

The Liability Of Bank Employees On Fictitious Credit Case Of Civil Servants(The Research At Branch Of Bank Aceh, Located In Kuala Simpang)

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ABSTRACT

Corruption is one of the criminal cases causing the harm to the State. Article 2, Verse (1) of Corruption Eradication Constitution regulates the substances of corruption cases. However, the argument rises related to the corruption case on Indonesian State Owned Enterprises (hereafter BUMN) or Indonesian: Regionally-Owned Enterprises (hereafter BUMD). The argument rises due to the financial separation of State on BUMN or BUMD that government acts as the shareholder that deserves to gain the consequences of profit and loss. This paper intends to find out three issues which are: 1) What is the responsibility of bank employees on the criminal offense of fictitious credit done by civil servants 2) What are the factors taken into consideration by the judge on verdict number 18/Pid.Sus-TPK/2017/PN.Bna 3) How is the legal analysis on the liability of bank employee on the criminal case of fictitious credit done by civil servants? The research reveals that: 1. The Aceh Bank employees on the case number 18/Pid.Sus-TPK/2017/PN.Bna according to the Judge Panel, is stated guilty due to the negligence of employees and are not abided to Standard Operating Procedures (hereafter SOP) that had been set up when the credit was issued which resulted the fictitious credit that caused the loss of State finances. 2. The factors taken into consideration by Judge Panel in deciding verdict number 18/Pid.Sus-TPK/2017/PN.Bna are: the factors that meet the whole substances of indictment, the negligence factors of legal subjects (*culpa*), and the potential losses of the State. 3. Legal analysis of bank employees on the criminal case of fictitious credit as mentioned on verdict Number 18/Pid.Sus-TPK/2017/PN.Bna is that the employees cannot be criminalized because they do not have bad intention (*mensrea*) and they had worked based on the certificate issued by Director of Company based on the business concept which has the consequences of profit and loss. Besides, the application of profit and loss of state on Bank Aceh can be acknowledge from the report of profit and loss provided at the end of the year.

1. BACKGROUND OF THE PROBLEM

Corruption is a criminal action which has rooted and is difficult to eradicate because the main actors on corruption cases are from state apparatuses. According to Burhanuddin Lopa, corruption is related to the bribery, manipulation on economic sectors and public interest.¹

Furthermore, Evi Hartati explains the definitions of corruption as follows: misappropriation or embezzlement corruption (the budget of state or company and so forth) for individual or other people interests.

- a) Corruption, rotten, ruined, love using the property or entrusted money, capable of being rubbed (on his/her authority for individual interest).²

Article 2 Verse (1) Act Number 20 Year 2001 about the amendment of Act Number 31 Year 1999 about The Eradication of Criminal Case of Corruption which allows the limitation of the definition of corruption is "Everyone who is against the law by making his/herself or other people or a corporation to be rich that cause state' financial or economic losses".

The act of corruption may happen in all institution that has relation with financial state including Banks. In general, the crime in banking can be classified into regulation of legal administration that contains criminal sanctions. The crime of banking is one of economic crimes often done by using bank as the target and facility of the criminal action with motives that are difficult to supervise or to prove based on banking regulation.

Furthermore, because of the government party has stock in the Bank, the banking crime can be classified into act of corruption. For instance is the case of fictitious credit of civil servants (hereafter PNS) at one of branch of Bank Aceh located in Kuala Simpang, Aceh Tamiang

¹Evi Hartati, *Tindak Pidana Korupsi*, Edisi Kedua, Sinar Grafika, Jakarta, 2014, page 10

²*Ibid*, page 9

District. The District Court of Aceh Tamiang detained six suspects of the corruption case of Bank Aceh with charge of fictitious credit, they are: Hj Ma (55), Rd (53), AR (53), IDY (30), and If (30). The other suspect was Alfi Laila, the former accountant of Junior High School of SMPN 2 Kejuruan Muda, who was the main suspect of corruption happening from 2011-2014. The motive was that Alfi Laila proposed the *consumer loan* to branch of Bank Aceh located at Karang Baru for fourteen customers with budget was IDR 2.249.000.000.³

