



**STATES LEGAL PROTECTIVE TO THE BANK'S
COSTUMER IN THE CASE OF EMBEZZLEMENT BY BANK
OFFICER**

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CHAPTER 1

THE INTRODUCTION

1.1 The Background

Banking activities in Indonesia is one of the main activities that have become a main necessity of the Indonesian population; banking activities in Indonesia have been done by all circles of society.

In order to keep the Indonesian economic system to stay balanced and keep the money circulating as it should, then formed a financial institution that offers banking products and services which are known as the Bank. Bank is an institution that channel funds to the community by collecting funds from people who registered as a customer in the bank.

In conducting its functions, the bank does not require small funds, the bank requires a very large fund to carry out its functions and perform their operational activities as it should. The bank's obtained funds come from the bank itself (internal funds) and funds from outside parties or third parties (external funds)¹.

Economic activities that are performed by Indonesian society is very rapid so that the level of the velocity of money in the banking sector in Indonesia is extremely fast, all people from the grassroots to upper classes are using the

¹ Malayu S.P. Hasibuan, *Dasar-Dasar Perbankan*.(Jakarta : Bumi Aksara, 2001)

services and products offered by the bank to accompany the business activities as well as their daily lives.

The longer it is, banks are increasingly showing its existence to life and economic development of modern Indonesian society. This is where we can see a good relationship between banks and their customers. Because customers use the services of the bank in order to manage their finances, then the public has a huge trust to the bank for the funds they collect are not just a few.

Due to the bank that has become an institution that raise public funds, banks must work with the precautionary principle because the funds belongs to the people who collected and managed by the bank that are not a bit. Due to if there is a slightest mistake made by the bank will have a fatal effects. This is based on the contents of Law No. 7 of 1992 on the implementation of the precautionary principle by banks as a financial institutions and the collector from the public².

Banking activities that are performed by the customer and the bank must be based on the rights and obligations that must be fulfilled by both parties involved in the banking activities, if there are one of the parties that does not fulfill their rights and obligations, as well as conducting activities that cause losses to the other party, then these activities can be categorized as a Crime of Banking.

Along with the times and the more people who use the services of the bank to perform all kinds of economic activities, the more open the opportunity for the parties who are not responsible to conduct kinds of various criminal acts.

² *Ibid*, hal 4

The wider and the more active of the banking sector in Indonesia, it requires that the country is taking part in banking activities in Indonesia. Since 1992, the Government has formulated the Law on Banking that is Law No. 7 of 1992 which was revised into Law No. 10 of 1998 on Banking. In this Law, the Government has shown that the country has participated in the banking activities in Indonesia. The establishment of Bank Indonesia as the central bank that served as a regulator and supervisor of Banking and financial activities in Indonesia also have shown how great the role of the country in maintaining economic stability in Indonesia, one of them is contributing to the arrangement and the manufacture of the Banking Law in Indonesia.

Bank Indonesia as the central bank has duties as a supervisor of banking activities in any bank in Indonesia and watches all the actions on the products and services provided by the bank as arranged in Law No. 23 of 1999 concerning Bank Indonesia:

Article 8:

To achieve the purposes specified in Article 7, Bank Indonesia has the following tasks:

- a. Establish and implement the monetary policy;
- b. Organize and maintain the smoothness of payment systems;
- c. Regulating and supervising banks.

But as time goes by, the government found it necessary and decided to establish an institute of banking and bank supervisory activities that are independent and

established by the Law. Then at December 31st, 2010, Financial Services Authority (OJK) is established as an independent bank supervisory institution that began fully operations on January 1st, 2014³. And in early January 2014, Bank Indonesia has been officially handed over to the OJK for supervising the banking sector. As regulated in Article 4 of Law No.21 of 2011 about Otoritas Jasa Keuangan, the purposes of establishing OJK as an independent supervisor of Banking agency and financial activities in Indonesia are:

- a. So that all activities in the financial sector are held regularly, fair, transparent, and accountable;
- b. So that all activities in the financial sector is able to embody the financial system to grow in a sustainable manner and stable;
- c. So that all activities in the financial sector is able to protect the interests of consumers and society

Within this article had been explained that the creation of OJK as a supervisory institution of financial and banking activities aimed to monitoring the performance of financial institutions and banks in Indonesia to work as it should and could protect the interests of consumers and the people of Indonesia

We need to understand what kind of course of action which is classified as a criminal act of banking. According to the provisions stipulated in the Law RI No.10 of 1998 on the Amendment of Act No. 7 of 1992 on Banking, actions that can be categorized as criminal acts of banking are:

³ Tim Kerjasama Penelitian FEB-UGM (Fakultas Ekonomi dan Bisnis-Universitas Gajah Mada) dan FE-UI (Fakultas Ekonomi-Universitas Indonesia)

- a. Crime involving the business license (Article 46)
- b. Crime involving the prohibition or obligation to provide information about the financial condition of the customer (bank secrecy) (Article 47, Article 47A)
- c. Crime involving the affiliated party's liability in the bank to obey all the provisions of Bank Indonesia (Article 48 paragraph 1, Article 49)
- d. Crime involving the affiliated party's liability in the bank to comply with all the provisions contained in the Banking Act (Article 50, Article 50A).

The form of banking criminal acts is already contained in the Law, but there are also some forms of banking criminal acts that are not contained in the Law, the banking criminal acts can be categorized as follows:

- a. Crime in the field of the traffic circulation of money, which consists of:
 1. Falsification of warrant transfer
 2. Falsification of warrant payment
 3. Falsification of transfer letter
- b. Crime in the field of Credit

As a user of products and services offered by the bank, the customer must have goodwill in carrying out banking relationship with the bank. Customers must know the rights and obligations that must be done in order to create a good and harmonious relation based on trust with the bank.

Not only customers who have an obligation to be a good consumer and build a harmonious relationship with the bank, the bank also has the same obligation they have to do to the customers. In maintaining public trust in participating and

choose them as a financial institution that they believe to manage their funds, a bank has a number of obligations which they must fulfill to the customers who use the bank's products and services. This obligation is based on one of ethics that must be owned by a bank, which is trust ethics⁴. One of the obligations set out in the Law RI. No. 10 of 1998 on the Amendment of Law No. 7 of 1992 on Banking is:

Article 40 paragraph (1):

“Banks are required to keep secret of the information about depositors and their savings, except in the case referred to in Article 41, Article 41A, Article 42, Article 43, Article 44 and Article 44A”.

In the Law it is directly regulated that the bank has an obligation to keep any secret or any information about the depositors, banks are required to maintain the security and confidentiality so there would not ever be a event of a leakage of identity which can have fatal consequences if there is a mistake in the custody of the secret identity of the customer as well as the number of savings.

The more criminal acts that can be done through the banking media, the more persons that are taking advantage that could harm either party with no small amount. This causes the level of customer's trust to the bank decreased, if the level of trust in the banks has decreased, the customer is no longer incentive to use the services and products offered by the bank to them, and if the products and services provided by the bank does not get more requests from customers, the bank cannot perform its function as the institutions and the fund collector from the public, and

⁴ O.P. Simorangkir, *Etik dan Moral Perbankan*, (Jakarta : Ind Hill. 1983), hal. 63.

this can affect the growing of unstable economic situation in Indonesia so that the development of infrastructure in Indonesia could be disturbed.

One of the banking criminal acts that happen in Indonesian is about embezzlement. Embezzlement itself has a definition as an act of unlawful having goods or belonging to someone else, but it is in his power, as listed in Article 372 of the Criminal Code which contains:

"Whoever deliberately and illegally having something of goods that are wholly or partly belongs to someone else, but that is in his power not as a crime punishable as embezzlement, with a maximum imprisonment of four years or a fine of nine hundred rupiahs"

A criminal act of embezzlement is one of the crimes that often occur in the banking sector in Indonesia. Therefore, the author will present some cases of embezzlement that has happened in the world of banking in Indonesia.

Based on the cases that the author will be thorough and themed of state protection to bank customers, the title of the research that the author stacks is **STATES LEGAL PROTECTION TO BANKs COSTUMER IN THE CASE OF EMBEZZLEMENT BY BANK OFFICER** (*perlindungan hukum yang diberikan oleh negara kepada nasabah bank dalam kasus penggelapan dana oleh pegawai bank*)

1.2 Problem Identification

In the preparation of this thesis, the authors have a problem that will be examined with the above title, as follows:

1. How the forms of legal protection by the state given to the customer in case of embezzlement of funds?

1.3 The Benefits of Research

The author conducted a research solely to provide benefits to the author's own self, others, and the related institution and have the same field of work with the theme that the author researched, some of the benefits that might be drawn from this study are:

a. Practical Benefits

The practical benefits of this research are as source of information for the public and relevant agencies of the criminal acts of embezzlement of funds. This study can be used as guidelines in order for bank customers can be more cautious in their banking activities primarily within the scope of the deposit of funds storage. Other than that, this study is also beneficial to the bank institutions so that the bank could be more careful in maintaining the trust of customers and the protection of personal data and the identity of its customers in order to avoid embezzlement of funds.

b. Academic Benefits

The academic benefits of this research are as a source of information for students regarding the crime of embezzlement. Students and readers can make this research as a source of information for future research about the case of embezzlement of funds.

1.4 Research Methods

In this research, the author uses the method of normative legal research where the author conducted a study of the documents in doing this research. Normative Legal Research itself is a legal research with more emphasis on the prevailing norms or norms in the Law⁵. The study of the documents that the author did was by the way of content analysis, which analyzes the way in the writings and documents in a way to systematically identifying traits or systematic character to identify messages and intentions contained in a writing or document⁶.

Qualitative research method is the method used by the author in this research, qualitative research methods itself is a descriptive research method and are using the analysis as the basis. The use of theoretical basis is also used as the focus of the author's research. The views and analysis will greatly affect the authors of this research as a qualitative research method used⁷.

The data that the author uses to study the documents in this research is secondary data that the authors obtained either from the library, documentation center, *Otoritas Jasa Keuangan* documentation center where the author done some internship activities, print and electronic media which consists of:

- a. Primary legal source, which is a various kinds of legislation related and regulate anything about banking, as well as criminal acts in the field of banking in general and about the crime of embezzlement.

⁵ Yesmil Anwar & Adang, *Pengantar Sosiologi Hukum*, (Jakarta: Grasindo), hal. 83.

⁶ Sri Mamudji, *et.al.*, *Metode Penulisan dan Penelitian Hukum*, (Depok : Badan Penerbit Alumni, 2005), hal. 29-30.

⁷ Prof. Dr. Conny R. Semiawan, *Metode Penelitian Kualitatif*, (Jakarta : Grasindo)

- b. Secondary legal source, which is a wide range of books and literature that discussed about banking and banking criminal acts. And also articles that contain the information required in doing this research.
- c. Tertiary legal source, which is the dictionary as well as printed and electronic encyclopedia containing the definition of legal terms and banking terms that are required to perform this research.

This study is a pure research that also known as basic research because, according to its application, this study aims to develop a knowledge or theory⁸.

The author also uses several approaches in conducting this research, the method of approach is very important because the author's approach can get the accurate sources and materials. some approaches that the author uses in this research are:

- a. Statute Approach

A normative study would have to use the statute approach, because what would be examined are various laws that are the focus of research. Statute approach itself is a method of research that uses regulations in the law as an important basis for research. Ibrahim⁹ stated that "normative research certainly should use legislation, because what would be examined are

⁸ *Ibid.*, hal. 5

⁹ Johni Ibrahim, *Teori & Metodologi Penelitian Hukum Normatif*, cet. III, (Bayumedia Publishing: Malang, 2007), hal. 300.

various rules of law as well as its central theme a focus of research".

b. Case Approach

Case approach in the normative research aims to learn the application of norms or rules of law which is done in a case or in a law practice.

1.5 Writing systematic

The writing systematic is presented in this research which were divided into IV chapters that are:

CHAPTER I : INTRODUCTION

This chapter described the background of the problem, the subject matter, the purpose of research, research methods, as well as the writing systematic.

