



THE RELATIONSHIP BETWEEN BANKING LEGAL PROTECTION AND CRIMINAL LIABILITY IN THE CASE OF CUSTOMER FUND EMBEZZLEMENT (STUDY OF DECISION NO.107/PID.B/2022/PN.PIN)

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Abstract - Banking institutions function as financial intermediaries that channel funds from surplus units to deficit units, and their existence is highly dependent on the principle of trust. One of the most serious challenges faced by banks is the embezzlement of customer funds by internal actors, sometimes using forged documents. This issue is exemplified in Decision No. 107/Pid.B/2022/PN.Pin, which highlights weaknesses in internal banking supervision, causing significant customer losses and undermining the stability of the national financial system. Normatively, embezzlement is regulated under Articles 372 and 374 of the Indonesian Penal Code (KUHP) and specifically addressed in Article 49 paragraph (1) of Law No. 10 of 1998 on Banking, which imposes criminal sanctions on bank officials or employees who abuse their authority.

Keywords: Banking law, Fund Embezzlement, Legal Protection, Customers.

INTRODUCTION

Banking plays a crucial role in supporting national development, particularly as a financial intermediary institution that collects funds from the public in the form of deposits and redistributes them back to the public in the form of loans or other forms (Ghozali et al., 2024). As a financial institution that relies on trust, the existence of banks is greatly influenced by the public's confidence in the protection of the funds they entrust. Therefore, the principles of prudence and the integrity of bank employees are important aspects in maintaining public trust (Fajriah et al.,

2022).

However in reality, there is often an abuse of power by bank employees, such as thru the criminal act of embezzling customer funds. Embezzlement of customer funds is an action carried out by individuals within the bank, whether staff or officials, who illegally take or utilize customer funds for personal or group gain. The act of embezzling customer funds can erode public trust in financial institutions. In line with the research conducted by Ratmono regarding the behavior of bank employees, it is mentioned that "a bank employee will seek opportunities to commit fraud to cope with personal

pressures, whether financial or non-financial; pressure alone is not enough to drive fraudulent actions, but there must also be opportunities arising from weaknesses in the internal control system" (Ratmono & Frendy, 2022). This finding indicates that the weakness of the internal supervision system is one of the main factors that opens up opportunities for fraudulent activities in the banking sector. One of the cases of abuse of power involves the Embezzlement of Customer Funds thru Document Forgery that occurred in Pinrang Regency in Decision No. 107/Pid.B/2022/PN.Pin. It is known that this action is not only dangerous and detrimental to the customers as the owners of the funds, but it also damages the image of banking and can disrupt the stability of the national financial system. Normatively, embezzlement of customer funds is categorized as a criminal offense regulated by the Criminal Code (KUHP), particularly Article 372 of the KUHP regarding embezzlement and Article 374 of the KUHP which regulates embezzlement by individuals who obtain control over goods due to employment or search relationships. Furthermore, criminal activities in the banking sector are also specifically regulated by Law Number 10 of 1998, which amends Law Number 7 of 1992 concerning Banking, particularly Article 49 paragraph (1) letter a, which states that members of the board of commissioners, directors, or bank employees who intentionally alter, obscure, conceal, delete, or eliminate accounting records or bank reports can be subject to criminal sanctions. This provision indicates that the act of embezzling customer funds is not only an ethical and administrative violation but also a crime that can result in imprisonment (Law No. 10 of 1998).

Law Number 8 of 2010 on the Prevention and Eradication of Money Laundering (TPPU) is also important, because funds obtained from embezzlement can be transferred, hidden, or used in other financial transactions related to money laundering crimes (Datau, 2017). This shows that embezzlement of customer funds is not merely an issue between the bank and the customer, but has a significant impact on the national financial system and can lead to ongoing criminal activities.

In the context of banking law, actions in this case need to be taken seriously as they reflect a violation of the Banking Law, which in this case regulates the bank's responsibility to protect customer funds and the fundamental role of the bank as a trust institution. Banking is bound by the principle of prudence as stated in Article 2 of the Banking Law, emphasizing that banking in Indonesia conducts its business based on economic democracy by applying the principle of prudence. Therefore, any violation that undermines these principles must be addressed firmly using criminal law instruments (Bahsan, 2007).

