule of law and ensures that the laws being drafted would be beneficial towards the development of the country and its legislation. The application of these 3 basic values and/or theories must also follow a hierarchy or

¹ Republic of Indonesia. Undang-Undang Dasar Negara Republik Indonesia (Constitution of the Republic of Indonesia), 1945. <http://www.setneg.go.id/undang-undang-dasar-1945>.

² Tiga Aliran Konvensional Tentang Tujuan Hukum," *Pengadilan Agama Sidikalang*, accessed November 29, 2024, <https://mail.pa-sidikalang.go.id/index.php/publikasi/arsip-artikel/723-tiga-aliran-konvensional-tentang-tujuan-hukum>.

priority in which the theory of justice always comes first, then followed by the theory of legal benefit and lastly followed by the theory of legal certainty as in a humanitarian and legal aspect we must always prioritize justice and ensure that all legal subjects are able to be treated fairly and just before the benefit or the certainty of the law. Furthermore, this would mean that the law must be taken into consideration by any individual, group, party or institution as it must be fair and just for everyone residing in Indonesia. More importantly, there is no person or institution that is above the law and the law sees and visualizes every person and party as equal which is further emphasized in Article 27 subsection (1) of the 1945 Constitution.³

It is also stated in Article 28D subsection (1) of the 1945 Constitution⁴ “Every person shall have the right of recognition, guarantees, protection and certainty before a just law, and of equal treatment before the law” this means that all citizens are also to be protected by the law during any of their activities and endeavors. With this in mind, it is important for Indonesia to promote and conduct strong rule of law obedience as it would benefit and create an environment that supports the development of the economy, maintains economic stability and increases foreign investment. This is due to the fact a country with strong rule of law would allow for the enforcement of law to be effective and efficient. With the

³ Republic of Indonesia. Undang-Undang Dasar Negara Republik Indonesia (Constitution of the Republic of Indonesia), 1945. <http://www.setneg.go.id/undang-undang-dasar-1945>.

⁴ Republic of Indonesia. Undang-Undang Dasar Negara Republik Indonesia (Constitution of the Republic of Indonesia), 1945. <http://www.setneg.go.id/undang-undang-dasar-1945>.

implementation of the law being upheld, it would create a sense of safety and security for business owners and investors to operate in Indonesia as for example it would mean that legal disputes can be resolved, contracts would be enforced and that the rights of business owners and investors would be respected and followed by individuals and parties. In addition, it would reduce acts of corruption, collusion, and nepotism as well as unpredictable decisions made by government officials which lead to a more healthy and fair business environment for business owners and investors to compete in. Hence, it would also provide more stability which is attractive for business owners and investors in Indonesia.

On the other hand, banks or the banking system plays a vital role in a country's government and economy including Indonesia as a bank act as the biggest intermediary for transactions on an individual scale up till transactions done by multinational corporations and conglomerates in which each transaction contributes towards Indonesia's economic cycle. Which in turn would stimulate the country and in the long run develop Indonesia.⁵ Moreover, this allows the banks as intermediaries to support international trade between Indonesian companies and foreign companies during financial transactions as well as aide in investment towards Indonesia in the many sectors of Indonesia's economy such as the mining sector, tourism sector, manufacturing sector. Furthermore, banks can support financial innovation and financial inclusion for the people of Indonesia, such as

⁵ Zuhri, Saifudin. 2024. Review of *Analysis of the Banking Industry in Indonesia through the Structure-Conduct-Performance Approach*. *Journal of Economics Research and Policy Studies*, 16.
<https://journal.nurscienceinstitute.id/index.php/jerps/article/download/1094/391/4483>.

creating new fintech (Financial Technology) which can make banking more accessible for consumers and businesses.⁶

Moreover, such innovations can be used to create systems and algorithms that allow lower-privileged class consumers to also take advantage of banking services which currently do not fully and effectively utilize the Indonesian banking system. Last but not least, as the role of the banks are to take deposits and make loans, they are also responsible for regulating the issue of credit to individuals and to business owners in Indonesia. With this in mind, it would help expand and stimulate Indonesia's economy, but the bank must also act as a body which can regulate the amount that it can lend and ensure that creditors would be able to repay their loans thus allowing for more stable and sustainable economic growth. In collaboration with financial innovation, it is hoped that banks would be able to reach lower-class consumers and provide them with loans that can allow them to take advantage of entrepreneurial opportunities.

