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JURIDICAL ANALYSIS OF FRAUDS IN BANKS WHICH RESULTED BY PROMBLEM BANKS

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Abstract:

In supporting business expansion, many of the Bank's officers and officers have implemented various strategies and methods to achieve expansion targets. The high necessity of life is one of the factors that causes many activities / actions that cannot be separated from fraudulent practices or fraud at the Bank. So it is necessary to know the causes (fraud) due to law (fraud). With a normative and empirical juridical approach. Shows that the factors causing fraud consist of: (a) (living beyond mean, gambling habit), (b) (internal control weakness), (c) (rationalization) and (d) (capability) fraudster, administratively (fraud) at the Bank can affect the soundness level of the Bank (CAMEL'S) related to Good Corporate Governance (GCG), Non Performing Loans (NPL's) or (rush money) due to decreased public trust (reputation risk). Banks Banks must be consistent in applying the principle of zero tolerance fraud by imposing strict legal sanctions, and the Financial Services Authority (FSA) to carry out intensive supervision of the banking business, especially the handling of fraud occurrences that occur within the Bank on a regular basis, through direct guidance or coordination to prevent there is a troubled bank.

Introduction:

The financial system is one of the important pillars for maintaining the stability of the Indonesia economy which will be the basis of the effectiveness of monetary policy, so that if the financial system is not stable, than monetary policy will not function properly.

Based on Act Number 7 Year of 1992, which has been refined into Act number 10 year of, article 3 states that the function of Indonesia Banking is a collector and distributor of public funds. Based on this explanation. It can be seen that financial transactions are related on the products and services provided by bank. The products and services offered by the banks include savings, time deposit, current account and credit. With the increasingly products and banking activities, the risks faced by banks will increase too, so that it needs to be balanced with the quality of risk management and adequate anti frauds strategies.

As organization running their business based on the principles of trust, the bank should not only be able to provide the best products and services to customers, but also must ensure the security of transaction of every business services that it provides. Therefore, the world bank is expected to continue to apply the principles of good corporate governance in all business activities to ensure the protection of the interests of stakeholders. With the development of the Indonesian banking industry, many banks are developing their business in order to maximize profits. In addition to the credit business strategy, the fund also includes market transactions of the bank itself. To achieve the maximum goal, the bank mus publish a variety of purposes that are supported by policies that are able to compete in domestic and international banking market.
In supporting the business growth, many of the Bank's officers have taken various strategies and ways to achieve the desired targets. In addition, with the increasingly high necessities of life being one of the factors causing many activities/actions that can not be separated from the practice of fraud at the Bank.

According to the Association of Registered Fraud Examiners (ACFE) in 20118, the organization loses 5% of its revenue every year because of fraud.

“The median response provided by these CFEs is that organizations lose 5% of their annual revenues to fraud. While this number is only a general estimate based on the opinions of the CFEs who took part in our study, it represents the collective observations of more than 2,000 anti-fraud experts who together have investigated hundreds of thousands of fraud cases.”

Bank fraud that occur generally involve people in the bank (interent / affiliated parties) who certainly know the in/out of the mechanisms and security systems of the bank concerned. Insider fraud is indeed a pure initiative and collaboration between insiders, there is also collaboration between insiders in the bank with outsiders, or fraud by outsiders by damaging the system in a bank by doing hekcer uses internet facilities (Sutan Remy Sjahdeini, 2006). All of these bank fraud cases show that the security system provided by the bank is weak and the application of fraud awareness is ineffective.

Various modus of crimes committed by bank fraud must be immediately anticipated by the legal apparatus in Indonesia, working fast and careful verification must be able to be done so that the law enforcement can be effective. Banks fraud is a white collar crime committed by intellectuals who use sophisticated technology and strategy as well as gaps in the rules or laws of internal and external bank. Today many incidents of fraud in the banking industry that is detrimental to customers and even the bank, but the bank that involve internal employees or parties also accureds fraud who did not follow the provisions of legislation. Maintain the bank’s image by keeping a negative image.

