

## CRIMINAL LIABILITY IN BANKING CRIMES IN INDONESIA

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### **Abstract**

*The banking industry today has a close relationship with human economic life. By running a bank business, banking supports the demands of human life. In accordance with Law No. 10, 1998 on Banking, a bank is a company that receives...deposits from the general public and uses the funds to lend money to the general public or use it in other ways to improve people's standard of living. According to Law No. 10, 1998 on Banking, a bank is an enterprise that accepts public deposits and uses the funds to lend to the public or use them in other ways to improve the standard of living of the general public. The following are examples of criminal behavior in the banking industry: licensing is known as illicit bank crimes, bank business secrets, offenses relating to the Bank's "commercial operations" and crimes relating to the Bank's supervision and direction. So what about bank accountability for the four forms of criminal behavior is closely related to behavior that may be carried out by bank management or staff.*

Keywords: **Banking, Crime, Economy.**

### **1. INTRODUCTION**

Banking is essential for development, especially in encouraging the nation's economic expansion. The term "banking law" refers to the positive rules that control everything around the bank. One of the financial organizations that accepts public money and distributes it to the public is a bank. According to Article 1 of the Banking Act, Bank is a legal entity that receives money from the public as a deposit, and distributes it to the public as credit, or in any other way in the "Banking" way (M. Chalunda, 2006).

The previous Banking Law was no longer sufficient to manage the problems and difficulties stemming from the banking business as the public's desire for financial services encouraged rapid economic development, particularly the banking sector. As a result, there have been "considerable" major reforms to the banking system, especially since Law No. 10 of 1998 on Banking Regulation was passed. In addition, to improve the effectiveness of monetary and financial policies, the Banking Law must always be accommodative (Moore et al., 2009).

As the bank evolved, its goals, tasks, and pursuits shifted in response to domestic and international political, economic, social, and cultural circumstances. The legal framework underpinning banking activities also varies over time according to the various interests

mentioned above. The first Banking Law was enacted by Law No. 14 of 1967. The Law on Banking and the Law on the Central Bank both succeeded in controlling domestic banking activities, as evidenced by the introduction of a new Banking Law in 1992 and the replacement of the Law on the Central Bank/Bank Indonesia in 1999. The second article of the Law also complements and builds on the first; There are no inconsistencies between articles. No changes or modifications were made during the time it was in place until it was replaced. In contrast to the other two laws, amendments to the Law 7 Year 1992 Year 1998 concerning Banking (Yusoff & Hassan, 2022).

In addition, there are criminal acts in the banking industry. These crimes take a wider variety of forms and manifestations today because, in addition to benefiting from technological advances and growing human knowledge, criminal acts in the banking industry also adjust for differences in the method of operation, location, and timing of the offender. With the advancement of science and technology, white-collar crimes involving the use of technological advances are increasingly perpetrated by members of the high socioeconomic class (Et. al., 2021).

Criminal acts or financial crimes are one type of white-collar crime that is prevalent today and worries many people. The term "banking crime," often known as "fraud banking," refers to offenses committed in relation to the banking industry," including financial institutions, equipment, and products. Both banks and their customers have the potential to commit and suffer banking crimes. According to the Law of the Republic of Indonesia, Number 7 of 1992 concerning Banking as amended by the Law ``Number R10 of 1998 concerning Banking (hereinafter referred to;Banking Law),..which includes thirteen different types of crimes, banking crimes are defined as criminal acts as referred to in "Articles 46, 47, 47A, 48 paragraph (1), 49, 50, and 50A. The four types of crimes include (a) license crimes, (b) crimes using bank secrets, and (c) crimes involving supervision and coaching and (d) crimes related to business activities. Thirteen categories of banking crimes are further broken down into these categories (Imaniyati et al., 2019).

A corporation is a legal entity that has employees and administrators who each have specific responsibility for managing the operations of the corporation. Social modernization must first be recognized in order to understand how closely related corporate criminalization is to it. As society became more advanced, its social, economic, and political systems became more complex, necessitating the establishment of formal life control systems (GILCHRIST, 2013).

Criminal responsibility refers to the imposition of fines on perpetrators of unlawful acts or giving birth to illegal situations. Therefore, criminal guilt refers to the procedure of assigning the creator of the crime the current punishment for the crime. In criminal law,

accountability means imposing penalties for subjective crimes against makers who have an objective basis. Criminal responsibility is judged based on the fault of the maker, not just the completion of the necessary parts of the crime. Thus, guilt is no longer only seen as a mental component of illegal behavior but is also placed as a determining factor in criminal liability. Criminal responsibility is attached to a person found guilty. Based on the description above, this paper will focus on two things including: (1) Types of banking crimes and (2) criminal liability for banking crimes (Rahmadia et al., 2020).