The function of deposit accounts in the banking system contributes in many roles including towards the source of funding for banks, with the money that is deposited to the bank by businesses and individuals it is then lent to creditors, invest in potential profit-gaining opportunities for the bank as well as improve the

⁶ Riny Jefri, Nurul Maghfirah Surianto, Eka Putra, and Maya Novitasari. 2024. "Impact of Financial Technology on the Financial Performance of Conventional Banks in Indonesia." *Jurnal Ilmiah Akuntansi* 9, no. 1 (July): 273–91. <https://doi.org/10.23887/jia.v9i1.71096>.

banking services of the bank. Furthermore, it allows the facilitation of payment systems that are used on a daily basis by individuals and business owners for transactions such as account payables, account receivables and other transactions necessary.⁷ In addition, banks also use deposit accounts to manage their liquidity and ensure that they hold enough cash to be able to accommodate the withdrawal of deposits from the bank consumers, this is crucial as the liquidity of a bank is key to maintaining the public trust towards the bank and prevent bank runs and financial crisis in the future.⁸

On the other hand, deposit accounts are also beneficial for the Indonesian society as it provides a platform for Indonesian citizens to safely and securely store their money, as deposit accounts are protected by the bank and reinforced by banking laws which in turn increases the level of confidence and trust in the banks and the banking system eventually leading to higher usage and development of the system nationwide.⁹ In addition, a deposit account benefits the Indonesian society by providing access to other financial services such as loans, investment, credit cards which in turn leads to the opportunity to grow their wealth and manage their finances in a more spread out and less-risk environment. Furthermore, deposit

⁷ Bolton, Patrick, Ye Li, Neng Wang, and Jinqiang Yang. 2023. Review of *Dynamic Banking and the Value of Deposits*. https://business.columbia.edu/sites/default/files-efs/citation_file_upload/Bolton%20Li%20Wang%20Yang%20Dynamic%20Banking%20JF%20forthcoming.pdf.

⁸ Hermansyah, *Hukum Perbankan Nasional Indonesia* (Jakarta: Kencana Prenada Media, 2010)

⁹ Winarto, Jacinta, Marcellia Susan, and Hernia. n.d. Review of *DETERMINANTS of CUSTOMER DEPOSITS in the BANKING SECTOR LISTED on INDONESIA STOCK EXCHANGE. MODUS* 34, no. 2: 140–57. <https://ojs.uajy.ac.id/index.php/modus/article/download/5699/2738>.

accounts also encourage budgeting and financial planning for individuals and businesses. This leads to greater financial stability as individuals and businesses can set apart sums of money which can be allocated to prioritized items such as for college education and new machinery respectively.¹⁰ This also leads to improved access to lines of credit, as owning a deposit account builds a financial profile in the bank which is used to determine the access to credit for individuals and businesses.

Hence, by demonstrating good financial management and responsibility in the deposit account, the bank would be more willing to provide access credit. Lastly, the usage of deposit accounts is more convenient for the consumers of the banking system as users would be able to utilize ATMs, mobile banking and electronic banking to facilitate their transactions, enhancing financial and economic participation as this would mean that more remote areas would still be able easily engage in transactions without having a physical bank branch. With this in mind, and the amount of safety and security that must be considered for deposit accounts as the majority of Indonesians put their confidence and trust in banks from the usage of deposit accounts. Leading to the banking system being very supervised and regulated.

¹⁰ “Getting to Know Deposit Investments: Different Types and Their Benefits.” 2024. DBS. 2024. <https://www.dbs.id/digibank/id/en/articles/mengenal-investasi-deposito-jenisjenis-dan-keuntungannya>.

