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Submission date: 16-May-2024 07:38AM (UTC+0700)

Submission ID: 2380532234

File name: 1863644.pdf (319.72K)

Word count: 3169

Character count: 16481

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12

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Abstract

An explanation of the Letter of Credit (L/C) is contained in the provisions of BI Regulation No. 5/PBI/2003 concerning Import Transaction Payments in article 1 point 3 states that "Letter of Credit, hereinafter referred to as Letter of Credit, is a promise to pay from the issuing bank to the recipient if the recipient submits documents to the issuing bank that comply with the requirements of the Letter of Credit. And it is contained in the Regulation of the Minister of Trade of the Republic of Indonesia Number 94 of 2018 concerning Conditions for Using Letters of Credit for the Export of Certain Goods. The bank's responsibility is limited to conducting research on the documents submitted by the beneficiary to the bank. Where the document research carried out by the bank aims to determine the suitability of the documents in question both physically and in substance with the terms and conditions of the L/C. If the documents are appropriate, the bank will make the payment, and if otherwise, the bank may refuse to pay. However, in the event that fraud is discovered while the documents are being negotiated, the issuing bank (issuing bank) can refuse L/C payment to the recipient (beneficiary). This is supported by data regarding the legal relationship between sales contracts and examination of documents being negotiated in L/Cs that contain fraud, that the existence of document fraud on L/Cs which then results in the beneficiary not being entitled to payment is a manifestation of exception for fraud.

Keywords: Legal Remedies, Banking, Letter of Credit.

How to cite:

Moertiono, R.J. (2021). "Legal Efforts Against Criminal Acts in the Banking Sector in the Form of Letters of Credit", *IJRS: International Journal Reglement Society* 2, No.3, Pages: 235-239.

A. Introduction

International trade transactions, better known as exports and imports, are essentially simple transactions that involve nothing more than buying and selling goods between entrepreneurs in different countries.¹

Because the area between entrepreneurs carrying out trade transactions is too far away, payments made directly or in cash pose a big risk and require a process that takes quite a long time so it is not effective and efficient. As a substitute for cash, a payment system using securities is used. The payment method is simply by check, current account or money order. In order for international trade transactions to run effectively and efficiently, the role of banks as payment intermediaries and agreed sales and purchase agreements is very necessary. In international trade transactions, banks offer the use of Letters of Credit (L/C) as a solution to create smooth international trade payment mechanisms. A Letter of Credit (L/C) is a promise to pay from the issuing bank (issuing bank) to the exporter (beneficiary) the value of the L/C as long as the exporter meets the L/C requirements. L/C requirements are requirements in the form of fulfilling the documents stated in the L/C, both physically and in the contents of the document. L/C involves parties such as exporters, importers, issuing banks and correspondent banks. However, an L/C is a contract between the issuing bank and the exporter. In implementing an L/C the parties will deal with documents but will not deal with transactions for goods, services or other implementation.²

The use of an L/C is to accommodate and resolve difficulties on the part of buyers (importers) and sellers (exporters) in trade transactions. In other words, L/C guarantees smooth payment and delivery of goods in accordance with the agreement that has been made between the exporter and importer through

¹ Adrian Sutedi, *Hukum Ekspor Impor, Raih Asa Sukses*, Jakarta: Penebar Swadaya Grup, (2014), p 3.

² Ramlan Ginting, *Transaksi Bisnis dan Perbankan Internasional*, Jakarta: Salemba Empat, (2007), p 12.

the good faith of both parties. The use of L/C provides positive aspects for exporters where they can rely completely on L/C, because payment will be guaranteed as long as all the conditions stated in the L/C are met. Certain types of L/C have certain advantages too. For example, for sight L/C, exporters can immediately receive payment just by showing supporting documents. L/C can also be used as collateral to obtain loans from other parties (pre financing).³

Based on the principle of L/C independence, the conformity of the documents submitted with the L/C requirements solely by referring to the L/C without considering the sales contract. In L/C financing, the exporter has the right to receive payment upon submission of documents that meet the L/C requirements. No payment without submission of documents. The nominated bank, which can be a negotiating bank, paying bank or accepting bank, will pay the exporter's bill upon submission of documents that meet the L/C requirements. In addition, the issuing bank (issuing bank) will make repayment to the designated bank upon submission of documents that meet the L/C requirements.