A Bank become problem bank or under supervision there is still administration (under financial services authority supervision (FSA), that is rated from financial statements rations of CAMELS (Capital, Asset Quality, Management, Earning, Liquidity, Sensitivity of Market). However fraud has note become a specific concern on the Financial Services Authority Regulation (FSA). Banking fraud is a crime that must be seriously action in order to protect stakeholders interest, and as a form of prevention of financial crises and legal certainly that cause banks default to fulfill responsibility to costumers.

Literature Review:

Bank is a financial institution whose business activities to collect fund from the public and refund it to the community and provide other banking services.

According to Decree Number 10 year of 1998, the banks is understood as a business entity that collects funds from the public in the form of deposits and funds in the form of credit and other forms to improve people’s lives.

Based on Articles 2, 3, and 4 of Act Number 7 Year of 1992, most of these articles were revised and supplemented by Act Number 10 Year of 1998 (hereinafter referred to as Banking Law) which regulates the principles, functions and objectives of a bank.

Indonesian Banking has a principle or basis in conducting its business activities based on economic democracy using the prudential principle.

According to Djoni S. Gazali & Rachmadi Usman (2010), the banking law is only the law that regulates all matters related to banks, institutions, business activities, and the methods and processes of conducting banking business. Banks are one of the financial institutions whose main function is to collect and distribute public funds. The Banking Law is "a series of laws and regulations that supervise the activities of banking and financial institutions, covering their nature and existence and their relationship with other areas of life (Jumhana, 2010).

Article 1 paragraph (1) of Act Number 10 Year of 1998, most the provisions have been amended and supplemented by Act Number 10 Year of 1998 (hereinafter referred to as the “Banking Law”), which regulates: institutional, commercial activities and conducting methods. And process activities”.

Financial institutions consist of two types, namely:

1. Banking financial institution is an entity that carries out activities in the financial sector in the form of an effort to collect funds, provide credit, as an intermediary to obtain financial sources, and venture capital participation, all of which are carried out directly or indirectly through fund raising, especially by issuing securities.
2. Non-banking financial institutions are institutions engaged in money and capital markets. The main aspects of business undertaken are:
   a. The financial development sector is in the form of providing medium/long-term credit and making capital participation.
   b. Businesses are aimed the peoples need such as providing loans in the form of pawnshops.

Types of non-banking financial institutions like as: (1) Insurance, (2) Financial institutions, (3) Pawn shops, (4) Pension fund providers.

Article 2 of Decree Number 10 on the Banking Industry in 1998 stipulates that Indonesian banks shall follow the precautionary principle when conducting business and be based on economic democracy. This show that the precautionary principle is one of the most important principles that banks must all banking operation is a wa to establish a sound bank.

Article 29 paragraph 2 emphasizes the importance of the precautionary principle that must be followed by any banking business. The principle stipulates that banks are required to maintain a stable level, including the ratio of capital adequacy, asset quality, management, liquidity, profitability and solvency ratios, and are required to carry out other business related to banking in accordance with the “prudential principle”. This article implies that policies must always be guided by laws and regulations so that they can be interpreted by law (EtyMulyati, 016). The principle of prudence (prudential banking) is a principle that regulates that a bank must carry out its functions and business activities prudently in order to protect public funds entrusted to it. The word caution itself is a wise word, however in the banking industry it is based on the principle of prudence (PermadiDigandpraja, 2004; Muhadi, 2006).

The monitoring, evaluation, and follow-up pillars are part of the fraud control system which at least contains steps in order fraud monitoring and evaluation and follow up mechanisms. According to Rachmadi Usman (2012), a bank has a problem if the bank is no longer able to fulfill its responsibility as a third party, because it suffers losses and as a result the public's trust in the bank decreases. Basically, banks become a problem when they continuously face problems in their activities and require special efforts to overcome these problems. Once the bank failed to meet its responsibilities to costumers, the reputation of the bank will be shaken, costumer will rush to buy (the bank’s operations), and finally the bank can go bankrupt or insolvent. If bank difficulties will endanger the continuity of its business, for example due to a sharp decline in capital, asset quality and liquidity, the bank’s business activities will deteriorate, it can be said that the bank is in trouble. This happens because the implementation is not in accordance with the precautionary principle and health.

