

Settlement Mechanism of Banking Fraud and the Role of the Financial Services Authority in Indonesia



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ABSTRACT: The development of technology and digitalization in Indonesia in recent years has been very rapid. In the era of technology disruption, every industry must be ready to adapt to face dynamic changes. The banking industry inevitably has to adapt to existing technological developments. Unfortunately, the developments are also followed by the growth of various frauds in banking. In response to this, Indonesian Financial Services Authority namely *Otoritas Jasa Keuangan* (OJK) demand banking industry to improve the reliability of Information Technology infrastructure. Several recent cases of mislaid customer funds show several loopholes in the existing banking security system. Customarily, customers who experience similar cases have reported the matter directly to the police authority, which in turn having extensive investigation process. In this paper, authors try to explain the role of OJK in improving the issues settlement, including by improving the banking system. Data is collected from a series of major cases of embezzlement in Indonesian banking and also from Financial Services Regulations to see the role that could be improved. The main conclusions are to report any irregularities to OJK in the first place instead to the police because Financial Services in Indonesia already has its own supervisory agency, and there needs to be massive socialization to customers regarding the reporting mechanism.

KEYWORDS: fraud, banking, Indonesia financial services authority

I. INTRODUCTION

Banking products vary widely according to the customer's needs. It is intended that people use banking services so that banks can carry out their business activities by managing customer funds. Banking profits from customer funds that are played through various instruments, one of which is saving account. Customers assign their funds based on trust. This trust is then manifested in a contractual agreement between the bank and the customer when the customer opens an account.

The contractual agreement between the bank and the customer is called the standard agreement, the customer entrusts the funds to be deposited so that they can be withdrawn as stated in the agreement. On that basis, customers are entitled to protection for their funds as well as a guarantee of security that the funds can actually be withdrawn by the customer. The protection obtained by customers for their deposit funds is absolute and cannot be contested.

Nowadays, there are many frauds committed by bank employees for their own profit, including eliminating customer funds so that customers experience losses. Customers who lose their funds should receive legal protection by the bank for their funds. However, customers often fail to defend their rights due to the unequal position of the bank and the customer.¹

The banking function is very crucial to the economy of a country and its public trust very important to be maintained. Without trust, its function as financial service institution will not work. Public trust can be obtained by having legal certainty in bank regulation and supervision as well as guaranteeing customer deposits to improve the continuity of healthy banking business. Therefore, legal protection for banking customers is considered very important to maintain customer confidence.² Legal protection is an obligation for the state. So it is appropriate that all banking activities are closely monitored by the appointed institution so public still believes the safe and trustworthy financial institution.³

Based on above reasons, the government has established an independent institution that has the authority to regulate and supervise banking through Law No 21/2011 concerning the Financial Services Authority in Indonesia. The reason for the formation of the Financial Services Authority is also based on the argument that banking supervision must be separated from Indonesian Central Bank (namely *Bank Indonesia*) to avoid conflicts of interest. Law No 21/2011 concerning the Financial Services Authority, is the implementation of Article 34.1 Law No 3/2004 concerning Amendments to Law No 23/1999

¹ Hermansyah, *Hukum Perbankan Nasional Indonesia*, Kencana, Jakarta, 2005.

² Uswatun Hasanah, *Hukum Perbankan*, Setara Press, Surabaya, 2017.

³ Kasmir, *Dasar-Dasar Perbankan*, Rajawali Press, Jakarta, 2014.

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concerning *Bank Indonesia*, which states that the task of supervising banking will be carried out by independent institution, namely *Otoritas Jasa Keuangan* (OJK).

OJK was formed to create an institution that has the functions, duties and authority to regulate and supervise activities in the financial services sector in an integrated, independent, accountable manner, capable of realizing a financial system that grows in a sustainable and stable manner, and is able to realize the interests of consumers and society. and can carry out supervisory duties in the Indonesian banking sector which previously was the task of Bank Indonesia before the enactment of Law No 21/2011 concerning the Financial Services Authority effective on November 22, 2011. This means that the regulation and supervision of the activities of the financial services sector is currently under an independent institution, not as before which was in several different institutions, such as the ministry of finance, capital market supervisory agency, and other institutions.⁴

OJK has an important role in the process of resolving disputes between banks and their customers, including the refund of customer funds lost due to unlawful acts committed by the bank. An example is the case of PT Maybank Indonesia Tbk some time ago which caused a stir in the Indonesian banking world. It is one of the unscrupulous Branch Heads who break into customer savings. Savings of IDR 20 Billion belonging to e-Sport athlete Winda Lunardi and his mother, were stolen by the Head of the Maybank Branch.