CHAPTER II : BANKING AND THE STATES

This chapter will explain everything related to the bank as a financial institution, the author will describe about the general understanding of the bank according to the Law, the establishment of banks, banks function as financial institutions, banking activities undertaken by banks, banking ethics and morals, protection law against bank customers, as well as the role of Bank Indonesia. In this chapter, the author will also explains the role of the country in the banking sector

in Indonesia, what steps have been taken by the government in order to achieve optimal stability of the banking world.

CHAPTER III : EMBEZZLEMENT CASES BY BANKS

This chapter will discuss the basic understanding of banking criminal acts, as well as the types of criminal offenses of banking arrangements and the parties involved in the criminal act of banking. In this chapter the author will provide a case study on the crime of embezzlement of funds by a bank employee to bank customers followed by the analysis of the authors of the case.

CHAPTER IV : STATE'S LEGAL PROTECTION TO BANK COSTUMER IN THE CASE OF EMBEZZLEMENT

In this chapter the author will describe the analysis of the writer of the case that the author adopted in this research.

CHAPTER V : CLOSING

In this chapter, the author will describe suggestions and conclusions from the authors.

CHAPTER II

BANKING AND THE STATE

2.1 Banking in Indonesia

Indonesia is a developing country which its development in financial sector has been rapidly improving. Indonesia has enforced an economic order system which has been there and formed since The 1945 Constitution of Republic of Indonesia was formed. Paragraph 33 in The 1945 Constitution of Republic of Indonesia has cover and explored the economic system in Indonesia. Every country in the world needs an economic system so that the sector of the economy in the country can continue to run in stability. In the world of global economy, it has been mentioned that there are 2 (two) economic system adopted by the majority of countries in the world, that is the system of market economy and the economic system of socialism¹⁰. The economic system of socialism is also called the command economy or centralized economic system. Basically, the economic system of socialism is an economic system where the economy is regulated by the country. In this system, the course of the economic system is the responsibility of the country or its central government. This system has been described in the view of Karl Marx in his book entitled *Das Kapital*. The characteristic of economic system of socialism¹¹ are:

¹⁰ Isei, *Bundling: Pemikiran dan Permasalahan Ekonomi di Indonesia*, (Jakarta: Kanisius)

¹¹ Find the definition in, "Pengertian Sistem Ekonomi Sosialis", accessed from <http://temukanpengertian.blogspot.com/2014/01/pengertian-sistem-ekonomi-sosialis.html>, on November 27th 2014, 13.41

- a. All the instruments and resources are controlled by the central government
- b. Private property rights are not approved
- c. No individual or group can strive freely in any sort of economic activity
- d. Economic policies are fully controlled by the central government

The economy of a country's system can be observed from two aspects, which are terms of the economic system and terms of economic structure. According to the basic definition of the economic system of socialism, every part of the economic sectors in Indonesia must obey the laws and regulations that exist in Indonesia and follow every policy that has been established by the central government.

There are a lot of factors that took parts in keeping the stability of economy in Indonesia; one of them is financial institution. Financial institutions are one of the parties who have a very big role in maintaining the economic stability in Indonesia. There are two types of financial institution, i.e. banking financial institutions and non-banking financial institutions. Amongst all of the financial institutions that provides services and financial services to people, bank is the financial institution that holds such an important role in the economic life of society. During its operation, banks should obey the laws and regulations, banking law in Indonesia, as well as the central government policies that had been formed. The purpose of establishing laws and regulations and government policy is to fulfill the interests of all sides, either from the bank or the client who trust their

funds to be managed by the bank. It is intended that the interests of all parties can be protected by the laws and no party feels disadvantage.

The Indonesian government has established laws on banking and issue policies that supports the government's aim in the economic sector which is to create safety and stability in Indonesian economic system. One of the specific purposes of the establishment of laws and regulations and policies of banking in Indonesia is to protect clients from the banking criminal offense which could be done by the banks that do not operate according to the procedures and applicable regulations in Indonesia. One of the government's policies that proves that the Indonesian government has participated directly in keeping the economic stability and financial security in Indonesia is making a bank supervisory institutions to prevent the occurrence of criminal offenses committed against customers by a bank. In this case, Indonesia, which was originally placing the bank supervision function in the function of the central bank, then did the separation so that the bank supervisory authority carried by a separated government agency¹². The government has formed Financial Services Authority or Otoritas Jasa Keuangan (OJK) institution which in charge as an independent bank supervisory institution. Bank supervisory authority which previously was held by Bank Indonesia as the central bank has fully become the authority of OJK. In this case, it is proved that the government has taken various steps to be able to create the optimal Indonesian economic system and free of actions against the law and unsuitable from the applicable procedures.

¹² Permadi Gandapraja, *Dasar dan Prinsip Pengawasan Bank*, (Jakarta: Gramedia Pustaka Utama)

2.2 Bank As a Financial Institutions

“Lembaga keuangan adalah sebuah perusahaan yang kegiatan utamanya adalah bergerak di dalam bidang penyaluran uang dan dana atau hanya menghimpun dana tersebut atau kedua-duanya”¹³. A financial institution is a company which focused on engaging the delivery of money and funds or simply raises funds or both. Some experts in the banking world also have quite different definitions from one another. Prof. G.M. Verryn Stuart in his book entitled *Bank Politik* said, "The bank is an agency which aims to satisfy the credit needs, either with tools of payment alone or with the money obtained from others, as well as passing the new exchangers in the form of demand deposits". Another experts, A. Abdurrachman in his book entitled *Ensiklopedia Ekonomi Keuangan dan Perdagangan* explains that "The bank is a type of financial institution that carry various kinds of services, such as providing loans, circulating the currency, supervising the currency, acts as a storage place of valuable objects, sponsoring the business companies, etc." ¹⁴

Thus the conclusion that mentioned above, banks as financial institutions, forms a general function works as follows:

1. Raise funds from the public and categorized it in the form of deposits. In this case, the bank has a function as a storage place for the communities' funds and investment. The community uses the bank service as a storage area of funds with the purpose of guaranteed security, because by using the services of a bank that

¹³ Kasmir, *Dasar-Dasar Perbankan*, (Jakarta: PT. Raja Grafindo Persada, 2002), hal. 3.

¹⁴ Thomas Suyatno, *Kelembagaan Perbankan*. (Jakarta: Gramedia, 1988). Hal. 1

offers trust and security, customers can feel calm and safe if their funds are in the bank. While the next purpose of why customers chooses to save money in the bank is for investment, the more money they save in a bank, then the more bank interest they will receive. To fulfill the purpose and needs of the customer, the bank provides services and products that are called the deposit.

2. Distributing funds to the society. The point is that in this case the bank gives a loan (credit) to the people who apply. In other words, the bank provides funds for people who need it.
3. Provide other bank services. The point is that the bank conduct activities outside from the activities of collecting funds from the public and distributes the funds to the community. For example, remittances (transfers), billing marketable securities that originated from the city (clearing), billing marketable securities originating from outside the city and abroad (inkaso), and other services.

Non-Banking Financial Institutions and Banks are something different and have different features themselves. One of the main characteristics that differentiate Non-Banking Financial Institutions with Banks is that Non-Banking Financial Institutions are not allowed to receive anything in the form of giro, deposits, and savings, while Banks are permitted.

2.3 Legal Form of The Bank and Its Founder

Bank is a financial institution that works at offering banking services and products to society, to be fully operated and legal, all banks require legal certainty

in its performance and operations in banking activities. To fulfill its rights and obligations, banks have to have certain laws so they can operate. These laws were intended to all those who conduct activities in the field of economics and uses services and products that the bank offers have a fixed legal certainty and can be protected by the law. Furthermore, these laws are useful if one day there are problems that must be solved by legal channels.

Article 16 through Article 20 of the Banking Law has arranged that any person or institution which conducts collecting funds from the public in the form of compulsory savings must first have a license as a public bank or rural bank of the management of Bank Indonesia, unless the fund raising activities of the community is set in certain laws¹⁵.

To found a bank, the permission of the central bank in Indonesia that is needed is the permission from Bank Indonesia. The obligation to get the permission as a public bank or Rural Bank is because of the activity of public fund raising is an activity that should get good supervision and regulation so that a fatal error does not happen because the funds raised by the bank is not a little and because banking activities are activities that is associated with the interests of the community who save their money in banks¹⁶.

In consideration of the granting permission as a Public Bank and Rural Bank, Bank Indonesia pays attention to the following matters¹⁷:

¹⁵ Indonesia, *Law Tentang Perubahan Law No. 7 Tahun 1992 tentang Perbankan*, UU No. 10 Tahun 1998, LN No. 182 Tahun 1998, TLN No. 3790, pasal 16-20

¹⁶ Rachmadi Usman, *Aspek-Aspek Hukum Perbankan di Indonesia*, (Jakarta : Gramedia Pustaka, 2001), hal 69

¹⁷ *Ibid.*,

1. Eligibility of:
 - a. Organizational structure and management
 - b. Source of capital
 - c. Ownership
 - d. Skills in banking
 - e. work appropriateness

2. The rate of fair competition between banks

The saturation level or the amount of banks within the scope of a particular area, and the equitable distribution of national economic development efforts.

Rural Banks have special requirements that must be fulfilled, namely, in addition the rural banks must fulfill various requirements mentioned above, and rural banks must also fulfill the requirements regarding the bank's domicile in the sub-district, which are sub-districts outside the city district / municipality, capital of a province, or the capital of the Country. The intended purpose of this is because one of the goals of constructing rural banks are so that rural banks could be supporting the economic development and modernization in rural areas that are still a lot lagging behind in construction sector in Indonesia.

In order to be fully operational and optimal and be able to be a legal institution in the sight of the law in Indonesia, a bank must have a clear legal form which has been heavily regulated in the Banking Law in Indonesia.

The legal form of the bank in Indonesia refers to the type of the bank itself, the form of the law on Public banks is different from the legal form of a

Rural Bank, but it could be the same as well. The legal form of the bank has been regulated in Chapter IV of Part Two of Article 21 of Law No. 7 of 1992 on the Principles of Banking. Article 21 paragraph (1) UU No. 7 of 1992 on Banking, the Law has been arranged that Public Bank can take the form as:

1. Liability Company
2. Local Company
3. Cooperatives and Limited Liability Company

However, based on Law No. 10 of 1998 on the Amendment of Law No. 7 of 1992 on Banking, Public Bank can only take the form as:

1. Limited Liability Company
2. Cooperatives
3. Local Company

The legal form of Rural Banks have also been arranged in the Banking Law which in Article 21 paragraph (2) Law No. 7 of 1992 on Banking which has been converted into Law No. 10 of 1998 mentioned that the legal form of Rural Banks is in the form of:

1. Local Company
2. Cooperatives
3. Limited Liability Company
4. Other forms that are set by the Government Regulation

In perform its function and its legal form, the bank desperately needs the country and government's role in the function of regulatory and supervisory

performance as a financial institution. The government's move in carrying out its role to participating in maintaining economic stability of the country, in this case, the establishment of Bank Indonesia as the central bank, which served as a regulator and supervisor of banking activities in Indonesia as well as banking and financial policy makers in Indonesia, since the enactment of the Law Pokok of Bank Indonesia on July 1, 1953, Bank Indonesia has become an institution that plays a vital role in the economy and the financial sector in Indonesia.

2.4 The Establishment of Public Bank

The country has established all sorts of shapes of Law which regulates banking in Indonesia in order to achieve economic stability in Indonesia; one of those things that are set in Law No. 10 of 1998 on the Amendment of Law No. 7 of 1992 on Banking is about the terms of the establishment of public banks. In Article 22 of Law No. 10 of 1998 on the Amendment of Law No. 7 of 1992 on Banking, it has been arranged that the establishment of a Public Bank can only be done by:

- a. Indonesian citizens and/or legal entities of Indonesia
- b. Indonesian citizens and/or legal entities of Indonesia with foreign citizens and / or foreign legal entities in partnership.

The determination of the capital contribution is also regulated. To establish a bank, the amount of a particular capital to be paid sums up to three trillion rupiah (Rp. 3.000.000.000.000,00)¹⁸. Establishment of banks also need to meet the

¹⁸ Indonesia, *Peraturan Bank Indonesia Tentang Bank Umum*, PBI No. 1/11/PBI/2009, LN No. 27 Tahun 2009, TLN No. 4976, Pasal 5

approval of the principles and business licenses. Approval in principle are some things that have to be fulfilled in preparing the establishment of the bank. Meanwhile the business license is a license given to the founder of the bank to be able to conduct banking business after all things in the approval in principle has been made in the preparation stage the establishment of the bank.

