



Characteristics of Sharia Bank employees' fraud actions against customer financing guarantees classified as corruption crimes

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Abstract

This research aims to analyze the fraudulent actions of sharia bank employees regarding customer financing guarantees which are classified as criminal acts of corruption. The formulation of the problem in this article is firstly the qualification of fraudulent acts of sharia bank employees which qualify as criminal acts of corruption and secondly the judge's legal considerations (ratio decedendi) regarding fraudulent acts of sharia bank employees which qualify as criminal acts of corruption. This research is normative legal research with statutory, conceptual and case approaches. The results of this research are the findings related to the characteristics of fraudulent actions of sharia bank employees who qualify as criminal acts of corruption.

Keywords: Corruption, fraud, sharia banking

Introduction

Face process development economy global moment this, especially the economy national which always move fast, competitive and integrated with various increasingly complex challenges and a financial system that continues to develop, requiring us to continue to innovate so that we can continue to follow and be in line with developments over time. National development is a sustainable development effort to create a just and prosperous Indonesian society based on Pancasila and the 1945 Constitution of the Republic of Indonesia. Since the launch of the liberalization of the banking world in recent years, it has been seen that developments industry banking walk so fast, public start familiar with and understand how to use banking services in business matters and other transactions. Therefore, the banking business began to develop rapidly so that it often had consequences in its regulation. This is important, considering that the banking business is a business based on trust so that development business banking need supported by adapting banking regulations to dynamic developments in society.

The number of businesses and types of activities carried out by banks will increasingly open up opportunities for irresponsible parties to reap profits personal. Party Which own chance For pick These benefits include parties whose daily work is related to the banking system, for example bank employees, members of the bank's board of directors, bank customers, members of the bank's board of commissioners, bank shareholders and state officials who have the authority to supervise the bank. In this case, of course the law must return to its role as an instrument in order to provide protection, create order, well-being And justice and create rules and systems that can prevent and eradicate criminal acts, including banking crimes.

One type of banking that also requires legal protection arrangements is sharia banking. By general forms financing Funded by sharia banks are buying and selling, renting, profit sharing and investment capital or partnership. The financing period is agreed by the bank and its debtor customers by considering the ability to repay the financing. In general, financing can be approved by the bank if the

customer accompanies the application with appropriate collateral.

The collateral is in the form of property belonging to the Debtor or a third party which is bound as a means of payment in the event of a default by the sharia bank. The guarantee provided by the debtor to the sharia bank is needed to pay the debt if there is a default on the financing provided by the bank by cashing in or selling the guarantee through a predetermined mechanism. Thus, during the assessment process regarding the feasibility of financing to prospective debtor customers, this guarantee becomes a determining indicator used by the bank to assess the suitability of debtor customers to obtain the amount of financing that will be provided and also the time period. With this guarantee, the Islamic bank as a creditor will have confidence as a condition stipulated by the statutory provisions regarding prudential standards to create confidence that the debtor will fulfill obligations that can be valued in money arising from a financing agreement.

In practice, it turns out that there are many acts of fraud related to guarantees at Islamic banks. In its development, some have even qualified as criminal acts of corruption. Therefore, it is necessary to carry out a comprehensive analysis regarding the fraudulent actions of sharia bank employees regarding customer financing guarantees which are classified as criminal acts of corruption.

The formulation of the problem in this article is *firstly* the qualification of fraudulent acts of sharia bank employees which qualify as criminal acts of corruption and *secondly* the judge's legal considerations (ratio decedendi) regarding fraudulent acts of sharia bank employees which qualify as criminal acts of corruption.

