

CORRUPTION IN BANKING IN INDONESIA

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ABSTRACT

The provision of credit by banks to customers includes matters of a civil and administrative things. However, at some point, these things can intersect with a criminal event and become a criminal offense, that is, if it is found that there is a violation of the law either committed by the creditor or debtor against the provisions stipulated in the law which in those provisions contains criminal sanctions. In fact, if this happens to the credit termination party at the government bank because of its inattention in cutting off the provision of credit to the debtor, causing financial losses to the bank, then the credit breaker may be subject to criminal provisions in the corruption law because of losses to government banks, indirectly it is also a financial loss of the state.

Keywords: The principle of prudence of the bank, government banks, financial loss of the state

INTRODUCTION

Based on article 1 number 2 of Law no. 7 of 1992 concerning Banking as amended by Law no. 10 of 1998, it is explained that "a bank is a business entity that collects funds from the public in the form of savings and distributes them to the public in the form of credit and or other forms in order to improve the standard of living of the people at large."

In Indonesia, there are two forms of banks based on ownership, namely banks managed by the private sector and banks managed by the government. Banks managed by the government can be in the form of BUMN (State-Owned Enterprises) or BUMD (Regional Owned Enterprises), which all or part of the capital comes from the government, both the central government and local governments.

In carrying out its activities, the bank has a program of channeling funds for the community, one of which is the provision of credit, namely the provision of a number of funds to people who need funds (debtors) by the bank that distributes funds (creditors), which includes guarantees (usually in the form of land certificates, land certificates). buildings and others) which is handed over by the debtor to the creditor which will be used at any time by the creditor if the debtor cannot repay the credit as agreed in the credit agreement.

However, in the implementation of this credit agreement, problems are often found, one of which is commonly found is the existence of bad credit (the debtor is unable to pay installments), which is generally caused by the condition of the debtor itself (default), but not infrequently problems are found due to problems from the completeness of credit administration, which may occur either because the bank itself does not comply with the prudential principle of the bank, this can happen because there is an intention to break into the bank system by falsifying the credit administration, which can result in bank losses.

The principle of prudence is an important principle that serves as a guideline for Indonesian banks as stated in Article 2 of the Banking Law which reads, "Indonesian banks in conducting their business are based on economic democracy by using the principle of prudence."

Provisions related to banking are based on law number 7 of 1992 as amended by law number 10 of 1998 where acts that are considered criminal acts are detailed in articles 46 to 50, among others; collecting funds without permission, protection for the bank to provide information to tax authorities, state receivables or law enforcement without permission from the leadership of Bank Indonesia, revealing bank secrets, not providing information at the request of customers or law enforcers who have been permitted, obligation to report on business activities and balance sheet to bank indonesia, intentionally causing false records, not including or omitting records, receiving gratuities in carrying out banking activities, allowing banking regulations to be disobeyed and shareholders asking the banks not to comply with regulations.

However, in practice, in law enforcement it is often found that there is a debate, whether the crimes committed by banks include general crimes, banking crimes, or criminal acts of corruption, this is often associated with criminal provisions in the banking law, which is often used as the basis for escaping from the bondage of corruption.

Based on the description above, the problem can be formulated as follows, namely whether a violation of the prudential principle of banks in providing credit to Government Banks can be charged with the Corruption Act?

RESEARCH METHODS

This type of research is legal research. This legal research is carried out to solve legal problems that have been formulated previously, in which the results achieved are to provide prescriptions or instructions about what should be.

The research approaches used in this legal research are the statutory approach and the conceptual approach.

Legislative Approach (Statute Approach). Through a statutory approach, a review of laws and regulations related to legal issues that have been formulated previously is carried out. In this legal research, a study is carried out on laws, such as the Banking Law, the Corruption Eradication Act and others, as well as a study on regulations, such as the Bank Indonesia Regulation.

Conceptual Approach (Conceptual Approach). Through a conceptual approach, ideas are obtained that give birth to legal understandings, legal concepts and legal principles which are of course relevant to legal problems that have been formulated previously in which legal definitions, legal concepts and legal principles. This comes from the views and doctrines that develop in the science of law. In this legal research, various legal concepts are used, such as the concept of the principle of prudence, state financial losses and others.

DISCUSSION

1. Bad Credit

Bad credit is a condition where debtors, both individuals and companies, are unable to pay their obligations to creditors in a timely manner due to the condition of the debtor experiencing a decline in financial performance, a form of instability in the business they are doing, or deliberately not paying their credit on time. including a decline in economic activity as well as high lending rates.

The debtor has defaulted on the credit that has been agreed upon in the agreement which in civil law is called a default or other term Non-Performing Loan. Article 1243 of the Civil Code stipulates the consequences for the party who is in default: "Reimbursement of costs, losses and interest due to non-fulfillment of an engagement is obligatory, if the debtor, even though it has been declared to be in default, still fails to fulfill the engagement, or if something must be given or done can only be given or done within the time that has exceeded the specified time.

