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LEGAL PROTECTION FOR CUSTOMERS USING INTERNET BANKING SERVICES IN INDONESIA

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ABSTRACT

The banking industry has adopted information technology in the form of internet banking in its services. Although the provision of internet banking makes transactions easy and practical, it also runs the risk of harming the bank's customers themselves. The problems of transaction security and customer protection are of particular concern for the development of internet banking in the future, mainly due to the absence of a legal certainty in Indonesia. This research is to find a legal certainty in providing legal protection to customers of internet banking service. The method used the normative legal approach. Normative legal research is a method that refers to the applicable legal norms. Legal protection of the customer's rights which must be realized by the service providers as mentioned in the Customer Protection Law becomes the sole responsibility of the service provider and the customers obtain the best facilities, especially in matters relating to the security of the customers. The absence of regulation specifically brings problem in the internet banking. In the electronic transactions law, there is no specific article regulating the internet banking. For banking business, the supervision is performed by the Financial Services Authority Regulation No.38/POJK.03/2016 concerning the Application of Risk Management in the Use of Information Technology by the Commercial Banks. However, the sanctions imposed on these violations are not strict because they are only administrative sanctions. Therefore, more strict regulation is needed in protecting customers who are disadvantaged by the use of internet banking.

INTRODUCTION

The development of information technology changes the pattern of thinking about boundaries, time, values, material forms, logical thinking, work patterns, and social behavioral boundaries from manual to computerized/digital services. The paradigm shift is in fact more difficult to follow by the law as a means of a social discipline. If the law is to protect the

human interests, then the law should serve the public with the best enforcement. A legal protection is the protection provided by the law and regulations to preserve a normal, comfortable and peaceful life for the society. (Kusuma, 2012)

Apart from the above changing dynamics brought by the growing reliance on internet, other issues that have joined to increase regulatory concerns for internet banking include the prevalence of frauds in the internet environment. Electronic banking services (electronic banking hereafter abbreviated as e-banking (Sharma, 2011) is a new strategic tool in the global banking sector to attract customers and increase customer satisfaction for financial services. As time and the age of information technology development go by, the telecommunication brings about business applications which are based on internet banking (Rahmath, 2010).

Digital era, namely the era of information technology is increasingly utilized, both by the society and the banking industry in order to improve the efficiency of operational activities and the quality of the bank services, such as internet banking (Djumhana, 2012). E-banking is the banking of the new era. The term Internet Banking or E-Banking is used as a supplement. Making banking products and other services available to wholesale and retail customers through an electronic distribution channel is called e-banking.

The development of technology-based systems especially related to the internet has influenced how banks interact with their customers (Parasuraman & Zinkhan, 2002). The use of technology in the banking business today is a must. The need for a fast information requires the banks to create a technology that can improve their performance (Egan & Prawoto, 2013).

One of the services provided by the banks is the internet banking, as an alternative medium of providing convenience for their customers. Internet banking is an electronic banking to provide convenience for customers in conducting banking transactions via computer and internet network (Suryani, 2005). Internet banking customers can have almost all banking services by only clicking the buttons (DeYoung, 2001).

Pikkarainen, Pikkarainen, Karjaluto, and Pahnla (2004) define internet banking as an internet portal through which customers can use various banking services ranging from bill payment to investment.

The famous quote by Bill Gates that banking is vital to a healthy economy, but banks themselves are not. It highlights the crucial nature of the electronic forces that are affecting banks more than any other financial service providers. This transition of business operation have created new model of operation called E-Banking (Shukla & Shukla, 2011).

The factors influencing the use of internet banking are as follows: 1) comfort has a positive effect on the customer's interest to use internet banking (Poon, 2008); 2) the ability to access the site and contact the bank when needed (Zeithaml, Bitner & Gremler, 2009); 3) availability of features through innovation to meet the customer needs (Gerrard & Cunningham, 2003); 4) privacy related to the user's personal information is assured (Hamlet & Strube, 2000); 5) internet banking speed to provide the desired information for internet users (Mukherjee & Nath, 2003); 6) internet banking has low transaction costs and high-speed services compared to other banking services (Chang, 2002).

