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Juridical Review of Settlement Regulations : Naughty Debtors in Banking Law in Indonesia

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Abstract: *This research was motivated by several cases resulting from the actions of naughty debtors which caused significant losses for Indonesia. There is a legal vacuum in Law Number 10 of 1998 concerning Banking, making it difficult for law enforcers to determine criminal acts committed by naughty debtors. The problem formulation taken is how banking law in Indonesia is in the perspective of legal objective theory, and what is the juridical review of baddebtors in the banking law. This research uses a normative legal research approach with a theory and legal principlesapproach. Several things need to be reviewed due to the impact caused by Law Number 10 of 1998 concerning Banking, namely that there is an article that can only ensnare bank employees if there is some form of criminal liability. Apart from that, there is no clause that regulates criminal sanctions for bank employees who collude with debtors. Bank Indonesia can impose administrative sanctions, but this authority is not regulated expressly and unequivocally in the Banking Law. So that Bank Indonesia has the potential to abuse its authority in determining actions.*

Keywords: *Juridical Review, Regulation, Naughty Debtors*

INTRODUCTION

Banks are corporations that operate in the financial services sector, which is one of the driving forces of the national economy. Banks as providers of capital for micro and macro economic businesses, as well as financial savings institutions for the community and economic actors. In order to maintain the stability, smoothness and security of banking businesses, the government has issued banking law, namely Law Number 7 of 1992 which was subsequently amended by Law Number 10 of 1998.

There are several decisions in banking crime cases which have become the product of court decisions in Indonesia, including; BNI Bank burglary case worth 1.7 trillion by Maria Pauline Lumowa, owner of PT.Gramarindo Mega Indonesia using a fictitious Letter of Credit (2002) (Adikara, 2023). First decision, as a result of these actions, the Defendant was targeted under Article 2 paragraph (1) in conjunction with Article 18 of Law Number 31 of 1999 as amended by Law Number 20 of 2001, concerning the Eradication of Corruption Crimes in conjunction with Article 55 paragraph (1) 1 of the Criminal Code in conjunction article 64 paragraph (1) of the Criminal Code. (Andi, 2012).

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Second decision, Tripanca Setiadana Bank scandal with bad credit of IDR 2,732.5 trillioncarried out by Sugiarto Wiharjo alias Alay (2008). Third decision, proof of a naughty debtor causing harm to creditors is subject to civil lawsuits in accordance with Decision Number 07/Pdt.Sus-Actio Pauliana/2015/PN.Niaga. Mdn, in whose decision the Panel of Judges stated thatthe Defendant was proven to have committed an unlawful act (2019). (Apsaridewi, 2023). Four decision, the injustice that occurs in law enforcement against naughty debtors is as a result of thelegal vacuum contained in provision Number: 7 of 1992 which was amended by Law Number 10of 1998, concerning Banking. This law is unable to ensnare naughty debtors who take advantageof the weaknesses contained in the Banking Law. There has been a legal vacuum in the Banking Law, which has resulted in law enforcement having difficulty in determining crimes committed by naughty debtors. So, in order to ensnare the actions of naughty debtors who have harmed certain banks, they ultimately use other provisions of law outside the Banking Law. (Butar-butar,2019).

Inconsistent and weak Banking Law Number 10 of 1998, it is necessary to carry out a deeper judicial review, so that naughty debtors who collaborate with employees who work at certain banks can be charged as perpetrators of criminal acts, not just acts against the law, which only be sued in civil court. Based on the background description above, there are two problems ofthis research. First problem is how banking law in Indonesia from a Goal Theory Perspective Law.Second problem is how the Juridical Review of Naughty Debtors in Law Banking Company. Thisresearch aims to examine judicially the regulations for resolving delinquent debtors in banking companies according to Indonesian law. Apart from that, the aim of this research is to provide basic material for consideration of drafting laws in dealing with bad credit resulting from the behavior of naughty debtors who have loans at banks.

RESEARCH METHODS

Literature Study (Library Research) is the research method used in this research. This research uses a normative legal research approach with a theory and legal principles approach. (Elisabeth, 2019). Normative legal research is research that is based on legal norms contained in statutory regulations and court decisions. The procedure carried out in this research is in stages; library data collection, review, concept collection, elaboration and explanation of the collected data or text.

