



Bank Responsibility and Legal Protection of Customers Damaged Due to Phishing Crime

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Abstract

This study aims to find out how bank responsibility and legal protection are for loss of account balances due to phishing crimes. This research was conducted using a normative qualitative descriptive method. Based on the data obtained in the results of this study, the authors draw the following conclusions: The phishing crime experienced by the customer, the bank can be fully responsible if the customer can prove that the phishing crime experienced by the public is not the negligence of the customer itself but an error of the existing security system on the part of the Bank. Apart from being responsible for losses that befell customers, there are more important efforts that must be made by the bank, namely improving the security system to prevent phishing crimes so that this crime does not get bigger and wider. Consumer protection is all efforts that guarantee legal certainty with the aim of providing protection to consumers for services that have been provided by the bank to consumers, regarding cases of phishing crimes experienced by customers it is still unclear whether this is the customer's negligence or an error in the security system. is in the bank, in other words, the bank must improve its security system to maintain customer confidence in the deposit funds provided by customers. Legal protection for victims of phishing crimes includes Law Number 10 of 1998 Amendments to Law Number 7 of 1992 concerning Banking, Law Number 8 of 1999 concerning Consumer Protection, and Financial Services Authority Regulation (POJK) Number 6/ POJK.07/2022 concerning Consumer and Community Protection in the Financial Services Sector.

Keywords: *Phishing; Bank; Consumer Protection*

Introduction

Based on Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, the Republic of Indonesia is a state based on law, in accordance with these provisions, the life of Indonesian citizens should be governed by law, because the law is for humans and will always be faced by humans, both individually, as well as citizens. Every human being certainly wants to live in peace, peace and prosperity, but along with the development of law and modernization in all aspects of life, crime in society is growing and increasing, including in Indonesia.

Based on Law Number 10 of 1998 Amendment to Law Number 7 of 1992 concerning Banking, 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 deposits and distributes them to the public in the form of credit and/or other forms other forms in order to improve the standard of living of the people at large. The main function of

the bank is to collect funds and distribute funds to the public, so that many people save money in it for the purpose of investing, saving, doing business or simply for transferring money. Bank is a large financial institution

Banks in carrying out their duties must maintain the full trust that has been placed by the community in them, because trust is the most important thing and is the basic principle of the relationship between the bank and its customers. Every bank should have integrity, be honest and professional with the aim of maintaining a reputation before the public, in order to continue to gain the trust of the public, so it is necessary to minimize anything that causes harm to the community. the central bank is the axis or axis in every country and is accompanied by commercial commercial banks and sharia banks. [1] The objective of Indonesian banking is to support the implementation of national development in the context of increasing equity, economic growth and national stability towards increasing the masses of people. [2]

The rapid development of technology has become an inseparable part of everyday life and has had a positive impact, one of which is making it easier for us to be able to communicate over long distances with anyone and can even contact people from different countries. The development of this technology also has a negative impact and has new challenges with the emergence of crimes in the world of cyber (cybercrime) by irresponsible parties. Current technological developments, banks are also increasingly sophisticated, namely the existence of an ATM card (Automated Teller Machine) makes it easier for us to transact, transfer money or just save money, and we can easily withdraw money anywhere via an ATM. Not only that, currently banks are developing through online banking, namely there is the BRImo application that is owned by a bank, namely Bank Rakyat Indonesia (BRI). With BRImo, you can easily transfer money anywhere without the need to go to the nearest ATM and use it relatively more efficiently, but Of course, this technology has a negative impact with the emergence of crimes committed by irresponsible people, one of which is phishing.