In Indonesia, the internet banking was pioneered by one of the national private banks in 1999 (Direktorat Penelitian & Pengaturan Perbankan Indonesia, 2002). In fact, the implementation of the internet banking has not developed rapidly. This can be seen from the low number of banks using internet banking services, i.e. only 6 out of 139 banks with the number of customers recorded as many as 147,500 people, and mostly used in large banks. Nevertheless, as a new and innovative alternative banking services, the internet banking becomes a very important and strategic issue for study (Hermana, 2010).

In the Indonesian market, out of about 130 national private commercial banks, not more than 20% of them have actually worked on these modern payments and administrative services. Such banks work seriously and modernly to develop their services so they can provide better services quickly, individually, safely and equally with no limitation since the service can be accessed from anywhere and at anytime. For these reasons, the banks began to adopt the use of information technology, especially the internet as a channel in providing services to its customers, known as internet banking or e-banking (Sugiarto, 2012).

Security issue relating to financial transactions through the internet banking has always become a major concern of the banking customers. The bad news about internet banking both in the printed and electronic media has increased people's fear. More customers are using mobile banking that is considered more secure than the internet banking (Agwu & Carter, 2014).

The development internet banking service in Indonesia has been pioneered by one of the national private banks, Bank Internasional Indonesia (BII) in 1998 (www.bankbii.com) and followed by other existing banks. Today, the internet banking services is dominated by the two largest banks in Indonesia, Bank BCA and Bank Mandiri.

In 2017, there was a case in Mandiri Bank that had caused an interruption in the Mandiri Online Service. The Mandiri Online Service was temporarily suspended due to the many reports of loss of funds from the internet banking service customers. The Financial Services Authority (OJK) requested an explanation from Mandiri Bank and monitored the implementation of the e-banking at Mandiri Bank and asked the bank management to ensure that all service infrastructures to customers were run well and safely. OJK also asked the customers to keep their transaction safe and secure, especially the internet banking transactions; particularly in keeping their personal identification number (PIN) and other personal security codes; and, not easily presenting their ID or password for any reason to other people. (www.ekonomi.kompas.com)

Mandiri Bank had also once encountered a case of *web phishing* activity via emails sent to the customers. *Web phishing* is a criminal activity using social engineering techniques (Singh, 2007). At a glance, the email is similar to the original email from Mandiri Bank. However, inside, there is a link to update the data of Mandiri Bank internet banking customers. When users update the data, the data is recorded and sent to another address (Radiansyah, Candiwan, & Priyadi, 2016).

The problem of legal protection for banking customers is so dilemmatic that until now a legal protection for customers has not been maximized to obtain a legal certainty in the national banking.

RESEARCH METHODS

The method (Marzuki, 2006) used in this study was the normative legal approach (Ibrahim, 2006). Normative legal research is a legal research that considers the law as a norm system (Fajar & Achmad, 2010). The data was obtained from secondary data consisting of (Ali, 2009): a) primary legal materials in the form of a legislation; b) secondary legal materials in the form of writings, both books and articles containing comments or analysis related to the subject matter; c) tertiary legal materials in the form of dictionaries. The data was collected using literature reviews and document analysis. The data was analyzed using qualitative methods based on a deductive thinking (Nasution, 2008).

RESULTS AND DISCUSSIONS

Legal Protection for Bank Customers

The banking institution is the core of the financial system of each country and is very important in a modern economy (Sukarno & Syaichu, 2006). Bank is a financial institution serving as a financial intermediary of two parties, a party that has an excess of funds and a party with a lack of funds (Ibrahim, 2004). Through lending activities and various services, the bank serves the financing needs as well as launching a payment system for all sectors of the economy (Hermansyah, 2006).