Literature review

Currently in Indonesia there are two types of banks, namely banks that carry out their business activities conventionally and banks that carry out their business based on sharia principles or what are called sharia banks. Referring to Republic of Indonesia Law Number. 21 of 2008 concerning sharia banking, it is stated that sharia banking is everything that concerns Sharia Banks and Sharia Business Units,

including institutions, business activities, as well as methods and processes for carrying out business activities. Meanwhile, the definition of a sharia bank itself is a bank that carries out its business activities based on Sharia Principles. According to their type, sharia banks consist of Sharia Commercial Banks and Sharia People's Financing Banks. The initiative to establish an Indonesian Islamic bank began in 1980 through discussions on the theme of Islamic banks as a pillar of the Islamic economy. Furthermore, as a form of trial, the idea of Islamic banking was put into practice on a relatively limited scale, including in Bandung (Bait At-Tamwil Salman ITB) and in Jakarta (Koperasi Ridho Gusti). Furthermore, in 1990, the Indonesian Ulema Council (MUI) formed a working group to establish an Islamic Bank in Indonesia. On 18 - 20 August 1990, the Indonesian Ulema Council (MUI) held a workshop related to bank interest and banking in Cisarua, Bogor, West Java, where the results of the workshop were then discussed in more depth at the IV MUI National Conference in Jakarta 22-25 August 1990, which resulted in a mandate for the formation of a working group for the establishment of Islamic banks in Indonesia. Next, the working group in question is referred to as the MUI Banking Team whose task is to approach and consult with all related parties.

In 1998, the government and the People's Representative Council made improvements to Law Number. 7/1992 became Law no. 10 of 1998 concerning Banking, which explicitly explains that there are two systems in banking in the country (dual banking system), namely the conventional banking system and the sharia banking system. Where this opportunity was warmly welcomed by the banking community, which was marked by the establishment of several banks with sharia principles such as Bank IFI, Bank Syariah Mandiri, Bank Niaga, Bank BTN, Bank Mega, Bank BRI, Bank Bukopin, BPD Jabar and BPD Aceh and others.

Ratification of several legislative products that provide legal certainty and increase sharia financial market activity, such as:

1. Law Number. 21 of 2008 concerning Sharia Banking;
2. Law Number. 19 of 2008 concerning State Sharia Securities (sukuk); And
3. Law Number. 42 of 2009 concerning the Third Amendment to Law no. 8 of 1983 concerning VAT on Goods and Services.

With the enactment of Law Number. 21 of 2008 concerning Sharia Banking, which was issued on 16 July 2008, the development of the national sharia banking industry increasingly has an adequate legal basis and will encourage its growth even more rapidly. The Birth of Law Number. 21 of 2008 concerning Sharia Banking encouraged an increase in the number of Sharia Commercial Banks (BUS) during its development from 5 Sharia Commercial Banks to 11 Sharia Commercial Banks in the period less than two years (2009-2010). Since the development of the sharia banking system in Indonesia, in the two decades of development of national sharia finance, much progress has been achieved, both in terms of institutional and supporting infrastructure, regulatory tools and supervisory systems, as well as public awareness and literacy regarding sharia financial services. Our sharia financial system is one of the best and most complete systems that is recognized internationally. As of

June 2015, the sharia banking industry consisted of 12 Sharia Commercial Banks, 22 Sharia Business Units owned by Conventional Commercial Banks and 162 BPRS with total assets of Rp. 273.494 Trillion. Currently, Indonesia has the largest sharia bank, namely Bank Syariah Indonesia or BSI, which has been operating since February 1 2021. BSI is the result of a merger or amalgamation of three sharia banks. Business Owned by Country (BUMN), ie PT Bank BRI

Sharia Tbk (BRIS), PT Bank BNI Syariah (BNIS), and PT Bank Syariah Mandiri (BSM). Bank Syariah Indonesia has assets of IDR 245.7 trillion, with core capital of IDR 20.4 trillion trillion. With amount the, bank sharia this will direct enter top 10 largest banks in Indonesia in terms of assets. Precisely in 7th place. Furthermore, in 2025, the target is to become a global player. The target is to penetrate the top 10 Islamic banks in the world in terms of market capitalization.

Research methodology

This research is a type of normative research. In this research, law is conceptualized as what is written in legislation (law in book) or law which is conceptualized as rules or norms which are a benchmark for society's behavior towards what is considered appropriate. However, in fact, law can also be conceptualized as what is in action (law in action). Law in the book is a law that should work as expected, both are different, meaning that the law in the book is often different from the law in people's lives.

The approaches in this research are statute approach, conceptual approach, and case approach. The legal materials used are primary and secondary legal materials.

