

Liability of Banking Parties in Internet Banking Facilities

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Abstract: The banking institution is the core of the financial system of each country. The Bank is a financial institution that becomes the place for individual, private business entities, state-owned enterprises, and even governmental institutions to keep the funds they own. Through lending activities and various services provided, the bank serves the financing activities as well as launches a payment system mechanism for all sectors of the economy. Internet banking is a delivery channel in the banking industry, and civic relationships arising from the internet banking. Every provider of an electronic system is required to provide a reliable and secure electronic system and is responsible for the proper operation of electronic systems. The method used in this research is the normative juridical approach. The normative juridical research method is a method that refers to applicable legal norms. In Indonesian laws, there is no specific and clear regulation regarding internet banking. However, the discussion about the need for clear rules governing internet banking issues has been widely reviewed and discussed. In the Act of Electronic Transaction Information (ITE Act), not even a chapter that regulates internet banking. However, there are articles on the transactions using the internet media. The arrangement of internet banking cannot be separated from the Banking Law No. 7 of 1992 and its amendment laws of Law No. 10 of 1998. To minimize the risks in Internet Banking, the Financial Services Authority, having the supervision authority over Indonesian banks as well as banks outside Indonesia, should always update the regulation regarding the implementation of risk management in the banking system and conduct active monitoring on the risk management implementation conducted by banks in Indonesia.

1 INTRODUCTION

The banking institution is the core of the financial system of each country. The Bank is a financial institution that becomes the place of the individual, private business entities, state owned enterprises, and even governmental institutions to keep the funds they own. Through lending activities and various services provided, the bank serves the financing activities as well as launches a payment system mechanism for all sectors of the economy (Abdurachman, 1993).

Banking is one of the pillars of Indonesia's economic development. The milestone of the Banking law was enacted since the issuance of Law No. 14 of 1967 on the Banking Principles which has been amended by Act No. 7 of 1992 regarding Banking and subsequently amended by Law Number 10 of 1998 on the amendment upon Act Number 7 of 1992 concerning Banking (hereinafter referred to as the Banking Law).

A bank is a business entity that collects and distributes public funds, so in terms of operation, Banks require the trust and support from the community. The relationship between the bank and the customer is based on the trust principle of the community. Therefore, without the support of the community, it will be challenging for the bank to be able to run its business smoothly. The legal relationship that exists between these banks and the customers may result in a legal problem.

The development of the banking world has evolved significantly. The rapid development of the banking world is heavily influenced by various factors, one of which is the technological factor. The use of technology in the banking world today is a must. The demands for fast information require banks to create a technology that can improve the

bank performance. Along with the technological advances, the banking world creates a system that implements the Internet as an intermediary media called Internet Banking or also called E-Banking.

Internet Banking is a new strategic tool in the sector of global banking to attract customers and increase customer satisfaction in the field of financial services. Over time and the development of information technology, telecommunications led to the emerging of a business application on internet banking basis. Internet banking is one of the banking services that allow customers to obtain information, communicate and conduct banking transactions through the Internet, and is not a bank that only provides banking services through the internet. The problem statement of this research is the liability of the banking party on the loss experienced by the internet banking users.

2 RESEARCH METHODOLOGY

The proposed method used in this research is the normative juridical approach. The normative juridical research method is the legal research that states the law as a norm system. Data from this study are secondary data consisting of; a) the materials of primary legislation in the form of constitutional law; b) the materials of the secondary law in the form of scripts, both in the form of books and articles that contain commentary or analysis related to the subject matter; c) the materials of the tertiary law in the form of dictionary. Data were collected using literature reviews and document analysis. The data were analysed using qualitative methods based on the logic of deductive reasoning.

3 RESULT AND DISCUSSION

3.1 The Basis of Accountability Laws against Banking Consumers

According to the Law of the Republic of Indonesia No 10 of 1998 on Banking, it can be concluded that the banking business includes three activities, i.e., raising funds, channeling funds, and providing other bank services. The activities of collecting and channeling funds are the principal activities of a bank while providing other bank services is considered as supporting activities. The activity of collecting the funds is performed by acquiring the funds from the community in the form of savings accounts, cheques, and deposits, with the addition of being given attractive rewards, flowers, and gifts as a stimulus for the community, while the activity of channeling funds is in the form of lending money to

the consumers. Meanwhile, other banking services are provided to support the operations of the main activities.