According to Zulfi Diane Zaini (2012), there are 2 (two) factors causing the occurrence of banking problems, the factors from insede and from outside the bank :

1. The inside bank factor are caused by :
   The bad credit (non performance loan); the cause of bad loans can be seen in terms of banks or their customers. From the banks, bad credit can be caused by distribute the credit without the precautionary principle; The Bank has made a mistake in the procedure making the decision to approve the customer's credit application; and The five credit analysis principle is unimplemented correctly. Then, an external factor, that bad loans can be caused by customers misuse of credit.
2. Speculative transactions; The bank conducts business activities in the form of transactions that are speculative in nature.
3. Fraudulent act; Many possibilities can occur in banking activities, fraudulent act against the law, for example, fictitious loans.
4. The negative influence of banking internal conflicts; The internal banking conflicts can also affect performance loans, for example to be the intervention of shareholders against bank management, conflict between bank management and the commissioner, so that it can affect the bank's services to the public.
   External factors (from outside) that can caused Banking Problem include :
   Issues or news are not true from the public. Misleading issues can influence bank customers to withdraw their deposits on a large scale (rush) so as to cause banks run, and ultimately affect banking liquidity and the end can be disturb business activities.

Fraud is still occurs in companies, including in banking. Unfortunately, only a few organizations/business people care about the importance of combating it. If you let, the company's money can be runs out without making a significant profit. According to the Association of Certified Fraud Inspectors (2016), fraud is a deliberate violation of the law for a specific purpose (manipulation or providing false reports to other parties) for a specific purpose (manipulation or providing false reports to other parties) by people inside or outside the organization for personal gain or directly or indirectly for personal gain behavior. Hurt other parties.

Bank Indonesia issued regulation Number 13/PBI/DPNP on Anti Fraud Strategy Implementation for Commercial Banks on 9 December 2011. The letter was formulated in a comprehensive and holistic and implemented in the form of fraud control system through four (4) pillars are interlinked following:

1. Prevention.
   The Prevention pillar includes measures aimed at reducing the potential for fraud, at least including awareness of fraud prevention, identification on vulnerabilities and employee awareness.
2. Detection.
   Pillar investigation contains tools designed to identify and detect fraud. These tools include at least the strategies and reporting mechanisms, sudden audits, and monitoring systems.
3. Investigation, Reporting and Sanctions.
   The investigation, reporting and sanctions pillar contains tools for investigating information and reporting systems, including tools for sanctions against fraud in World Bank business activities, which at least include: investigation, reporting, and sanction.
4. Monitoring, evaluation and Follow up.
   The monitoring, evaluation dan follow up pillar includes tools designed to monitor and evaluated fraud incidents, as well as the follow up operations required based on evaluation results. These tools include: monitoring, evaluation and follow up.

Generally, fraud occurs cause of three main things consists of: presence of pressure to commit fraud, opportunity that can be exploited and Rationalization. Three elements of fraud summarized by Cressey (1953) have been known as fraud triangle theory. Meanwhile, according to the diamond fraud theory that added an element of capacity/capability of fraud perpetrators is one that encourages it.

According to Tuanakotta (2013) The triangle of frauds consists three conditions which are generally present when fraud occurs:

1. Insistence
2. Opportunity (perceived opportunity)
3. Rationalization.

Certainly is a characteristic that can not be separated from the law, especially the written legal norms. Law without the certainty of losing its meaning because it can no longer be used as a code of conduct for all. Certainty themselves referred to as one of the objectives of the law. Legal certainty is a legal guarantees which include justice. Norms that promote justice must follow the rules strictly. According to Gustav Radbruch, justice and legal certainty is a permanent part of the law. He believes, rule of law and judiciary must be considered, as well as legal certainty for national security and public order must be maintained. Finally, positive law must always be observed. Based on the theory of legal certainty and the values that must be realized that values of justice and happiness. (Achmad Ali, 2002).