Default is a common thing in lending activities as a risk that may occur due to the debtor's fault, either intentionally not fulfilling obligations or due to negligence and due to forced circumstances (overmacht or force majeure) beyond the ability of the debtor. As compensation for this default are: First, the obligation to pay compensation for what was experienced by creditors as regulated in Article 1246 of the Civil Code in the form of losses that have been suffered and profits that could have been obtained. Second, the cancellation of the agreement as referred to in Article 1266 of the Civil Code after the approval of the judge. Third, the transfer of all risks due to negligence to the debtor. Thus, it is clear that bad debts are caused by a default on the agreement that has been mutually agreed upon between the creditor and the debtor.

However, it is not uncommon for bad loans to be caused by internal bank parties (analysts) who do not assess debtors in accordance with applicable regulations, where the assessment should aim to give approval to credit applications submitted by debtors (customers) to creditors (banks). must apply the principles of prudence and trust that serve as guidelines in providing credit, so as to minimize the risk of bad loans to banks.

2. Corruption Crime

In Law No. 31 of 1999 as amended by Law No. 20 of 2001 concerning criminal acts of corruption, the articles that are most relevant to bad loans are Article 2 and Article 3 in the form of corruption against state finances.

In article 2, the most important thing is that there is an unlawful act that precedes so that a state financial loss occurs which can be considered as a result of an unlawful act which in this case is interpreted as being contrary to the provisions of the applicable legislation as referred to in Article 7 and Article 8 as well as the explanation of Law No. 12 of 2011 concerning the formation of laws and regulations. This law describes in detail the groups of statutory regulations since the 1945 Constitution, MPR Decrees, laws or regulations in lieu of laws, government regulations, presidential regulations, provincial regulations, district/city regulations, including regulations stipulated by the Assembly. People's Consultative Assembly, People's Representative Council, Regional Representative Council, Supreme Court, Constitutional Court, Supreme Audit Agency, Judicial Commission, Bank Indonesia, Minister, agency, institution or commission of the same level established by law or by the Government by order of Law, Provincial Regional People's Representative Council, Governor, Regency/City Regional People's Representative Council, Regent/Mayor, Village Head or the equivalent as long as ordered by a higher Legislation or formed based on authority, namely the administration of certain government affairs in accordance with the provisions of the Legislation. -invitation.

Thus, it is clear what provisions were violated first so that the violation has the cause of state financial losses. There is often a debate regarding the existence of further provisions, for example those made internally by a BUMN or BUMD either in the form of a board of directors' decision or in the form of technical guidelines for activities, as well as technical instructions issued by the ranks below the minister, even for example village representative bodies, whether it includes statutory provisions. invitation.

By thoroughly understanding the meaning of the regulations in Article 7 and Article 8 above, it is very clear that there is a key word "as long as it is ordered by a higher Legislation or is formed based on authority" which must be understood correctly. government properly by avoiding irregularities that result in state financial losses.

3. State Financial Losses in Banking

Another issue that is being debated is related to state financial losses which many parties argue that state financial losses are only limited to the finances that have been budgeted by the state or region as stated in the APBN and APBD and their derivatives to the village/kelurahan level so that finances that are outside the APBN and APBD does not include the scope of state or regional finance.

Meanwhile, the finances of BUMN or BUMD companies, especially subsidiaries of BUMN or BUMD, are not included in the scope of state/regional finance because they are separated from state finances and become company assets. This issue is often questioned by the defendant or his legal advisor in court in order to escape the snares of corruption, where this opinion is widely used and supported by experts in state finance law.

The financial status of companies or subsidiaries of BUMN and BUMD is actually very clearly stated in the explanation of the law on eradicating corruption in the fourth paragraph general explanation: State finances in question are all state assets in any form, separated or not separated, including all parts of state assets and all rights and obligations arising from: a) being in the control, management, and accountability of State officials, both at the central and regional levels, b) being in the control, management and accountability of State-Owned Enterprises/Business Entities Region-owned, foundations, legal entities, and companies that include state capital, or companies that include third party capital based on agreements with the State. In this explanation, it is very clear that the scope of state or regional finance is not only in BUMN or BUMD, even in foundations, legal entities and companies in which there is state or regional capital participation so that the issue of the scope of state or regional finance should not be a debate anymore because it has become very important. clearly regulated in the corruption law. This provision for the definition of state finances has also been subject to a judicial review to the constitutional court but was rejected so that there is no longer any solid basis for interpreting state finances to the extent contained in the APBN or APBD.

CONCLUSION

The use of criminal provisions in the Corruption Act is very possible, especially for banks in which there is capital from the government, both central and local governments, which results in a loss to the bank, it can also be considered detrimental to the state, where the element of harming the state is one of the elements contained in the provisions of criminal acts of corruption.

The imposition of provisions on criminal acts of corruption against persons at the state bank is only imposed when there has been a state loss in which it is clear that the state loss has arisen as a result of an unlawful act committed by these persons. This criminal liability must of course be separated from civil liability because civil liability is imposed if there is a loss to the company, not a loss to the state.

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