## **2. IMPLEMENTATION METHOD**

This research is qualitative, which means it aims to understand the phenomena associated with banking crime in Indonesia. using legal approaches (statue approach) and conceptual (conceptual approach).The data collection method uses library research as the primary data collection method, which uses library materials. Supported by primary data sources, in the form of books on banking crimes in Indonesia and legislation that will be the object of research. Then from the data, the author uses descriptive data analysis, which describes the whole problem in research based on the materials and data sources owned.

## **3. RESULTS AND DISCUSSION**

### **3.1 Types of Criminal Actions in "Banking Field" According to Law Nomor 7 of "1992 On "Banking as" has been amended" by Law "Number 10 of the Year" 1998**

#### **A. Criminal Acts related to Licensing**

Any company that wants to set up a bank must comply with the rules outlined by law. In line with Article 16 of the Law on Banking, the Chairman of Indonesian Banks must grant a business license to each party as a General Citizen or a People's Credit Bank if they intend to carry out operations to collect money from the public in the form of deposits(Beale, 2009).

If it turns out that not obtaining a business license is in accordance with the provisions / rules in Article 16 of the Law on Banking but still carries out banking operations, such as collecting money from the general public, this behavior can be referred to as operating black bank practices.

The threat of punishment for criminal acts related to licensing is regulated in PP pasal 46 of the Banking Law:

1. Whoever collects funds from the community in the form of deposits without a business licenseDari, the Indonesian BBank leadership as referred to in Pasal 16,

shall be punished with imprisonment of at least 5 (five) years and a maximum of 15 years and a fine of at least Rp.10,000,000,000.00 (ten billion rupiah) and a maximum of Rp.200,000,000,000.00 (two hundred billion rupiah).

2. In the event that such activities referred to in paragraph (1) shall be carried out by legal entities in the form of limited liability companies, associations, cooperative foundations, funerals prosecutions against such bodies, shall be carried out either against those who give orders to do such acts or who act as leaders in the act or both". Legal entity in the form of a company

## **B. Criminal Actions Related to Bank Secrets**

The banking sector must be able to maintain public trust given its status as a financial institution. One of them relates to the customer's financial situation and personal data information. According to Article 1 Angka 28 of the Banking Law, information about depository and savings customers is what is meant by bank secrets (Bantekas, 2006).

If there is a party who commits a breach of bank secrets, the Law on Banking has provided for the imposition of criminal threats in Articles L47 and NPorigin 47a as follows:

Article 47 of the Banking Law which reads:

1. Goods ready without carrying a written order or permission from the Chairman of Bank Indonesia as referred to in Article 41, Article 41A, and Article L42, deliberately forcing the bank or its affiliated parties to provide information as referred to in Article 40, shall be threatened with imprisonment of at least 2 (two) years and a maximum of 4 (four) years and a fine of at least ARp.10,000,000,000.00 (ten billion rupiah) and at most Rp.200,000,000,000,000, 00i(two hundred billion rupiah).
2. Members of the Board of Commissioners, Board of Directors, bank employees or; Other Affiliated Parties who knowingly provide information that must be kept confidential according to Article 40, shall be punished with imprisonment of at least 2 (two) years and a maximum of 4 (four) years along with a fine of at least Rp.4,000,000,000.00 (four billion rupiah) and a maximum of Rp.8,000,000,000.00 (eight billion rupiah)",

And Article L47 A of the Banks Law which reads:

Members Board of Commissioners, Board of Directors, or bank employees who intentionally fail to provide information that must be fulfilled as referred to in Article 42AA and Article P44A, shall be punished with imprisonment of at least 2 (two) years and a

maximum of 7 (seven) years and a fine of at least Rp.4,000,000,000.00 (four billion rupiah) and a maximum of Rp.15,000,000,000.00k (fifteen billion rupiah)

### **C. Criminal Actions Related to Bank's Business Activities**

Banks need to maintain public trust in the responsible use of customer cash, which is shown in the form of accountability reports given the increasing diversity of banking products and activities. The report will then be released to Bank Indonesia and/or the Jasa Keuangan Authority or will soon be published through the media. Parties who ignore this rule may face criminal penalties, as stipulated in Article 49 of the Bank Law (Dinh et al., 2020) .