In Indonesia, the provisions concerning Banking are regulated in Law Number 7 of 1992 concerning Banking and subsequently amended by the stipulation of Law Number 10 of 1998 concerning Amendment to Law Number 7 of 1992 concerning Banking (hereinafter referred to as the Banking Law) (Fuady, 2003). The Banking Law should provide legal protection for customers in the banking sector.

In relation to banking financial transactions, the existence of Law Number 11 of 2008 on Electronic Information and Transactions has brought an umbrella for banking activities using electronic media thus provides a legal protection for the banking consumers (Tianotak, 2011). This law provides a legal protection for electronic transaction consumers in Indonesia because this law provides a room for everyone to file a lawsuit against the party which administers the electronic system or uses the information technology that causes a loss (Sjahputra, 2010).

To control the banks, the internet banking activity is monitored by the Financial Services Authority hereinafter referred to as OJK (Sitompul, 2002). Before the issuance of the OJK Law (Law No.21 of 2011), bank supervision was conducted by the Bank of Indonesia. After the OJK Law exists, the regulation and supervision of financial service activities in the banking sector are carried out by OJK (Kasmir, 2014).

This customer protection needs to be linked to the establishment of a solid banking system which ultimately leads to an efficient, strong and robust banking system to create a financial system stability that promotes the national economic growth (Sugiarto, 2004). Therefore, banks and customers must have an equal relationship to support a sound banking system (BPHN, 1993/1994).

Government regulations are increasingly paying attention to banks, especially internet banking (DeYoung & Hunter, 2003). In the case of

electronic banking services, an OJK regulation on the implementation of a Digital Banking is being formulated. Digital banking service is an electronic banking service that optimizes the use of customer data in order to serve customers' financial transactions in a convenient, fast, and easy way to suit customers' needs safely, and can be done independently by the customers. So, the main key in the internet banking services is a risk management and prudential principles whose ultimate estuary is the improvement of the service quality to the customers (Kusuma & Susilowati, 2007).

Banking services through an electronic media is a service for bank customers to obtain information, communicate, and perform banking transactions through the electronic media as clearly stated in Article 1 Point 3 of the Financial Services Authority Regulation No. 38/POJK.03/2016 concerning the Application of Risk Management in the Use of Information Technology by the Commercial Banks.

In Article 2, it is mentioned that banks are required to apply an effective risk management in the use of Information Technology. Banks are also required to provide a communication network that meets the principles of confidentiality, integrity and availability. In conducting electronic banking services, banks are required to comply with the provisions of OJK and/or other related authorities. The protection provided by the bank is very important to generate a trust and convenience to the customers.

The sanctions that can be imposed under this OJK regulation are administrative sanctions in the form of written warning, decreasing the level of financial soundness in the form of downgrading governance factors in bank rating, prohibition to issue product or implementing new activities, closing certain business activities; and/or inclusion of members of the Board of Directors, Board of Commissioners and executive officers onto the failure list through a fit and proper assessment mechanism (Article 36 Paragraph 1 of the Financial Services Authority Regulation No. 38/POJK.03/2016).

Bank customers' legal protection is not only a concern in Indonesia. As a comparative study, banking customer complaints in Malaysia are also related to cyber insecurity and electronic banking. This was expressed by the *Consumer Association of Penang* (CAP, 1994) as they felt sorry for the statement issued by The Associations of Banks in Malaysia (ABM) saying that customers have become victims of fraud because of their lack of awareness and knowledge of the latest scams and this sounds very similar to saying that consumers are blamed for other people' successful fraudulent activities. ABM also said that it is the customer's responsibility to protect their assets and devices. Whereas, CAP expected banks to be responsible for protecting customers assets.

Liability of Banks from the Perspective of the Customer Protection Law

Business actors (Sidabalok, 2006) should be legally responsible as they are the main actor in the enforcement of the customer protection law. Since only with a legal liability, the customer rights can be obtained including the bank customers who use internet banking services.