Principle Approval consists of:

- a. The draft of deed of incorporation, it includes draft statutes which includes:
 - i. Name and domicile
 - ii. Business activities as a bank
 - iii. Capital
 - iv. Ownership
 - v. Authority, responsibility, and the term of office of members of the Board of Commissioners and Board members.
 - vi. The requirement that the appointment of members of the Board of Commissioners and members of the bank's board of directors in prior to go through and get approval from Bank Indonesia.
- b. Ownership data, which are:
 - i. List of candidates for the bank's shareholders with details of the amount of stock to be held for each legal entity Bank Limited Liability Company / Regional Government
 - ii. List of candidates for the primary savings and mandatory savings of the members, as well as a list of the number of grants for banks that have a cooperative legal entity.

- c. The list of candidates for the Board of Commissioners and members of the Board of Directors must be accompanied by:
- i. A photograph from the last one (1) month with the size of 4x6 cm.
 - ii. Photocopy of ID Card (KTP) or passport within the validity period.
 - iii. Biography
 - iv. Personal statement letter stating that the person concerned is a person who has a good track record, someone who has never committed a crime or other despicable acts in the field of banking, finance and other business sectors, never get a penalty for having found guilty from a criminal act, and is not listed in the Register of Disqualified, that is the determination of the assessment requirements; Fit and Proper Test (Kemampuan dan Kepatuhan) set by Bank Indonesia.
 - v. A statement regarding the statement that the person concerned has never been declared bankrupt and not the person who was a stockholder, member of the board of directors or commissioners that were judicial guilty verdict by a local court decision within a period of 5 years prior to the date of filing the application.
- d. Plan organizational structure
- e. Business plan (rencana bisnis) for 3 (three) years from the time of request.
- f. Guidelines for the management of risk (risk management), guidelines on the implementation of good corporate governance, internal control plans, as well as the IT plan that will be used in the institution.

- g. Strategic plan in the medium term and long term (corporate operational plan).
- h. Proof of deposit of the amount of capital at least 30% (thirty percent) of the total amount of the minimum paid-up capital as elaborated in article 5, in the form of a photocopy of a deposit slip at the Bank in Indonesia, by stating that the funds can only be done after getting permission of the Board of Governors of Bank Indonesia.
- i. Work systems and working procedures within the institution.
- j. Statements from the stockholders of the entity as a Limited Liability Company / Regional Government or of a candidate member of the Bank which is a legal entity Cooperative. In a written statement, the statement also stated that the payment of capital:
 - Do not derived from any loan or financing facility in Indonesia.
 - Are not coming from and for the purpose of money laundering.

The list candidate stockholders or list of candidates who have been submitted must fulfill the specified requirements, those requirements are:

- a. In the case of an individual, accompanied by various documents mentioned in paragraph (1) letter c number 1 through number 5, as well as documents and / or other statement letter requested and required by Bank Indonesia as the Central Bank and fulfilling the request.

b. In the case of a legal entity shall be accompanied with the following documents:

- The Deed of incorporation of legal entity, this deed contains various things about the Statutes which is equipped with a variety of changes that have been approved by the authorized institutions, including the foreign legal entity in accordance with the provisions applicable in the country where the legal entity is derived.
- Documents as referred in paragraph (1) letter c number 1 through number 5.
- The financial statements of the legal entity that has obtained an audit from public accountants selected by a maximum period of 6 (six) months before the date of application.
- List of stockholders, along with the details of each individual stockholding, for a legal entity PT / PD, or a list of members, along with details of principal savings and mandatory savings and the amount of grant for legal entities Cooperative.
- Recommendations from the authorized institution of the country of origin for foreign legal entities.
- List of the entire structure of the business group related to the Bank and the Bank's Legal Entity owner up to the last owner.
- Document and / or other statement letter requested and required by the Bank of Indonesia.

c. In the case of the government, either central or local government, shall be accompanied by the following documents, that is:

- Copy of a document containing a statement of the decision for the establishment of Local Government for Local Government.
- Budget
- The document referred to in paragraph (1) letter c number 1 through number 5 of the authorized official to represent the government.
- Document and / or other statement letter requested and required by Bank Indonesia.

While the business license consists of:

- a. The Deed of Establishment of Legal Entity, the deed contains statutes which have been verified by the authorized institution.
- b. Ownership data as referred to in Article 7 paragraph (1) letter b, each of the data is accompanied by the documents referred to in Article 7 paragraph (2) in case if there is a change of ownership.
- c. List of Boards of Commissioners and Directors. This list is accompanied by:
 - Example of signature and initials
 - Identity and various documents as referred to in Article 7 paragraph (1) letter c, in the case of a change.
 - For foreign citizens must attach a photocopy of a *Kartu Izin Tinggal Terbatas (KITAS)* or *Kartu Izin Tinggal*

Tetap (KITAP) and a copy of work permit from authorized institutions.

- Documents as referred to in Article 7 paragraph (1) d, e, f, g, and h, in case if there is a change.
- The evidence of operational readiness in the form of:
 - a. *Nomor Pokok Wajib Pajak (NPWP)* and *Tanda Daftar Perusahaan (TDP)*.
 - b. Sample forms / slips to be used in the bank's operations.
 - c. Photos of the office buildings and layout of the rooms inside the office.
 - d. Proof of ownership of the use, possession or the office rent agreement.
 - e. List of inventory and fixed assets.
- A statement letter made by the stockholders of the Bank in the form of legal entity PT / PD or of a member of the bank in the form of legal entity Cooperative, that repayment of capital has been paid up to the correct procedure, which are:
 - a. Not derived from a loan or other financing facility in any form of the Bank and / or any other party in Indonesia.
 - b. Not derived from and for the purpose of money laundering

- A statement letter made by members of the board of directors stating that the person concerned either individually and collaboratively does not own shares more than 25% (twenty five percent) of the paid up capital of another company that is as arranged and referred to in the Bank Indonesia Regulation concerning the implementation of Good Corporate Governance for Banks.
- A statement letter made by a member of the board of directors that the person concerned is not in a dual position as has been stated in the Bank Indonesia Regulation concerning the implementation of Good Corporate Governance for Banks.
- A statement made by a member of the Board of Commissioners that the person concerned shall not also exceed the provisions referred to in the Bank Indonesia Regulation concerning the implementation of Good Corporate Governance for Banks.
- A statement made by a member of the Board of Commissioners and the Board of Directors that has no family relationship as defined in the Bank Indonesia Regulation concerning the implementation of Good Corporate Governance for Banks.

2.4.1. The Opening of Public Bank's Branch Office

The branch office is a part of the bank's office which directly has a responsibility to the head office of the bank concerned, which equipped with a clear address that shows and states where the branch offices operates and conduct their banking business¹⁹.

If a public banks want to open branches or representative offices located in foreign countries, then it can only be done if it is to get permission and approval of the Head of Bank Indonesia. Whereas if you want to open an office whose position is below the branch office, you only need to submit a report to Bank Indonesia, which states that the office was opened and operated. Types of offices under the branch office are such as supporting branch offices that are usually located in some densely populated areas that cannot be reached by the Commercial Bank branch office with a bigger scale²⁰.

2.5 The Establishment of Rural Banks

Rural Banks (*Badan Perkreditan Rakyat*) is a financial institution that only accepts deposits, savings, and / or other similar forms as well as channeling funds to those in need. A rural bank is usually being around the community who are in need such as communities in villages. Everything about Rural Banks is also has been arranged in Law No. 7 of 1992 on Banking, which, as amended by Law No. 10 of 1998. In Article 23 of Law No. 7 of 1992 on Banking which has been amended by Law No. 10 of 1998, stated that the parties who wish to apply to

¹⁹ Rachmadi Usman, *Aspek-Aspek Hukum di Indonesia*, (Jakarta: Gramedia Pustaka, 2001), hal. 70

²⁰ *Ibid*

establish a Rural Bank must meet several requirements that has been established by the law, which are:

- a. Indonesian citizen
- b. Indonesian legal entity which the entire ownership is held by an Indonesian citizen
- c. Local Government
- d. Two or more parties as mentioned in subparagraphs (a), (b), and (c).

Just like the establishment of commercial banks, the establishment of a Rural Bank also has a minimum deposit amount of capital requirements that have been set. The paid-up capital to establish rural banks with a minimum number are²¹:

- i. Rp. 5, 000,000,000.00 (five billion rupiahs) for rural banks established in Jakarta.
- ii. Rp 2.000.000.000,00 (two billion rupiahs) for rural banks established in the provincial capital on the island of Java and Bali, and in the district or municipality such as Bogor, Depok, Tangerang and Bekasi.
- iii. Rp. 1,000,000,000.00 (one billion rupiahs) for rural banks established in the capital of the province outside of Java and Bali and the islands of Java and Bali and outside of the regions referred to in paragraphs a and b.

²¹ Indonesia, *Peraturan Bank Indonesia Tentang Bank Perkreditan Rakyat*, PBI No. 6/22/PBI/2004, LN No. 80 Tahun 2004, TLN No. 4409, Pasal 4.

- iv. Rp. 500,000,000.00 (five hundred million rupiahs) for rural banks established in other areas outside the regions referred to in paragraphs a, b and c.

Besides the requirements mentioned above, things that must be fulfilled in order to form Rural Banks is the fulfillment of the principle approvals and permits²². What is meant by the principle of approval is an agreement to conduct any form preparations made in order to establish a bank. Meanwhile business license is a license to conduct banking activities after all the preparations to fulfill the approval in principle has been conducted completely and by appropriate procedures.

2.5.1. The opening of Rural Bank's Branch Office

Rural Bank who wants to open a branch office is also required to obtain permission from the head of Bank Indonesia beforehand. But the difference between the opening of a branch office of the Public Bank is the Chairman of Bank Indonesia considers and pay attention to some aspects of the banks that are in the area petitioned for, granting this permission besides adding the requirements at the branch office of rural banks, it also must pay attention to the level of healthy competition among banks, bank saturation levels that are within the region, as well as economic equality and national development, so that what was meant here is in one area not allowed to open too much rural bank branch office due to the saturation of the number of banks and competition between banks that's getting tighter other than that, there are still many areas in Indonesia,

²² *Ibid.*, Pasal 5.

where the presence of Rural Banks is very necessary to be able to maintain and advance the economic development in the region. Besides, the opening of a rural bank's branch office also does not require the permission of the Chairman of Bank Indonesia. But planning of opening an office is required to be reported to Bank Indonesia.

2.6 Opening of the Bank Derived From Overseas

With the times and the development of the banking sector in Indonesia is increasingly attracting foreigners to invest and open a bank branch offices in Indonesia, the opening of a bank branch offices that comes from abroad (foreign banks) has been set in Government Regulation No. 24 of 1999 on the terms and Procedures Opening of Branch Office, Sub Branch Office, and the Representative Office of the Bank domiciled abroad who later described again in the Decree of the Board of Directors of Bank Indonesia Number 32/37/KEP/DIR/dated May 12, 1999 on Requirements and Procedures Branch Office, Branch Office, and Bank Office, located in Overseas²³.

Bank Indonesia make a judgment about the requirements of banks from abroad who can open a branch office in Indonesia, some of the things as regulated in the provisions of the Decree are as follows:

- i. Banks domiciled abroad who can open a branch office in Indonesia is the bank whose:
 - a. Has a rating and good reputation based on rating agencies, leading rank in the international world.

²³ Rachmadi, *Op. Cit.*, hal. 70

representative offices are required to be subject to banking regulations, laws, and regulations applicable in Indonesia.