In conducting its business the bank is obliged to implement the principle of prudence. It is stipulated in article 29 paragraph (2) and paragraph (3) of Law Number 7 of 1992. Furthermore, in Article paragraph (4) and paragraph (5), it is stated that the bank serves to provide credit and other business activities. In this case, banks are required to take measures that do not harm the bank and the interests of customers who entrust their funds to the bank, as well as the bank role as intermediaries in providing information on possible risks of losses that may occur as a result of the customer transactions conducted through the bank.

If in conducting its business, the bank has neglected the obligation as stipulated in article 29 paragraph (2), (3), (4), and (5) of Law Number 7 Year 1992, and resulting in consumer losses, the bank is obliged to replace the funds along with the cost of compensation and interest to the consumer.

3.2 Legal Protection of Internet Banking User

In order to protect customers in the use of internet banking services, the Law No. 8 of 1999 on Consumer Protection can also be associated with the implementation of internet banking. In this case, the company in question is the bank, and the intended consumer is the bank client.

In the implementation, two regulations are utilized in the internet banking, namely self-regulation and government regulation. Self-regulation is a rule that is usually formed by the parties to anticipate the vacuum of law to protect the customers and the banks in internet banking service, while government regulation is a rule formed by the government to protect both the customers and banks of the internet banking service.

In general, the Banking operations in Indonesia, especially in terms of internet banking, implement the self-regulation, since Indonesia government does not have regulations that specifically regulate internet banking to protect the consumer interests, resulting in the bank to make its regulations that are deemed fair in protecting interests of both parties.

The rules of self-regulation specifically include the substantive rules to ensure that the consumer (the bank client) knows that the company (the bank) meets the requirements.

Although the self-regulation rules have been created by many banks that provide internet banking

services, it is essential to have the government regulations that thoroughly organize the activities of internet banking. Furthermore, the contents of the self-regulation of the banks will be different since each bank set its own rules. The articles of law to be formed should include clear regulations regarding internet banking, particularly on the customers' protection in internet banking service. With the establishment of precise rules and regulations, specifically managing the internet banking activities, it is expected to protect the interests of the customers and the banks in a balanced manner.

In Law No. 11 of 2008 on the ITE Act is a law established to specifically regulate various human activities in the field of information and communication technology, including some criminal acts that are categorized as cybercrime. The ITE Act passed on 21 April 2008 is considered sufficient to manage legal issues of the Internet banking system as one of the banking services formed by the technological advances. Obstacles such as the technological and legal aspects no longer become the inhibiting factors in the development of Internet banking in Indonesia. Although the articles of ITE Act have no specific article which arranges the activities of Internet banking, there are several regulations governing the transaction using the Internet media.

Every provider of electronic systems is required to provide a secure and reliable electronic system and is responsible for the system to operate properly. "Reliable" means the electronic system has the ability that matches with the needs of its users. "Secure" means that the electronic system is physically and non-physically protected. "Properly operated" means the electronic system has the ability in accordance with its specifications.

Responsible means there is law regulations that legally control the implementation of the electronic system. However, such provision shall not be applicable in the event of proven circumstances of force, error, or negligence of the users of electronic systems. The ITE Act also stipulates that, as long as a separate law does not determine it, every operator of an electronic system shall operate an electronic system that meets the following minimum requirements:

1. Able to re-display the electronic information or electronic documents in full form according to the retention period specified by the law;
2. Able to protect the availability, integrity, authenticity, confidentiality, and accessibility of electronic information in the electronic system;

3. Able to operate under the procedures or instructions of the electronic systems;
4. Equipped with procedures or instructions that are written with language, information or symbols that can be understood by all parties of the electronic systems;
5. Have a sustainable mechanism to maintain the novelty, clarity, and responsibility of the procedures or products.

In ITE Act, there is no clear Article governing about internet banking. However, there is an Article on the transactions using the internet media. In the general provisions of the ITE Law, Article 1(2) states that electronic transactions are legal acts committed using computers, computer networks, or other electronic media. An article in ITE related to internet banking is Article 15, which states:

1. Each Operator of the electronic system shall administer a reliable and secure electronic system and shall be responsible for the proper operating electronic system;
2. The operator of the electronic system is responsible for the management of the electronic system.