DISCUSSION AND ANALYSIS

A. Banking Law in Indonesia from the Perspective of Legal Objective Theory

The theory is related to legal objectives, or is in line with the theory put forward by GustavRadbruch, that there are 3 (three) legal objectives that must be achieved in the law enforcement process, namely: (a) legal justice, (b) legal certainty and (c) legal benefits. (Gamar, 2020). If studied further, in Law Number 10 of 1998 concerning Banking, there are several articles which are considered not to reflect the value of justice, because in law enforcement practices, for the board of commissioners, bank employees and affiliated parties the legal application uses bankinglaw. , meanwhile, everyone who is not on the board of commissioners, bank employees and affiliated parties will be subject to other laws, such as: the Criminal Code, or what is often appliedby law enforcers is using corruption laws, with the aim of making the penalties heavier. This lawenforcement practice violates the principle of "lex spicialist derogat legi generalie" as regulated in Article 63 paragraph (2) of the Criminal Code. (Midia & Ferliadi, 2018).

The provisions in Article 46 (1) and Article 47 (1) of Law Number 10 of 1998 concerningBanking, contain different elements, namely the element "whoever". This article is addressed to every person who violates the provisions of the law, whether as an individual or an organization and contains a general meaning, which is deemed to have fulfilled the principles of legal objectives, namely; there is justice because it applies to everyone. Apart from the principle of justice, there is also legal certainty, because it does not have multiple interpretations and benefits,because it can provide prosperity. The "whoever" element also emphasizes that the perpetrators targeted in this article are not only the board of commissioners, bank employees and affiliated parties, but also other people outside the bank employees themselves. (Subaidi, 2016).

Apart from the element "whoever" is an element of the article, the provisions of the articlealso state "board of commissioners, bank employees and affiliated parties" which is not relevant to the purpose of making the law, and there is no law that chooses its own legal subject, because Basically, evil acts can be committed by anyone, so the special phrases regarding legal subjects contained in Law Number 7 of 1992, which was amended by Law Number 10 of 1998, concerningBanking, are discriminatory.

In the theory of legal objectives put forward by Gustav Radbruch as explained above, thethree requirements for legal objectives state that the law must fulfill a sense of justice, as a principle of equality before the law, while based on a description of the elements that stated

in Banking Law Number 7 of 1992 which was amended by Law Number 10 of 1998, there are elements that do not fulfill the sense of justice, the criminal consequences of which in the banking law designate specific legal subjects, namely the board of commissioners, bank employees and affiliated parties.

Another weakness in the regulation of criminal offense provisions found in the Banking Law, among others, is that the criminal provisions in Article 49 only regulate bank employees aslegal subjects. However, when there are debtors involved in banking crimes, this Law is unable to do anything, because there is a legal vacuum, namely that there are no criminal provisions for naughty debtors in this Law. Likewise, regarding administrative sanctions, the authority to determine sanctions is handed over to Bank Indonesia, which is a gray authority. Solutions need to be found for these weaknesses so that the application of law in banking crimes can be carried out in accordance with the theory of legal objectives put forward by Gustav Radbruch: Justice, Legal Certainty and Benefits. (Gustav, 2012).

B. Juridical Review of Naughty Debtors in Banking Law

Some things that need to be reviewed because of the impacts they have are :

1. In Law Number 10 of 1998 concerning Banking, there are several things that, if implemented, are unable to ensnare naughty debtors who have robbed a particular bank, namely article 49 paragraph (1). This article regulates the act of falsifying documents/data,whether made by bank employees or debtors applying for loans, which results in harm to the Bank itself. In the provisions of this article, the only things that can be charged as a form of criminal responsibility are acts committed by bank employees, while the loss of money as a result of this naughty debtor is mostly enjoyed by the debtor.
2. In Law Number 10 of 1998 concerning Banking, there is no clause that regulates criminal sanctions for bank employees who collude with debtors in applying for collateral for loans whose NJOP value has been increased by naughty debtors, in collaboration with employees. field analysts who check the suitability of collateral for loans submitted by debtors.
3. Likewise, if you look at the provisions regulated in Article 52 of Law Number 10 of 1998 concerning Banking, related to administrative sanctions against Banks which states; paragraph (1) states "without prejudice to the criminal provisions as intended in Article 47,Article 47A, Article 48, Article 49 and Article 50A, Bank Indonesia may determine administrative sanctions against banks that do not fulfill their obligations as intended in thisLaw, or The

leadership of Bank Indonesia can revoke the business license of the bank concerned"; and in paragraph (2) it is stated "administrative sanctions as referred to in paragraph (1), include, among others.

a. monetary fines;
b. written warning;
c. decline in the level of bank health;
d. prohibition on participating in clearing activities;
e. freezing certain business activities, both for certain branch offices
f. as well as for the bank as a whole;
g. dismissal of bank management and subsequent appointment and appointment
h. temporary replacement until the general meeting of shareholders or meetings
i. Cooperative members appoint permanent replacements with approval
j. Bank Indonesia;
k. inclusion of members, administrators, bank employees, shareholders in the list of disgraceful people in the banking sector.
l. And in paragraph (3) it is stated "further implementation of sanctions administratively determined by Bank Indonesia.