- vi. The opening of a branch office or supporting branch offices that will perform business activities in the Islamic principles, in addition to attending various regulation above, they also have to follow the rules and regulations governing public bank that conducts its business activities based on Islamic principles.
- vii. In the event of a dispute or problem, the process of closing supporting branch office or representative office procedures can only be done if the procedure had obtain permission from the Board of Directors of Bank Indonesia with the filing of the petition in advance along with the reasons for closure, the evidence, as well as evidence of settlement obligations to its customers. While the process of closing the supporting branch office or representative office must follow the procedures that has been set out in the legislation concerning revocation of dissolution and liquidation of the bank.
- viii. Branch office or representative office is obliged to report everything about the performance of its business to Bank Indonesia, including the merger or consolidation, as well as a plan of action to be taken by the Bank's head office in the country of origin of the branch office or representative office which is located in Indonesia.
- ix. Bank Indonesia has the authority to examine adherence to laws and regulations in Indonesian law against branch offices or representative offices.

- x. The member of the leadership of a branch office or representative office may consist of Indonesian citizens and / or foreign nationals, the office manager must fulfill certain requirements, have a good knowledge about Indonesia, especially the knowledge in economy, language and culture of Indonesia and obtain approval from Bank Indonesia before being appointed and occupy the position.

2.7 Types of Bank

The bank that is formed in Indonesia is diverse and various, activities performed by banks are also limited by function and type, there are activities that may be done by the bank, and there are activities that should not be done by the bank. A bank should work based on the functions and types in order to continue to get a business license in Indonesia.

1. In Terms of Function

In terms of function, banks are divided into four (4) types, that is Public Bank, Rural Bank, Central Bank and public banks that specialize in conducting certain activities:

- a. **Public Bank** is a type of bank conducting conventional business and or execution of business activities which is based on Islamic principles in the provision of services activities in payment traffic. This bank is a common trait, which means that banks can provide all kinds of

banking services available. Other names of public bank is commercial bank.²⁴

- b. **Rural Bank** is a type of bank that is perform their duties according to Islamic principles. In doing its business activities, Rural Bank does not provide many types of services in payment traffic in payments made in the bank, means the Rural Bank has a smaller space compared with public banks²⁵
- c. Central bank is an Indonesian bank as referred to in Law No. 13 of 1968 concerning the Central Bank, and then replaced by Law No. 23 of 1999 on Bank Indonesia.²⁶
- d. Public Bank that specializes, is a commercial bank specializing to conducting and concentrate on certain activities. It has been organized and made possible by the provisions of Article 5 paragraph (2) of the Banking Act No. 7 1992:²⁷

"Commercial Bank can be specialized to conducting certain activities or give greater attention to certain activities"

²⁴ Kasmir, *Op. Cit.*, hal. 19

²⁵ *Ibid.*

²⁶ Widjanarto, *Hukum dan Ketentuan Perbankan di Indonesia*, (Jakarta : PT. Pustaka Umum Grafiti, 2003), hal. 55

²⁷ *Ibid*

2. Type of Bank in terms of its status²⁸

The division is based on the position or status of a bank. The status of the bank itself can identify the size of the bank's ability to serve the public a good performance in terms of the number of products and quality of service. The division of this kind is divided into:

- a. Foreign exchange banks: foreign exchange bank is a bank that has special authority to be able to make transactions abroad or anything related to foreign currency. Services that can be done by foreign banks are such as a transfer to foreign countries, the collection abroad or Travelers' Cheques.
- b. Non-Foreign Exchange banks: non-foreign exchange bank is a bank types that do not have the permission to be able to perform a variety of service activities that can be done by foreign exchange banks. The conclusion is a non-foreign exchange banks is the opposite of foreign exchange banks, non-foreign exchange banks can only conduct transactions conducted only within national borders.
- c. **Types of banks in terms of ownership.**

The division of a bank is the division of types of banks in terms of the bank's ownership, the division of types of banks in terms of ownership is divided into 5 types that are state-owned banks, privately owned national bank, foreign-owned banks, the Bank Proprietary Blend, and bank-owned cooperatives:

²⁸ *Ibid*

- a. *State-Owned Banks* is a bank in which its ownership is entirely controlled by the government ownership, deed of development, ownership, and also the capital belongs to and come from the government, the bank profits produced is also fully owned by the government. Some examples of state-owned banks are like BRI, BTN, and Bank Mandiri.
- b. *Privately owned national bank*, is a bank that is owned by a national private party. The establishment and its deed is also owned and controlled by the private, profit-sharing as well as its shareholding is also owned by private parties. Some examples of privately owned banks nationwide are BCA, Bank Danamon and Bank Mega.
- c. *Foreign-owned banks*, is a bank whose ownership is foreign owned, it could be a bank a branch office that has its head office outside the country, as well as the benefits of ownership of this bank is fully owned by foreigners. Some examples of banks owned by foreigners is Citybank and American Express Bank.
- d. *Bank proprietary blend*, is a bank whose ownership is held by foreign and national private parties Indonesia, but the majority of its shareholding are owned by private parties nationwide. Some examples of a bank proprietary blend is Merincorp Bank, PDFCI Bank, etc.

- e. *Bank-owned cooperative*, is a bank owned by a company that has a cooperative legal entity. One of the banks that used to be owned by legal corporate entities cooperative is Bank Umum Koperasi Indonesia (Bukopin).

3. Type the Bank in terms of manufacturing and the creation of demand deposits

The next review of the type of bank is a type of bank in terms of the manufacture of demand deposits. In this category, the groupings of types of banks are divided into two (2) parts, which are Primary Bank and Secondary Bank:

- a. **Primary Bank.** Primary Bank is a bank that has the authority to create demand deposits. The types of banks that are included to primary bank is:
 - i. **Circulation Bank**, which also called the Central Bank. The only central bank in Indonesia is Bank Indonesia. Circulation Bank has the authority to make paper money and demand deposits
- b. **Secondary Bank.** Secondary Bank is a bank which its only task is to be an intermediary in lending to the public. The types of banks that are classified as the secondary bank is a saving banks in general (Public Bank) and other banks that do not have the authority to create demand deposits.

2.8 Business Activities Performed by Banks

The role of banks in the life of society feels more and more needed, so that the total number of demands for services and banking products in Indonesia has increased from year to year along with the development and economic and infrastructure development in Indonesia. Therefore, banks are required to be able to always serve the public and fulfill the needs of people in the economy by perform various types of business activities and produce products and services to be able to attract people to entrust their economic activities entirely to the bank. The activities as well as bank products and services must also follow the conditions and procedures applicable and must obey the laws and regulations in Indonesia so that the bank can get legality as valid financial institution.

2.9 Business Activities As well as products and services that are conducted by commercial banks

Bank is an institution that has the title as an institution of trust. The banks that have characteristics as an institution of trust have some characteristics such as:

- a. In accepting deposits from Surplus Spending Unit (SSU), banks can only provide a written statement which explains that the bank has received a deposit in a certain amount and for a certain period of time.
- b. In channeling funds to Deficit Spending Unit (DSU), banks do not always ask for collateral in the form of goods as guarantee of the provision of credit given to the DSU that has a good reputation.

- c. In conducting its activities, the bank use more of public funds collected in the bank compared to using the capital from the owners or stockholders of the bank.²⁹

In relation to the role and characteristics of the bank as an institution of trust, in operation, the bank's main business is based on four main areas:

- a. Liquidity Transformation

The definition of Liquidity Transformation is the funds deposited by customers (SSU) to banks is generally are liquid, therefore customers can easily withdraw the funds in accordance with the form of savings.

- b. Risk Diversification

The definition of Risk Diversification is a strategy of banks in lending to a variety of different communities and sectors of the economy which are diverse; it is intended to reduce the risks faced by banks in deployment of loans which it is getting smaller increasingly.

- c. Maturity Flexibility

Maturity Flexibility is one of the strategies pursued by banks in managing their funds, in this method, the bank made a form of deposit which its period of withdrawal by Surplus Spending Unit (SSU) is varied so that there are funds were deposited in the bank's corporate budget. This fund can be borrowed by the DSU from the bank.

- d. Denomination Divisibility

Banks can raise funds from the SSU with the small value amount of each, but overall will produce a large amount of funds. In this way, the

²⁹ Malayu. S.P Hasibuan, 2001, Dasar-Dasar Perbankan, (Jakarta: PT. Bumi Aksara), hal . 4.

bank can meet the demand of the DSU to get funding in the form of credit.

As a financial institutions engaged in banking, the bank has three (3) main activities are carried out, which is to raise funds, distribute funds as well as other banking services. These activities are:³⁰

1. Raise Funds (Funding)

Fundraising is a raising fund activity which is purchased by the society. This storage activity offers a variety types of deposits, deposit types are often referred to as an account. Some types of deposits are:

a. Demand Deposit

Demand Deposit (Giro) is a type of savings deposits that is offered by banks which its withdrawal can be done by check. The interest known as the demand deposit services will be given to each holder of demand deposit account at the bank. Specified interest in demand deposits is relatively smaller than the interest on other types of deposits.

b. Saving Deposit

Savings deposits is a type of savings that is offered by the bank with its withdrawal is according to the requirements set by the bank. The withdrawal of funds on this deposit type is using a passbook, automated teller machines (ATMs), as well as a withdrawal slip. These savings account holders will receive an interest as a consideration for their saving deposits.

³⁰ Kashmir, *Op. Cit.*, hal. 30-37

c. Time Deposit

Time Deposit is a type of savings which have a certain time period.

The withdrawal can only be done according to the maturity date.

Deposits consist of various types, which are:

i. Term Deposits

Time deposits are the type of deposits which are published by a certain time period. Time deposits are published on behalf of both individuals and institutions. Interest in the amount according to the current opening time deposits will be given to every customer who has the time deposit accounts. The liquefaction of deposits funds can be done every month or every date of maturity of the time deposit.

ii. Certificates of Deposit

Certificate of Deposit is a type of deposit which are published with a period of 2, 3, 4, and 12 months.

iii. Deposit On Call

These types of deposits are deposits that have a period of at least 7 days and a maximum of a month. These types of deposits usually have large numbers and bank account in the name of people who have this deposit. The liquefaction of interest can be done at the stage of deposits on call that should be confirmed to the bank on the first three days before the time of liquefaction.

2. Channeling funds (Lending)

This type of business is the type of banking business in order to distributing or selling the funds rose from the public to the communities that are sold in the form of credit loans.

The types of loans offered by banks are highly variable, the types of loans that are generally offered by most of the banks in Indonesia are:

a. Consumptive credit

Consumptive credit is a kind of credit that is used to fulfill the personal needs of the borrower's credit as the fulfillment of clothing materials, food, and shelter.

b. Productive credit

Productive loans are loans that are used for investment or opening up a business and are used for working capital. This loan is given so that the funds can be used to create a business so that it can be returned with the results of operations that has been made, those who usually use these loans are entrepreneurs who are just starting their business.

c. Profession Credit

Profession credit is a type of loan that is given to professionals in their fields, such as doctors, and other types of professions.

d. Investment Credit

Investment loans are loans that are given to entrepreneurs who invest in or make an investment. This credit has a long period of time which is about a year.

e. Trading Credit

Trading credit is a credit given to merchants in order to expand and facilitate the activities of its trading business, the difference between productive credit to trading credit is that trading credit is only given by the borrower who have a business and not as an investors and the credit is given to merchants who are already established a business and is already operating and not the establishment of new businesses.

f. Working Capital Credit

Working capital credit are loans that are given on the basis of starting a new business formed with the requirements and certain proposals submitted to the bank. These short-term credit is not more than a year.

3. Provides Other Services.

Besides the storage fund activities and distribute them to the public, the bank also has activities that can support and provides banking services to their customers. A bank that is large enough is usually followed by a variety of services available to customers.

Some service activities that are provided to customers of the bank are:

a. Clearing

Clearing is a billing slip (marketable securities, checks, demand deposits) to the concerned bank from the city.

b. Collection (*inkaso*)

Collection is a billing slips that come from abroad.

c. Remittance

Remittance is a money transfer services that can be done through a bank.

Remittance can be done to accounts that are in the country or abroad, but the remittances to overseas can only be done by foreign banks.

d. Safe Deposit Box

This service is a safe deposit box rental services or a storage boxes to customers which is used to store marketable securities or other valuable items such as gold.

e. Credit Card

This service offers the use of a card that can be used for the customer's personal consumption, but the use of these cards will be charged according to the amount of usage in this card along with the cost of the fee.

f. And other kind of services

2.10 Business Fields By Public Banks

Duties and functions of public banks are basically to collect funds from the public and distribute it in the form of credit. Public banks also receive deposits that are done by the public in the form of deposits and demand deposits.