Methodology:

a. Problem Approach
   In discussing the problems contained in writing this thesis the problem approach used is a normative juridical approach (normative legal research) and an empirical approach (empirical legal research)
b. Data Sources and Types
   1) Secondary Data.
      Secondary data was obtained from library research material by studying documents, theoretical archives, concepts, doctrines and legal principles relating to the principle of how to quote and examine the Acts and regulations, theories from experts, legal dictionary, and scientific articles. According to SoerjonoSoekanto who explained that secondary data, i.e. data obtained from library studies by reading, quoting and studying legislation, books, documents, dictionaries, articles and other legal literature relating to the issues, is to be discussed.
   2) Primary Data.
      Primary data is data obtained directly from the community. To obtain data directly the researchers took primary data from field research objects using the interview method, and held question and answer sessions with the resource persons, to answer research problems.
c. Data Collection and Processing Procedure
   1) Data Collection Procedure.
      Data collection procedures in this study, carried out using two methods as follows, namely:
      a) Literature Study, is a series of activities carried out by the author with a view to obtaining secondary data by reading, recording and quoting from various literature, Acts, books, mass media and other written discussions that have to do with the research conducted;
      b) Field Research (Field Research), is a research conducted by observation (observation) and interviews (interviews) with key informants.
   2) Data Processing Procedure
      After the data is collected, the data is processed through the processing of data with the following steps: identification of data; Data classification and systematization of data.
d. Data Analysis
   Analysis of the data obtained was carried out by means of qualitative juridical analysis, namely analysis carried out descriptively namely observing arguments from the data obtained in the study. Then the results of the analysis followed by a deductive conclusion that is the way of thinking that is based on common reality, then conclude the concrete which is then used as the research literature.

Discussion:

A. The Factors That Cause Fraud in Banking Institutions in Indonesia.

Based on data from the Financial Services Authority (FSA) during period year of 2017-2018, it shows that there is an upward trend in the incidence of fraud that occurs in banks in Indonesia obtained by the FSA from the results of special supervision. The main modes of fraud that occur are related to violations of the precautionary principle (prudent), violations of standard Operating Procedures, abuse of authority, and fictitious loan. The cause of fraud that occurs or suspected bank fraud, generally comes from internal banks such as internal control weaknesses from supervisor, lack of integrity (employee), and the weaknesses in banking system, so that management needs to increase supervision through the implementation of an independent review by the Internal Audit Division, reviewing internal policies, security of information technology and infrastructure.

Further, in line that the Financial Services Authority Report, majority of cases of alleged bank fraud occurred in lending activities in 60 cases (75%) and the remaining 10 cases in the area of funding/misuse of customer funds (12.7%), and 9 cases in others (11.4%). Fraud or suspected bank as a result of FSA investigations, it is known that the majority occurred in Rural Banks (BPR) as many as 68 cases (86.1%), while cases in Commercial Banks were 11 cases (13.9%). While in terms of fraud perpetrators, the Directors became the dominant perpetrators who alleged banking crimes (51.11%), while the second largest was executive officers with 20 players (22.2%), while employees were in the third position with 12 players (13.33%), 10 shareholders (11.11%), and 2 (22.2%) commissioners.

The Financial Services Authority (FSA) does not specify fraud incidents that occurred at commercial banks or rural banks that have been investigated, but can be an illustration that the increasing trend of fraud requires bank management to increase supervision through the implementation of an independent review by the Internal Audit Division, internal policy reviews and securing information technology and supporting infrastructure, and the most important thing is the law enforcement/deterrent effect for perpetrators of fraud both internal (insider fraud) or external fraud.

Based on the theory of fraud triangle of fraud (Donald Cressey) and Fraud diamond (Wolfe and Hermanson), the incidence of fraud in the area of credit that occurred at the Bank resulting in losses of Rp.1,131 billion, can be analyzed the causes or the factors the perpetrators commited fraud are as follows:

1. The fraudster is an account officer at Bank, where the money from the debtor is used for online gambling. This shows that in terms of fraudster/perpetrator have a pressure namely online gambling behavior carried out to enrich themselves (financial need, gambling) so that as to take advantage of the gap in the loan installment payments provided by debitors without being deposited into bank records.
2. Perpetrator carry out these actions on 94 debtors, and carried out in the office of Bank this shows that internal control weakness, Standard Operating Procedures in perform services to the debitur/customers, especially loan payments. The dual control function (four eye principle) in banking activities is a must in order to prevent fraud.
3. The average customer is a coffee farmer, where when the debtor repayment is accelerated because the coffee plantation has produced, this opportunity is used by fraudster under the reason of outstanding loan performance and will automatically benefit of Bank due specifically to individual targets and achievement. This reason is rationalization of perpetrators.
4. Fraud has been committed by perpetrators since October 2017, with 94 debtors as victims, and was only revealed in December 2017 (according to the audit report). This shows that the perpetrators of fraud (account officers) have the ability to conceal of fraud that have been carried out and not to be detected (capacity/capability). So that actors can take advantage of debtors/customers money and use for personal gains.

A result of fraud committed the Bank employees above, result in non performing loans (NPLs), thereby effecting the soundness level of the Bank.

Furthermore, based on an analysis of audit reports and news on electronic media, a fictitious loans case, with a loss of Rp. 28.7 billion, that the perpetrators of fraud are external parties who take advantage of the weaknesses of the Bank's internal controls. The Bank officer involved again is the account officer. The case that occurred was the lending (the fictitious loans) given to employees of the company with guaranteed payroll as an installment of loans. But the fact the lending is not in accordance with the procedure, where documents and debtors given loan are not employees of institution. Debtors are only used as ID Card to apply for loan. The results of loans disbursement are used by individual companies for personal gains, while monthly installments of loans are paid by perpetrators (loan users).

Based on the case, the factors causing the occurrence of fraud base on (fraud triangle theory by Donald Cressey's and diamond fraud by Wolf and Hermanson) are as follows:

1. The pressure :
   External parties: financial needs from perpetrators so that they plan to apply for fictitious loans by manipulating documents loans application employees who are not actual CV employees.
   Internal parties: there is pressure to achieve individual and company performance targets so that prudential banking is ignored.

2. Opportunity :
   External parties: easy submission of permanent employee loans, with working capital between the company and the Bank related to the payment of salaries of company employees distributed to the Bank, without conducting a detailed bonafidity assessment (due diligence) so that analysis external parties is not analyzed well.
   Internal party: does not conduct a feasibility assessment (bonfidity) of the company that will be given loan and the internal control weakness of the supervisor over the loan application process that is not according to procedure.
3. Rationalization :
   There is justification, that employee loans continue smoothly, because monthly installments are paid and loans are perform and offcourse profitable for Bank (interest profit).
   The internal parties involved have received illegal remuneration, which is regarded as a common phenomenon in the processing of loans, that is, in the form of parcels. This behavior does not conform to the code of ethics and the principles of good corporate governance.
4. Capability :
   Fictitious loans for fix income employees has been conducted by external since 2015 and was discovered in 2017 (2 years conceal). This shows that fraud perpetrators have the ability to conceal and are clever in performing loan maintenance to make it look normal.

In the case of giving fictitious credit that losses bank PurbalinggaRp. 28.7 billion, based on the results of the audit report, it was obtained the fact that lending by the account officer at Bank did not accordance with the precautionary principle especially the analysis of loan feasibility and capability of business based on the analysis of component 5'C (character, capacity, condition of economy, capital, collateral). Analysis of company bonafidity, document verification, prospective debtors who will be given employee loan not conducted in accordance with the Standard Operating Procedure (SOP), becomes a loophole that fraud was occured at the Bank.

The principle of prudence is a principle that stipulates that a bank must be careful in carrying out its functions and business activities to protect public funds entrusted to it. Article 2 of Act Number 10 Year of 1998 amending Act Number 7 Year of 1992 concerning the Banking Industry which stipulates that Indonesian banks must adhere to the principle of prudence in conducting business and be based on economic democracy. Article 29 paragraph 2, and 4 of Decree Number 10 Year of 1998 clearly regulates the precautionary principle which reads as follows:

1. Paragraph (2) : Banks are required to maintain to soundness of a bank in accordance with the provisions of capital adequacy, asset, quality, management, liquidity, profitability, solvency, and other aspects related to bank business, and are required to conduct business activities in accordance with the precautionary principle;
2. Paragraph (3): in providing credit or financing based on Sharia Principles and conducting other business other business activities, banks are required to adopt methods that are not detrimental to the bank and the interest of costumers who entrust their funds to the bank;
3. Paragraph (4): For the benefit of costumers, banks are required to provide information about possible risk of loss in connection with customer transactions conducted through banks.