Phishing is an attempt to obtain someone's information or data using deception techniques. Data that are targeted by phishing are personal data (name, age, address), account data (usernames and passwords), and financial data (credit card information, accounts). The official term phishing comes from the word fishing, namely fishing. This phishing activity has the goal of baiting people to voluntarily provide personal information without realizing it. Without knowing that the information will be used to commit crimes. Phishers usually appear as authorized parties or institutions by using fake websites or e-mails that look convincing until they succeed in tricking the victim. Phishing data information that has been obtained by the perpetrator can be used directly to deceive victims or can also be sold to other parties to carry out irresponsible actions. [3]

Two customers of Bank Rakyat Indonesia (BRI) were struck by the unfortunate fate that they suddenly lost money in their account. The nominal value is fantastic, namely Rp. 1.114 billion. The events experienced by the two customers were uploaded by the stella Maris Mom's Facebook account. The chronology of the disappearance of money in the account begins when the victim receives information about changes in transaction costs. The message stated that BRI had changed the transaction fee to Rp. 150,000 per month, from only Rp. 6,500 of them read the message in shock and panic because the nominal had gone up so much. The contents of the next message they get is that if the customer does not agree with the change in transaction fees, they must fill out the form that was sent and the customer is asked to fill in their personal data in the form, via a page service that is suspected to be a fake link. They got this information via Whatsapp messages, found the message, the customer also negotiated and asked to be able to help him not to change transaction fees. However, it turns out that the money in the customer's account has disappeared. It is suspected that the perpetrator acted using a fake link. The amount of money that can be saved is only Rp. 14 million only. [4]

Based on this case, the author is interested in discussing and knowing more about bank responsibility and legal protection for loss of account balance due to phishing crimes.

Method

The types of legal materials in this study consist of Primary Legal Materials in the form of laws and regulations, Secondary Legal Materials which include literature books, and Tertiary legal materials, namely legal materials in the form of legal dictionaries and general Indonesian dictionary. As for the sources of legal materials in this study, they originate or are obtained from the library. The technique of collecting legal materials is carried out through library research in various libraries, the internet, magazines, journals and newspapers. The legal material obtained from the literature study is analyzed descriptively qualitatively, and the next step is to draw conclusions in an inductive way, namely a way of drawing conclusions from the specific to the general.

Results and Discussion

1. Bank Responsibilities to Customers Who Are Lost Due to Phishing Crimes

Bank as a business entity has a function as a financial intermediary (financial intermediary), namely receiving funds (funding) from people who have excess funds and distributing them to users in the form of credit.[5] Banks have a more specific function as Agents of Development, namely that banks function to facilitate production, distribution and consumption activities. Agent of Trust means that trust is the foundation of all banking activities, starting from activities to collect funds to distribute them to the public. Banks as Agents of Service have the function of providing other services owned by the banking sector to the public. These functions are expected to be able to provide a detailed and comprehensive picture of the influence and function of banking in Indonesia's economic activities, this means that banking is interpreted not only as a financial intermediary business entity (Financial Intermediary Institution).[6] The responsibility of the bank if the customer suffers a loss is to handle and resolve various customer complaints and complaints, to avoid protracted problems that occur.[7]

Law Number 10 of 1998 concerning Banking (Banking Law) regulates 3 main functions of banks as companies, namely:

- a. The function of the bank is to receive public funds (customers);
- b. The function of the bank is to carry out fund distribution activities through credit services to help businesses; And
- c. The function of the bank is to provide services in the form of payments and domestic and/or foreign trade.

Along with the rapid development of information technology has changed the pattern of life, virtual life and reality life. This paradigm change is the result of the presence of cyber space, which is the impact of global computer networks. [8] The responsibility of the bank in the event of a loss is a manifestation of fulfilling one of the consumer rights in the Consumer Protection Act, namely the right to obtain compensation, compensation and/or reimbursement, if the goods and/or services received are not in accordance with the agreement or not as they should be. [9]

In this situation, cyberspace may facilitate stolen identity activities. A stolen identity can be used for unauthorized access; it refers to a scenario where a person accesses data that he or she has not been given permission to access. [10] In addition, the data can be used in various other forms of crime. In fact, sometimes it is difficult to investigate and distinguish between legitimate and unauthorized access.[11] Links included in phishing scams lead unsuspecting people to fake sites designed to imitate the real thing, with the smallest detail designed to mimic as perfectly as possible. In this case, many internet users, especially beginners, tend to believe everything they read and become easy prey for cybercriminals to steal their personal and financial information. [12]

Phishing crimes that occur in society are getting worse and causing anxiety in the community about the safety of their funds stored in banks. As long as law enforcement officials are authorized to uncover cases of phishing crimes that occur in the community and bank managers are also unable to convince the public regarding the security system for customer funds. Unrest in the community is likely to continue to escalate and even spread because until now the perpetrators are still spreading hoax messages on WhatsApp. If this continues to take its toll, national banks will have to bear the risks due to phishing crimes.