Business fields by public bank which are usually is applied in the Indonesian banking system in that suits the provisions of the functions and duties of public banks as banking institutions are:³¹

- a. Transferring money that are done either with notification via telegram or a letter by giving sight draft among branch offices.
- b. Provides medium-term loans, long-term loans, or take part in companies with an approval and the resolution as decided by Bank Indonesia.
- c. Receiving savings in the form of deposits and demand deposits.
- d. Provide short-term loans with a dependent effects or guarantees of agricultural products, goods transport document liabilities and documents storage.
- e. Receive and paying the money in a checking account, receiving orders of payment of bills on valuable papers, and take orders of transferring money.
- f. Buying and selling checks, bill of exchange, other commercial papers and payments that are made with letters and telegrams.
- g. Renting out storage space for valuables items.
- h. Provides bank guarantees with fairly dependents
- i. Running other businesses that are usually performed by public banks in general.

³¹ Suyatno, Thomas, et.Al. *Kelembagaan Perbankan*. Jakarta : PT Gramedia Pustaka Utama. 1987.

2.11 Rural Bank's Business Activities

Business activities that are done by Rural Banks mostly are the same as the business activities conducted by public banks, but it's not as much business activity and as complete as conducted by public banks.

The activities that are done by rural banks are as follows:³²

- a. Fund raising conducted in the form of:
 1. Deposit savings
 2. Savings
- b. Distributing funds committed in the form of:
 1. Trading Credits
 2. Investment Credits
 3. Working Capital Credits

Some of the services that are prohibited for rural banks by the decision of Bank Indonesia are:

- a. Conduct an insurance activities
- b. Following the clearing activities
- c. Receiving deposits in the form of current accounts
- d. Conducting financial activities that are related to foreign exchange.

³² Kasmir, *Op. Cit.*, hal. 37-38.

2.12 Banking Supervision

In order to maintain the economic stability and banking activities in Indonesia, the bank's performance in providing services to their customers should be well targeted and does not breaking the rules and regulations in the legislation and the laws in Indonesia. The Indonesian government also plays an important role in improving the performance of banks in Indonesia, the government established a supervisory mechanism which in charge of overseeing activities of banks in the banking business.

To be able to maximize the potential of the bank in their performance, it requires a supervisory mechanism that has the task of supervising the performance of the bank from going off of the path and the goal of why the bank is established. A bank will run and work well if there is a control mechanism that oversees the bank. Supervision is really necessary so that the bank remains on their tracking performance and do not cause any losses which impact on anyone.

The existence of an independent supervision mechanism that is established by the government can protect the interests of customers in terms of the law which entrusts the management and doing banking activities in the bank.³³

³³ Permadi Gandapraja, *Dasar dan Prinsip Pengawasan Bank*. (Jakarta : PT. Gramedia Pustaka, 2004)

2.13 The Consideration of the Need for Bank Supervision Mechanism

There are a lot of things that are taken to be a consideration of why the mechanism of bank supervision is needed in Indonesia. These considerations are:³⁴

1. The Bank has a basic function as a financial institution; the bank's main function is to collect funds from the public, implanting and managing these funds into a productive source of funds and can produce profits. In addition, the bank also has the responsibility to provide banking services to the public and offers services to public so that people can conduct transactions and financial payment transactions.

Based on the functions of the bank, there are many things that are taken into consideration why supervision is necessary in the field of banking in Indonesia. Some things to be aware of and considered by the bank functions are:

- a. In terms of capital investment, provision of credit, and the management of other types of productive assets, banks require the accuracy in analyzing the request of the debtor. Banks do this way by making the calculation of the possibility or the probability.

This function contains the risk that is called as the risky assets. If the bank is not accurate in analyzing a request applied by the debtor, it will cause huge losses to the bank.

³⁴ *Ibid.*,

b. Foreign exchange bank is a bank that is allowed to conduct transactions out of the country or conduct all kinds of transactions related to foreign exchange. Foreign Exchange Bank conduct transactions with its partners that are outside the country who has a very wide location and so widespread that the risk faced by the bank would be greater.

c. Liquidity is an important obligation that must be fulfilled by the bank to its customers; the bank's obligation is to make payments to the bank customers. The bank must understand banks' liquidity management in terms of the management of bills and obligation to fulfill to customers both in terms of magnitude, conditions, period of time and maturity. By understanding this management concept, the bank can prepare and maintain the amount of liquidity.

If the bank does not understand this management, the bank cannot fulfill its obligations to make payments to customers on time and well done, it can cause harm to many parties.

2. The banking system is a system that should run in parallel and synergy towards the fulfillment of the functions and targeted set, the banking system has a large central role in the economy of the country. the good reciprocal relationship between the banking system with macro-economic policy from the government is also needed so that the Indonesian banking system is running properly so that the bank can maintain its existence as an institution that provides balance in the sector of the country's economy. No doubt that the bank supervision

system is needed in order to realize a healthy financial system in Indonesia.

2.14 Customer's Legal Protection

The main purpose of the establishment of the bank supervisory institutions is to protect the interests of customers through the base of laws, rules, and regulations that exist in Indonesia. Customers are the people who entrust their funds and assets to be managed in a bank. Therefore, the bank as an institution of trust should be able to maintain customer's trust in its performance.

2.14.1 Bank's Obligations

In its operation, a bank has a wide range of obligations that must be fulfilled in order for the bank remains viable to serves as an institution that provides banking services to the public. By fulfilling the obligations as it should be, then the bank can continue to maintain the trust of its customers.

In operating its functions as an institution, a bank must be able to strike a balance between obligation (Banking Duty Principles) and the management of the bank (banking management principles) based on banking ethics.

The banking obligations that must be fulfilled by the bank are: ³⁵

- a. General obligation. General obligations includes common things that must be accepted by the customer includes a sense of safety perceived by the customer, the optimal service provision, as well as equal treatment that are given to each customers.

³⁵ Rimsky K. Judisseno, *Sistem Moneter dan Perbankan di Indonesia*. (Jakarta : PT Gramedia Pustaka Utama, 2002), hal. 104.

- b. Specific obligations. Specific obligation is an obligation that must be fulfilled by the bank's internal institution sector itself; it includes the obligation of the bank's responsibility to the government, to the employees and owners of the bank. The responsibility to the government is fulfilling the responsibility to fulfill the government's request that the bank can manage with both development and monetary stability within the body of the bank which aims to improve the livelihood of communities. The responsibility of the bank to its employees is the fulfillment of the rights of the bank employees and guarantee of their welfare.

In running its business activities, addition to having to fulfill the obligations, the bank must also fulfill the principles of Good Corporate Governance. The fulfillment of this principle should be done because they affect the performance of the bank. The rebuilding of the banking sector and generate financial sector of the ongoing crisis must be accompanied by the observance of the precautionary principle, the fulfillment of good corporate governance principles as it should be, and the effective authority of banking supervision of the institution is held by *Otoritas Jasa Keuangan (OJK)* institution.³⁶

2.14.2 The Legal Relationship Between Banks and Its Customer

In the banking law, it has been arranged regarding the legal relationship between the Bank and its customers, this law also clarifies the rights and

³⁶ Yunus Hussein, et.al, *Analisis dan Evaluasi Hukum Tentang Perubahan Undang-Undang Perbankan (Law Nomor 7 Tahun 1992 Jo Law Nomor 10 Tahun 1998)*, (Jakarta : Badan Pembinaan Hukum Nasional, 2007), hal. 37.

obligations that must be received by the customers that the bank must do to its customers.

Article 29 of Law No. 7 of 1992 has also been setting up about the relationship between customers and the bank, this article has arranged the duties and functions of the bank's role as an institution of trust and institutions that work on the principle of prudence. In operation, the bank is supposed to work and operate as it should and not creating a loss of customers and the rights that should be received by the customer can be fulfilled properly by the Bank.

2.15 Banking Criminal Acts

A criminal act (*Strafbaar feit*) is an action violating the law relating to an error (*Schuld*) of a person who is able to be responsible. An error meant as a mistake in its broadest sense that includes intentional (*dolus*), and negligence (*culpa lata*)³⁷. Banking criminal act itself is a criminal acts committed in the banking sector, some sources say that the banking criminal acts and criminal acts in the field of banking is something different, the difference is, criminal acts in the banking sector is a criminal offense which is done and occurs in banks, both set in the Law No. 7 of 1992 which as amended into Law No. 10 of 1998, and those that are arranged in other laws. While the banking criminal acts are a criminal acts that is only regulated in the Law on Banking. However, some authors and some circles thinks that between banking criminal acts and criminal acts in the banking sector does not need to be differentiated because a criminal act is a criminal offense that

³⁷ Frans Hendra Winarta, *Suara Rakyat Hukum Tertinggi*, (Jakarta: Penerbit Buku Kompas, 2009)

banks do have a common offense committed by some individuals and / or banking institutions.

2.15.1 Criminal Acts Related to the Bank's Business

The Bank offers a wide variety of services that are provided to customers, the bank needs to maintain customer's trust that the bank can maintain the good name of products and services in order to always be the choice of the customer and the bank can continue to operate properly. Banks must report an announcement about its liability directly to the public through the mass media, and providing accountability report to the banking supervisory agencies which is the *Otoritas Jasa keuangan* Institution.

In Law No. 7 of 1992 on Principles Of Banking, as amended by Law No. 10 of 1998 on the Amendment of Law No. 7 of 1992 on Banking, There are several articles that regulate various criminal actions related to the business of the Bank. The Articles that contain an explanation of the action are:

- a. Article 49 paragraph (1) letter a:

"The members of the board or directors, or employees of the bank who knowingly makes or causes any fake recording in the books or in the reporting process, as well in documents or reports of business activities, transactions or account statements of a bank"

- b. Article 49 paragraph (1) letter b:

"The members of the board or directors, or employees of the bank who have deliberately omitted or do not insert or has not done recording in the books or in the report, or in a document or business activity report, report transactions or account of a bank"

c. Article 49 paragraph (1) letter c:

"Members of the board or directors, or employees of the bank who intentionally change, blurs, hide, delete, or eliminate the presence of a recording in the books or in the report, or in a document or business activity report, report the transaction or a bank account, or by deliberately change, blurs, eliminate, hides, or destroy the accounting records "

d. Article 49 paragraph (2) letter a:

"Members of the Board of Commissioners, Board of Directors, or a bank employee who intentionally request or accept, allow, or agrees to receive a reward, commission, extra money, services, money or valuable items, for personal gain or for the benefit of their families, in order to obtain or trying to get the other person to obtain a cash advance, bank guarantees, or credit facilities from the bank, or in order to purchase or discounted by the bank upon draft letters, promissory notes, checks, and trade papers or proof of other obligations, or in order to provide agreement for another person to perform the withdrawal of funds that exceed the credit limit at the bank, is punishable by imprisonment of at least three (3) years and a maximum of 8 (eight) years and a fine of at least Rp 5,000,000,000.00

(five billion rupiahs) and at most Rp100.000.000.000,00 (one hundred billion rupiahs)”

Three articles above have clearly set about banking criminal acts and criminal penalties that punishable to the offender if the banking criminal act happens. Fairly heavy sanctions will be imposed for criminal banking. This Law protects and guarantees the rights of customers in Bank of banking criminal acts relating to the business of banks as the business of banks is that the banking sector has a close relationship with customers and their financial activities.

2.15.2 The Crime of Embezzlement of Funds by a Bank

The potential of criminal acts that may be performed by a bank to its customers is very diverse, criminal offenses committed by these banks could cause huge losses for customers, the perceived impact of criminal offenses committed by the bank not only be felt by customers, but also the bank's good name , as well as the public trust in the bank will decrease or even disappear. One of criminal offenses that may be committed by the bank is the crime of embezzlement of funds. Criminal acts of embezzlement have also been arranged in the Criminal Code. The article which regulates the basic part of banking criminal act is Article 372 of the Criminal Code:

"Whoever that are willfully and illegally having something such as goods that are entirely or partly belongs to someone else, but that is in his power is not as a crime punishable as embezzlement, with a maximum imprisonment of four years or a fine of nine hundred rupiahs".