Product responsibility (Campbell, 1990) is one of the legal instruments that produces an obligation to protect the rights of the customers. Historically, a product liability emerged from an imbalance of responsibility between producers and consumers. Producers (Widijantoro, 1998) are

cautioned to be continuously careful with the product, because the liability of the product should be strictly regulated.

The application of a strict liability (Miru & Yodo, 2007) is based on the premise that today's customers cannot do much to protect themselves from the risk of a serious damage caused by a "defective product". The more complex the product is, the fewer opportunities available for customers to keep themselves from the product defects.

According to Gunawan (1994) the main objective of the world of law introducing a product liability is to provide a protection to customers (customer protection) in order to have a fair risk between producers and customers.

The responsibility of the banks as business actors as regulated in Article 19 of Law Number 8 of 1999 concerning Customer Protection should cover a compensation for the damage, pollution, and/or customer loss due to consuming goods and/or services and a compensation in the form of a refund or replacement of goods and/or services of a similar or equivalent value, or health care and/or a re-compensation in accordance with the provisions of the applicable legislation. However, it does not apply if the business actor can prove that such error belongs to the customer.

In general, the demands for a compensation borne by the consumers as a result of using the product, whether in the form of material, physical or mental damages, can be based on several provisions which are generally divided into two categories, namely: compensation claims based on default (*wanprestatie*) and compensation claims based on deeds against the law (Miru & Yodo, 2007).

For the losses due to the errors or negligence of the business actors or banks, the customers have the right to get a compensation as regulated in Article 4 Letter h of the Customer Protection Law (UUPK). And, if the business actors refuse to compensate the customers' demands, they can be sued through the Customer Dispute Settlement Agency (BPSK) or the customers can launch an appeal to the Judicial Body located in their area as regulated in Article 23 of the Customer Protection Law.

The customers have the right (Nordin & Abdullah, 2017) to choose the right solution for them either through the court or out of the court. A dispute settlement through a court (litigation) is a dispute resolution pattern that occurs between the parties to the dispute, in which the settlement of the dispute is settled by the court. The verdict is binding. In addition, there is also an out-of-court dispute resolution through BPSK which carries out dispute resolution and settlement through mediation or arbitration or conciliation as set out in Article 52 Letter a of the Customer Protection Law.

In the case of alternative dispute resolution, OJK issued the Regulation Number 1/POJK.07/2014 concerning Alternative Institution for Dispute Resolution in Financial Services Sector. In the event of a complaint, the complaint must be settled first by the financial service institution. In the event that no agreement is reached, the customer and the financial service institution may settle disputes outside the court or through the court either through mediation, adjudication and arbitration.

With the existence of the alternative institution for a dispute resolution, there are two things that become the output of this institution activities. First is a complaint management. The complaint mechanism has nothing to do

with the institution where the bank will later be asked to appoint a special team handling the issue in case of a complaint. In that mechanism, there is no need for an institution. The institution will only exist and is required if it turns out that, from these normal complaints, customers are not satisfied, so the customers can file a lawsuit to the court. However, if the court mechanism is considered costly then it can be pursued by submitting it to an alternative dispute resolution institution (Hadad, 2004). However, the sanctions imposed on these violations are not strict because they are only administrative sanctions.

CONCLUSIONS

The legal protection of customer's rights which must be fulfilled by the service providers as mentioned in the Customer Protection Law becomes the sole responsibility of the service provider and the customer gets the best facilities especially in the case of a personal security. The absence of regulation specifically regulating internet banking has brought some issues. In the electronic transaction law there is no specific article regulating the internet banking. For the banks, the supervision is performed by the Financial Services Authority Regulation No.38/POJK.03/2016 concerning the Application of Risk Management in the Use of Information Technology by the Commercial Banks. However, the sanctions imposed on these violations are not strict because they are only administrative sanctions. Therefore, more strict regulation is needed in protecting customers who are disadvantaged by using the internet banking.