Based on this background, the authors consider the role of OJK in the process of returning lost customer funds need to be investigated in order to achieve a certainty in the refund process as a form of legal protection and to assess the existing role of OJK.

II. BASIC AUTHORITY OF THE FINANCIAL SERVICES AUTHORITY

Article 1.1 Law No 21/2011 concerning the Financial Services Authority states that OJK is an independent institution and is free from interference from other parties, which has the functions, duties, and authorities of regulation, supervision, examination, and investigation as referred to in the Act. The purpose of establishing OJK is contained in Article 4 with the purpose that all activities in the financial services sector can be:

- a. Held regularly, fairly, transparently, and accountably;
- b. Able to realize a financial system that grows in a sustainable and stable manner; and
- c. Able to protect the interests of consumers and society.

Article 6 states that OJK carries out the task of regulating and supervising:

- a. Financial service in the banking sector;
- b. Financial service in the Capital Market sector; and
- c. Financial service in the Insurance, Pension Funds, Financing Institutions, and Other Financial Services Institutions sector.

Article 7 states that to carry out regulatory and supervisory duties in the banking sector, OJK has the authority to:

- a. Regulation and supervision of bank institutions which include:
 - i) licensing for the establishment of banks, opening of bank offices, articles of association, work plans, ownership, management and human resources, mergers, consolidations and acquisitions of banks, as well as revocation of banking business licenses; and
 - ii) banking business activities, including sources of funds, provision of funds, hybrid products, and activities in the service sector;
- b. Regulation and supervision of bank soundness which includes:
 - i) liquidity, profitability, solvency, asset quality, minimum capital adequacy ratio, maximum credit limit, loan to deposit ratio, and bank reserves;
 - ii) banking reports related to bank soundness and performance;
 - iii) debtor information system;
 - iv) credit testing; and
 - v) bank accounting standards.

⁴ Johannes Ibrahim, *Pengimanan Pinjaman (Kompensasi) dan Asas Kebebasan Berkontrak dalam Perjanjian Kredit Bank*, CV Utomo, Bandung, 2003.

III. THE ROLE OF THE FINANCIAL SERVICES AUTHORITY IN THE PROCESS OF REFUNDING LOST CUSTOMER DEPOSITS

The obligations of banking institutions in carrying out civil responsibilities in the form of returning lost customer deposits are contained in Law No 21/2011 and its implementing regulations, namely Financial Services Authority Regulation Number 1/POJK.07/2013 concerning Consumer Protection Sector in Financial Services.

Article 28 Law No 21/2011 states that for the protection of consumers and the public, OJK has the authority to prevent losses, which include:

- a. Provide information and education to the public on the characteristics of the financial services sector, services and products;
- b. Enquire the Financial Services Institution to stop its activities if the activity has the potential to harm the community; and
- c. Other actions deemed necessary in accordance with the provisions of laws and regulations in the financial services sector.

So, in addition to provide education to the public about banking institutions, OJK is also entitled to enquire or other matters deemed necessary to banks to stop banking activities if it is deemed detrimental. OJK also may give warnings to companies that are considered deviant so that they can immediately correct it. Then provide information to the public about the company's activities that can harm the community.⁵

The authority possessed by OJK is very important for the community, especially to bank customers so that customers really understand about banking products and all the consequences so as to minimize losses caused by customer ignorance.

In the process of refunding lost customer deposits, the Financial Services Authority has established a complaint service for aggrieved customers as regulated in Article 29 of Law No 21/2011, which includes:⁶

- a. Prepare adequate service to consumers who are harmed by individual in the Financial Services Institutions;
- b. Create a complaint mechanism for consumers who are harmed by individual in Financial Services Institutions; and
- c. Facilitate complaint resolution.

For the protection of consumers and the public, Article 30.1 Law No 21/2011 states that OJK has the authority to carry out legal defenses, which include:

- a. Order or take certain actions to the Financial Services Institution to resolve the complaints of the Consumers who have been harmed by the said Financial Services Institutions;
- b. File a lawsuit:
 - i) To recover the assets belonging to the harmed party from the party causing the loss, whether under the control of the party causing the loss or under the control of another party in bad faith; and/or
 - ii) To obtain compensation from parties who cause losses to Consumers and/or Financial Services Institutions as a result of violations of laws and regulations in the financial services sector.