According to chief of prosecutors of Court, Aceh Tamiang, the actions of the suspects breached the Article 2 Verse(1) *juncto* Article 18 Verse (1) point a, b, Verse (2), and Verse (3) Act Number 31 Year 1999 as an amendment with the Act Number 20 Year 2001 about The Eradication of Criminal Action of Corruption *juncto* Article 55Verse(1) ke-1 based on Criminal Code Guideline (hereafter KUHPidana) Article 64 Verse (1).⁴

According to the explanation above, it is acknowledged that the case of fictitious credit happened at branch of Bank Aceh, Karang Baru is classified as the corruption. Therefore, the bank employees who worked based on the certificate issued by Director of Bank Aceh which helped the process of credit issuance became the suspects of corruption.

Based on the case above, the writer is interested to write dissertation about this case with title "The Liability of Bank Employees on Fictitious Credit Case of Civil Servants (The research at Branch of Bank Aceh, located in Kuala Simpang)".

2. RESEARCH QUESTIONS

Based on the background of the problem stated previously, the research questions are as follows:

1. How is the liability of criminal case done by the bank employees on fictitious Credit of Civil Servants?
2. What are the factors taken into consideration by the judge on verdict Number 18/Pid.Sus-TPK/2017/PN.Bna?
3. How is legal analysis of criminal case on of bank employee liability on fictitious Credit of Civil Servants?

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<http://aceh.tribunnews.com/2017/04/27/lima-karyawan-bank-aceh-ditahan> Retryeved on 14 July 2017 8.00 pm

⁴Erwinsyah, The Chairman Of State Prosecutor Aceh Tamiang, *Interviewed* on 20 August2017 (edited)

3. DISCUSSION

The Responsibility of Criminal Offense of Bank Employees on Fictitious Credit of Civil Servants

Everyone who is punished guilty on committing the criminal action has to take the responsibility before the applicable law because the guilty has committed the crime regulated in legislation. According to Barda Nawawi Arief, the responsibility of criminal case contains the culpability values based on the balance of mono-dualistic based on the justice value that should be parallel with the legality values based on the certainty values. Although the concept is principled that the liability of criminal cases based on the culpability, in some cases, it is not limited to the *vicarious liability* and (*strict liability*). The *errors* are either the *error fact* or the error concept based on the apology reason that the perpetrators are not criminalized except the errors are deserved to be blamed on.⁵

According to Hans Kelsen on his theory about the legal liability, states that: "someone has liability before the law on the certain offense or that she/he is a subject to take the legal responsibility which means that the perpetrator is responsible to the sanction of the action against the law."⁶

Criminal liability is related to legal subject/ offenders on criminal offense according to legislation. On the formulation of criminal offense, the determination is if the criminal offenses are "On behalf of legal institution or corporation" thus the lawsuits and criminal sanction are punished to the officials either individually or collectively with high criminal penalties.⁷

Criminal liability on corruption offense is more general from general law in term of offense regulated on Act Number 20Year 2001 about the amendment of Act Number 31 Year1999 on Eradication Of Corruption Offense which has larger scope particularly regarding to

⁵Barda Nawawi Arief, *Masalah Penegakan Hukum dan Kebijakan Penanggulangan Kejahatan*, PT. Citra Aditya Bakti, Bandung, 2001,page 23

⁶Hans Kelsen (a), sebagaimana diterjemahkan oleh Somardi, *General Theory Of law and State, Teori Umum Hukum dan Negara, Dasar-Dasar Ilmu Hukum Normatif Sebagai Ilmu*, Nuansa & Nusa Media, Bandung, 2007,page 119

⁷EkoSoponyono, *Kebijakan Formulasi Sistem Pemidanaan yang Berorientasi Pada Korban dalam Bidang Hukum Pidana Materil*, Pohon Cahaya, Yogyakarta, 2011, page 112

the substances that cause the State loss financially or economically. The substance causing the loss of the finance state which determines the criminal offense is the corruption offense or general offense.