According to Abdul Kadir Muhammad, the theory of responsibility in unlawful acts (tort liability) is divided into several theories, namely as follows: [13]

- a. Responsibility for unlawful acts committed intentionally, the defendant must have committed an act in such a way as to harm the plaintiff or know that what the defendant has done will result in a loss.
- b. Responsibility for losses due to unlawful acts committed through negligence, is based on the mixed concept of moral and legal wrongdoing.
- c. Absolute responsibility due to unlawful acts without questioning mistakes, is based on intentional good deeds, meaning that even though it is not his fault he is still responsible for the losses incurred as a result of his actions.

Banks in providing responsibility for losses to customers who are victims of crime will not immediately provide compensation to customers who have suffered losses. The bank will carry out the stages determined by Bank BRI, namely first if the customer's account balance is reduced and mysteriously disappears or suddenly without any previous transactions, it is expected to immediately report to the nearest BRI Bank branch with evidence or can call to call Bank BRI's center at 14017 or 1500 017. Second, after a customer reports a mysterious loss of balance, the customer must have proof of reporting provided by customer service, as proof that the customer concerned has reported a crime against his account. Third, Bank BRI will conduct an investigation into the transaction flow of the customer's account concerned, by finding out whether the loss of account balance experienced by the customer is due to an error from the Bank BRI system or an error from the customer himself. [14]

If the results of the investigation conducted by Bank BRI, the head office investigator management, have been completed and the results are true, that customer funds that disappeared suddenly or mysteriously were purely an error due to a crime committed by an irresponsible person, Bank BRI will compensate the loss. fully to the customer concerned. Full compensation carried out by Bank BRI is a form of responsibility from the Bank itself. If the results of the investigation state that it was not the fault of the Bank's system but the losses suffered by the customer were purely due to the negligence of the customer concerned (human error), then Bank BRI has no obligation to fully compensate the customer concerned. [15]

Based on the description above, it can be concluded that the phishing crime experienced by the customer, the bank can be fully responsible if the customer can prove that the phishing crime experienced by the community is not the negligence of the customer itself but an error from the security system that exists on the part of the bank. Apart from being responsible for losses that befell customers, there are more important efforts that must be made by the bank, namely improving the security system to prevent phishing crimes so that this crime does not get bigger and wider.

2. Legal Protection for Customers Who Are Lost Due to Phising Crimes Phising

Customer protection for the implementation of digital banking services can be carried out by preventing or overcoming conditions that are not expected later by customers through laws and regulations, this protection is known as preventive protection. [16] Customer data including customer personal data is data that is protected by the bank, namely a document and or information that must be kept confidential by the Bank. Banks may not provide customer data to third parties unless this has been

agreed beforehand. Examples of customer banking data, namely PIN (Personal Identification Number), credit card numbers and the like, must be kept confidential by the Bank. [17]

Legal protection is defined as providing protection to individual interests protected by law. Protection aimed at consumers in the business world which is seen both materially and formally is increasingly important, given the increasingly rapid movement of technology as a driving force for the productivity of producers of goods or services to be produced in achieving the goals of a business.[18] Business or services in the financial sector have become a business that is very vulnerable to various harmful actions by irresponsible persons by taking advantage of the existence of technology to carry out an action, whether it is fraud or misuse which results in losses for users of these services.[19]

Legal protection for customers as consumers have the right to file customer complaints, as well as to use banking mediation forums to obtain a simple, cheap, fast settlement of disputes in the banking sector. If the rights and obligations of a liquidated bank are in line with the Consumer Protection Law, then the bank will be able to carry out banking activities. Customers have the right to security, the right to choose products, the right to obtain clear and accurate information and the right to be treated correctly and honestly. Furthermore, the customer has an obligation to follow the information instructions and procedures carried out by the bank. [20]