The relationship between banking criminal act with embezzlement criminal act are very closed because the embezzlement criminal act are very likely occur in some banking activities, the internal irresponsibilities parties in the bank may cause a massive lost that affect many other parties.

Based on the Act and the rules above have mentioned that the interests of customers in banking activities is guaranteed and protected by applicable law, the role of government in shaping legislation, institutions and bank supervisory authority banking procedures which have been approved by Bank Indonesia as the central bank is the right step in order to manage and realize the protection of the law and the interests of bank customers by state and maintain the stability of the economic sector in Indonesia.

2.16The Protection for bank customer

Based on these three cases, it can be analyzed that there already happen an embezzlement of funds that committed by employees of the bank to its customers. In the first case can be seen that there already happen an embezzlement of fund case which measures a dibursement of company funds that committed by the party who does'nt have the authority to access the deposit account funds. Whereas in the second case it is known that there has been an embezzlement of fund case which measures a switching action of the books of deposits belonging to one customer who has a valid certificate and legal auththority, these actions clearly violated the applicable procedures. With the onset of criminal cases in the bank, then the bank's customers as consumers have materially harmed.

Each bank customers have given legal protection by the state so that every bank customer's financial interests and the security management of the funds in the bank can be processed safely and protected by the law.

Protection of bank customers are basically divided into two, namely the direct protection and the indirect protection. The difference between the indirect protection with direct protection is indirect protection is a protection that does not directly mention that the customer is protected by both law contained in the Banking Act and contained outside the Banking Act. While the direct protection is the protection which directly states that the customer is protected by law, whether contained in the Banking Act and which are outside the Banking Act.

2.16.1 Indirect Protection

Indirect protection is the protection provided indirectly to the bank customers that well regulated in the Banking Act and regulated outside the Banking Act. This protection is the protection that includes the crime prevention efforts that may be made by the bank. Efforts made in the aim of preventing the occurrence of a variety of things that can harm the customer this efforts also in the form of improvements of the banking system in order to prevent criminal acts that can be performed by a bank or similar acts which could cause losses to bank customers, because of the development of information and technology make more opportunities open and increasing number of variations of banking criminal acts that may occur.

In this case the bank needs parties that have good morals, personality and very high dedication to work professionally to be able to operate a good banking system, these parties are parties that are directly related to the banking system.

In the bank's operations, the parties that directly connected are the shareholders, directors, officers and employees of the bank. Shareholders, the bank commissioners, and directors are the parties that directly related to the ownership of a bank, if a bank owned by the people who have integrity, high responsibility and good professionalism, then the bank will be able to operate without constraint or various types of negative actions that violate banking procedures in Indonesia. But if the bank is owned by a group of people who are not responsible and does not have high integrity, the bank is very likely to encounter problems and take actions that violated the banking procedure in Indonesia, and this condition led to a loss in various parties, both the customer and the bank itself because customers have lost confidence in the bank.

Government and Bank Indonesia as the Central Bank in Indonesia, which has authority in the task of supervision and guidance to all banks in Indonesia has also established regulatory function to ensure that a bank owned and controlled by the people who have the integrity to their work, these regulations are listed in the Bank Indonesia Regulation No. 5/25/PBI/2003 on the

assessment of capability and Proper. This regulation was formed with the aim that the performance of banks in Indonesia can achieve a high totality, it is concerned about the supervision and oversight of banking in Indonesia. Some of the criteria used to determine the eligible parties to become the owner of a bank and perform the management are also regulated in this Bank Indonesia Regulation.

For Prospective Shareholders have formed two conditions, namely:³⁸

1. Financial Feasibility

This fulfillment is the fulfillment of administrative requirements in order to assess the financial ability of the prospective shareholders of all aspects, among others, are not included in the list of bad debts, not been declared bankrupt or become a director or commissioner who is liable for the errors that cause a firm or company declared bankrupt, and have no debt that has matured and other issues.³⁹

2. Integrity

³⁸ Indonesia, *Bank Indonesia Regulation Number On Capability Assessment and Propriety (Fit and Proper Test)*, PBI 5/25 / PBI / 2003. LN No. 124 of 2003, Supplement No. 4334, Article 4.

³⁹ *Ibid.*, Article 6

In this case, prospective shareholders should have good morals, high commitment to be able to comply with all laws and regulations, as well as a commitment for the development and operation of a good and healthy banks.⁴⁰

In addition, Bank Indonesia Regulation also establishes requirements and the fit and proper for the Bank Management candidates, some of these conditions are:⁴¹

1. Integrity,

Integrity is an aspect which includes good moral owned by the prospective candidates bank manager, in addition to having good morals and character, prospective bank manager should also have a commitment and willingness to comply with the legislation in Indonesia.

2. Competence,

Competence is the level of knowledge that should be possessed by the prospective bank management, the level of competence of candidates for the management of banks are divided into two (2) that the level of competencies required for commissioner candidates and the competencies required for directors of the bank;

⁴⁰ *Ibid.*, Article 5

⁴¹ *Ibid.*, Article 15

- a. Candidate must have adequate knowledge of banking sector for considerable experience in the field of banking.
- b. Director candidates must have knowledge of banking and relevant enough for the office, adequate professional experience in banking and finance is also required, in addition, prospective directors must also have the ability to perform strategic management for a healthy bank.

3. **Good financial reputation,**

Every bank manager candidate should have a good financial reputation, meaning they are not included in the list of bad debts and never declared bankrupt or become directors or commissioners who were found guilty of causing bankruptcy of a company within a period of 5 (five) years prior to nomination.⁴²

There are a lot of things needs to be done for the purpose of prevention of not desirable things and actions in banking, in addition to those which have been set out in the Regulation of Bank Indonesia, the bank organization also must show good faith and high professionalism. A bank institutions that have been

⁴² *Ibid.*, Article 18

established must meet several requirements so the banks can be considered as a good and healthy banks, these requirements are:⁴³

- a. Staff organization is an organization that is the most flexible because the responsibility that is held is very clear.
- b. The operating system should based by the activity or productivity in the bank so that the mechanism of working relationship between staff either vertically or horizontally can be run properly.
- c. The Organization structure should be made with a vertical system, it is intended that the scope of work of each position and the position of the employee can be clearly divided.
- d. Every *Job description* of each employee must be shared and clearly defined in order to avoid misunderstanding in determining their respective duties.
- e. The delegation of authority system needs to be done to the employees so that, customer service can be improved.
- f. The Placement of the employees based on the principle *right man on the right place*, this principle is one way that the scope of work of each employee can be effective and targeted.
- g. Bank organizations should be divided into:

⁴³ Malayu, *op.cit*

- *Front Office*, Front Office duty is to serve customers directly in financial activities.
- *Bank Officer*, Bank Officer in charge to take care of the internal workings of the company such as accounting, companies auditing, as well as the management of human resources which are not directly related to the bank's customers.

As an institution of trust, a bank must have a good intention in providing services to its customers. This can be realized by providing the disclosure of information relating to the customer and the bank, the bank should be able to explain and give information as complete as possible about the type of services, procedures that must be completed by the customers and other explanations needed. The relationship between the customer and the bank is a bonded relationship that uses a treaty that must be met by both parties, therefore it is necessary disclosure of information that must be obtained by the customer in order to avoid misunderstandings and errors in the procedure of implementation in banking activities.

Good faith is something that must be done and fulfilled in making an agreement. Terms of good faith that must be met in an agreement entered in Article 1338 paragraph 3 of the Code of Civil Code, this article states that an agreement must be executed with

the intent and good faith. Agreement must be met by the two parties that had the same good faith in doing the deal. If there is one party that violates or does not comply with one of the agreement that has been established, then the agreement can be canceled. The provisions concerning the cancellation of the agreement has been provided for in Article 1328 Civil Code, this article states that in the event of fraud or trickery that has violated the subjective conditions because one party is not aware of any circumstances in accordance with the provision of information or successor agreement at first, then there will be no deal , in other words, the agreement can be canceled.

The next thing to consider is the intent and good faith made by customers. If the bank already has a good human resources, as well as a good management system, customers also plays an important role in maintaining the health of the bank's performance, if the customer has good intent and purpose of using the products and services offered by the bank, then both parties are shall not feel aggrieved. The other purposes with the goal against the applicable law will be punished by criminal sanctions.

The next thing that must be done by the bank is aware of the client, in this case the principle of *Know Your Customer* is needed, this principle is done by the bank to its customers to find out about its customers with the purpose of protecting the bank's

reputation. In addition, this principle can test the bank about compliance with the banking applicable provisions and as part of the precautionary principle in the banking activity that goes with healthy and in accordance with procedures. *Know Your Customer* principle can also protect the bank, so the bank does not become a victim of harmful acts committed by customers. *Know Your Customer* is done in the hope that the bank could do early identification of customers and any activities undertaken by the customers.

The principle of customer recognition are also provided in the Bank Indonesia Regulation No. 3/10/PBI/2001 and amendments to the Bank Indonesia Regulation No. 3/23/PBI/2001, as well as Bank Indonesia Circular Letter No. 3/29/DPNP. As well as the finance minister's decision No. 45/MK06.2003.

The things concerning about *Know Your Customer* by banks that regulated under several rules above are the things that are associated with customers as well as the banking activities done at the bank, the rights and obligations held by the customer, the rights and obligations held by banks, etc., these things are:

- a. Financial institutions are required to have a policy that is made to determine customer acceptance procedures, customer identification, and monitoring of customer accounts. This thing must be done, so

the bank can identify things about the customers and suspicious transactions in customer accounts, besides, banks are also required to carry out risk management related to the principle of *Know Your Customer*.

- b. Policies and procedures established by the bank about the application of the principle of *Know Your Customer* written inside the Guidelines Concerning the Principles of Customer which is forwarded to the institution's bank supervisory authority so can be applied to the customer.
- c. The bank financial institutions are required to request various forms of supplementary documents to support the availability of customer identity owned by the bank as well as the National Identity Card identity documents or other support documents needed, determined purpose and implementation of this policy is to disclosure the identity of the prospective customer or information that enable the bank to know the profile and identity of the prospective customer.
- d. Directors of the financial institution has a responsibility for the implementation of Bank

Indonesia Regulation in the financial institution he leads.

- e. Establishment of a officer unit that directly responsible for the implementation of the principle of *Know Your Customer* and determine special officer to handle customers who rated high risk or in case of suspicious transactions.
- f. Financial institution is prohibited from conducting banking business relationships with prospective customers who do not comply with the policies that have been determined by Bank Indonesia about customer acceptance and customer identification.
- g. Financial institutions are required to maintain and store the customer profiles that include kind of work, the amount of income, normal trading activities, as well as the purpose of opening an account in the bank.
- h. Financial institutions are required to perform an updates to the document regarding customer identification within a period of 5 years since the customer's account closure.
- i. The risk management policies are determined by the bank should include some important things that such oversight by the board of financial institutions,

delegate authority, separation of duties / tasks distinction within each division, internal control, firm internal audit, and training of bank employees.

- j. Financial institutions shall report any suspicious transactions made by customers in the bank to the supervisory authorities, Transaction Reports Centre and Analysis Centre (PPATK)/*Pusat Pelaporan dan Analisis Transaksi (PPATK)* no later than one week after the suspicious transaction known by the financial institution.
- k. In case of suspicious transactions occur, the financial institutions are prohibited from telling the customers or parties that directly related to the customers on that transaction.
- l. Know Your Customer principles are also applied by banks incorporated in Indonesia who are located abroad.
- m. These regulations provide compensation and exception to customers who do not have accounts at the bank for the transaction value is not more than 100,000,000.00 (one hundred million dollars).
- n. The imposition of sanctions to the person concerned.

Relating to the above cases, Bank Mandiri and Bank Bukopin did not give the indirect protection to its customer, they did not held the fit and proper test for the employees with as appropriate related to Bank Indonesia Regulation No. 3/10 / PBI / 2001 and Amendments to the Bank Indonesia Regulation No. 3/23 / PBI / 2001, as well as Bank Indonesia Circular Letter No. 3/29 / DPNP. As well as the finance minister's decision No. 45 / MK06.2003, it is evident because it is still the embezzlement case that happens and the embezzlement are committed by one of its employees, it is very unfortunate, because the actions of the employee, then the bank's overall company suffered losses are not few in number.

