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Risk Management of Indonesian Banking in Fraud Prevention

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Abstract

Fraud based on the provisions of the Circular Letter of Bank Indonesia Number 13/28/DPNP issued on December 9, 2011 is an act of deviation or omission that is intentionally carried out to manipulate banks, customers, or other parties, which occurs within the bank and/or uses bank facilities, resulting in losses and fraud perpetrators gaining profits directly or indirectly. Fraud control efforts are important in supporting the achievement of healthy banking activities. The legal issues described in this paper discuss how risk management should be applied by national banks in preventing and overcoming fraud. The problem with this is how risk management should be applied by national banks in preventing and tackling fraud. The results of the discussion of this paper classify the legal provisions related to the prevention and handling of fraud, and produce an output in the form of an analysis that can be applied as a policy (operational standard) of banking risk management in minimizing fraud in accordance with the times and remains in the realm of the study of Pancasila Law in the banking context. The conclusion of this paper is to determine the risk management description model as an important and strategic factor in handling fraud which consists of objectives, risk identification, determination of size, analysis techniques, implementation, and evaluation.

Keywords: *Risk Management; Banking; Fraud*

Introduction

The concept of law and all Indonesian state affairs cannot be separated from the existence of Pancasila as the basis of the state and the source of all sources of law and the soul of the Indonesian nation (volksgeist), in other words that Pancasila animates the entire life of the Indonesian legal state. 1 The concept of a state of law Pancasila is the concept of a state of law developed and implemented in Indonesia which is based on the Pancasila legal system. The concept of a constitutional state of Pancasila has the characteristics contained in the philosophy of the Indonesian nation and state, namely Pancasila. [1] The current globalization has caused various problems in almost all aspects of human life in the political, social, cultural, economic, scientific and technological fields, resulting in fundamental changes. Along with changes in all these aspects have an impact on changing the pattern of human social behavior in society, the legal aspects must also change. Laws must be regulated in order to create order in society. This requires a legal umbrella. Thus it can be said that the law cannot be static, but must be dynamic, and changes are always made in line with the times and the dynamics of social life in society. [2]

Modernization in a society is a process of transformation, a change in society in all its aspects. 3 One of the impacts of modernization can be seen from the progress of science and technology that has an impact on people's daily lives. As a result of the progress of science and technology it occurs in two fields, namely the field of social philosophy of society and choices in various daily problems.4 However, modernization and development do not necessarily change the existing legal rules, but also the law that accommodates so that modernization and development that occurs does not have a detrimental impact on society and the state. Therefore, a country needs a modern legal system, namely a set or a legal system that is able to anticipate and overcome various problems that may arise. Every country in the world is inseparable from the influence of globalization, as a result of globalization, it also has an impact in the field of law and the need for the concept of integration between legal systems, both from the religious legal system and from the national legal system of each country. [3] Modernization and Development which will be discussed here are related to the forms of the legal system that have an impact on social change in society. Modernization is a social change that shows aspects of the systematic use of mechanical tools, while development is a social change that is desired and planned.[4]

If we examine development, then modernization theory is the most dominant theory in determining the face of development. The theory of modernization and development which is basically an idea of social change in its journey has become an ideology. This development is the result of enormous financial and political support from governments and private organizations and companies in the United States and other liberal countries. All of that makes modernization and development a movement of scientists between disciplines of social sciences that focuses on studies of social change. As a result, modernization theory is not only a "growing industry", but has become a school of thought, and has even become an ideology.[5] The influence of modernization in the third world is very broad, not only among academics in universities, but also among the bureaucracy, namely the planners and implementers of development programs in third world countries. also greatly influenced the thinking of many non-governmental organizations. [6] In the current era of globalization, the elements of modernization and the increasing intensity of development are very influential on changes and developments in laws that have previously been regulated, especially in this discussion regarding financial transactions in national banking.

The financial system is one of the important pillars in maintaining economic stability in Indonesia, which will be the basis for the effectiveness of monetary policy so that if there is instability in the financial system, monetary policy cannot run normally. One of the strategic roles in managing the financial system is banking institutions. Based on Law Number 7 of 1992 which has been amended to become Law Number 10 of 1998, Article 3 states that the main function of Indonesian Banking is to collect and distribute public funds. Based on this explanation, it can be seen that financial transactions are related to the products and services offered by the banking sector. The products and services offered by the banking sector include savings, time deposits, demand deposits, and loans.

A bank is defined as “an institution, usually incopated, whose business to receive money on deposit, cash, checks or drafts, discount commercial paper, make loans, and issue promissory notes payable to bearer known as bank notes.” (an institution that has a large role in the commercial world, which has the authority to accept deposits, provide loans and issue securities or power of attorney to collect. In practice there are examples of problems in bank management that cause the bank's performance to be disrupted. The disturbing problems are in the form of fraudulent actions based on the provisions of Bank Indonesia Circular Letter Number 13/28/DPNP issued on 9 December 2011 are acts of deviation or omission that are intentionally carried out to deceive, deceive, or manipulate banks, customers, or other parties, which occur in the environment. bank and/or using bank facilities so as to cause the bank, customer, or other party to suffer losses and/or the fraud perpetrator to gain financial benefits either directly or indirectly. Efforts to control and monitor fraud are important aspects in supporting the effectiveness of implementing strategy a anti-fraud that creates a sound banking business and minimizes other legal problems.