REFERENCES

- Ali, Z. (2009). *Metode penelitian hukum*. Jakarta: Sinar Grafika. pp.47-57.
- Agwu, E. M., & Carter, A. (2014). Mobile phone banking in Nigeria: Benefits, problems and prospects. *Int. Journal of Business and Commerce* Vol.3 (6), pp. 50-70.
- BPHN. (1993/1994). *Departemen kehakiman-RI perlindungan hukum terhadap nasabah bank*. Jakarta: BPHN, p. 53.
- Campbell, H. (1990). *Black's law dictionary*. St.Paul Minn: West Publishing Co., 1209.
- Chang, Y. (2002). Dynamics of banking technology adoption: An application to internet banking. *Working Paper*. University of Warwick.
- Customer Association of Penang. (2014). *Concern regarding our cyber security and electronic banking still unanswered*. Penang, Malaysia: CAP, 1.
- DeYoung, R. (2001). The financial performance of pure play internet banks. *Federal Reserve Bank of Chicago Economic Perspectives*, 25 (1), 60-75.

- DeYoung, R. & Hunter, W. C. (2003). Deregulation, the internet, and the competitive viability of large banks and community banks. *The Future of Banking*. B. Gup. (ed) Westport, CT: Quorum Books.
- Direktorat Penelitian & Pengaturan Perbankan Indonesia. (2002). Internet banking di Indonesia. *Buletin Ekonomi Moneter dan Perbankan*, Jun2, pp. 38-39.
- Djumhana, M. (2012). *Hukum perbankan di Indonesia*. Bandung: PT Citra Aditya Bakti. Pp. 1-2.
- Egan, R., & Prawoto, H. (2013). Pengaruh internet banking terhadap kinerja perbankan di Indonesia (Studi empiris pada bank yang listing di BEI). *Jurnal Akuntansi Bisnis*, Vol.XI, pp. 138-153.
- Fajar, M., & Achmad, Y. (2010). *Dualisme penelitian hukum*. Yogyakarta: Pustaka Pelajar. P. 33.
- Fuady, M. (2003). *Hukum perbankan modern*. First book. Bandung: Citra Aditya Bakti. P. 1.
- Gerrard, P. & Cunningham, J. (2003). The diffusion of internet banking among Singapore consumers. *Int. Journal of Bank Marketing*, 21 (1), pp. 16-28.
- Gunawan, J. (1994). Product liability dalam hukum bisnis Indonesia, *Orasi Ilmiah dalam Rangka Dies Natalis XXXIX*. Bandung: Unika Parahyangan, 1.
- Hadad, M. D. (2004). Menanti mediator bank-nasabah. *BEI NEWS*. 23rd Edition, 23 (V).
- Hamlet, C., & Strube, M. (2000). Community banks go online, *ABA Banking Journal's 2000 White Paper/Banking on the Internet*, March. pp. 61-64.
- Hermana, B. (2010). Pengukuran kualitas layanan internet banking. *Jurnal Ekonomi Bisnis* Vol.15 (1), pp. 47-57.
- Hermansyah. (2006). *Hukum perbankan nasional Indonesia*. Jakarta: Kencana Media Group. Pp. 7-8.
- Ibrahim, J. (2004). *Bank sebagai lembaga intermediasi dalam hukum positif*. Bandung: CV.Utomo. pp. 36-37.
- Ibrahim, J. (2006). *Teori & metodologi penelitian hukum normatif*. Surabaya: Bayumedia Publishing. Pp. 45-50.
- Kasmir. (2014). *Bank dan lembaga keuangan lainnya*. Jakarta: Raja Grafindo Persada. pp. 318-324.