Based on two (2) cases of fraud in the above, it can be concluded that the main factor that causes someone to commit fraud on the Bank in accordance with the theory of triangular and diamond fraud scams pressure, opportunity, rationalization, and capabilities. In general, fraud behavior is driven by 2 (two) factors, namely internal and external, commonly referred to as the GONE theory, namely Greedy, Opportunity, Need, and Exposure. Greed and need are internal factors, while opportunity and disclosure are external factors. Based on this theory, a person will commit fraud because human beings are basically greedy, never feel satisfied as done by fraud (account officer) or unscrupulous employees of Bank.

B. Legal Consequences of Fraud that Occur at The Bank, Causing Bankings Problem:

Based on Article 1 paragraf (5) of the Deposit Insurance Agency Regulation No. 4 / PLPS / 2006 concerning the settlement of failed banks that do not have a systemic impact, it states that the problem banks, based on the assessment of the Banking Supervisory Agency, have difficulties that endanger their business continuity and are placed under supervision specifically by BSA. Criteria for banking problem are divided into two types, namely:

a. The standard for non-structure banking is whether there is only one or more CAMEL’S aspect (capital adequacy ratio / capital adequacy ratio); asset quality; management; productive liquidity; sensitivity to market risk (to market risk sensitivity) is classified as a bad bank. In this case, the condition of the bank is not serious, because capital and liquidity do not harm the business activities of the bank concerned. Bank problem in this group are usually caused by temporary problem, it is hoped that the owners and managers of the bank can and want to improve the condition of the bank.
b. Criteria for Structural Banks that are structural when all aspects of CAMEL'S are classified as unsound bank, and the condition of banks in general are classified as severe, such as declining and low capital, liquidity has endangered the continuity of bank business. Such bank conditions occur because of a large non-performing loan burden and cannot be resolved properly, so that the difficulties ultimately affect the conditions of profitability, solvency, and liquidity. This is sometimes exacerbated by the lack of good faith from bank owners and management to make a settlement. Therefore, a rescue effort

that is comprehensive in nature and requires a relatively long time is needed, especially because the owner/management of the bank is no longer able to solve banking problems (Zulfi Diane Zaini, 2012).

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In the case of Bank, it certainly affects the quality of the credit that becomes NPL’s, and automatically the performance or soundness level of the bank becomes decreased. Based on the performance report of Bank \after the incident causing non performance loans to Rp, 1.13 billion. Where as for, the occurrence of fictitious loans by external parties affected the Bank NPL’s Rp. 28.7 billion. Compared to the company, the amount of non-performing loan losses both BRI bank is considered too small, so it will not significantly impact the net non performing loans required b the Financial Services Authority in the Regulation of Financial Services Authority (FSA) Number 15 Year of 20117.

The Financial Services Authority (FSA) regulation stipulates that for systemic banks, if tha bank’s condition deteriorates and meets the specified standards, the Financial Services Authority will require the establishment of a Financial System Stability Committee (FSSC) to determine the handling of systemic banking problems. As for banks other than systemic banks, in the event that the bank's condition worsens and fulfill established criteria, the Financial Services Authority will inform the Indonesian Deposit Insurance Agency (IDIC) to take necessary measures on the bank.

The Financial Services Authority also determines three bank supervision statuses, namely normal supervision, intensive supervision, or special supervision. Banks are set under intensive if they meet one more of the criteria established by the Financial Services Authority (FSA) namely:

1. The minimum Capital Adequacy Ratio (CAR) is equal to or greater than 8%, but lower than the minimum capital adequacy ratio based on the banks risk profile which must be met.
2. The core capital ratio (level 1) is less than a certain percentage determine by the Financial Services Authority (FSA)
3. The Rupiah reserve requirement ratio is equal to or greater than the statutory statutory reserve ratio that banks must meet, but according to FSA assessments, banks have basic liquidity problems.
4. Non Performing loan net (NPL net) or non performing net financing (NPF net) ratio of more than 5 percent of total loans or total financing.
5. Soundness Level of Bank with a composite rating of 4 or 5. (less soundness and not soundness).
6. Soundness Level of the Bank with a composite rating of 3 and governance rating of 4 or 3.