The occurrence of fraud can be caused by several factors that can come from within or from outside. In general, the causes of someone committing fraud are pressure, opportunity, and rationalization. Even today, not only in the banking sector, the occurrence of fraud can also be seen in e-commerce companies that hold massive product sales promotions at very low prices. On the one hand, the national legal sector, which continues to change with the times, cannot be separated from the legal basis that forms it. Pancasila as the basis of national law is the first step in making an orderly way of life in society. In the banking sector in dealing with fraud itself, the principles of Pancasila are the basic guidelines for the formation of laws that protect those who are directly related to the incident philosophically, sociologically, and juridically. Based on this brief background description, the author is interested in compiling an article with the title Indonesian Banking Risk Management in Fraud Prevention. The problem with this is how risk management should be applied by national banks in preventing and tackling fraud.

Methods

The research method used is a normative research method, using a statute approach related to Risk Management Of Indonesian Banking In Fraud Prevention.[7] The statute approach is to examine matters relating to legal principles, legal views and doctrines, and laws and regulations related to Risk Management Of Indonesian Banking In Fraud Prevention, and accurate and accountable data.[8] In addition, an in-depth examination of the legal facts is also held to then seek solutions to the problems that arise in the symptoms in question.[9]

Results and Discussion

Fraud is a loss that arises as a result of being known to misrepresentation/misrepresentation (misstatement), concealment of material facts, or careless/uncalculated presentation that influences other people to act or act that harms them. Improving the protection of public funds entrusted to banks, apart from applying the precautionary principle as well as fulfilling bank health requirements, and at the same time functioning to prevent practices that are detrimental to the interests of the wider community. [10] Some of the Fraud Crimes are briefly regulated in National regulations:

No	Event Type	Legal basis
1	Illegal Earnings Management	Article 390 of the Criminal Code
2	Giving Misleading Opinions	Article 416 of the Criminal Code
3	Banking Crimes which are Embezzlement Category	Article 372 of the Criminal Code
4	Liability Due to Agreement	Article 1365 BW
5	Banking Crimes in connection with falsification of customer accounts	Article 49 paragraph (1) letter c, Law 10/1998
6	Accounting Crime in the Capital Market in the form of Market Manipulation	Article 91 of the Law. 8/1995 concerning the Capital Market

The causes of the fraud when translated into several explanations include: [11]

1. The pressure of the workload may be due to overtime working hours that are too long, feeling underappreciated according to achievements, unclear career paths;
2. One of the employees of the finance department manipulated the financial statements by marking up profits to be higher than they should be due to pressure from the management. The profit mark-up is used to improve the company's image in the eyes of investors and shareholders. In this way, indirectly, the employee's performance will also increase. considered good. achievements, unclear career paths and others.
3. Pressure on employees by surrounding families who demand more material achievements;
4. Manipulating the number of sales in order to generate turnover figures according to the target by the marketing team;
5. Using company money for personal gain (spree) employees [11].

Regarding the Pancasila Economy, according to Mubyarto in his book Pancasila Economy, he describes the positive characteristics of the realization of the Pancasila Economic system, including:

1. The economy is structured as a business based on the principles of kinship,
2. Production branches which are important to the state and affect the livelihood of the people are controlled by the state.
3. The sources of wealth and state finances are used by consensus of the people's representative institutions and supervision of their policies in the people's representative institutions,
4. The potential for initiative and creativity of every citizen is fully developed within limits that do not harm the public interest.

Of course, the implementation of some of these points in realizing the running of banking business activities that minimize the occurrence of fraud that protects the main philosophical values of Pancasila which consists of God, Humanity, Unity, Democracy, and Social Justice. The characteristics of economic democracy conveyed by Mubyarto are the characteristics that have been determined in the 1945 Constitution of the Republic of Indonesia. These are contained in Article 33 and Article 34 of the 1945 Constitution, so that the Indonesian people do not need to be confused about how the characteristics or pillars of the Pancasila Economic System. [12] As a brief example in the case of Unlawful Acts of Appeal Decision Number 173/PDT/2019/PT.DKI Jakarta between PT. Life insurance Mega Indonesia (Comparant I/the Plaintiff was originally against PT. Bank Tabungan Negara (Persero), TBK (the Appellate/Comparant II was originally the Defendant). At the conclusion of the case, the judge partially granted the plaintiff's request because the defendant committed an act that was not within his authority causing loss to the plaintiff.The defendant's actions which are classified as fraud, namely the Defendant through the Head of the BTN Cash Office, Enggano Branch, withdrawing funds, did not apply risk management for banking activities in accordance with the provisions of Article 2 paragraph (1) PBI 5/8/PBI/2013 concerning Implementation of Management Risks for Commercial Banks as amended by PBI 11/25/PBI/2009 concerning Implementation of Risk Management for Commercial Banks plus OJK Regulation Number 18/POJK.03/2016 concerning Implementation of Risk Management for Commercial Banks Losses suffered by the plaintiff were caused by funds managed the defendant was carried out a withdrawal process that did not come from the plaintiff's order as follows na provisions for the management of checking accounts (object of dispute) that are agreed upon.[12]