4. Provisions regarding administrative sanctions are ineffective, because ultimately the implementation of administrative sanctions is determined by Bank Indonesia. administrative sanctions are gray sanctions and are biased, whether the administrative sanctions are basic sanctions or as additional sanctions even though in paragraph (1) it is stated "without reducing the criminal provisions as intended in Article 47, Article 47A, Article 48, Article 49 and Article 50A Banking Law Number 10 of 1998 concerning Banking." Apart from that, with the authority given to Bank Indonesia to impose sanctions,Bank Indonesia will be the executor of administrative sanctions on banks in Indonesia, the provisions regarding sanctions are determined by Bank Indonesia itself. With this authoritywithout being regulated explicitly and firmly in the Banking Law, Bank Indonesia has thepotential to take steps to abuse of power in determining actions. The authority to determinesanctions by Bank Indonesia is a floating authority (swing authority) given by law, which should be stated in the Banking Law, Bank Indonesia no longer needs to be charged with making decisions regarding administrative sanctions, but is directly appointed as the Bankthat has the authority to execute (executor) in carrying out administrative sanctions againstbanks that violate certain articles in the Banking Law.

5. With the enactment of Law Number 21 of 2011 concerning the transfer of banking regulatory and supervisory functions from Bank Indonesia to the OJK, the regulatory and supervisory functions that have been carried out by Bank Indonesia have shifted to the Financial Services Authority. According to the Central Statistics Agency, in 2023, there will be 24,276 commercial bank offices and 5,165 BPR (Rural Bank) offices in Indonesia.(I Ketut, 2017). The large number of banks in Indonesia, and the lack of legal certainty, provide opportunities for naughty debtors, including the case of Eddy Tansil (1996), who broke into the Indonesian Development Bank through a bad credit scheme, which cost theState IDR 1.3 trillion. . case of burglary of Bank BNI worth 1.7 trillion by Maria Pauline Lumowa, owner of PT.Gramarindo Mega Indonesia using a fictitious Letter of Credit mode(2002). Tripanca Setiadana Bank scandal with bad credit of IDR 2,732.5 trillion carried outby Sugiarto Wiharjo alias Alay (2008).

Burglary of bank funds through bad credit is the easiest method for naughty debtors to use, because of the intervention of officials and authorities who are the back-up for naughty debtors who become bank robbers. If you look at the modus operandi carried outby these naughty debtors, the actions committed by these naughty debtors are actually criminal acts related to the Banking Law. So the regulations that are applied should be the provisions regulated in the Banking Law. (Putri, 2023).

As a result of the weak provisions contained in the Banking Law, there is an inconsistency with the principles of legal application regulated in Article 63 paragraph (2) whichstates "If an act falls within a general criminal regulation, it is also regulated in a general criminalregulation. specific, then only that specific thing is applied." To avoid various crimes in the banking world, it is necessary to take judicial review steps. If repairs are needed, reconstructionor reformulation can be carried out according to Law Number 10 of 1998 concerning Banking.

CONCLUSIONS

a. From the theoretical perspective of legal objectives, Law Number 10 of 1998, there are elements that do not fulfill a sense of justice, legal certainty and benefit. This is due to the criminal consequences that specifically designate legal subjects, namely the board of commissioners, bank employees and affiliated parties.

b. Several things that need to be reviewed because of the impacts caused by Law Number 10of 1998 concerning Banking are; there is an article that can only ensnare bank employeesif there is some form of criminal liability. Apart from that, there is no clause that regulatescriminal sanctions for bank employees who collude with debtors. Bank Indonesia can impose administrative sanctions, but this authority is not regulated explicitly and firmly inthe Banking Law. So Bank Indonesia has the potential to take steps to abuse of power in determining actions.
c. There is a need to review the articles in Law Number 10 of 1998 concerning Banking, so that they are fair, have legal certainty and are useful. Irrelevant articles can be reconstructed or reformulated.

ADVICE

There is a need to review the articles in Law Number 10 of 1998 concerning Banking, so that theyare fair, have legal certainty and are useful. Irrelevant articles can be reconstructed or reformulated.Apart from that, it is necessary to regulate severe penalties for officials who provide back-up fornaughty debtors who become bank robbers. Strengthening the provisions contained in the BankingLaw is necessary, so that there is consistency in the principles of legal application.

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