- Kusuma, M. J. (2012). *Hukum perlindungan nasabah bank: Upaya hukum melindungi nasabah terhadap tindak kejahatan ITE di bidang perbankan*. Bandung: Nusa Media. p. 3.
- Kusuma, H., & Susilowati, D. (2007). Determinan pengadopsian layanan internet banking: Perspektif konsumen perbankan Daerah Istimewa Yogyakarta. *JAAI* 11 (2), pp. 125-139.
- Marzuki, P. M. (2006). *Penelitian hukum*. Jakarta: Kencana. pp. 93-96.
- Miru, A., & Yodo, S. (2007) *Hukum perlindungan konsumen*. Jakarta: Raja Grafindo Persada. pp. 172.
- Mukherjee, A., & Nath, P. (2003). A model of trust in online relationship banking. *The Int. Journal of Bank Marketing Science*, 31(4), pp. 5-15.
- Nasution, B. J. (2008). *Metode penelitian hukum*. Bandung: Mandar Maju. pp. 35-37.
- Nordin, R., & Abdullah, A. R. (2017). Human rights, its scope and application: An empirical analysis of future human rights advocate in Malaysia. *Pertanika Journal of Social Sciences and Humanities* 25(2), p.741-760.
- Parasuraman, A., & Zinkhan, G. M. (2002). Marketing to and serving customers through the internet: An overview and research agenda. *Journal of the Academy of Marketing Science*, Vol. 30, No.4, pp. 286-295.
- Pikkarainen, T., Pikkarainen, K., Karjaluto, H., & Pahnla. (2004). Consumer acceptance of online banking: An extension of the technology acceptance model, *Internet Research*, 12 (3), p.224-235.
- Poon, W. C. (2008). Users adoption of e-banking services: The Malaysian perspective. *Journal of Business and Industrial Marketing*, 23(1), pp. 59-69.
- Radiansyah, I., Candiwan, & Priyadi, Y. (2016). Analysis phishing threats in online banking services. *Conference: Simposium Nasional Keuangan dan Perbankan*, (1), pp. 4-18.
- Rahmath, S. (2010). Customer perspective on e-business value: Case study on internet banking. *Journal of Internet Banking and Commerce*, Vol.15, No.1, pp. 1-13.
- Sharma, H. (2011). Bankers' perspectives on e-banking and its challenges: Evidence from north India. *The IUP Journal of Bank Management*, 10 (4), p.61-70.

- Singh, P. N. P. (2007). Online fauds in banks with phishing. *Journal of Internet Banking and Commerce*, 4.
- Sidabalok, J. (2006). *Hukum perlindungan konsumen di Indonesia*. Bandung: Citra Aditya Bakti, pp. 5-6.
- Sitompul, Z. (2002). *Perlindungan dana nasabah bank: Suatu gagasan tentang pendirian lembaga penjamin simpanan di Indonesia*. Jakarta: Fakultas Hukum Universitas Indonesia, p. 220.
- Sjahputra, I. (2010). *Perlindungan konsumen dalam transaksi elektronik*. Bandung: Alumni, pp. 57-58.
- Shukla, R. & Shukla, P. (2011). E-banking: Problems and prospects. *IJMBS* 1 (1), p.23-25.
- Sukarno, K. W., & Syaichu, M. (2006). Analisis faktor-faktor yang mempengaruhi kinerja bank umum di Indonesia. *Jurnal Studi Manajemen & Organisasi*, 3 (2), p. 46-58.
- Sugiarto, A. (2004). Membangun fundamental perbankan yang kuat. Jakarta: *Harian Media Indonesia*, January, p.1-7.
- Sugiarto, A. (2012). Adopsi internet banking bagi keunggulan performa perbankan: Sebuah studi pada sektor perbankan Indonesia. *Jurnal Dinamika Akutansi*, 4 (1), p.13-19.
- Suryani. (2005). *Komunikasi terapeutik: Teori dan praktik*. Jakarta, p. 49.
- Tianotak, N. (2011). Urgensi cyber law di Indonesia dalam rangka penanganan cyber law di sektor perbankan. *Jurnal Sasi* 17 (4), pp. 24-25.
- Widijantoro, J. (1998). Product liability dan perlindungan konsumen di Indonesia. *Justitia Et Pax*, 5.
- Zeithaml, V. A., Bitner, M. J., Gremler, D. D. (2009). *Service marketing*. New York, Amerika: The McGraw Hill Companies. p. 111.