The phenomenon of embezzlement of customer funds creates a need for a deeper analysis of the criminal liability of the perpetrators, the relevance of provisions in general criminal law and banking law, and the extent to which the banking legal system can protect customers. Analysis from the perspective of banking law is essential to understand the relationship between banking regulations, general criminal law, and efforts to protect customers as a form of consumer protection in the financial services industry. In this case, it reveals the weakness of the internal banking supervision system. The crime of embezzlement thru document forgery

can only occur if there are gaps in the bank's control and audit mechanisms. In the perspective of banking law, this contradicts the principle of prudence.

MAIN PROBLEM

Based on the above description, the researcher formulates the problem as follows: How is the legal protection of Customer Funds regulated based on the provisions of Article 49 paragraph (1) of Law Number 10 of 1998 concerning Banking in cases of embezzlement of customer funds thru document forgery? And how is the criminal liability for the embezzlement of Customer Funds thru document forgery in Decision No. 107/Pid.B/2022/PN.Pin?

In this case, the researcher wants to analyze the extent to which banking regulations can provide legal protection to customers, as well as how these provisions are implemented in banking practices when there is an abuse of authority by bank employes. Then also to show how the perspective thru criminal law can be used to provide a strong foundation in imposing criminal sanctions in such cases, as well as reflecting the application of articles that can provide a sense of justice for the victims while also giving a deterrent effect to the perpetrators of the abuse of power by committing embezzlement.

METHOD OF RESEARCH

Research methods are a method of problem-solving and the development of knowledge known as research methods. In this research, the researcher uses a normative juridical research method based on references found in books, journals, websites, and other references.

Johnny Ibrahim argues that normative legal research is a scientific process that seeks to uncover a truth based on the scientific principles of the normative

aspects of law. The solid scientific logic used in this type of research is based on the discipline of field science. Normative legal science focuses on the law itself, making it an introspective study of the law as the object of investigation.

RESEARCH RESULT AND DISCUSSION

Legal Protection of Customer Funds Based on the Provisions of Article 49 Paragraph (1) of Law Number 10 of 1998 Concerning Banking in Cases of Criminal Acts of Embezzlement of Customer Funds by Means of Document Forgery

Legal protection for customer funds in the conduct of banking activities has two main dimensions: Criminal law regarding sanctions against perpetrators of banking crimes and Civil law concerning corporate liability for efforts to recover customer losses. In Law Number 10 of 1998 concerning Banking, various banking crimes are regulated, including provisions that refer to the actions of bank employes, Directors, or Commissioners who commit unlawful acts such as document forgery that harm customers. This statement is based on the text and interpretation of Article 49 of the Banking Law. Article 49 paragraph (1) of Law No. 10/1998 stipulates that members, the Board of Commissioners, the Board of Directors, or bank employes who intentionally commit certain acts that cause losses to the bank or customers can be criminally prosecuted. In legal practice, this provision is used to ensnare bank employes or officials who commit document forgery, false recording, or other actions that result in the disappearance of customer funds. Therefore, the Text of the Law and its implementing provisions become references for determining the

elements of the crime and the threat of punishment.

As is known, legal protection for customer funds is an important aspect in the banking world because public trust in banks is greatly influenced by the guaranty of deposit security. Law Number 10 of 1998 concerning Banking explicitly regulates this through Article 49 paragraph (1), which states that members of the board of commissioners, directors, or bank employees who intentionally cause losses to the bank or customers can be subject to criminal liability (Law No. 10 of 1998). This provision indicates that the law not only provides preventive protection but also repressive measures by criminally prosecuting internal bank parties who abuse their authority. The relevance of this article is clearly evident in the Pinrang District Court Decision Number 107/Pid.B/2022/PN. Pin, where a bank employee was proven to have embezzled customer funds by falsifying documents (Pinrang District Court Decision No.107/Pid.B /2022/PN.Pin). The modus operandi used was manipulating documents to make the transactions appear legitimate, while the actual intent was to unlawfully divert the funds. Such actions clearly harm customers and simultaneously tarnish the integrity of the banking institution. Therefore, Article 49 paragraph (1) is relevant to use, considering that the perpetrator is an insider within the bank who has direct access and deliberately misuses the trust given to him.