General Explanation of Article 30.2 Law No 21/2011 states that the filing of a lawsuit is based on the OJK assessment that violations committed by banks against laws and regulations in the financial services sector result in material losses for their customers, the public or financial services sector.

Meanwhile, the compensation is only used for payment to the injured party. Article 31 Law No 21/2011 states that further provisions regarding consumer and public protection are regulated by the OJK Regulation No 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector. Article 1-12 stipulates that information and education about banking provided by OJK to the public contains the characteristics, services, and products of financial institutions. Through this effort, information regarding customer rights can be obtained so that customers can find out what their rights. Thus, the decisions taken by customers are appropriate and in accordance with the level of their needs.

In the event that a banking customer loses their deposit in the bank, OJK regulation mentions the obligations of Financial Services in Article 25 that states it is required to maintain the security of Consumer deposits, funds, or assets that are under the

⁵ Irwansyah Putra, *Peranan Otoritas Jasa Keuangan dalam Melakukan Pengaturan dan Pengawasan Terhadap Bank*, Jurnal Hukum Ekonomi, 2013, Vol. II, No. 1.

⁶ Mariam Darul Badruszaman, *Perjanjian Baku Dan Perkembangannya Di Indonesia*, Alumni, Bandung, 1998. Muhammad Djumhana, *Hukum Perbankan di Indonesia*, Citra Aditya Bakti, Bandung, 2012.

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responsibility of Financial Services Businesses; and Article 29 states that Financial Services Businesses must be responsible for Consumer losses from errors and/or negligence, management, employees of Financial Services Businesses and/or other parties.

In the end, OJK's role in conducting the refund process begins with preparing adequate tools to service consumer complaints, establishing mechanisms, and facilitating the settlement. If in the case that the bank still does not have good faith to refund customer funds, then the OJK can take actions that are deemed necessary to force the bank to carry out its obligations.

IV. REPORTING MECHANISM

OJK will not hesitate to eradicate financial products that violates the rules or illegal. The reason is, there are so many victims of financial service transactions ranging from lost accounts to online loans, ranging from crushing interest to threats.⁷ As of Mei 2021, OJK have eradicated 894 financial products which ranging from money game to online financial loan.

There are several requirements that have been proposed by the OJK if consumers or the public want to file a complaint to the OJK. The following are the conditions:

1) Experiencing financial loss

The first requirement is that consumers suffer financial losses caused by financial services in the banking sector, capital market, insurance, etc., in the amount of a maximum loss of IDR 500 million. Then, OJK also accepts complaints if they suffer losses due to general insurance with the largest loss being IDR 750 million.

2) Make enquiries

The second requirement is to make a written application to the OJK. The letter must be accompanied by supporting documents related to the complaint. In addition to written letters, complaints can also be made by telephone, email, and so on.

3) Past the deadline

When a consumer does not get a settlement from a financial services business, the customer has the right to make a complaint to the OJK. In addition, if the financial services business has also passed the time limit determined by the OJK, the customer is also entitled to report it.

4) Not more than 60 days

The submission of complaints by consumers to financial service business is not more than 60 working days. This time is calculated from the date of the complaint letter submitted by the financial services business to the consumer.

5) Civil nature

OJK wants the complaints to be clear and transparent, especially in any data that customers submit. So, don't let customers lose their data when they want to file a complaint.

After these conditions are met, the OJK will be happy to assist the dispute. However, if the settlement cannot be resolved properly, then the customer's affairs can go to court.⁸

V. CRIMINAL INVESTIGATION IN THE FINANCIAL SERVICES SECTOR

In article 1.2 of the Financial Services Authority Regulation No 22/POJK.01/2015 concerning Criminal Acts in the Financial Services Sector, it is stated that a Crime in the Financial Services Sector is any act/event that is punishable by a criminal act as regulated in the Law governing the OJK, Banking, Sharia Banking, Capital Markets, Pension Funds, Microfinance Institutions, Insurance, Indonesian Export Financing Institutions, Social Security Administering Body, *Bank Indonesia* insofar as it relates to interference with the implementation of OJK's duties in banking regulation and supervision, as well as laws and regulations. Concerning Other Financial Services Institutions, as referred to in Law No 21/2011.

The rapid development of financial products and services, science and information technology, as well as the globalization of financial transactions on the one hand has the opportunity to support the progress of the financial services sector, but on the other hand can disrupt financial system stability due to the emergence of various more complex types of crime, so it is necessary for proper handling. OJK Regulation No 22 /Pojk.01/2015, criminal investigations in the Financial Services Sector are carried out quickly, low cost and simple to make light of the criminal acts that occurred in order to realizing justice, benefit, and legal certainty, growing and maintaining public trust in the financial services sector, and strengthening financial system stability.

