

**ANALISIS YURIDIS TERHADAP PERBUATAN MELAWAN HUKUM
BANK DALAM KASUS PEMBOBOLAN REKENING NASABAH BANK
MANDIRI CABANG KUDUS (Studi Putusan Nomor: 281/Pdt/2022/PT.SMG)**

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ABSTRAK

Bank memiliki kegiatan usaha yaitu menghimpun dan menyalurkan dana dari masyarakat. Bank menjamin dana masyarakat yang disimpan aman karena dalam melakukan kegiatan usahanya sudah diatur oleh undang-undang, namun dalam melakukan kegiatan usaha tersebut Bank bisa melakukan kesalahan prosedur yang mengakibatkan hilangnya dana nasabah. Penelitian ini bertujuan menganalisa pertimbangan hukum Majelis Hakim dalam menentukan unsur-unsur Perbuatan Melawan Hukum Bank dan pertimbangan hukum Majelis Hakim dalam mengabulkan tuntutan ganti rugi berdasarkan Perbuatan Melawan Hukum pada Putusan Pengadilan Negeri Semarang Nomor: 281/Pdt/2022/PT.SMG.

Penelitian ini menggunakan metode pendekatan yuridis normatif dengan spesifikasi penelitian deskriptif analitis. Jenis data yang digunakan dalam penelitian ini adalah data sekunder yang terdiri dari bahan hukum primer, sekunder dan tersier yang dilakukan dengan studi kepustakaan. Data disajikan dalam bentuk uraian logis, sistematis dan rasional kemudian dianalisis secara normatif kualitatif.

Berdasarkan hasil penelitian dan pembahasan, Majelis Hakim secara tegas menentukan Perbuatan Melawan Hukum Tergugat yaitu melakukan penarikan dana dari rekening Tabungan Penggugat atas permintaan orang lain memenuhi salah satu unsur Perbuatan Melawan Hukum yaitu melanggar hak subjektif orang lain. Selain unsur melanggar hak subjektif orang lain, Penulis berpendapat adanya kurang sempurnaan *Branch Delivery System* (BDS) untuk menyimpan identitas nasabah yang dimiliki oleh Tergugat memenuhi unsur bertentangan dengan kewajiban hukum si Pembuat atau Pelaku karena bertentangan dengan Pasal 20 ayat (1) dan Pasal 59 ayat (2) POJK Nomor 23 Tahun 2019 tentang Penerapan Program Anti Pencucian Uang dan Pencegahan Pendanaan Terorisme di Sektor Jasa Keuangan serta Pasal 2 Undang-Undang Nomor 10 Tahun 1998 tentang Perbankan. Majelis Hakim mengabulkan tuntutan ganti kerugian materiil Penggugat sebesar Rp. 5.800.090.000,00 karena perbuatan Tergugat telah memenuhi semua syarat-syarat mengajukan ganti kerugian dalam Pasal 1365 KUH Pedata.

Kata Kunci: Perbuatan Melawan Hukum, Pembobolan Rekening, Nasabah Bank

*JURIDICIAL ANALYSIS OF BANK UNLAWFUL ACTS IN THE CASE OF
BULGLARY OF CUSTOMER'S ACCOUNT AT BANK MANDIRI KUDUS
BRANCH (Case Study Number 281/Pdt/2022/PT.Smg)*

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ABSTRACT

Banks have business activities, namely collecting and distributing funds from the public. The Bank guarantees that public funds are kept safe because in carrying out its business activities it is regulated by law, but in carrying out these business activities the Bank can make procedural errors that result in the loss of customer funds. This study aims to analyze the legal considerations of the Panel of Judges in determining the elements of the Bank's Unlawful Act and the legal considerations of the Panel of Judges in granting compensation claims based on Unlawful Acts in the Semarang District Court Decision Number: 281/Pdt/2022/PT.SMG.

This study uses a normative juridical approach with analytical and descriptive research specifications. The type of data used in this research is secondary data which consists of primary, secondary and tertiary legal materials which are obtained through literature studies. The data is presented in the form of logical, systematic, and rational descriptions and then analyzed qualitatively and normatively.

Based on the results of the research and discussion, the Panel of Judges firmly determined the Unlawful Act of the Defendant, namely withdrawing funds from the Plaintiff's Savings account at the request of another person, fulfilling one of the elements of the Unlawful Act, namely violating the subjective rights of others. In addition to the element of violating the subjective rights of other people, the author believes that the existence of a Branch Delivery System (BDS) imperfection to store customer identities owned by the Defendant fulfills elements contrary to the legal obligations of the maker or perpetrator because it is contrary to Article 20 Paragraph (1) letter a and Article 59 paragraph (2) Indonesian financial services authority regulation number 23 of 2019 concerning the implementation of anti-money laundering and prevention of terrorism financing programs in the financial services sector and Article 2 of Law Number 10 of 1998 concerning Banking. The Panel of Judges granted the Plaintiff's claim for material compensation of IDR 5,800,090,000.00 because the actions of the defendant have fulfilled all the requirements for filing compensation in Article 1365 of the Civil Code.

Keyword: unlawful acts, account breach, bank customers