According to Sudikno Mertokusumo, legal certainty is a guarantee that the law must be implemented in a good way, legal certainty requires efforts to regulate law in legislation made by authorized and authoritative parties, so that these rules have a juridical aspect that aims to guarantee there is legal certainty so that it has a function as a rule that must be obeyed and enforced. [21]

Based on Law Number 10 of 1998 Amendments to Law Number 7 of 1992 concerning Banking, it provides legal protection to depositors that their deposits are guaranteed by the bank through the establishment of a permanent public deposit insurance institution in accordance with Article 37B of Law Number 10 of 1998, namely as follows:

- a. Each bank is obliged to guarantee public funds stored in the bank concerned,
- b. In order to guarantee public deposits at the bank as referred to in paragraph (1) in the form of a Deposit Guarantee Institution,
- c. The Deposit Insurance Corporation as referred to in paragraph (2) is in the form of a legal entity (Indonesia),
- d. Provisions regarding guarantors of public funds and Deposit Insurance Corporation, shall be further regulated by Government Regulation.

The banking sector's financial services sector must be responsible for losses that befall customers. In accordance with the provisions of Law Number 8 of 1999 concerning Consumer Protection, namely in Article 19 paragraphs (1) and (3) which states that business actors are responsible for providing compensation for damage, pollution and/or losses suffered by consumers as a result of use goods and/or services produced or traded. Business actors can provide compensation that is carried out within a period of 7 (seven) days after the date the transaction took place. Settlement of consumer disputes with business actors can be carried out through court or out of court according to voluntary choices by the parties to the dispute in accordance with the provisions of UUPK Article 45 paragraphs (1) and (2).

Financial Services Authority Regulation (POJK) Number 6/POJK.07/2022 concerning Consumer and Community Protection in the Financial Services Sector Article 8, states that financial service business actors must be responsible for consumer losses arising from errors, negligence, and/or actions which are contrary to the provisions of laws and regulations in the financial services sector, carried out by the Board of Directors, Board of Commissioners, Employees, and/or third parties working for or representing the interests of PUJK. In the event that the PUJK can prove that there was involvement, error, negligence

and/or actions contrary to the provisions of the laws and regulations of the financial services authority committed by the consumer, PUJK is not responsible for consumer losses that arise.

Based on the description above, it can be concluded that consumer protection is all efforts that guarantee legal certainty with the aim of providing protection to consumers for services that have been provided by banks to consumers, regarding cases of phishing crimes experienced by customers it is still unclear whether this is a customer negligence or an error in the security system at the bank, in other words, the bank must improve the security system to maintain customer confidence in the deposit funds provided by customers. Legal protection for victims of phishing crimes includes Law Number 10 of 1998 Amendments to Law Number 7 of 1992 concerning Banking, Law Number 8 of 1999 concerning Consumer Protection, and Financial Services Authority Regulation (POJK) Number 6/ POJK.07/2022 concerning Consumer and Community Protection in the Financial Services Sector.

Conclusion

Based on the description above, it can be concluded as follows:

1. The phishing crime experienced by the customer, the bank can be fully responsible if the customer can prove that the phishing crime experienced by the community is not the negligence of the customer itself but an error from the security system that exists on the part of the bank. Apart from being responsible for losses that befell customers, there are more important efforts that must be made by the bank, namely improving the security system to prevent phishing crimes so that this crime does not get bigger and wider.
2. Consumer protection is any effort that guarantees legal certainty with the aim of providing protection to consumers for the services provided by the bank to consumers, regarding cases of phishing crimes experienced by customers it is still unclear whether this is customer negligence or system error security in banks, in other words, banks must improve security systems to maintain customer confidence in deposit funds provided by customers. Legal protection for victims of phishing crimes includes Law Number 10 of 1998 Amendments to Law Number 7 of 1992 concerning Banking, Law Number 8 of 1999 concerning Consumer Protection, and Financial Services Authority Regulation (POJK) Number 6/ POJK.07/2022 concerning Consumer and Community Protection in the Financial Services Sector

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