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Legal Protection for Customers Who Experience Losses Through The Mobile Banking Feature Service System

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Abstract

The formulation of the problem in this study is about the responsibility of the bank if the customer suffers a loss and legal protection for bank customers who suffer losses due to services from the bank system on mobile banking services based on Law Number 8 of 1999 concerning Consumer Protection. The type of research used is normative juridical research, namely legal research carried out through analysis, description, and study of library materials in the form of agreement contents, laws and literature relating to the problem to be studied. Based on the results of the study, it is known that in connection with the bank's obligations to customers who experience problems with mobile banking due to a system failure that results in loss of funds in the customer's account, this is resolved by re-crediting the account with an amount equal to the loss in question. This shows that banks have accepted their responsibility as industry players to provide compensation in accordance with Article 7 of Law no. 8 of 1999 concerning Consumer Protection, which states that industrial players are obliged to provide compensation, and/or compensation in the event of a loss due to the use, manufacture, or use of goods and/or services. Suggestions that can be given to users to be more careful in using mobile banking. And to the bank the security is further enhanced.

Keywords

Legal Protection, Customers, Loss, Mobile Banking

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1. Introduction

Legal protection is closely related to the rights inherent in each holder. Interests are individual or group demands that are expected to be met. Protection for customers in today's business regulations is a matter of great urgency, so that the existence of legal protection or legal protection is to create comfort and peace for the parties concerned.

Legal protection should be an effort to create a sense of security and protection for customers. The main key in legal protection for customers is that between customers and financial institutions are very closely related, banks will not develop properly and cannot provide benefits to the wider community, if there are no customers, because as a banking business actor is very dependent on customers, to be able to maintain business continuity.

One of the advances in information technology is the birth of mobile banking (mobile banking). Mobile banking is said to have become a new way of marketing banking services and can act as Customer Relationship Management (CRM) for financial service companies. Customer Relationship Management (CRM) is a strategy that is integrated into the corporate culture and with the passage of time it is always honed and improved according to the needs and desires of its customers. This happens because in the mobile phone market has been very

widely used by consumers, mobile phones make it easier for companies to communicate with the target market and can build stronger relationships with consumers in this case banking services as a provider of mobile banking services. Mobile banking allows users to access balance information to transfer a certain amount of money only via mobile phones. One of the problems encountered in the use of mobile banking is transaction failure and repeated transactions due to delayed SMS (SMS-delay), this is due to the SMS (Short Message Service) protocol that does not have a mechanism to maintain the connection depending on traffic, Traffic is a measure of data transfer that has been used by the web, so delays in information often occur in mobile banking transactions.

The weakness of m-banking is the dependence on the availability of the operator's cellular network. If there is a blank spot or network unavailability, then the m-banking service cannot be performed. This is actually not the responsibility of the bank but the responsibility of the cellular operator and internet provider used by customers to access m-banking services. The use of cellular networks for the purposes of commercial transactions (mobile commerce) is considered quite safe, because the user's identity is clearer, one cell phone number is only used by one person.

Information delays that sometimes occur at certain hours involve two servers, namely the bank server and the operator server, if one of the servers is repaired it will interfere with the transaction process. The security of mobile banking services worries bank customers who use mobile banking services. The losses of bank customers using mobile banking services that occur due to delays in information on mobile banking services by the bank system have become a study in the field of banking law that can be related to consumer protection law, considering that customers are consumers who use banking services.

According to Article 21 Paragraph (3) of Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE) states that: "If the loss of electronic transactions is caused by the failure of the operation of the electronic agent due to the actions of a third party directly against the electronic system, all legal consequences will be borne by the the responsibility of the electronic agent operator," Article 22 paragraph (1) of Law 11 of 2008 concerning Electronic Information and Transactions (ITE) also explains that: "Certain electronic agent operators must provide features on the electronic agents they operate that allow users to make changes information that is still in the transaction process".

Electronic agents are obliged to provide access for users to be able to make changes to information during the transaction process. The electronic information provided is not only limited to writing, sounds, pictures, maps, designs, photos, electronic mail, telegrams, or the like, letters, signs, numbers, access codes, symbols, which have been processed which have meaning or can be understood by people. who can understand it.