As the banking system and the banking institutions are very highly supervised and regulated, and as stated by Jonker Sihombing (2011) who stated that “A bank is a financial institution whose business activities are related to various types of risks, and a bank must be able to survive in the midst of these risks. Therefore, banks must be able to achieve targets mandated by shareholders in the midst of existing risks. The principle of prudence (prudential banking practices) is a reference that must always be held by bankers in carrying out bank activities that they lead”¹¹ meaning that banks operate with high risks and must be protected by strict laws and as banks continue to develop and evolve in accordance with technological advancements and cultural and societal changes, there must be an advancement and amendments in the law to ensure that banking regulations are also up to date. One of the first regulation in banking that was legislated was Law 7/1992 concerning Banking, this law serves as the basic framework of banking law and emphasizes the licensing, establishment and basic regulation of banks both commercial and rural. This law includes the main activities of banks such as the distribution and collection of funds, risk management and regulations for everyday banking operations. Nevertheless, in regards to the fact that the laws act as a basic framework, it was vague and generalized and had to be updated to keep up with technological advancements and current trends, this law was then amended by Law 10/1998, which further completed and supplemented the previous laws as it focused

¹¹ Sihombing, Jonker, *Butir-Butir Hukum Perbankan*. (Bekasi: Red Carpet Studio, 2011)

on the importance of not only an individual bank's performance but also towards the performance of the banking system as a whole.

Later on, in the 21st century Law 21/2008 on Sharia Banking was legislated as Indonesia is a Muslim majority country, as there was increasing demand from the Muslim community for a banking system that does not conduct in *riba* which is considered *haram* by the Muslim community.¹² Therefore, banks that operate under Sharia and Muslim principles are prohibited from charging interest to its clients but instead use a model of profit-sharing. The law also specifies more on how Sharia banks can be operated and managed in accordance with Sharia principles. Last but not least would be Law 9/2016 on Prevention and Resolution of Financial System Crisis. This law was drafted and legislated to ensure that the banking system can be protected from financial crises. The laws that have been put in place establish protocols to safeguard the banking system and appoint several institutions and authorities to manage banking crises and maintain financial stability as well as problems of liquidity in banks.

Moreover, there are 3 regulatory bodies for banking in Indonesia which is the National Bank or Bank Indonesia, the Financial Services Authority or the Otoritas Jasa Keuangan and the Indonesia Deposit Guaranteeing Corporation or the Lembaga Penjamin Simpanan. Bank Indonesia maintains monetary stability and

¹² Samudra, Muhammad Tun. 2022. Review of *Politics of Sharia Banking Law in Indonesia*. *LEGAL BRIEF* 11, no. 2 (May).
<https://legal.isha.or.id/index.php/legal/article/download/326/261/1122>.

regulates the banking system, this includes the implementation of monetary policy, the management of the national payment system such as the Indonesian Rupiah (IDR) and in more modern times the management of electronic national payment system such as QRIS, as well as regulating and supervising the banking sector.¹³ Bank Indonesia also has the authority to license banks and banks would also consult with Bank Indonesia if faced with issues with liquidity. On the other hand, the Financial Services Authority is the main regulatory and supervisory body for banks, financial institutions, insurance companies and capital markets that operate in Indonesia.¹⁴ It monitors that all these institutions are complying with the laws and regulations that have been put in place, and assess the risk management practices. The Otoritas Jasa Keuangan is also capable of penalizing these financial institutions if it finds that they are not complying with regulations. It is also capable of establish legislation concerning the supervision and the regulation of financial institutions¹⁵ such as regulations on consumer protection. The Indonesia Deposit Guaranteeing Corporation (LPS) on the other hand acts as insurance to safeguard the funds of depositors in case of a bank run or there is a bank failure.¹⁶ In which depositors can

¹³ "Overview." n.d. [Www.bi.go.id. https://www.bi.go.id/en/fungsi-utama/stabilitas-sistem-keuangan/ikhtisar/Default.aspx](https://www.bi.go.id/en/fungsi-utama/stabilitas-sistem-keuangan/ikhtisar/Default.aspx).