The technique for collecting legal materials used in this thesis research is Normative Law research or literature with library studies of legal materials, both primary legal materials, secondary legal materials, tertiary legal materials and non-legal entities. Searching for legal materials can be done by reading, listening, Viewing or by searching for legal materials via the internet. In fact, the law is then analyzed to find answers to existing legal issues.

Discussion

Qualification of fraud acts of sharia bank employees who qualify for corruption crimes

Fraud in banking activities, refers to Article 1 point 2 of Financial Services Authority regulation Number. 39/POJK.03/2019 of 2019 concerning the implementation of the Anti-Fraud Strategy for commercial banks ("POJK 39/2019), Fraud is an act of deviation or that is intentionally carried out to deceive, defraud or manipulate the bank, customers or other parties that occur within the bank environment and/or use bank facilities so that the bank, customer or other party suffers losses and/or the fraud perpetrator obtains profits, either directly or indirectly. Based on the things mentioned above, fraud is an act of deviation or that is deliberately carried out to trick, deceive or manipulate the bank, customers or other parties that occurs within the bank and/or using bank facilities so that the bank, customers or other parties suffer. loss and/or the perpetrator of the fraud obtains a profit either directly or indirectly, by looking at several elements in the article which are practically connected with the characteristics of criminal acts of corruption, it can be explained, among others, as follows:

- a. Corruption always involves more than one person, as well as fraud on financing guarantees carried out by employees of state-owned sharia banks usually involving more than one person because the maker, checker and approval functions begin at the time of initiation of a customer financing facility application by the maker or initiator. The analysis or review process by the checker and the process of issuing approval or decision by the approval or deciding official. Some of the modes commonly used in fraud related to financing involving customer guarantees include:
1. The mode of credit crime or fictitious financing, namely fictitious crime, refers to various forgeries, for example making fake letters, falsifying letters, intellectual forgery.
 2. The crime mode of a fictitious debtor is that the debtor is used to trick the creditor into releasing the funds but the user of the funds is not the person concerned but another party.
 3. The crime mode of fictitious documents is anything that is written, stated, recorded on paper or equipment, so that it contains a meaning that can be seen, heard and read.
 4. The fictitious collateral mode is that the collateral submitted by the debtor to obtain funds does not exist, or does not belong to the debtor himself.
- b. Corruption is generally carried out in full secrecy, the same is the case with acts of fraud committed by sharia bank employees. These fraud acts are carried out in full secrecy, where problematic financing will only be detected at a later date, which is usually suspicious for detection, among others, if it is detected if it is The bank has problematic credit (not current or even bad), the number of which is increasing and significant, if bank employees are found behaving/having a luxurious lifestyle that is not in accordance with their income or salary, there is bookkeeping that is not in accordance with the provisions, there are employees exceed their authority and responsibility.
- c. Corruption involves elements of mutual obligation and benefit, as is the case with acts of fraud in sharia banking, just as acts of fraud also involve elements of obligation as bank employees, where the purpose of the fraud is intended to obtain a profit.
- d. Corruption with various kinds of ideas takes cover behind legal justifications. In the same way as fraud in sharia banking, usually the perpetrators of the fraud feel that they have committed deviant actions, but what they do is considered correct, for example, because the salary or wages given are very low, or there are no bonuses while the profits obtained by the bank are very large, they feel I have given many achievements to the bank, I feel that the performance is good
- e. Done a lot to contribute to the Bank, so if you then commit deviations then that action is considered correct.
- f. Those involved in corruption are those who want firm decisions and they are able to influence decisions. In the criminal act of fraud in sharia banking, the perpetrators involved, according to their status and position, have the authority to decide on a process for the financing.
- g. Corruption acts involve fraud either on public bodies or the general public. In sharia banking fraud, it is certain that this is an act of deviation or that is deliberately carried out to deceive, defraud or manipulate the bank, customers or other parties that occur within the bank and/or using bank facilities.
- h. Any form of corruption is an affront to trust. That the act of sharia banking fraud is an insult to the trust given to employees who commit fraud in accordance with the duties and responsibilities they carry out.
- i. Every form of corruption involves multiple, contradictory functions of those who carry it out. Sharia banking fraud acts also usually involve multiple contradictory functions, in the realm and scope of the duties and responsibilities attached to the perpetrator's position in the bank.
- j. An act of corruption violates the norms of duty and responsibility in the social order⁹⁷. Whereas in the act of sharia banking fraud, the perpetrators were proven not to have carried out or violated the norms of their duties and responsibilities as bank officers, whether the rules that apply to the sharia bank itself or had violated the provisions of the applicable laws, especially Law Number. 21 of 2008 concerning Sharia Banking.