In addition, banks can also be designated as banks subject to special supervision in meeting one or more of the following criteria:

1. CAR ratio is less than 8 percent; and / or
2. The minimum deposit reserve ratio (based on the Indonesian rupiah) is less than the statutory minimum deposit reserve ratio that banks must meet based on the assessment of the Financial Services Authority (FSA) (banks have basic liquidity problems or short term Banks with poor liquidity development).

Based on the FSA Regulation Number 15 Year of 2017, specifically the status of the bank under special supervision, incidents of fraud that occurred and analyzed above had no significant impact on the performance of companies Bank. However, fraud incidents that occur at the above banks have legal consequences for the company or the Bank and also for the perpetrators of fraud. Some of the legal consequences of bank fraud incurred are:

1. The incidence of fraud, especially in the field of credit resulted in both the customer or the bank. The customer feels disadvantaged due to the loan status that is not paid off and is problematic in the records of the financial information reporting system and results in being blacklisted. Whereas for Banks, non-performing loans cause bank NPLs to increase and increase cost of reserve loss and companies can automatically lose money and ultimately banks may become troubled (net NPL components according to FSA Regulation Number 15 Year of 2017, criteria number 4).
2. The fraud, can result in decreased public trust because the bank was considered failed to provide services to customers and protected the assets that have been deposited. If this is not done properly (effective complaint handling), it can cause bank run or rush money effect. If there is a withdrawal or transfer of funds from one bank to another, it will automatically reduce the banking liquidity. (criteria for the soundness level of of banks in corporate governance in accordance with FSA Regulation Number 15 of 2017, criteria number 6)
3. Fraud may cause internal and external criminals to participate in bank crimes. According toAct Number 7 Year of 1998 (as amended by Act Number 10 (Banking Law) Year of 1998, banking crimes with criminal categories include seven articles, namely Article 46, 47, 47A, Article 48 (1), 49, 50 And Article 50A. At the same time, bank crimes that fall into the category of criminal sanctions violations are lighter than those classified as crimes and consist of one clause, article 48 paragraph (2).
4. Fraud that has a significant impact and fulfill the Bank's ratio criteria as stipulated in FSA Number 15 / POJK.03 / 2017, cause banks difficulties that endanger their business continuity there are arrangements, namely Article 37 Paragraph (1), (2) and paragraph (3) Act Number 10 Year of 1998 concerning Banking, which states:

    a. In the case of a bank experiencing difficulties endangering its survival, Bank Indonesia may take action to:
        1) shareholders add capital;
        2) Shareholders replace the bank’s board of supervisors and/or bank directors;
        3) the bank write-off credit or financing based on the Shariah Principle that is bad and calculates bank losses with capital;
        4) banks merge or consolidate with other banks;
        5) banks are sold to buyers who are willing to take over all obligations;
        6) Bank to transfer the management of all or part of its activities to other parties;
        7) the bank sells part or all of the meaning and / or bank liability to the bank or other party.

b. If ;
    1) the actions referred to in paragraph (1) are not sufficient to overcome the difficulties faced by the bank; and
    2) based on Bank Indonesia's assessment of the condition of banks that can jeopardize the banking system, the bank's main directors may revoke the licenses of banks and bank directors ordered to immediately convene a general meeting of stakeholders to dissolve the legal entity and form a team clearing bank.
c. In the case of bank directors do not convene a general meeting of stakeholders referred to in paragraph (2), the head of Bank Indonesia requested the court to issue a decision containing the order dissolution of legal entity the bank and appoint a liquidator. Team and ordered liquidation according to regulations.