¹⁴ "Memahami Fungsi Dan Wewenang Otoritas Jasa Keuangan (OJK)." n.d. [Www.cimbniaga.co.id. https://www.cimbniaga.co.id/id/inspirasi/perencanaan/wewenang-ojk](https://www.cimbniaga.co.id/id/inspirasi/perencanaan/wewenang-ojk).

¹⁵ Sihombing, Jonker, *Otoritas Jasa Keuangan; Konsep, Regulasi Dan Implementasi*. (Jakarta: Ref Publisher, 2012)

¹⁶ "Artikel :: [Artikel] Memahami Peran Lembaga Penjamin Simpanan Sebagai Jaring Pengaman Sistem Perbankan Nasional." n.d. [Bppk.kemenkeu.go.id. https://bppk.kemenkeu.go.id/balai-diklat-keuangan-malang/artikel/artikel-memahami-peran-lembaga-penjamin-simpanan-sebagai-jaring-pengaman-sistem-perbankan-nasional-127688](https://bppk.kemenkeu.go.id/balai-diklat-keuangan-malang/artikel/artikel-memahami-peran-lembaga-penjamin-simpanan-sebagai-jaring-pengaman-sistem-perbankan-nasional-127688).

be guaranteed up to 2 billion IDR per client per bank if there is a bank failure. This was set in place to build confidence and trust for depositors in the bank.

Furthermore, these regulatory bodies also have the authority to also make their own specific laws and regulations (*lex specialis*) in accordance with Articles 7 and 8 of Law 12/2011 in which Article 8 further emphasizes from that of Article 7 specifically stating “(1) Types of Legislation other than those referred to in Article 7 paragraph (1) include regulations stipulated by the People's Consultative Assembly, People's Representative Council, Regional Representative Council, Supreme Court, Constitutional Court, Audit Board, Judicial Commission, Bank Indonesia, Ministers, agencies, institutions or commissions of the same level which are established by Law or by the Government on the orders of Law, Provincial People's Representative Council, Governor, Regency/City People's Representative Council, Regent/Mayor, Village Head or equivalent”.¹⁷ This is due to the fact that the general laws would not be able to cover the specific issues that must be covered by these institutions. Examples of this would be Law 8/2010 on the Prevention and Eradication of Money Laundering that was issued by Bank Indonesia and the Otoritas Jasa Keuangan, which specifically focuses on the law enforcement and the prevention of money laundering, as money laundering is a complex issue which requires in-depth investigations and methods which would be too specific to be implemented in the *lex generali*. On the other hand, Bank Indonesia also has created

¹⁷ Republic of Indonesia, *Undang-Undang Republik Indonesia Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan* (Law No. 12 of 2011 on the Formation of Legislation), 2011, <https://www.bphn.go.id/data/documents/11uu012.pd>

another regulation which is Bank Indonesia Regulation No. 20/6/PBI/2018 in regards to *E-Money* and Payment Systems. The Bank Indonesia must legislate this regulation as they must always develop and continue following the current technological development, as regulations that are legislated by institutions are much easier to draft and approved while having to an extent binding legal force whilst not having to follow the whole process of getting laws to be legislated by the DPR and the President.

Nevertheless, in accordance with the general explanation of Article 29 of Law 10/1998,¹⁸ banks are required to have and implement an internal supervision system in order to ensure the implementation of the decision-making process in bank management in accordance with the principle of prudence. Considering that banks primarily work with funds from the public that are deposited in banks on the basis of trust, every bank needs to continue to maintain its health and maintain public trust in it. This is due to the fact that in reality, many cases that are related to banking are caused by the mismanagement of funds by banking staff and/or the misuse of certain influential positions in banking organizations and/or the banking system to acts that are against the law. In addition, banks is a very strategic means for committing criminal acts in the financial/banking sector, because it is a form of business that has the flexibility to collect and distribute funds.¹⁹

¹⁸ Republic of Indonesia, *Undang-Undang Republik Indonesia Nomor 10 Tahun 1998 Tentang Perubahan Atas Undang-Undang Nomor 7 Tahun 1992 Tentang Perbankan* (Law No. 10 of 1998 on the Amendment to Law No. 7 of 1992 on Banking), 1998, <https://www.bphn.go.id/data/documents/10uu010.pdf>.