2.16.2 **Direct Protection**

Beside the indirect protection provided by the state to bank customers, the government also provides some direct protection that can be directly reached by the bank customers who feel their rights are not met by the bank, which gives great loss to them.

Act No.10 of 1998 on the Amendment of Act No. 7 of 1992 on Banking regulates the backlog that provided to customers. Article 37B states that each bank has an obligation to ensure customer deposits which entrust their funds to be kept in the bank.

Article 37B also mentioned that the function of guaranteeing customer deposits made by the Deposit Insurance Agency/*Lembaga Penjamin Simpanan (LPS)* that has a special authority to perform the

underwriting function. Law to discuss the Deposit Insurance Agency is Law No. 24 Year 2004 on LPS, the law governing the duties and powers and functions of the Deposit Insurance Agency. Law No. 24 of 2004 stated that LPS function is to guarantee the deposits of depositors who save their money in the bank and actively participate in maintaining the stability of the banking system in Indonesia are carried out in accordance with the field and the authorities.⁴⁴

The function of LPS as an institution that has a special authority in maintaining the stability of banks in Indonesia has the task:

- a. Implement the deposit guarantee.
- b. Formulate and establish policies for the implementation of deposit insurance.

LPS also have a special authority in carrying out its function as an independent institution that is engaged in the underwriting clients, LPS authority is:

- a. Set and collect premiums loans.
- b. Set and collect contributions at the time of the first banks participated in LPS.
- c. To manage assets and liabilities that must be done by LPS
- d. Obtain all the data required to perform its functions, ie the data of customer deposits, the relevant bank health data, the

⁴⁴ Indonesia, *Law on Deposit Insurance Agency*, Law No. 24 of 2004, LN No. 96 of 2004, Supplement No. 4420, Article 4

bank's financial statements and reports the results of the bank check.

- e. Perform verification and confirmation of the bank customer deposits participants data.
- f. Establish requirements, procedures, and terms of payment of claims.
- g. Appoint, authorize, and / or assign other parties to serve in order to meet the interests of LPS or perform a particular task.
- h. Conduct outreach to the banks and the public about its function as an institution that guarantees deposits of funds.
- i. Impose sanctions against those who commit violations.

The existence of LPS as an institution that can guarantee customer funds deposited in the bank should be able to increase customer confidence in their banking activities in a bank, LPS did reimbursement to the customer in case of things that are unwanted and cause loss or reduced funds owned by customers in one of the participating banks with LPS. LPS has a guarantee limit of customer funds, that is worth to Rp2.000.000.000,00.

The protection afforded by LPS is the kind of protection that can be directly received by customers of the bank in case things go wrong. Direct protection provided by the government is a system of direct complaint by the client to institute banking supervisory authority which is

now owned by the institution Financial Services Authority/*Otoritas Jasa Keuangan (OJK)*. Customers can immediately make a complaint to the OJK if they feel aggrieved by the bank, or the bank did not fulfill their obligations to customers, after the complaint, OJK can immediately conduct an investigation and settlement action of disputes between the customer and the bank.

In the embezzlement of funds committed by the bank officers and employee above, can be seen that LPS would remain directly indemnify the funds to the customers, although the individual employees of the bank has been convicted criminally and perform compensation. LPS also will provide an obligation to the bank to replace the losses suffered by the customers due to the fact that the bank had violated the trust that has been given by the customer.

The second case illustrates that the state has provided an opportunity for clients who suffered losses caused by acts of embezzlement of funds by a bank employee to bring the case to court, the state provides the opportunity for the client to report the case to the Syariah Mandiri Bank and someone named Sugiyanto as reported. This could prove that the state has provided direct protection to bank customers who suffered losses caused by the criminal act committed by a bank employee.

CHAPTER III

EMBEZZLEMENT CASES BY BANK

Embezzlement of funds is a banking criminal offense that commonly occur in the banking activities in Indonesia so it needs vigilance and closer scrutiny of the performance of banks in Indonesia. The role of the Bank as an institution of trust and its image must be maintained, because the bank is a financial institution that close to the people and the most people use the services of the bank to manage their funds and financial activities.

3.1 The Liability on Embezzlement Case by a Bank

The responsibility of the bank to its customers if one of its employees with a criminal offense, especially the crime of embezzlement of bank funds is to provide compensation that is commensurate with the loss suffered by the customer. Until now, the government and Bank Indonesia had not yet established laws and specific regulations regarding responsibility bank employee committed the crime of embezzlement.

Criminal acts of fraud has been under article 372 of the Criminal Code which makes the individual as its object, not an institution or company that the responsibility of banks so far is limited to the compensation to be made

to its customers, if the bank does not provide indemnity or liability whatsoever to the customer suffer such losses, the good name of the bank will be bad and the bank lose the trust of the public or from other customers.

As service users and customers of a bank, the public are required to know and be aware that crime can always happen at any time if there is an opportunity that is open to the parties who are not responsible. The following are some examples of cases of embezzlement by a bank that occurred in Indonesia:

3.2 Embezzlement by Bank Mandiri and Bank Bukopin

3.2.1 Case Description

- a. Reporter : Anang Saifuddin
- b. Reported : Yekti Hartono
- c. Case Chronology

Former director of PT. Medixe Sekawan Utama has revealed that there has been an embezzlement case of customer funds that occurred in the Bank Mandiri KCP Rawalumbu amounted to Rp14,265 billion and in the Bank Bukopin Melawai Branch Office amounted to Rp7,022 billion. Disclosure of this embezzlement case is related to the news carried by Denny Agusta as President Director of PT. Medixe Sekawan Utama stating that there is no loss for the Banks over the embezzlement amounted Rp21,287 billion.

The embezzlement case occurred between January and April of 2010 and is reported as a criminal offense banking in June which was reported by the director of PT. Medixe Sekawan Utama as well as the shareholders, Anang Syaifudin to the police.

In this case the parties are declared to be reported is Yekti Hartono. Yekti Hartono is the financial manager of the company. It is known that Yekti Hartono may involve one of bank employees, because all the funding procedure are violated the applicable procedures.

In July 2010, the shareholders of the company who allegedly cooperated with Yekti Hartono hold a General Meeting of Shareholders (AGM) or *Rapat Umum Pemegang Saham (RUPS)* where unlawfully replace the position of Managing Director from herself into Denny Agusta that in this case, Denny Agusta is the sister in law of Yekti Hartono.

In this case, there are some elements of the banks that are easily perform the disbursement of funds that belongs to customers who do not have authorization on the account. The disbursement action of funds in the bank is unauthorized disbursement since been violated the proper banking procedures.

Disbursement of the fund has performed in the Bank Mandiri KCP Bekasi Rawalumbu amounted Rp720 million that

made on May 5, 2010 cash withdrawal CEK EK 140 810, The signing Authorization in these disbursements is on behalf of Anang Saifuddin and Muhammad Fauzan and Medixe-Medical Equipment seals, in addition to it, the bank also did not confirm the disbursement of these funds.

However, it has been found that all the components used to make this disbursement of these funds is unauthorized and different, the seals is Medixe-Medical Equipment not the authorized seals from PT. Medixe Sekawan Utama.

The fund disbursement of Business Savings Account No. 156-00-0351328-2 in Bank Mandiri in very large cash number, that number reached Rp13,545 billion. People who are entitled to do the authorization to disburse the funds in this account should be the main director Anang Saifuddin as well as the shareholders in the company. But in fact, the person doing the disbursement of these funds is Yekti Haktono without a power of attorney that legally signed by Anang Saifuddin.

As well as the case that occurred in the Bank Bukopin Syariah Melawai Branch Office. The disbursement of Business Savings Account No. 7701023837 in large quantities which amounted to Rp7,022 billion. The person who has the authorization to perform the disbursement of these funds is Anang Saifuddin,

while those who did these disbursements is Yekti Hartono conducted without the valid power of attorney⁴⁵.

3.3 Embezzlement conducted by PT. Bank Syariah Mandiri

3.3.1 Case Description

- a. Reporter : Mrs. Supartini
- b. Reported : Sugiyanto
- c. Case Number : 199 K/Pdt/2005.
- d. Case Chronology

Mrs. Supartini is a customer of Bank Syariah Mandiri, which reside in the Komplek POLRI RT001 / 08 Larangan Indah, Tangerang. Mrs. Supartini sued PT. Bank Syariah Mandiri as alleged commit the embezzlement action of her deposits in that bank.

Mrs. Supartini has been a customer of Bank Syariah Mandiri's time deposits since March 26, 1992 which was originally named Bank Susila Bhakti Branch Office of Bona Indah, South Jakarta. Mrs. Supartini open her time deposit accounts for 100,000,000, - (one hundred million

⁴⁵ Okezone, "This is the Chronological Darkening The Independent & BSB Fund", accessible from <http://economy.okezone.com/read/2011/04/06/320/442961/inilah-kronologis-penggelapan-dana-di-mandiri-bsb> , on 1 December 2014, at 14:12

rupiah) with a numbered certificate of deposit: 52.01.01.000144 on behalf of Mrs. Supartini herself.

The time deposits that belongs to Mrs. Supartini has a maturity date of each of September 26, and so on until today, interest on deposits and the deposit funds were never disbursed but renewed automatically.

Around February 1996, Mrs. Supartini will disburse her time deposits fund following with the deposit interest at Bank Syariah Mandiri. But Mrs. Supartini surprised because her time deposit accounts that should be in his name, has now become on behalf of a another name, Sugiyanto, an employees of Bank Syariah Mandiri Mayestik Branch Office, South Jakarta with employee Number: AC.22.100750.64, whereas Mrs. Supartini didn't know Sugiyanto and never gave any power of attorney to the person named Sugiyanto.

The number of funds stored in the Mrs. Supartini account since the accounts made up to this claim is made is Rp352.054.840, - (three hundred and fifty two million fifty-four thousand eight hundred and forty rupiah). That number is the amount of deposit accounts owned by Mrs. Supartini along with the deposit interest. The original certificate of time deposit accounts are still owned by Mrs. Supartini

with certificate Number: 52.01.01.000144 dated March 26, 1992 worth Rp100,000,000, - (one hundred million rupiah), the certificate is on behalf of Mrs. Supartini.

3.4 Embezzlement by employees of Bank Windu

3.4.1 Case Description

- a. Reporter : Branch Manager of Bank Windu ITC Serpong Branch Office
- b. Reported : Dina Anggraeni
- c. Case Chronology

Embezzlement of customer funds that committed by bank its and employees also happens in Bank Windu. Embezzlement case was conducted by a Bank Windu employee named Dina Anggraeni. Dina has embezzled customers funds worth Rp241 million in cash offices of Bank Windu ITC Serpong Branch Office, South Tangerang City.

These actions constitute the crime of embezzlement of customer funds with theft purpose. Dina steal customer funds worth Rp241 million by way of exchanging the money that have the Rp100,000 denomination with a smaller denomination which is under Rp20.000 with the intention of eliminating the tracks.

This action began detected when the branch manager of Bank Windu replace Dina as a teller with a new employee. When the new teller took an amount

of money which totaled Rp10,000,000.00 for the purposes of payment for the customer, the teller found that the amount that is in the money pile is not worth Rp10,000,000.00 because the money that located in the safe-box are small denominated. The teller immediately report the incident to the manager, after the manager check the safe-box, it was found that the denomination of Rp100,000 nominal is already exchanged with money that a have smaller varied nominal, ranging from the amount of Rp 2,000 to Rp 10,000.

The Branch Manager directly have a report to the Internal Credit Unit (Internal Audit) of Bank Windu. During the audit process, Dina itself is transferred to Bank Windu Branch Tanah Abang.

According to the Internal Audit examination, there are 2,561 pieces of Rp10.000 denomination following some other denomination, amounting to Rp14.9 million. After the Internal Audit did an intensive examination, Internal Audit will catch Dina. According to the examination, Dina claimed that the act of embezzlement of funds is done because she wants to meet his personal needs such as clothes, shoes, bags and the others.