This research is normative research. The statutory approach is carried out by reviewing all laws and regulations that are related to the legal issue being handled.⁴ Analysis of legal materials is carried out using qualitative analysis methods which are used to explain legal events, legal materials or legal products in detail to facilitate legal interpretation.⁵ Analysis of legal materials is carried out using a content analysis method (content analysis method) which is carried out by describing the material of legal events or legal products in detail to facilitate interpretation in discussions.⁶

The data used in this research comes from secondary data. Secondary data or library data includes primary legal materials, namely binding legal materials. Secondary Legal Materials, Secondary legal materials are materials that provide an explanation of primary legal materials.⁷ Secondary legal materials include explanations of primary legal materials in the form of expert doctrine contained in books, journals and websites.⁸ Tertiary Legal Materials, Tertiary legal materials are materials that provide meaningful instructions and explanations for primary and secondary legal materials such as legal dictionaries, articles, etc.⁹

B. Discussion

1. Legal Regulations Regarding Criminal Acts in the Banking Sector in the Form of the Use of Letters of Credit

An explanation of the Letter of Credit (L/C) is contained in the provisions of BI Regulation No. 5/PBI/2003 concerning Import Transaction Payments in article 1 point 3 states that "Letter of Credit, hereinafter referred to as Letter of Credit, is a promise to pay from the issuing bank to the recipient if the recipient submits documents to the issuing bank that comply with the requirements of the Letter of Credit. And it is contained in the Regulation of the Minister of Trade of the Republic of Indonesia Number 94 of 2018 concerning Condition for Using Letters of Credit for the Export of Certain Goods.

The payment method is by applying a Letter of Credit (L/C) which is first made in the sales contract. The definition of a sales contract is a document or letter of agreement between the seller and the buyer which is a follow-up part of the purchase order billed by the buyer or importer. Where the contents consist of a prerequisite, fulfillment of payment for goods to be sold, such as price, quality, quantity of goods, procedures for collecting goods, insurance payments and so on. By applying the clause on the procedure for fulfilling a payment using a Letter of Credit contained in a contract, after that the buyer (importer) submits a Letter of Credit application to the foreign exchange bank in his country (opening bank).

As for the weaknesses in transactions using a Letter of Credit, in this case the bank is only responsible for the documents and the bank is not responsible for the goods or other applications. The following is based on Article 5 and Article 14a of the uniform duties and practices for documentary

³ Mir, *Dasar-Dasar Perbankan*, cet.1, Jakarta: PT. RajaGrafindo Persada, (2005), p 186.

⁴ Ahmad Marzuki, *Penelitian Hukum (Edisi Revisi)*. Jakarta: Kencana, (2017), p. 133.

⁵ Zainuddin, Rahmat Ramadhani, "The Legal Force Of Electronic Signatures in Online Mortgage Registration", *Jurnal Penelitian Hukum De Jure* 21, No. 2, (2021): p. 244

⁶ Rahmat Ramadhani, "Legal Consequences of Transfer of Home Ownership Loans without Creditors' Permission", *IJRS: International Journal Reglement & Society* 1, No. 2, (2020): 33.

⁷ *Ibid*, p. 114.

⁸ Erwin Asmadi, "Procedure for Destruction of Evidence of the Crime of Narcotics Abuse Based on Formal Law in Indonesia", *IJRS: International Journal Reglement & Society* 1, No. 2, (2020): p.79.

⁹ *Ibid*.

credit 600, if there is a foundation for the principle of commitment in the documents in a Letter of Credit transaction.¹⁰

¹ In Uniform Customs & Practice for Documentary Credits 600 Article 5 UCP 600 which reads "Banks deal with documents and not with goods, services or performance to which the documents may relate." Thus, the article above states in full that the bank is not responsible for goods, services or achievements resulting from the implementation of the master agreement rather than Documentary Credit. If in the future a dispute arises in line with the implementation of the master agreement, the bank cannot be aligned regarding the dispute because the bank is only responsible for the documents in the Documentary Credit. Apart from that, based on the understanding of absolute suitability, documents which are a requirement in Documentary Credit must be completed as appropriate. There may be no material or non-material disputes between Documentary Credit and the documents presented by the recipient. If a dispute occurs, the issuing bank or its proxy is not obliged to fulfill a Documentary Credit payment to the recipient party. Thus, increasing international trade will increase the intensity of export-import payment traffic between countries in the world. The safest payment system and seen from the perspective of the size of the risks faced in export transactions is the use of a Letter of Credit (L/C). Letter of Credit as a document occupies a very strategic position as a means of collecting other shipping documents.¹⁰