¹⁹ T. Abdullah, *Bank dan Lembaga Keuangan* (Jakarta: Raja Grafindo Persada, 2012).

Hence, in order to further understand and dive deeper into this significant problem in the world of banking and the supervision and law enforcement of banking crime, we would like to further investigate a case of embezzlement in a branch of Bank Danamon that has been finalized (*inkrah*) by the District Court of Tangerang with Decision No. 876/Pid.B/2021/PN Tng being the case that has been chosen to be further analyzed as embezzlement is a very serious crime that often happens in the banking environment. This further analysis of embezzlement in a banking institution we hope can become a gateway to preventing similar cases in banking institutions in the coming future and also deter potential perpetrators from engaging in such acts.

1.2 Formulation of Problems

1. What are the legal issues and the obstacles during the law enforcement of the banking crime that happened in Decision No. 876/Pid.B/2021/PN Tng?
2. What are the solutions towards the obstacles that were present in the law enforcement of the banking crime that happened in Decision No. 876/Pid.B/2021/PN Tng?

1.3 Purpose of Internship

The purpose of my internship is to further understand the legal system and the environment that I will have to face in the future as an aspiring legal advocate. As quoted by famous author Roy T. Bennett “Some things cannot be taught; they must be experienced. You never learn the most valuable lessons in life until you go

through your own journey”.²⁰ With this quote, I reflect on the past in which I am very grateful for the excellent provision of legal education by the lecturers and staff at the Law Faculty of UPH. However, my hunger for further knowledge pushes me to seek more than what is taught at university and experience in a more practical sense how I would be able to utilize the education that I have received and learned from UPH into the legal environment of Indonesia. With this in mind, I believe that taking the internship program over the undergraduate thesis would allow me to gain more practical experience that may be beneficial for my future occupation as a legal advocate in Indonesia.

Furthermore, I also intend to apply the theoretical knowledge that I have gained during my legal studies in UPH Karawaci to my internship in hopes of allowing me to further understand what has been taught by my lecturers as well as develop more real-world skills such as communication between other lawyers, time management between different legal assignments. Moreover, with this particular case and topic that I have chosen, I believe that I will be able to deepen my understanding of Banking Law, Criminal Law as well as the Criminal Procedural Law, including how effectively and efficiently the law is implemented and enforced as well as the obstacles that I may face during the enforcement of the laws stated

²⁰ 2024. Google.com. 2024.
<https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.goodreads.com/quotes/7769556-some-things-cannot-be-taught-they-must-be-experienced-you&ved=2ahUKEwj2d3GxvWJAxVq4TgGHQdvEXIQFnoECBUQAQ&usg=AOvVaw2u-V4de07EbJUnWLi0IYa3>.

beforehand and what solutions can be used to combat said obstacles. In addition, I hope that I will be able to connect with professionals and senior lawyers that have practiced law for over a long time and have a lot of experience in the world of legal practice, in which they may be able to feedback and guidance in my performance which would allow myself to improve and develop into a better legal practitioner.

1.4 Benefits of the Internship

1.4.1 Theoretical Benefits

The theoretical benefits of this internship are first and foremost is the practical application of the legal theory that has been taught by the lecturers at UPH as I have stated beforehand. By conjoining the theoretical knowledge that I have learned during my classes in UPH onto real-world cases I would be able to learn how legal principles and the law itself is implemented and interpreted across different situations. This in turn allows myself to gain more experience for practice later on after I have been sworn in as a legal advocate. In addition, I would also be able to observe the civil and criminal procedures of the law on a first-hand basis such as the registration and administration of cases to the court both through e-court and manually going to the court (*Pengadilan Negeri*) and also witness examinations and even discussions with law enforcement officers. Likewise, I would also be able to observe my senior lawyer and paralegal colleagues strategize and brainstorm on how to handle and approach different cases and what kind of insights or ideas from a theoretical standpoint that can be implemented on a practical sense which will

then be used as legal arguments in legal opinions or during court appearances and many other situations.