The problem of legal protection for banking customers is a matter that is still very dilemmatic, so that until now legal protection for customers has not been maximized to get good certainty in national banking. The implementation of mobile banking, which is strongly influenced by the development of information technology, in fact, in addition to making transactions very easy and practical, on the other hand creates a sign of risk that can harm the bank's customers themselves. The rights of customers that must be realized by service

providers as stated in Law Number 8 of 1999 concerning Consumer Protection are the full responsibility of the service provider and customers get the best facilities, especially in matters relating to the customer's own security.

Based on the background, the expected research objectives are to find out and explain legal protection for bank customers who experience losses due to services from the bank system on mobile banking services based on Law Number 8 of 1999 concerning Consumer Protection. Loss.

The research related to the research conducted by the researcher is the first research of Cut Maidina Ananda Putri, in a thesis entitled "Juridical Review of Legal Protection Against Customers Who Suffer Losses Due to Errors in the Bank System in Mobile Banking Services". Dwi Ayu Astrini's second research, in a journal entitled "Legal Protection of Internet Banking Users from Bank Customers from Cybercrime Threats". Anis Busroni's third research, in a journal entitled "Legal Protection in Internet Banking Transactions According to the Electronic Transaction Law.

2. Research Methods

This study formulates two problems. How is the legal protection for bank customers who experience losses due to services from the bank system on mobile banking services based on Law Number 8 of 1999 concerning Consumer Protection. What is the responsibility of the bank if the customer suffers a loss.

To answer this question, we need an appropriate method to be able to answer it. The type of research used in this research is qualitative research. Qualitative research is research that intends to understand the phenomenon of what is experienced by research subjects such as actors, perceptions, motivations, and others. Holistically, and descriptively in the form of words and language, in a special context that is natural and uses various scientific methods. The approach method used in this research is a normative research method, normative research is a legal research that puts the law as a building norm system. The system of norms in question is about the principles, norms, rules of laws and regulations, court decisions, agreements and doctrines. The research is descriptive analytical, which reveals the laws and regulations relating to legal theories that are the object of research.

The data sources themselves consist of primary and secondary sources. Sources of legal materials can be divided into primary legal sources and secondary legal materials. Meanwhile, secondary legal materials are in the form of all publications on law including legal books including theses, theses, legal dissertations, legal journals. Then tertiary legal materials, namely materials that provide instructions and explanations for primary legal materials and secondary legal materials, such as dictionaries (law), etc.

3. Discussion

4. Banking Liability Based on the Consumer Protection Act

In mobile banking services, the first party responsible is the bank which is the service provider, in which case the bank is also called the business actor. Article 1 point 3 of Law Number 8 of 1999 concerning Consumer Protection states that: A business actor is any

individual or business entity, whether in the form of a legal entity or not a legal entity established and domiciled or conducting activities within the jurisdiction of the Republic of Indonesia, either individually or jointly through agreements to carry out business activities in various economic fields.

The responsibilities of business actors as stated in Article 19 of Law Number 8 of 1999 concerning Consumer Protection are: a. Business actors are responsible for providing compensation for damage, pollution, and/or consumer losses due to consuming goods and/or services produced or traded. b. The compensation as referred to in paragraph (1) may be in the form of a refund or replacement of goods and/or services of a similar or equivalent value, or health care and/or compensation in accordance with the provisions of the applicable laws and regulations. c. The compensation is given within 7 (seven) days after the transaction date. d. The provision of compensation as referred to in paragraphs (1) and (2) does not eliminate the possibility of criminal prosecution based on further evidence regarding the existence of an element of error. The provisions as referred to in paragraph (1) and paragraph (2) shall not apply if the business actor can prove that the error is the fault of the consumer.

In general, claims for compensation experienced by consumers as a result of using the product, whether in the form of material, physical or mental losses, can be based on several provisions, broadly speaking there are two categories, namely claims for compensation based on default and claims for compensation based on actions. against the law. In addition to responsibilities, business actors also have rights and obligations that must be carried out as stipulated in Article 6 and Article 7 of Law Number 8 of 1999 concerning Consumer Protection, including:

Article 6 of Law Number 8 of 1999 concerning Consumer Protection, the rights of business actors are: a. The right to receive payments in accordance with the agreement regarding the conditions and exchange rates of traded goods and/or services b. The right to obtain legal protection from the actions of consumers who have bad intentions c. The right to carry out proper self-defense in the legal settlement of consumer disputes. The right to rehabilitate a reputation if it is legally proven that consumer losses are not caused by goods and/or services traded. Rights regulated in the provisions of other laws and regulations.