So it is clear that fraudulent acts by sharia bank employees are an element of deviant acts or those that are deliberately carried out to trick, deceive or manipulate the bank, customers or other parties that occur within the bank and/or using bank facilities, are very suitable and have the same characteristics or have the following characteristics. The same characteristics as elements in criminal acts of corruption.

Judge's legal considerations (ratio decedendi) regarding fraud actions of sharia bank employees who qualify for corruption crimes

That in order to further clarify the characteristics of fraudulent actions by Sharia Bank employees regarding customer financing guarantees which are classified as criminal acts of corruption, the author presents examples of fraudulent actions by Sharia Bank employees which are classified and processed as criminal acts of corruption, based on the Criminal Decision of the Jambi District Court Number. 38/Pid.Sus-TPK/2021/PN.Jmb. on February 25 2022, the defendant AL, who included several of the judge's legal considerations in his decision and ruling.

In his legal considerations the judge stated that PT. Bank BRI Syariah is a State-Owned Enterprise with a share ownership composition of 73% owned by PT BRI Tbk, 18.33% owned by the public and 8.67% owned by the BRI Financial Institution Pension Fund (DPLK). So in this case classify PT. Bank BRI Syariah as a BUMN is based on the composition of share ownership and/or funding sources.

Regarding the fraud committed by the bank employee, it was explained that in June 2009, PT Bank Syariah BRI, which later became PT. Bank BRI Syariah Tbk issued the BRIS IB Multi-Purpose Ownership (KMG) financing facility program, which is intended for the purchase of halal multi-purpose goods other than the purchase of cars and houses.

That the implementation process is preceded by a wakalah agreement, namely PT. BRIS represents another party, in this case the customer, to purchase multi-use goods from the

goods seller, then the money for purchasing the multi-use goods can be directly given to the account of the proxy, namely the customer. After the multi-use goods are purchased by the customer on behalf of BRIS, in principle the multi-use goods have become the property of BRIS, then a sale and purchase agreement for multi-use goods (Murabahah) is carried out, namely BRIS sells the multi-use goods to the customer who promises to pay the selling price in installments. According to the financing period.

That of the 5 (five) customers, there are 3 (three) customers with civil servant status who do not know their names to apply for KMG iB financing at BRIS, namely: 1. Witness RT 2. Witness MW 3. Witness MA, while for 2 (two) the customer knows that his name was used to apply for KMG iB financing at BRIS, but the legal materials/documents submitted by witnesses SY, EG, HL to the defendant when applying to obtain a loan or financing facility do not match the actual situation, and at the time the contract was added to the agreement it was made as if it were signed by their respective husbands, as for the 2 (two) customers, namely: 1. Witness MW, the original decree in question was still collateral for a loan at another bank and at the time of the credit agreement the husband was not accompanied ; 2. Witness JI submitted all the required documents when applying for a loan or financing facility, but was not accompanied by her husband when implementing the credit agreement.

That even though the defendant knew that the 5 (five) customers proposed by witness EG, witness SY, witness HM, and witness KD did not meet the requirements as KMG iB BRIS debtors and there were even customers who did not know the legal materials/documents used to apply for KMG iB financing in BRI, but the defendant as AO continued to process all of the documents without verifying and investigating the veracity of the documents, and the defendant also made a Customer Visit Report (LKN) and Personal Investigation Report (PIR) which appeared to have been carried out, thus contradicting the internal provisions regarding BRIS iB Multi-Service Ownership Financing (KMJ) and Changes to BRIS iB Multi-Use Ownership Financing (KMG) Features, as well as duties and His responsibilities as marketing correspond to his position at the Bank.