Additionally, I would also be able to understand and observe the real-world ethical dilemmas of being a lawyer, as I would be able to experience legal ethics directly such as attorney-client privilege, conflict of interest and professional responsibility such as holding commitments and setting professional expectations for clients. Likewise, participating in interactions with clients and potential clients would supplement the expectation for professionalism and confidentiality that must be followed when practicing law in the future. This would then be followed by building confidence and legal professionalism when practicing law that I must face in the future while simultaneously developing how I can effectively communicate to future clients for negotiations or in different legal scenarios such as during mediations or even during court situations.

1.4.2 Practical Benefits

On the other hand, there are also several practical benefits of internship, such as finding and building a mentorship with senior lawyers. This would open a gateway to being able to observe and learn the practice of law under an experienced and senior lawyer. Consequently, this could lead to securing strong recommendations and references from mentors which can become very beneficial for securing job opportunities in the future. Additionally, internships would allow

hands-on experience and development regarding case preparation and drafting legal documents especially with the guidance from senior lawyers as mentors.

Furthermore, internships help strengthen time-management and organization as there are multiple cases in a law firm and this would allow myself to learn the importance of certain tasks that must be prioritized and manage time effectively between different projects. Last but not least, would be the fact that internships would help develop client interaction skills such as being able to understand the needs of the client, this can be observed during client and potential client consultations and meetings, this allows interns to handle the concern of the clients and how they can communicate solutions on an easy-to-understand basis for the client.

1.5 Time and Location of Internship

My internship program is hosted by Parama & Co Law Office which is based in Jakarta on Jalan Sukarjo Wiryopranoto, No 2/2. I started my internship on 1st August 2024 and will end on 1st December 2024 which is a total of 4 months. My work schedule starts at 8:30 AM till 6:00 PM WIB from Monday to Friday with the possibility of overtime if necessary.

1.6 Systematics of Writing

The systematic or structured organization of an undergraduate thesis is essential as it enhances the readability and the clarity of the flow of the thesis itself

and helps clarify the research purpose and problem. Hence, this undergraduate thesis has been divided into 5 (five) main chapters to help the reader more feasibly understand this undergraduate thesis which are correlated and sequential. The systematics of this writing are organized as follows:

CHAPTER I INTRODUCTION

The introduction opens the gateway for the undergraduate thesis as it introduces the topic and background information and the importance and significance of the study. This includes the formulation of problems that will be discussed in the undergraduate thesis as well as the general benefits that the internship can bring for the Author of the thesis.

CHAPTER II THEORETICAL BASIS

This chapter highlights the theoretical framework and concepts that are included during the research that has been conducted to be able to produce this thesis and further explains the definitions of the concepts and theoretical framework present in this thesis. This includes concepts such as Banking Law, Embezzlement of Funds, and Criminal Law. This also provides context on how this concept correlates to the undergraduate thesis.

CHAPTER III OVERVIEW OF INTERNSHIP AGENCY

This chapter introduces the organization in which the internship is conducted and further discusses Parama & Co Law Office's structure, operations and the various services that it provides. In addition, this chapter also discusses the duties and tasks that must be completed during the

internship and the personal experience that has been gained throughout the whole internship period.

CHAPTER IV DISCUSSION

This chapter discusses the analysis of the case that has been chosen, which in this case is the Bank Danamon Indonesia case regarding embezzlement and its correlation with Indonesian Banking Law and Criminal Law regulations. Furthermore, this chapter will include the data and insight that will be used to analyze and find solutions regarding the formulation of problems that have been stated beforehand.

CHAPTER V CONCLUSION

The last chapter in this undergraduate thesis summarizes the analysis of the case and emphasizes the importance of the issue that has been discussed. This includes a concise reflection of the key points that were analyzed as well as the discussion of the problems that were formulated in the introduction of this undergraduate thesis. Moreover, a theoretical and/or practical solution is to be provided in regards with the analysis of the problems that has been formulated that could be implemented by practitioners of banking and criminal law or the institutions that would find it relevant to apply.