A criminal act or criminal misappropriation in the banking sector is a form or method of activity that bypasses the provisions of applicable laws and regulations in the commercial aspect and in the financial aspect, making it one of the many forms of crime or criminal acts in the economic aspect, crimes or acts. This crime is usually also known as a criminal act or white collar crime. It is common for criminals to carry out the following criminal acts around the scope of banking, carried out by corporate actors, known as white collar crimes. When carrying out their action plan, the perpetrators also collaborate with "insiders" or individuals in the bank itself, moreover, it is often found that the owner of the bank himself takes part in smoothing the road and makes the bank owner the mastermind to hand over the Letter of Facilities. the credit. In a rule regarding the implementation and capability of a credit that has excessive documents, which is known as uniform payments and practices for document credit (UCP-DC 600) which is in reading thirty-four if the basic thing is that a bank can provides flexibility if there is a dispute or disagreement regarding the documents of the Letter of Credit with the limitation that the misuse is non-material in nature.¹¹

2. Banking Legal Remedies If a Letter of Credit Crime Occurs

In L/C transactions, the issuing bank often encounters problems due to criminal acts occurring in L/C document transactions. One of these crimes is document fraud in L/C transaction agreements. In L/C, fraudulent crimes are divided into two types, namely document fraud (forged or fraudulent document) and transaction fraud (fraud in transaction). These two types of fraud are classified as fraud exceptions. The purpose of this fraud exception is that fraud is an exception to the application of the principle of separation of contracts and the principle of document attachment. What is meant by fraud is the action of the beneficiary, whether carried out by the beneficiary himself or with the help of a third party, without the knowledge of the applicant, to deceive the issuing bank or bank authorized to pay using a certain method carried out in L/L transactions. C or documents in the L/C, with the intention of obtaining payment from the issuing bank. A fraud can be said to be document fraud if it fulfills the following conditions:¹¹

- a. If the documents submitted are physically in accordance with the terms and conditions requested by the buyer/applicant and in accordance with the terms and conditions in the L/C, but the documents are found to have been forged or substantially contain fraud.
- b. There is incorrect information or data in the documents submitted to the bank by the beneficiary.
- c. Incorrect information as referred to above can be carried out by the beneficiary or a third party with the knowledge of the beneficiary.

The fraud exception does not apply, or in other words, the issuing bank can accept or reject the payment refusal request if the following things occur:

- a. The designated bank has made payments or negotiations in good faith. In this case, the designated bank makes payments or negotiations without knowing that there is forgery or fraud;

¹⁰ Afriastuti, *Penggunaan Letter of Credit Pada PT. Kusumahadi Sentosa*, Surakarta: Universitas Sebelas Maret, (2009), p 34.

¹¹ Andrian Sutedi, *Tinjauan Yuridis Letter of Credit dan Kredit Sindikasi*, Bandung: Alfabeta. Bandung, (2012), p 91.

- b. Payment has been made to the beneficiary by the confirming bank which made the payment in good faith;
- c. The legal holder (holder in due course) of the note drawn based on the L/C after acceptance by the accepting bank;
- d. Carrying out obligations by the party receiving the transfer of obligations from the issuing bank and/or obligations from the designated bank that have been paid. The party receiving the obligation from either the issuing bank or the designated bank is not aware of any forgery or fraud.

The bank's responsibility is limited to conducting research on the documents submitted by the beneficiary to the bank. Where the document research carried out by the bank aims to determine the suitability of the documents in question both physically and in substance with the terms and conditions of the L/C. If the documents are appropriate, the bank will make the payment, and if otherwise, the bank may refuse to pay. However, in the event that fraud is discovered while the documents are being negotiated, the issuing bank (issuing bank) can refuse L/C payment to the recipient (beneficiary). This is supported by data regarding the legal relationship between sales contracts and examination of documents being negotiated in L/Cs that contain fraud, that the existence of document fraud on L/Cs which then results in the beneficiary not being entitled to payment is a manifestation of exception for fraud. The occurrence of fraud regarding L/C documents causes the principle of independence to be null and void, which causes the contracts underlying the birth of the L/C, which were originally unrelated to each other, to later become one unit. Fraud also makes the principle of attachment to documents and the provisions for determining suitability null and void.¹²

C. Conclusion

An explanation of the Letter of Credit (L/C) is contained in the provisions of BI Regulation No. 5/PBI/2003 concerning Import Transaction Payments in article 1 point 3 states that "Letter of Credit, hereinafter referred to as Letter of Credit, is a promise to pay from the issuing bank to the recipient if the recipient submits documents to the issuing bank that comply with the requirements of the Letter of Credit. And it is contained in the Regulation of the Minister of Trade of the Republic of Indonesia Number 94 of 2018 concerning Conditions for Using Letters of Credit for the Export of Certain Goods.

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¹² Kevin J Talumepa, "Upaya Hukum Bank Atas Tindakan Kejahatan Dalam Transaksi Menggunakan *Letter of Credit*", *Jurnal Lex Privatum*, 10, No. 2, (2023): p 43.

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