⁷ Maulana Adieb, "Mau Laporan ke OJK? Ikuti Langkah-Langkah Berikut", <https://glints.com/id/lowongan/lapor-ojk/#.YB4B3ugzBIW>, accessed on 31 January 2021.

⁸ Uswatun Hasanah, *Perlindungan Hukum Nasabah, Filosofi, Teori, dan Konstruksi*, Interpena, Yogyakarta, 2012.

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Taking into account the above, this OJK Regulation is drafted to strengthen the legal basis for conducting Investigations in the Financial Services Sector so that the Investigation process mandated in the OJK Law can be carried out properly.

In Article 2.1 and 2.2 OJK Regulation No 22 /Pojk.01/2015 states that "OJK has the authority to carry out criminal investigations in the Financial Services Sector by its investigators". In the OJK Regulation Article 3, it is stated that the OJK Investigators consist of:

- a. Investigating Officer of the State Police of Indonesia employed at OJK; and/or
- b. Civil Servant Officers who are employed at OJK and given special authority as Investigators.

The Investigators are authorized to carry out investigative actions in accordance with the provisions stipulated in Law No 8/1981 concerning the Criminal Procedure Code and other laws that give authority to Police Investigators. Meanwhile, the Investigator of OJK as referred to in Article 3.b is authorized to take action. The investigation is in accordance with the provisions regarding the investigation as regulated in Law No 21/2011.

What is meant by "investigative action" is, among other things, forced efforts in the form of summons, bringing witnesses and suspects, arresting, detaining, examining, searching, and confiscation. Whereas what is meant by having the authority to carry out investigative actions in accordance with the provisions stipulated in Law No 8/1981 is where the Investigating Officer has the authority to investigate which includes police discretion (*politie belied*). As regulated in Article 7, it is stated that Investigators as referred to in Article 6.1 of the Criminal Procedure Code have the authority to:

- a. Receive a report or complaint from party regarding the existence of a criminal act;
- b. Take the first action at the scene;
- c. Order to stop a suspect and check the suspect's identification;
- d. Make arrests, detentions, searches and confiscations;
- e. Conduct inspection and confiscation of letters;
- f. Take fingerprints and photograph a person;
- g. Summon people to be heard and examined as suspects or witnesses;
- h. Bring in the necessary experts in connection with the examination of the case;
- i. Terminate the investigation;
- j. Take other legally responsible actions.

Whereas the investigation authority carried out by the Police is also regulated in Article 1.10 of Law No 2/2002 concerning the National Police states that Investigators are officers of the State Police who are authorized by law to conduct investigations. In this case, the task of the Police in relation to the criminal justice system is to conduct investigations either on their own initiative or on behalf of community reports. In conducting investigations, the police are responsible for their own institutions, in this case the police institutions with a higher structure.

Article 3.b is authorized to carry out investigative actions in accordance with the provisions regarding investigations regulated in Law No 21/2011 is that the Civil Servant Officials carry out special duties or authorities given by the law which is the basis the law is Law No 21/2011 as stated in Article 49 concerning Investigations. Civil Servant Investigators are under the coordination and supervision of State Police investigators. In addition to that, the Civil Servant Investigator reports to the State Police investigators about the existence of a criminal act that is being investigated, and if the Civil Servant Investigators have completed their investigation, the results of the investigation must be submitted to the Public Prosecutor through the State Police Investigator.

CONCLUSIONS

The role of OJK in the process of refunding lost customer deposits is to prepare adequate tools to provide customer complaint services, create a customer complaint mechanism, and facilitate the settlement from harmed customers. If the bank is still not willing to return the customer's deposited funds, the Financial Services Authority may order or take certain actions to the bank in order to resolve the customer's complaint that was harmed by the said bank, file a lawsuit to recover the funds, or obtain compensation from the bank.

The Financial Services Authority already has a reporting mechanism for all financial service transactions that have an impact on customer financial losses, what needs to be paid attention to is the lack of socialization to the public regarding this mechanism so that in the end customers directly submit complaints to the police in the form of a criminal which sometimes takes more time to settle.

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The Financial Services Authority needs to emphasize its role in terms of imposing sanctions on banks so that banks are willing to carry out their obligations to return customer funds lost due to the bank's fault, so that their role in the midst of society can truly achieve benefits.

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