Article 7 of Law Number 8 of 1999 concerning Consumer Protection. The obligations of business actors are: a. In good faith in carrying out its business activities b. Provide correct, clear and honest information regarding the condition and guarantee of goods and/or services as well as provide an explanation of the use, repair and maintenance c. Treat or serve consumers correctly and honestly and non-discriminatory d. Guarantee the quality of goods and/or services produced and/or traded based on the provisions of the applicable quality standards of goods and/or services e. Provide opportunities for consumers to test, and/or try certain goods and/or services and provide guarantees and/or guarantees for goods manufactured and/or traded f. Provide compensation, compensation and/or compensation for losses due to the use, use and utilization of traded goods and/or services; g. Provide compensation, compensation and/or replacement if the goods and/or services received or utilized are not in accordance with the agreement.

One of the forms of bank liability is in the case of a loss experienced by a customer of mobile banking services due to an error in the bank system resulting in the loss of customer funds in their account, manifested by being credited back into the customer's account in an amount equal to the loss. This means that the bank has fulfilled its obligation as a business actor to provide compensation. So the bank has carried out its obligations as stated in Article 7 letter f of Law Number 8 of 1999 concerning Consumer Protection stating to provide compensation, compensation and/or compensation for losses due to the use, use and utilization of traded goods and/or services."

Article 19 of Law Number 8 of 1999 concerning Consumer Protection explains that banks are required to provide compensation to customers when the customer feels aggrieved by the bank's mistakes or negligence. if the bank does not fulfill the compensation, the customer can make a claim against the bank, as stated in Article 23 of Law Number 8 of 1999 concerning Consumer Protection which states that business actors who refuse and/or do not respond and/or do not fulfill the compensation losses on consumer claims as referred to in Article 19 paragraph (1), paragraph (2), paragraph (3), and paragraph (4), can be sued through the consumer dispute settlement agency or submit to the judiciary at the consumer's domicile."

5. Accountability of Banks Based on Banking Law

The Banking Law related to Customer Protection is regulated in Article 5 Paragraph (1), Article 20 Paragraph (1), Article 23, and Article 33, Law No. 10 of 1998 concerning Amendments to Law No. 7 of 1992 concerning Banking. In Article 5 Paragraph (1) it is stated that according to its type, a bank consists of: a. Commercial Banks, b. Rural banks.

In an effort to provide security in the banking process, regulation is needed, either through legislation in the banking sector or in other related legislation. In this case, Law Number 8 of 1999 concerning Consumer Protection has a close relationship, especially in terms of protection for banking customers, which can also be interpreted as a consumer.

1. Conventional Bank

The responsibility of banks, namely, regulating and supervising banks is carried out by Bank Indonesia, including in the event of a change in the transfer of bank ownership, in particular, customer data, regarding licensing issues, including: Approval of bank ownership and management, namely concerning bank institutions in terms of ownership may relate to mergers, consolidations and acquisitions.

Banks have licenses, terms of credit agreements and in the event that customer data, bank services and matters relating to banks to other customers are approved by Bank Indonesia, then Bank Indonesia is the holder of authority for all banks, and is responsible for all banks and is inseparable. of the bank's customer obligations.

Violations of customer rights by banks can be resolved through legal channels. However, when we are again aware of the values of the Pancasila state law and the 1945 Constitution which put forward the principle of deliberation, the mediation forum is also an important dimension. When the banking dispute can still be resolved properly and still benefits both

parties, then legal or court proceedings can be set aside/discontinued. This is also related to the principle of cheap, simple and fast dispute resolution. The presence of these efforts certainly cannot be separated from the reciprocal relationship between customers and banks, be they depositors in the form of savings or deposits or other customers.

2. Sharia

Islamic Banking (Islamic Banking) is a step forward in the development of banking. The main principle of Islamic banking is the prohibition against the withdrawal of interest in any form in conducting transactions and business or trading activities. Sharia Banking has been regulated in Law Number 21 of 2008 concerning Sharia Banking (hereinafter written UUPS).