If examined further, the legal protection contained in this article can be viewed from two sides. First, from the preventive side, the criminal threat in Article 49 paragraph (1) functions to prevent abuse by bank employees. Second, from the repressive side, customers who suffer losses obtain legal certainty because the

perpetrators can be charged under special criminal provisions in the banking sector, which are more specific compared to general articles in the Criminal Code. Thus, protection of customer funds is not only based on the bank's internal supervisory mechanisms but is also guaranteed through criminal law instruments.

Furthermore, the relationship between Article 49 paragraph (1) and this court decision demonstrates the synchronization between banking law and general criminal law. The act of document forgery can indeed be prosecuted under Article 263 of the Criminal Code, while the act of embezzlement can be charged under Article 372 of the Criminal Code. However, the existence of special provisions in the Banking Law emphasizes that crimes in the banking sector have their own characteristics, namely involving public trust in the financial system. Thus, legal protection for customer funds does not merely mean the return of financial losses, but also efforts to maintain the stability and credibility of banking institutions.

From the description, it can be concluded that in Decision Number 107/Pid.B/2022/PN.Pin, it is a concrete example of the application of Article 49 paragraph (1) of the Banking Law. This legal norm proves that the state is present to provide legal certainty for customers while also strengthening the integrity of the banking system. The legal protection referred to not only provides a sense of security to the aggrieved customers but also ensures that any violations committed by bank employees will be processed and sanctioned according to the applicable regulations. Although Article 49 paragraph (1) of Law Number 10 of 1998 on Banking has already provided a legal basis criminal law to protect customer funds, its

regulations still leave some weaknesses, namely;

- a) First, the regulated protection emphasizes action after the crime has occurred (repressive), while preventive instruments to ensure that customer losses do not arise from the beginning are still limited. The fact that cases of embezzlement thru document forgery, such as in the Pinrang District Court Decision Number 107/Pid.B/2022/PN.Pin, can still occur indicates that the bank's supervision and internal control mechanisms are not yet fully effective.
- b) Second, the existence of criminal sanctions in Article 49 paragraph (1) does not fully guaranty the return of lost funds. Criminal prosecution of the perpetrator does provide a deterrent effect, but the certainty of customer loss recovery often still depends on the bank's policy or thru civil litigation. With such conditions, customers remain in a vulnerable position.
- c) Third, this regulation places more emphasis on the criminal responsibility of individual bank managers or employes, while comprehensive responsibility has not been detailed.

This shows that the available legal protection is still partial. Therefore, additional steps are needed to make it more comprehensive, such as strengthening the internal oversight system, consistently applying the principle of prudence, and clarifying the compensation or restitution mechanisms for affected customers (Huda & Puspitasari, 2018). Thus, legal protection is not only about punishing the perpetrators but also ensuring the security and recovery of

funds entrusted to the bank by the public.

Criminal Responsibility for the Crime of Embezzlement of Customer Funds by Means of Document Forgery in Decision No.107/Pid.B/2022/PN.Pin

In criminal cases, judges are required to seek and prove the truth of the facts of the events that occurred during the trial, whether it be witness evidence or supporting elements. They must do this based on the prosecutor's indictment (Awdina et al., 2024). In Decision No. 107/Pid.B/2022/PN.Pin, Article 374 of the Criminal Code in conjunction with Article 64 paragraph (1) of the Criminal Code is applied as a response by the criminal justice system to the crime embezzlement of customer funds committed by a bank employe who falsified documents. The core issue lies in the abuse of authority by a bank employe who has access to customer funds. Based on the provisions of Article 374 of the Criminal Code, it states that "Anyone who embezzles something that is in their possession due to an employment relationship or due to a search, or because they receive wages for it, shall be punished for embezzlement with a prison sentence of up to five years" (Indonesian Criminal Code, Article 374). Based on this provision, the main element that needs to be proven is the act of embezzlement committed due to an employment relationship or position (Engka, 2023). In criminal cases, judges are required to seek and prove the truth of the facts of the events that occurred during the trial, whether it be witness evidence or supporting elements. They must do this based on the indictment from the Public Prosecutor. In this case, the defendant had the responsibility to manage

customer funds according to banking procedures, but instead transferred a portion of the funds for personal use. The action shows that the defendant has violated the trust given to him by the bank and the customers. Thus, the element of "the item delivered due to the employment relationship" can be considered proven legally and convincingly in front of the law.