CHAPTER IV

STATE'S LEGAL PROTECTION TO BANK CUSTOMERS IN THE CASE OF EMBEZZLEMENT

The embezzlement of bank customers conducted by unscrupulous employees of the bank is a criminal act that was still mostly done by parties who are not responsible and just puts his personal advantage in it. Such cases occur due to a wide open opportunity for them to commit the crime, this is due to lack of supervision and lack of adherence to the manager of the bank for the bank that he leads. Legislation in Indonesia has set a lot of bank customers and the protection of the rights of bank customers that must be met by the bank.

Form of protection provided by the state to bank customers are divided into two forms, the first form is **direct protection** and the second form is **indirect protection**. Direct protection is a protection form which states that the customer is protected by law, whether contained in the Banking Act and which are outside of the Banking Act. While the indirect protection is a protection form which not directly mention that the customer is protected by the law, whether contained in the Banking Act and which are outside of the Banking Act.

Banking Act is a law that regulates everything concerning banking activities in Indonesia. Banking Act explains that a form of protection that should be given to the bank's customers are indirect protection, this is done by the establishment of regulations regarding improvement, openness, and discipline of the bank's performance. This is provided for in Article 29 of Law No. 10 Year 1998 on the Amendment of Act No. 7 of 1992 on Banking:

1. Guidance and supervision of banks conducted by Bank Indonesia
2. Banks are required to maintain the health of the banks in accordance with the provisions of capital adequacy, asset quality, management quality, liquidity, profitability, solvency, and other aspects related to the business of the bank, and shall conduct the business activities in accordance with the precautionary principle.
3. In providing the credit or financing based on Sharia Principles and conduct other business activities, banks are required to take a way that do not harm the interests of the bank and the customer who entrusted their funds to banks.
4. For customers interest and needs, banks are required to provide information about the potential risk of loss which associated with the transactions conducted through a bank customer.
5. The conditions that must be met by the bank are referred to paragraph (2), paragraph (3), and paragraph (4) shall be determined by Bank Indonesia.

The Act as a whole contains regulations that include the regulations requiring banks to apply the precautionary principle as a financial institution that manages the trust of customers who save their funds there.

This provision should be made the customers not worried about the security of their funds in the bank or with the bank's actions and all planning from

the bank related to the products and services they would do. Customers can entrust their funds in full without fear that their funds are not safe or the bank will suffer from failed business or bankruptcy.

Article 29 of the Banking Act provide indirect protection to bank customers, it is contains the function of bank supervision conducted by Bank Indonesia on the performance of banks in Indonesia. Many articles related to the function of Indonesian bank as an institution that has a function as a builder and banking watchdogs in Indonesia, the article is Article 30 through Article 37.

Protection should be received by the customer is the secret protection of customers who are in the bank, or also called bank secrecy. Bank Secrecy is everything connected with the financial and other matters of bank customers. The bank secrecy requires banks to be able to keep all the customers secret and privacy including the anonymity of clients and the number of customer deposits in the bank.

Article 40 of Law No. 10 Year 1998 on the Amendment of Act No. 7 of 1992 on Banking has stated that banks are required to keep the information on depositors and its saves.

Based on the analysis of the authors, the above cases also occur due to the leaking of the identity of bank customers to the individuals who are not responsible for and there is a bank employee who violates the provisions of the bank secrecy. Information about the identity, deposits ownership and savings ownership not only opened by them, but they also take action against the law to commit the embezzlement of funds as well as the transfer of the books that directly provide huge losses to customers who have such accounts.

In addition to the Banking Act, subsequent legislation that ensures protection against the customer is the Consumer Protection Act is Law No. 8 of 1999 on Consumer Protection, the customer is a consumer of products and services provided by the bank.

Article 4 of Law No. 8 of 1999 states rights owned by consumers as users or services, namely:

- a. The right to security and safety; the purpose of this right of this is to ensure the safety and security of consumers while using certain goods and services so that the consumer are protected from various kinds of loss.
- b. The right to obtain information openly; the purpose of the right of this is so that consumers can know the whole of the products and services that are clearly specified.
- c. The right to be heard; this right is given so that the consumer do not suffer further losses, it guarantees the rights of consumers to ask some questions about the products and services provided by the manufacturer, and the manufacturer shall provide a clear answer.
- d. The right to obtain living needs; this right is the most basic right, the consumer is given the right to obtain the basic necessities of life and maintain a decent life with.
- e. The right to choose; this right is given to the consumer so that the consumer can choose products and services that will be used.

- f. The right to obtain redress; this right is given to restore a state that has been damaged due to the use of goods or services supplied by the manufacturer, or possibly that harm consumers.
- g. The right to the protection of the consumer; this right is given so that consumers understands how to use the products and services so that the consumers can avoid the loss caused by the use of these products.
- h. The rights to a clean environment and healthy living; this right is given so that the clean and healthy environment for all consumers can still continue to be well maintained.
- i. The right to obtain appropriate legal settlement efforts; this right is granted to recover losses suffered by consumers through legal channels.

Of the above ten consumer rights, consumer rights that are associated with the embezzlement of funds belonging to clients that occurred in the bank are:

- a. The right to receive redress.

Redress is an obligation that must be done if one of the parties suffered material losses as a result of actions violating the law committed by the other party. The process of compensation is a process that must be done after the known occurrence of unlawful acts which caused the loss without having been processed through legal system.

- b. The right to obtain legal remedies that is worth.

Indemnity obligations must be fulfilled directly by the party or parties who cause harm to act against the law. Redress obligation is an obligation that must be carried out with unavoidably whether someone

likes it or not. Some thought better resolve the issue or payment of compensation with friendlier approach, but usually the settlement with a "friendlier approach" is even more convoluted and could add more the problems faced by the customer, therefore legal action is the only step that should followed in order that the compensation process can run properly so that the aggrieved party does not suffer further losses, and damages can be received through legal and amount equitable with the amount of losses that have been in misery.

Direct form of protection provided by the state is the establishment of an independent agency that has a special authority in providing guarantees and security for our customers, the state has established the Deposit Insurance Agency/*Lembaga Penjamin Simpanan* (LPS) and the Financial Services Authority/*Otoritas Jasa Keuangan*(OJK)

State establish a special institution that has supervisory authority as banking and financial institutions in Indonesia, the authority currently held entirely by the institution Financial Services Authority/*Otoritas Jasa Keuangan*(OJK), in Article 4 of Law No. 21 of 2011 on the Financial Services Authority has stated that the purpose of establishing the OJK is: ⁴⁶

- a. That all activities in the financial sector held regularly, fair, transparent and accountable.
- b. That all activities in the financial sector is able to realize the financial system to grow in a sustainable and stable.

⁴⁶ Indonesian, *No.21Tahun Act 2011 on the Financial Services Authority*, Article 4

- c. That all activities in the financial sector is able to protect the interests of consumers and society.

This article has been mentioned that the purpose of the establishment of this institute is for all activities in the financial sector is able to protect the interests of consumers and society. Institutions that have activity in the financial sector is a Financial Institution, the bank is one of the financial institutions, therefore, the bank is one of the financial institutions that are under the supervision of the OJK.

Article 6 of Law No.21 of 2011 on the Otoritas Jasa Keuangan also mentioned that the OJK task regulation and supervision of financial services activity in the banking sector.

With the establishment of the OJK, the expected performance of banks in Indonesia and banking activities are performed can walk properly and do not conflict with applicable laws in Indonesia so that bank customers can conduct their banking activities and transactions securely.

The state also has established the Deposit Insurance Agency/*Lembaga Penjamin Simpanan*(LPS) which has the task to be the customers' funds they save in a bank, LPS duty to ensure the safety of customer funds to fund the replacement of the customer if the customer suffers loss or reduction of funds they save money in the bank due to adverse actions undertaken by the bank against them.

In addition, the state also provide indirect protection to customers. The State provide this protection by means of make up in the banking sector in Indonesia, Bank Indonesia as the central bank has enacted various laws that have

been discussed in Chapter III, namely the regulation on bank liabilities in Indonesia to make corrections in their internal management system that does not adverse things happen customers.

Second Act has shown that the legal protection provided by the state to customers has been set in the Act. Criminal offense of embezzlement occurred due to lack of supervision by the bank so there is unscrupulous bank employees who commit acts against the law. This is not only detrimental to the customer as the owner of the funds, but also raises the material and moral damages to the bank, the bank must provide appropriate compensation to the customer and the bank's good name could be damaged because of irresponsibility that is only done by one The bank employee. If the bank's reputation is damaged, then the customer confidence in the bank can be reduced.

Therefore, of the three example cases of embezzlement of customers' funds committed by the bank, it can be concluded that the state also plays a very important role in maintaining the stability of the banking and transaction security for bank customers by providing various forms of protection to customers so that customers feel safe in the transaction with the bank.

Why embezzlement by a bank is interesting other than ordinary embezzlement as in article 372 of the Criminal Code?

This is because the embezzlement of funds by banks are not regulated directly in the banking law as well as in the Criminal Code, it makes the embezzlement of funds by a bank becomes a special case and requires the government to establish rules concerning criminal offenses committed by banks

CHAPTER V

CLOSING

Based on the explanations from the previous chapter, a wide range of theories about the Indonesian banking and banking criminal acts and cases which have been analyzed, the conclusions and suggestions which can be provided by the author of the research topics are:

THE CONCLUSIONS

1. The criminal action in the banking sector has been regulated in the Banking Law and outside the Banking Law, in particular regarding the criminal offense of embezzlement of funds by the bank. The Banking Law which regulates banks in Indonesia and Crime in Banking is Law No. 10 of 1998 on the Amendment of Law No. 7 of 1992 on Banking. Meanwhile, the crime of fraud has also been provided for in Article 372 of the Criminal Code.
2. Legal Protection that can be accepted by the customer in the event that a crime of embezzlement of funds by the bank is the acceptance of redress from the relevant bank. Furthermore, other legal protections that can be accepted by the customer is the protection of the law both directly and indirectly. Direct protection takes the form of an obligation by the country to the banks to keep the secret of the data containing fund owners in the bank. Banks are also required to carry out planning in the bank's internal operations and committed to the

principles of cautious and precision in the operation and provision of services to depositors as elaborated in Article 29 of the Banking Law. Further protection which can be accepted by the customer is indirectly protection, indirect protection is in the form of actions and regulations that are outside of the Banking Law, such as contained in the Decree of Bank Indonesia. Such protection is a form fit and proper test for all employees and the management of banks which will operate a bank. In addition, the regulation on bank liabilities in the conduct of management and organization of banks that must be done to protect the interests of consumers, the Consumer Protection Law, as well as Liability Company Law. The legal protection for bank customers in Indonesia has entered the stage of completion, the performance of government and law enforcement agencies in providing legal protection to customers, the investigation of unlawful conduct that occurred, as well as giving an obligation to provide compensation to customers for banks that commit the act against the law has been properly implemented. Applicable procedures should continue to be maintained so that the legal protection given to customers of the bank in case of banking criminal acts, especially the crime of embezzlement of funds can be given properly.

3. The Indirect and Direct Protection is two kind of protection that given by the government to the bank's customer, both of them are related to the policy making and regulation making, the law implementation are

used when there is a dispute that related to that law, or litigation process that require the law as a legal basic.

SUGGESTION

1. The role of law enforcement agencies is needed to maintain security and stability in the Indonesian economy. Law enforcement should be able to make the Banking Law as the legal basis that is used in all sorts of settings in the banking sector in Indonesia. Banking Law is the basis or Lex Specialist under the authority of other regulations, so that other rules can be applied side by side with the Banking Law, such as Article 372 of the Criminal Code concerning criminal offenses of embezzlement that could accompany the Banking Law in terms of resolving cases of fraud of funds conducted by the bank.
2. Society as a party using the services and the services provided by the bank should be more vigilant in conducting banking activities. More people should also know about the procedure of granting legal protection provided by the government and law enforcement if a criminal act banking happen to them, reporting illegal actions carried out by the bank should also be done. Government and agency bank supervisory authority and other agencies associated with the provision of legal protection to customers must also do outreach to the community so that people are not ignorant about the legal protection provided by the government

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