Article 49 of the Banking Law which reads:

1. Members of the Board of Commissioners, Commissioners, or Employees of the Bank intentionally:
  - a. create or cause false records in books or in reports, or in documents or reports of business activities, transaction reports or accounts of a bank.
  - b. omittingOr not entering or causing no recording in the books or reports or in documents or reports of business activities, transaction reports or bank accounts.
  - c. change, obscure, hide, delete, or eliminate the tone of a recording in the books or in reports, or in documents or reports of business activities, transaction reports or accounts of a bank, medium intentionally alter, obscure, eliminate, hide or, damage the records, punishable with imprisonment of at least 5 (five) years and a maximum of 15 (fifteen) years year *as well as.....a fine of at least Rp.10.000.000.000,00 (ten billion rupiah) and a maximum of Rp.200.000.000.000,00 (two hundred billion rupiah).*
2. Members of the Board of Commissioners, Board of Directors or bank employees who intentionally:
  - a. requesting or accepting, permitting, or agreeing to receive, remuneration, Commission, additional money,; services, money or valuables, for his personal benefit for the benefit of his family, in order to obtain or seek to obtain for others in obtaining advances, bank guarantees, or credit facilities from Bank, or in the framework of purchasing or discounting by the bank on money orders, promissory notes, cheques, and papers Trade or other proof of obligation, or in order to give consent to others to carry out withdrawals of funds that exceed their credit limit at the bank.

- b. do not carry out the necessary measures to ensure the bank's compliance with the provisions of the Gini Laws and other laws and regulations applicable to banks, at least A3 (three) years and a maximum of 8A (eight) years fine minimum of Rp.5,000,000,000.00 L (five billion rupiah) and a maximum of Rp.100,000,000,000.00S (one hundred billion rupiah)".

#### **D. Criminal Action Related to Supervision and Bank Development.**

Every bank must comply with the regulations set by the organization in charge of bank supervision, namely Bank Indonesia and the Indonesian Authority in conducting its operations. Bank Indonesia must understand how its operations and business are conducted because it is a large-scale manager of public funds (Sembiring & Pujiyono, 2020) .

If a bank violates any of these requirements, it may be deemed to have committed a banking crime and held liable under Article L48 of the Banking Law:

- 1) "Members of the Commissioner, Commissioner, Commissioner, or Bank Employee who intentionally fail to provide information that must be fulfilled as referred to in Article L30 paragraph (1) and paragraph (2) and Article 34 paragraph T(1) and Paragraph (2), shall be threatened with imprisonment At least A2 (two) years and a maximum of A10 (ten) years and a fine of at least ARp.5,000,000,000.00L (five billion rupiah)J and a maximum of Rp.100,000,000,000.000.00 (one hundred billionaire rupiah)".
- 2) "Members of the Commissioner, Commissioner, or Bank Employee Kalangala provide, information that must be fulfilled as referred to in Article 30 paragraph (1) and Article 34 paragraph (1) and paragraph (2), shall be threatened with imprisonment of at least 1 (one) year and a maximum of 2B (two) years dan or a fine of at least Rp.1,000,000,000.00 (one billion Rupiah)Dand a maximum of Rp.2,000,000,000.00 (two Billion Rupiah)".

### **3.2 Criminal Liability for Banking Crimes According to Law Number 7 of 1992 concerning Banking as amended by Law Number 10 of 1998**

#### **A. Criminal Liability in Bank Licensing Crimes**

A person must be responsible if he commits an act criminal Bank licensing with Take money from Society in the form of Current Account, deposit, Certificate Deposit, savings, and/or other comparable forms without izin from the Chairman of the Bank Indonesia, intentionally or negligently.

Proven who can hold accountable mates of occurrence illegal banks under Article 46 paragraphs (1) and (2). When a company is responsible for the actions of its agents, this is known as "*Actus Reus*" And that means that the action taken by the agent must be legitimate and within the limits of business liability. The behaviour must also be intentional (*mens rea*) And done by people who are mentally or psychologically capable.

Any type of bank licensing crime committed by a legal entity, such as a Limited Liability Company, Association, Foundation, or Cooperative, will be prosecuted against the person who gave the order to commit the crime, the person who led the act, or both.

If a corporation conducts its business without a permit or the licensee corporation violates the terms (conditions/situations) specified in the permit, the doctrine of strict criminal liability, or so-called strict liability, may be applied to the breach of the company's obligations.

Because the bank does not benefit from the actions of the administrator or employee of the bank and because the bank without a license cannot be called a body law, company Edenhall These banks cannot be held liable for crimes involving bank licensing under the doctrine of strict liability and vicarious responsibility. Administrators must take responsibility under the concept of ultra vires when they operate beyond their power. Banks are victims of this crime because of the activities of administrators or employees.

There are two types of criminal wrongdoing that apply when it comes to violations of bank licenses: managers bear responsibility themselves and corporations hold managers accountable.).

### **B. Criminal Liability in Bank Secret Crimes**

Internal Bank consisting of members, commissioners, directors, and bank staff is subject to Articles 47A and 48 of the Banking Law. Because of management's failure to uphold the principle of bank secrecy, which can harm many parties and cause the bank to lose public trust, management can be held accountable based on the principles of *zweck vermogen* theory and *ihering*. When a crime of bank secrecy is committed, managers can operate legally, but they can also get out of established procedures or outside the scope of their responsibility.