3.3 The Responsibility of Banking Party on the Internet Banking Facilities

The activities of internet banking may contain high risks. Internet banking is a distribution channel that provides opportunities for the banks to broaden their reach, improve the customer experience and reduce operational costs. Although internet banking services offer amenity, internet banking also has numerous risks. In the implementation, internet banking often neglects the security matters (both technically and non-technically) resulting in numerous problems.

The most recent case occurred as quoted in consumer media, a customer of Indonesia Nation Bank (BNI), did a transfer transaction using internet banking facility from BNI on August 5, 2018. At that time, the transfer was declared successful, and the consumer kept the proof of the transfer. However, about a week later the customer was informed that the funds had not been credited to the destination account, whereas the customer account balances have been cut off. On January 15, the consumer reported this problem to the BNI Call Centre.

The impact of these risks can be attributed to a system that is not efficient at the time of its

operation. Risks that may arise, either directly or indirectly, may result in losses for the banks and communities, especially customers using the internet banking services.

Essentially, internet banking does not pose new risks that are different from banking service products through other media, but it is proven that internet banking increases the risk. Of all the risks mentioned above, the internet banking in particular increases the strategic risk, transactional risk including security, legal and reputation risks. Therefore, in addition, to improve the customer experiences of these internet banking services, the banks should identify, measure, monitor, and control these risks with the precautionary principle.

In Article No. 4 of the Regulation of Financial Services Authority Number 38 /POJK.03/2016 on the Implementation of Risk Management in the Use of Information Technology By Commercial Banks states that the Bank is required to establish clear authority and responsibilities of the Board of Directors, Board of Commissioners and officials of each employment level related to the use of Information Technology.

If the bank has reported on Incidental reporting as in Article 31 POJK No. 38 / POJK.03 / 2016, the Financial Services Authority (OJK) will conduct legal defense as contained in Article 30 of Act no. 21 of 2011 on the Financial Services Authority which states as follows:

1. For consumer and community protection, OJK is authorized to defend the law, which includes:
 - a. Order or perform certain actions on the Financial Services Institution to resolve customer complaints harmed by the Financial Services Institution;
 - b. File a lawsuit:
 - (1) To reclaim the property of the damaged party from the liable party, either under the control of the liable party or the control of a third party; or
 - (2) To obtain indemnification from the liable party to the consumer or the Financial Services Institution as a result of the violation of the laws in the financial services sector.
2. The indemnity referred to in paragraph (1) point b No. 2 is only used for the compensation paid to the damaged party.

As the principle in building an internet banking system, the banking financial institution must provide a real-time internet banking service facility and cross-channel view of all customer information. Thus, the banking financial institution can respond immediately to any consumer activity or transaction, improve customer experience, provide opportunities for cross-selling profits, and also with internet banking service; the institutions are expected to enter the next generation of retail banking.

In developing an electronic system, the legal aspects should also take into account. The security of this electronic system depends not only on how far the potential risk can be minimized but also depending on how far it meets the legal obligations. At the time the electronic system was launched to the public, the legal liability aspects should be a primary concern and under the precautionary principle. This is per Article 3 of the ITE Law which states as follows

"Utilization of information technology and electronic transactions is implemented based on legal certainty, benefits, prudence, trust, and technology neutral."

Based on the previous descriptions above associated with Article 3 of the ITE Law, if there is an act that violates the principles of the electronic system, it can be categorized as an offense.

Regarding alternative dispute resolutions, the OJK shall issue OJK Regulation Number 1 / POJK.07 / 2014 concerning Alternative Dispute Settlement Institution in Financial Services Sector. In the event of a consumer complaint, the complaint must be settled in advance by financial services institutions. In case no agreement is reached, the consumer and the financial service institution may settle disputes outside the court or through courts either through mediation, adjudication, and arbitration.

4 CONCLUSIONS

In the Indonesian legal regulation, there is no specific and clear regulation regarding internet banking. However, the discussion about the need for a thorough law governing internet banking issues has been widely studied and discussed. In the ITE Law, there is no definite article about internet banking. However, there are articles on the transactions using the internet media. Internet banking arrangement cannot be separated from the Banking Act Number 7 of 1992 and its amendment laws of Act Number 10 of 1998. In order to

minimize the risks in Internet Banking, the Financial Services Authority, having the authority over Indonesian banks as well as banks outside Indonesia, should always update the regulation regarding the implementation of risk management in the banking system and conduct effective supervision of the implementation of risk management conducted by the banks in Indonesia.

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