As an effort to overcome this, in general, risk management is an important and strategic factor consisting of 6 processes, namely: determining objectives, identifying risks, determining risk measures, selecting analysis techniques, implementation, and evaluation. Risk management is an attempt to identify, analyze, and control risks in every business activity with the aim of obtaining higher effectiveness and efficiency. Based on Bank Indonesia Regulation Number 11/25/PBI/2009, the risk management procedure policies at least include:

1. Systems and procedures (standard operating procedures) and authority in the management of new products or activities;
2. Identification of all risks inherent in new products or activities, both related to banks and customers;
3. Trial period of risk measurement and monitoring methods for new products or activities;
4. Accounting information systems for new products or activities;
5. Analysis of legal aspects for new products or activities; and,
6. Information transparency to customers

According to the Circular to all commercial banks in Indonesia Number 13/28/DPNP/2011 concerning the Implementation of Anti-fraud Strategy for commercial banks, in order to control the risk of irregularities, banks are required to implement risk management as stipulated in the provisions regarding the implementation of risk management for commercial banks. by strengthening in several aspects, including the following: [13]

1. Active supervision of management

The authorities, duties, and responsibilities of the Board of Commissioners and the Board of Directors also include matters related to fraud control in implementing risk management in general. The success of implementing an anti-fraud strategy as a whole is highly dependent on the direction and enthusiasm of the Bank's Board of Commissioners and Board of Directors. In this case, the Board of Commissioners and the Board of Directors of the Bank are required to foster an anti-fraud culture and awareness in all levels of the Bank's organization.

2. Organizational Structure and Accountability

Banks are required to establish a unit or function in charge of handling the implementation of anti-fraud strategy within the bank's organization to increase the effectiveness of the anti-fraud strategy implementation. The establishment of this unit or function must be accompanied by clear authorities and responsibilities. The unit or function is directly responsible to the President Director and has direct communication and reporting relationships to the Board of Commissioners.

3. Control and Monitoring

Fraud control and monitoring is one of the important aspects of the bank's internal control system in supporting the effectiveness of the anti-fraud strategy implementation. Fraud monitoring needs to be equipped with: adequate information system in accordance with the complexity and level of risk of fraud in the bank. The following brief description illustrates the risk management process: starting from Goal Setting, Risk Identification, Risk Measurement, Risk Analysis, Risk Implementation, and Risk Evaluation. [14]

There are many advantages that companies get when implementing a risk management program. These advantages include:

a. Provide an effective strategic plan for the company;
b. Control costs due to better workflow, client evaluation, and collaboration agreement processes;
c. Increase profits through better client and job management;
d. Reducing the risk of litigation as a consequence of a better process with a back-up plan;
e. Increase knowledge and understanding of risk exposure;
f. Systematic decision-making, well-informed and through a careful process;
g. Less interruption and repetition of work due to better process understanding and careful process;

h. Develop a platform for continuous improvement within the company.

Conclusion

The issue of the issue of Pancasila values in the implementation of the anti-fraud strategy law in Indonesia is one of the efforts to realize the provisions of the staat fundamental norm of national material law. Various forms of internal fraud by bank management in an effort to seek personal gain, resulted in the bank he manages not being in a healthy bank condition as it should be. Another impact that occurs is not only harming the internal management of the bank, but also harming the finances of customers who should benefit from the distribution of the financial sector to other communities in the form of business capital loans. The perpetrator of an act of fraud in carrying out his fraudulent act is usually caused by several reasons, both from within himself and from outside himself. A person can commit fraud if it is based on three things, namely opportunity (opportunity), pressure or incentive (pressure or incentive), and rationalization (rationalization). The three of them support each other and form a pillar of fraud known as the fraud triangle.

The most common forms of fraud in banking are abuse of authorization, falsification of customer data, and abuse of customer dormant accounts. Based on Bank Indonesia Circular No.13/28/DPNP/2011 that the anti-fraud action mechanism is in the form of risk management implementation, namely active management supervision, organizational structure and accountability, and fraud control and monitoring. In addition, the anti-fraud strategy, which is implemented in the form of a fraud control system, has four pillars, including prevention; detection; investigation, reporting, and sanctions; and monitoring, evaluation, and follow-up. Banks are required to carry out their business activities based on the principles of Good Corporate Governance to improve bank performance, protect the interests of stakeholders, and improve compliance with applicable laws and regulations and generally accepted ethical values in the banking industry.

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