Article 1 Verse (22) Act Number 1 Year 2004 about State Treasure explains “The losses of the state/region are the shortage of money, valuable documents, and property which are actual and certain in term of the number as the results of action against the law either intentionally or unintentionally”. The concept applied on the article is the concept of losses according to material offense. The action can be categorized as the cause of State losses with conditions actual loss condition of the State.

The questions raised are when the losses of the states happen on State-Owned Enterprise (BUMN) or Regionally State-Owned Enterprise (BUMD) because each corporation has to take the criminal liability of the state losses. Article 23, The 1945 Constitutions of Republic of Indonesia relating to the financial responsibility is from each institution.

In line with this, the State wants to do business and in order to run the business, it uses BUMN or BUMD as the representative of government party. For instance is the Acehese Government with Bank Aceh, the local government in district and province levels as the highest shareholders at Bank Aceh. In running the business, the State as the shareholders gets the consequences of profit and loss.

Five employees of Bank Aceh on the case verdict Number 18/Pid.Sus-TPK/2017/PN.Bna were charged with indictment Article 3 Jo. Article 18 Verse (1) points a, b, Verse (2), Verse (3) Act 20 Year 2001 about the amendment of Act Number 31 Year 1999 about The Eradication Of Corruption Offenses Jo. Article 55 Verse 1, the first KUHP Jo. Article 64 Verse 1 KUHP.

The panel of judges punished the Bank employees guilty in committing the criminal offense “corruption” that corresponded with the indictment of general prosecutors and sentenced one year in prison, fine of IDR50.000.000,00 (fifty millions) in case the fine was not paid, the guilty party had to be prisoned for one month.

On the consideration, the judge panel stated that the Bank Aceh employees were guilty that resulted the negligence and did not follow the Standard Operating Procedure (hereafter SOP) that had been set in issuing the credit that cause the fictitious credit.

The Factors Taken into Consideration by Judge on Verdict Number 18/Pid.Sus-TPK/2017/PN.Bna

The factors taken into consideration by judge on corruption offense of fictitious credit at branch of Bank Aceh in Kuala Simpang were as follows:

1. The fulfilled factors of all indictment substances

The main factor taken into consideration by the judge in deciding a case is the fulfillment of lawsuits which are divided in the substances of criminal cases. In term of indictment Article 3 Jo. Article 18 Verse (1) Points a, b, Verse (2), Verse (3) Act 31 Year 1999 about The Eradication of Criminal offenses as amendment on Act Number 20 Year 2001 about the amendment of Act Number 31 Year 1999 about The Eradication of Criminal offenses Jo. Article 55 Verse 1 the 1st KUHP Jo. Article 64 Verse 1 KUHP, which the substances of Articles are as follows:

1. Every Person;
 2. Who makes self-benefited or other people-benefited or a corporation-benefited;
 3. Misappropriation of authority, opportunity or property because of the position;
 4. Harm the State finance or State economy;
 5. The substance on the involvement of the offense;
 6. The substance on the sustainable offence;
2. The factor of negligence (*culpa*) of the suspects

According to Moeljatno, the negligence (*culpa*) is either intentionally or coincidentally, however, the *culpa* is considered less significant compared to the intention, because it is the *culpa* lawsuit, the *culpa* is the virtual (called *quasideliet*) that cause the criminal. *Culpa* lawsuit contains two types; the negligence lawsuit whether it causes the consequences or not, but it is charged with the criminal offense which is the negligence itself, the differences of both of them are very easy to comprehend which is the negligence that causes the consequence and due to the consequence happens, the lawsuit is formed, the negligence which does not cause the consequences has been charged with criminal offense at the first place.⁸

3. Factors that harm the State

Based on the financial formulation of State as stated in Act Number 31 Year 1999, the financial loss of the State can be formulated as follows:

- a. The issuance of the resource/assets of State/Region (in term of money, property) that should not be issued;

⁸Barda Nawawi Arief, *Op.cit*, pages 46-

- b. The issuance of the resource/assets of State/Region that should not be greater based on the applied criteria;
- c. The loss of the resource/assets of State/Region that should be accepted (including the acceptance in term of fake money, fictitious property);
- d. The acceptance of the resource/assets of State/Region that is smaller/lower than it should be (including the acceptance of damage property, inappropriate quality);
- e. The emersion liability of the State/Region that should not be;
- f. The emersion of greater liability of the State/Region than it should be;
- g. The loss of right of the State/Region that should be possessed according to applied regulation;
- h. The State/Region accepts less right that it should be.