Since the adoption of Act Number 7 year of 2009 on the establishment of government regulations (in place of Act number 7 year of 2008 in the 24^{th} year of 2004and the 3rd year of 2008 concerning the amendment of deposit insurance companies), the law in the 24th year of 2004 was revised Since then, Article 37(2) of the Banking Law has expired. As a form of legal certainty for stakeholders, it follows the theory of legal certainty. According to gustavradbruch, justice and legal certainty are fixed parts of the law. Judicial and legal certainty must be considered, and the legal certainty of national security and order must be maintained. Finally, positive laws must always be observed. The government also issued the Act number 9 year of 2016 on the Prevention and Management of Financial System Crisis", which focuses on preventing and dealing with systemic banking issues, which are an important part of the financial system. The "Law on Prevention and Handling of Financial System Crisis" regulates the role of the Financial System Stability Committee. The Financial System Stability Committee is composed of the minister of enchance, the governor of Bank of Indonesia, The Chaiman of the Financial Services Authority (FSA) Committee and the Chairman of the Deposit Insurance Corporation Committee.

Conclusions and Suggestion:

A. Conclusions:

Based on this result, the following conclusions can be conclude as follows :

1. Factors that cause fraud (fraud) committed by internal banks or external parties, namely:
    a. There are pressures where the fraud perpetrators have financial needs, negative behavior (online gambling) so as to take advantage of existing gaps.
    b. There are opportunities that the weaknesses of internal control/supervisor, verification and monitoring of Bank officer become an opportunity for perpetrators to commited fraud.
    c. Rationalization, the demand for benefits from the Bank for outstanding loans that affect interest income, and illegal gratuities that are considered general or small that affect the objectivity of Banking employees in providing credit (conflict of interest) causes control and vetification becomes weak.
    d. The capability, fraud perpetrators are able to concealed fraud within a certain period of time (3 months and 2 years) shows that the perpetrators have the ability to hide the actions of other employees and/or supervisor, so they can used the results of fraud for personal gains.
2. The legal consequences of fraud that occur at the Bank causing a Troubled Bank, namely:
    a. Fraud is one aspect of assessing the soundness level of the banks, especially governance and financial performance reports. High fraud, in the field of credit can trigger of the problems loans (NPL) so that if the net NPL ratio does not fulfill the

Financial Services Authority Regulation of 5%, it can lead to banks under special supervision.

b. Fraud that is not handled properly, and has become a public interest (local and national media news) can decreased the Bank's image (reputation risk) which could have an impact on trust or even trigger bank rush. Given that BRI is the largest bank in Indonesia.
c. Fraud can cause internal and external perpetrators to be involve in banking crime, not only affect to business because employee not only take care of company targets but also facing legal processes that can drag other parties in accordance with the Standard Operating Procedures (SOP) company.
d. Legal consequences in points (a), (b) and (c), if the bank is in trouble and endangers its business continuity, then the bank can be a problematic bank even a failed bank (non-systemic or systemic impact) so that resolution efforts by agencies related to Bank Indonesia, FSA, IDIC, and Management Financial System Crisis Committee, become resultion in their handling and prevention strategies (restructuring) as a form of legal certainty for the interests of the public or stakeholders.

B. Suggestion:

1. The cause of fraud at the Bank base on from insider fraud, so that fraud mitigation and prevention, especially in banks, must be handled seriously, consistently, giving a deterrent effect and strict legal sanctions. Fraud events are often not reported to the authorities due to image or reputation reasons, so that the deterrent effect for perpetrators of fraud and strict legal sanctions are not a major concern, the Bank must be consistent in applying the principle of zero tolerance fraud to protect the interest of costumers and stakeholders.
2. The Financial Services Authority can expressly regulate the criteria of fraud that can be used as a basis for determining a bank to be a problem bank. The Financial Services Authority should conduct intensive supervision of the banking business, especially in the handling of fraud events that occur in the Bank's on a regular basis (not only reports), but also through direct coaching, coordinating, informating on fraud that occurs and getting media attention, so that the Bank does not become problematic, consistency in the implementation of anti-fraud strategies in commercial banks, in efforts to prevent and manage fraud can always protect the interests of stakeholders.

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