Furthermore, in the judge's considerations, the application of Article 64 paragraph (1) of the Criminal Code, which relates to continuous acts or *voortgezette handeling*, is also evident. This article states that "if someone commits several acts that each constitute a crime or offense and are so related that they must be regarded as a single continuous act, then only one punishment shall be imposed" (Indonesian Criminal Code, Article 64(1)). In this ruling, the defendant's actions were not only committed once but repeatedly with the same pattern and purpose, namely to gain personal profit through the manipulation of customer transactions. The repetition of the acts with the same intent and purpose fulfills the criteria for a continued offense as referred to in that article. The panel of judges determined that each action of the defendant was part of a series of acts that were consciously planned. Thus, even though the actions were carried out multiple times, they are still legally considered as a single unit of criminal offense. The application of this article is appropriate because it illustrates the continuity of interrelated actions carried out systematically. The *modus operandi* used in this case is forgery transaction documents used as a means to facilitate the crime of embezzlement (Ardha, 2020). A study on internal control systems in banking reveals that control activities such as segregation of duties, authorization procedures, reconciliation, and

periodic audits serve as both preventive tools and oversight mechanisms (Almaliki, 2023). These findings emphasize that when internal controls are not functioning properly, actions like document forgery can go undetected for extended periods and eventually become part of a structured series of criminal activities. This oversight gap was then exploited by the perpetrator to manipulate banking documents. The defendant manipulated banking administrative evidence to make it appear as though the transactions were legitimate and in accordance with the bank's internal procedures. The forgery of the documents is not a standalone crime, but rather a tool or method used to facilitate the embezzlement of customer funds (Sugiharti, 2023). In a legal perspective, the forgery strengthens the proof of the element of intent (*mens rea*) of the perpetrator. The judge considers that this action demonstrates malicious intent and careful planning, as the defendant consciously created false documents to cover up the crime. Therefore, the connection between embezzlement and document forgery becomes important evidence that strengthens the legal case against the defendant's actions.

From the perspective of the judge's legal considerations, the decision in this case demonstrates the application of the law in accordance with the principles of justice and legal certainty. The panel of judges considered all pieces of evidence, including witness testimonies, transaction documents, and the defendant's confession during the trial. The consideration shows that the judge not only evaluates the formal elements of the legislation but also looks at the social and moral impacts caused by the defendant's actions (Purba et al., 2024). In the context of banking law, this action undermines

public trust in financial institutions and causes losses to customers. Therefore, this decision sends a moral and legal message that any breach of trust in the financial system must be dealt with firmly. Thus, the application of Article 374 in conjunction with Article 64 paragraph (1) of the Criminal Code is considered appropriate because it reflects a balance between the aspects of justice, legal certainty, and social utility.

CONCLUSION

Based on the analysis results, it can be concluded that the application of Article 374 of the Criminal Code in conjunction with Article 64 paragraph (1) of the Criminal Code has been carried out correctly regarding the crime of embezzling customer funds accompanied by the modus operandi of document forgery. The judge successfully proved the element of "property entrusted due to an employment relationship" as referred to in Article 374 of the Penal Code, because the defendant, as a bank employee, abused the trust and authority of his position to unlawfully transfer customer funds. The application of Article 64 paragraph (1) of the Criminal Code is also appropriate, as the acts were committed repeatedly with the same intent and purpose, thus categorizing them as a continuing crime.

Furthermore, this research also shows that Article 49 paragraph (1) of Law Number 10 of 1998 concerning Banking provides a strong legal basis for criminal law to protect customer funds from abuse of authority by

internal bank parties. However, this repressive legal protection has not been fully effective because it has not been complemented by adequate prevention and recovery mechanisms for the harmed customers. This case

proves that the bank's internal supervision still has gaps that allow for the crime of embezzlement through document forgery.

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