In the use of internet banking facilities, banks must also pay attention to and maintain the confidentiality of their customers, both regarding customer data or regarding the amount of deposited funds in certain banks. In addition, the bank must also maintain the privacy of the bank itself. This is regulated in Article 1 number 28 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking.

For tax purposes, at the request of the Minister of Finance, the leadership of Bank Indonesia is authorized to issue written orders to banks to provide information and show written evidence and letters regarding the financial condition of depositing customers to tax officials. This is regulated in Article 41 Number 1 of the Banking Law.

For settlement of bank receivables that have been submitted to the State Receivables and Auctions Agency or the State Receivables Affairs Committee Head of Bank Indonesia may grant permission to the officials of the State Receivables and Auctions Agency or the State Receivables Affairs Committee to obtain information from the bank regarding customer deposits. This is regulated in Article 41A Number 1 of the Banking Law.

In civil cases between a bank and its customers In civil cases between a bank and its customers, the directors of the bank concerned may inform the court about the financial condition of the customer concerned and provide other information relevant to the case. This is regulated in Article 43 of the Banking Law.

At the request, approval, or authorization of the depositing customer made in writing. Upon approval or authorization from the depositing customer and the approval or authorization is made in writing, the bank is required to provide information regarding the depositing customer's deposit at the bank concerned to the party appointed by the depositing customer. This is regulated in Article 44A Paragraph 1 of the Banking Law.

The business activities of Islamic banks are more varied than conventional banks, because Islamic banks are not only based on a profit-sharing system (mudharabah) but also a buying and selling system (murabahah), leasing and providing other services as long as they do not conflict with sharia principles.

Theoretically, the position between Islamic banks and customers in murabahah financing is equal (balanced). There are also general principles of contract law, such as the principle of consensualism, the principle of freedom of expression, and the principle of legal equality. However, in practice it is often found inequalities in position between the two parties to the agreement. The customer is in a situation that requires sharia bank financing facilities

and with this position, the customer does not have a better bargaining position than the bank. Customers have no other choice because banks are generally protective to secure their portfolios, by placing creditors in a favorable position.

The murabahah financing agreement between the customer and the sharia bank is made by default by the bank concerned. This will benefit the Islamic bank's position and the customer cannot change the agreement. The customer only has the option to accept or not to accept the financing agreement in question and the possibility to make such changes does not exist at all.

Legal protection for Islamic banks and customers in murabahah financing agreements is needed because the parties do not necessarily have the same power, so that one of them has a low bargaining position. As a result, this will result in one of the parties having no other choice, so they will accept the agreement. In fact, the party may not necessarily be able to fully accept it. Thus, the agreement produced by both parties does not have a balanced power. In fact, the agreement should be based on the principle of willingness of the parties who made it.

Therefore, the parties who make the agreement and the parties involved in it need to be given legal protection. The legal protection is of course provided based on the applicable laws and regulations, agreements, and according to custom. Legal protection is given to the parties who make it. And in the context of banking, business actors are said to be the bank and customers as consumers who need legal protection because consumers have a greater risk than business actors and have a weak consumer bargaining position. Therefore, the rights of consumers as customers in banking have the opportunity to be violated. In short, legal protection for customers as consumers in banking requires special regulations through laws and regulations, so that the interests of consumers can be protected.

6. Conclusion

Based on the results of research on legal protection for customers who experience losses through the mobile banking feature service system, legal protection for mobile banking service customers who experience losses due to services from the bank system can be carried out with repressive and preventive legal protection. Repressive protection is provided in the form of sanctions, namely civil sanctions in the form of compensation as stipulated in Article 19 of Law Number 8 of 1999 concerning Consumer Protection and administrative sanctions. Preventive legal protection is carried out to prevent losses to mobile banking service customers due to errors from the bank system experienced by other customers/consumers. The form of the bank's responsibility to customers who experience losses on mobile banking services due to errors from the bank system resulting in a loss of balance in the customer's account, is realized by being credited back to the customer's account in the amount of money equal to the loss. This shows that the bank has fulfilled its obligations as a business actor to provide compensation.

The suggestion from the researcher is to the bank, in the context of implementing mobile banking services, the security is further enhanced, so that there will be no more losses experienced by customers due to services from the bank system and its legal protection is

further emphasized so that in the future. To the Government, to make special regulations regarding mobile banking services so that they have a definite legal basis.

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