That because of his actions, the perpetrator committed fraud and it was proven that there was fraud and negligence in the financial management (financial fraud) of the defendant by not verifying and investigating the loan applications of 48 (forty eight) Multi-Purpose Ownership (customers at PT. BRI Syariah Bank which does not comply with the terms and conditions of the product, has resulted in money being released from PT's cash. Bank BRI Syariah Tbk should not have left. This is contrary to Law Number 17 of 2003 concerning State Finances, Article 3 paragraph (1): "State finances are managed in an orderly manner, in compliance with statutory regulations, efficiently, economically, effectively, transparently and responsibly by paying attention to a sense of justice." propriety."

So "the defendant's actions have increased the defendant's personal assets by Rp. 10,608,675,172 (ten billion six hundred eight million six hundred seventy-five thousand one hundred and seventy-two rupiah) or other people, ...which ultimately harms state finances...", then in the verdict it has been decided that the defendant has been legally proven and convincingly guilty of committing a

"CORRUPTION CRIME TOGETHER" by punishing the defendant with imprisonment for 10 (ten) years and a fine of Rp. 500,000,000.00 (five hundred million rupiah) provided that if the fine is not paid it must be replaced by imprisonment for 3 (three) months;

That it is clear and unequivocal in accordance with the judge's legal considerations in this ruling, one of which is the basis for acts of fraud in Islamic banks, in this case involving BRISyariah, that the defendant has violated or contravened Law Number 17 of 2003 concerning State Finances, Article 3 paragraph (1): "state finances are managed in an orderly manner, in compliance with statutory regulations, efficiently, economically, effectively, transparently and responsibly by paying attention to a sense of justice and propriety" so that the act of fraud regarding the process of providing financing facilities carried out by the defendant is and is classified as an element of criminal acts of corruption.

However, on the other hand, there are other problems related to several documents of evidence, including guarantee documents for customer financing that were misused by the perpetrator, which were decided in his decision and will be returned to the Public Prosecutor for use in the case which will be filed separately, so that in this case Customer financing facilities remain unpaid and become bank receivables, and guarantees for bank financing cannot yet be executed to fulfill remaining obligations for financing misused by the perpetrator.

So, due to this incident, the customer financing process will be in arrears and the guarantee for customer financing cannot be executed as repayment of the customer's financing obligations, so that the bank will suffer losses from the customer's financing arrears.

Conclusion

That the characteristics and characteristics of fraudulent acts of Sharia Bank employees are the same as the elements and characteristics of criminal acts of corruption, namely that they fulfill the elements of fraud, as well as more detailed characteristics or characteristics, as follows: a. Corruption and fraud in sharia banking always involve more than one person, usually involving the functions of maker, checker and approval. b. Corruption and fraud in sharia banking are generally carried out in complete secrecy, c. Corruption and fraud in sharia banking both involve elements of reciprocal obligations and benefits, d. Corruption and acts of fraud in sharia banking with various kinds of tricks both hide behind legal justifications. e. The perpetrators involved in corruption and fraud in sharia banking are the same ones who want firm decisions and they are able to influence decisions. f. Acts of corruption and fraud in sharia banking both involve fraud either on public bodies or the general public. g. Every form of corruption and fraud in sharia banking is an insult to trust. h. Every form of corruption and fraudulent acts in sharia banking both involve contradictory dual functions of those who carry them out, and/or involve contradictory dual functions, within the realm and scope of the duties and responsibilities attached to the perpetrator's position. Moreover, in the event that there is an element of potential state loss in these fraudulent acts and/or actions, the characteristics of fraudulent actions by Sharia Bank employees regarding customer financing guarantees are classified as criminal acts of Corruption.

Suggestions

Sharia banks are expected to be able to better understand the characteristics of fraud in order to be able to carry out efforts to monitor, prevent and resolve fraud cases committed by bank employees by implementing all provisions issued by the regulator, so as to maintain the quality of the sharia banking business which is trustworthy, halal and mutually beneficial for the parties.

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