Since the bank is the victim of unlawful activities of management or employees in this case, the business cannot be held liable for the criminal act of stealing bank secrets. Criminal misconduct in this context is associated with what is regulated by civil law, in particular with regard to the activities of "*intra vires*" and "*ultra vires*," in accordance with *the idea of*



*management accountability in accordance with its authority under the articles of association of a legal entity.*

This suggests that the same type of criminal liability applies to bank license violations as it does to crimes involving bank secrets, meaning that even if the corporation is associated with the crime, the management in question is still liable. Branch Leaders (Bank Mandiri South Jakarta) and Head of KPembantu Branch Office (BRI Senen Branch) are considered criminally responsible, as in the example case mentioned above.

### **C. Criminal Liability in Bank Business Activities**

According to Article 49 of the Bank Law, members of the Board of Commissioners, Board of Directors, or Bank Employees who intentionally commit a criminal offense are subject to criminal activities related to bank operations. One of the areas of bank operations that can be misused by various parties and cause losses to other people, banks, and the State is lending. As a result, the Banking Law need not be used to punish those who commit crimes involving bank business; instead, the Corruption Act and the Criminal Code can also be applied to those who commit such crimes, provided all necessary criteria are met.

If giving activity credit done accordingly with Legislation The apply ,analysed in accordance with the principle Prudence, only done for repenting bank, the banker does not use the distribution of credit facilities for his own interests, and the banker as referred to in the analysis has acted professionally and in accordance with his duties, Then the bank as a corporation responsible Answer Criminally atas Lending activities that done by banker. In cases involving bank business crimes, the following persons have been found responsible: Director (BBD); Director (CPA); Director, Commissioner and Employee (PT. MSII); President Rector Director management Risk, and EEVPP Coord. Corporation (Bank Mandiri); and Head of BNI SKM Medan, Head of Business Marketing Group BNI Youth Medan, and Relationship BNI SKM Medan (BNI). Companies may be subject to criminal charges based on a variety of theories and doctrines, including theories. Fiction, concession theory, organic theory, strict responsibility doctrine, vicarious responsibility doctrine, identification doctrine, aggregation doctrine, and corporate culture doctrine(Tigar, 1990).

When people with direct connections or standing within, or authority over, the corporation If you commit a crime, the corporation can be held accountable. The actions, perpetrators, liabilities, and wrongdoings of the corporation are all identified. If the corporation does not profit from crimes committed by corporate organs that commit bank business crimes, corporations cannot be held accountable in this case. According to Roseland Saleh, in the event that management is appointed as the person in control, only actions



carried out by the corporate equipment in accordance with the authority based on its bylaws are considered to have been carried out by the corporation (legal entity)(Khanna, 1996).

#### **D. Criminal Liability in Bank Development and Supervision**

The following types of errors are caused by illegal coaching and monitoring of banks:

1. Intentionally.
2. Failure to comply with Bank Indonesia's established procedures in providing complete information and explanations about its business.
3. It is not possible to investigate the books and files accessible there, and should offer the necessary support to verify the accuracy of all documentary statements and justifications reported by bank.
4. not provide balance sheet, annual profit/loss statement, reasons, and other periodic reports to Bank Indonesia within the period and in the manner determined by Bank Indonesia.
5. There is no audit of the annual balance sheet by the public or profit/loss measurement.

Without affecting the criminal provisions referred to in Article 47, L47A, L48, L49, L50, and Article 50 of the Banking Law, Bank Indonesia may impose administrative sanctions on banks that do not fulfill their obligations as described in Law 10 of 1998 concerning Banking, or the Chairman of the Indonesian Bank may revoke the business license of the bank concerned.

#### **4. CONCLUSION**

The conclusion is that in order to hold someone accountable, they must have the capacity to take responsibility. It is clear who can be questioned in Article 46, Verses T1 and N2. Party Kang Responsible for incidents of black bank crimes, i.e. those involved in the activity of collecting money against those who give and without the permission of the authorities order to carry out deeds or lead deeds or oppose both. Council Commissioner, Management, Bank Employees, Parties Affiliate and Others who knowingly violate Article 47 paragraphs 1 and 2, and Article 47A of the Banking Act are among those who can be criminally prosecuted in the event of a crime involving bank secrets.

Criminal responsibility for acts committed, according to Article 49 of the Banking Law Members of the Board of Commissioners, Board of Directors, or employees of the Bank who intentionally commit criminal acts may be charged with criminal acts related

to the Bank's operations. Then management is also responsible. This form imposes criminal guilt on administrators who serve as responsible managers as well as banks for criminal acts of bank supervision and counseling. The bank is responsible for the mistakes it makes. By law, members Dewan Commissioner, Commissioner, or employee of Bank is criminally responsible for the crime of coaching and supervising the Bank.

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