According to the statement above, the word of financial loss of the state is described in two kinds of relationship:

1. The action solemnly harms the financial State (*actual loss*)
2. The possibility causing the loss (*potential loss*)

On the case of criminal offense done by the employees of Bank Aceh in issuing the credit may cause the loss to Acehese Government (*potential loss*). Therefore, the employees are categorized as the subjects of law who have the criminal liability.

The Legal Analysis of Liability of Criminal Offense Done by Bank Employees on Fictitious Credit of Civil Servants

Five suspects of Bank Aceh's employees on verdict Number 18/Pid.Sus-TPK/2017/PN.Bna should not be charged with criminal codes because the employees worked based on the certificate (SK) issued by the Corporate' director. Thus, the criminal codes should not be charged to someone because she/he against the Director' certificate. It is not classified as breaching the constitution. Besides, the Director' certificate was valid only for internal scope. The liability should be made annually and discussed on the shareholder meeting.

If the Director decides that there is the offense, the Director will punish the employees based on Standard Operating Procedures applied by each Company. Additionally, one of the obligations is to do management evaluation. There is no explanation from the loss substances of State finance which is stated in the formulation

of lawsuit on Article 2 and 3 on constitution of corruption offense. The result is that the application of lawsuit to the corruption suspects of BUMN becomes complicated due to the proved substances to BUMN that creates the problem related to the State finance.

The process of judicial review is in Constitutional Court with the judicial review on constitution of State finances. Judicial review Number 62/PUU-XI/2013 was proposed by the legal forum of BUMN and the Article inquired for judicial review was Article 2 point g letter I Act Number 17 Year 2003 about State finances as well as Article 6 Verse (1), Article 9 Verse (1) point b, Article 10 Verse (1) and (3) point b, and Article 11 point a, Act Number 15 Year 2006 about Audit Board of the Republic of Indonesian (hereafter BPK). The proposal of judicial review states that BUMN assets are not included in State finances and BPK cannot perform investigation to BUMN.

The proved substance of State financial losses of corruption case in BUMN becomes problematic. If the loss of BUMN is considered as the state loss based on the regulation on Treasure Act, it results many of employees of BUMN to be suspects due to the corruption action, however it also may be caused either by *miss management* or by *business loss*.

Therefore, the employees of Bank Aceh on this case should not be charged because they had worked based on business concept. They who worked based on SK of Director of Bank Aceh have targets to be fulfilled on customer loan business. When the customer make the proposal of Customer Loan Issuance, the employees of Bank serve the customer and they will not impede the stages of lending.

4. CONCLUSION

Based on previous problem discussion, it can be concluded as follows:

1. The criminal liability of employees of Bank Aceh on case Number 18/Pid.Sus-TPK/2017/PN.Bna is that the Judge sentenced guilty to the employees due to the negligence and did not follow the applied SOP in issuing credit which resulted the fictitious credit that has potency of State financial loss.
2. The factors taken into consideration by Judge on verdict Number 18/Pid.Sus-TPK/2017/PN.Bna are the fulfillment of indictment, negligence of legal subject (*culva*), the factor of potency of State financial loss.
3. The legal analysis of criminal liability of Bank employees on fictitious credit as stated on verdict Number 18/Pid.Sus-

TPK/2017/PN.Bnais that they cannot be committed guilty due to the bad intention (*mensrea*) and they had worked based on SK issued by Bank Director based on business concept which has the consequence of profits and losses. Besides, whether the State loss is applicable or not, can only be found on the annual report of profit and loss at the end or the year.

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