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Review of Criminal Liability Law Disbursement of Fictive Credit Funds by Banks in Perspective of Criminal Aspects of Banking

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Abstract. *The anatomical pattern of fictitious mode crimes can be used by banks, some elements of fictitious mode only, or all elements of fictitious mode are used, so that this fictitious mode can be faced by banks because it comes from outside or from within. But banks can also use it themselves from outside and from within, when the bank uses fictitious mode from outside and from within, then the funds that are actually distributed will appear and the funds that are distributed are only records or documents or transactions, but the funds do not exist or are empty, imaginary, so that they become fictitious, then fictitious funds or credit funds become fictitious credit. This research aims to find out and analyze (1) the legal nature of criminal policy in the banking sector, (2) patterns of criminal responsibility for the disbursement of fictitious credit funds by banks, (3) legal problems of criminal responsibility in cases of disbursement of fictitious credit funds by banks. The approach method used in this study is normative juridical. The specifications of this study are descriptive analytical. The data source used is secondary data. Secondary data is data obtained from library research consisting of primary legal materials, secondary legal materials and tertiary legal materials. The results of the study and discussion can be concluded: (1) Law No. 10 of 1998 concerning Banking, specifies thirteen types of banking crimes (Articles 46 to 50), of which thirteen crimes can be classified into four types of crimes, namely: crimes related to licensing; crimes related to bank secrecy; crimes related to supervision and guidance; crimes related to banking business. (2) Implicated by the provisions of laws and regulations governing fictitious credit, the suspect can be subject to criminal responsibility under Article 49 of Law No. 10 of 1998 concerning Amendments to Law No. 7 of 1992 concerning Banking. Paragraph 1 states that: Members of the Board of Commissioners, Directors or bank employees who intentionally make or cause false records to be made in the books or in the reporting process, or in documents or reports on business activities, transaction reports or accounts of a bank. (3) Conceptually, the cumulative-alternative formulation system has been regulated in Law Number 1 of 2023 concerning the Criminal Code, whereby if the fine is not paid, the property is confiscated and auctioned to pay the fine or taken from the convict's income and if there is none (not enough), a substitute prison sentence/imprisonment is imposed for a period not exceeding the maximum prison sentence/imprisonment threatened.*

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Keywords: *Banking Crime; Criminal Liability; Fictitious Credit.*

1. Introduction

The Unitary State of the Republic of Indonesia is one of the large countries that prioritizes applicable legal provisions.[1]The positive legal regulations in force in Indonesia are clearly an important component in building a safe, peaceful and secure life.[2]As stated in the Constitution of the Republic of Indonesia, namely the 1945 Constitution of the Republic of Indonesia, it has been emphasized that Indonesia is a state of law, this phrase is stated in Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia.[3]

This affirms that the implementation of Indonesian governance must always be based on and in accordance with the law. Paragraph 4 of the Preamble to the 1945 Constitution, the country's constitutional foundation, states that one of the state's goals is to create general welfare and improve the nation's life.[4]This has implications that general welfare becomes a constitutional ideal, accompanied by the growth of an intelligent Indonesian society that is capable of leading the Indonesian nation to become a sovereign and prosperous nation.[5]

One of the areas of law in order to maintain order and security for Indonesian citizens is criminal law.[6]Criminal law reform is an effort to orient and reform criminal law in accordance with the central socio-political, socio-philosophical and socio-cultural values of Indonesian society that underlie social policy, criminal policy and law enforcement policy in Indonesia.[7]

Current national economic developments are increasingly aligning with regional and international economies, which can both be beneficial and have detrimental impacts. One result of Indonesia's development efforts is increased economic growth and trade. However, behind this, economic crime has also selectively increased, both quantitatively and qualitatively, in line with advances in technology and science.

Traditional forms of crime have evolved into more modern forms, making them difficult to address and even difficult to enforce. For example, banking crimes are committed by the bank's management or others working with it.

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[1]Ari Yudistira and Widayati, The Investigation Process of Prospective Children in Criminal Action, Jurnal Daulat Hukum: 4 (1), March 2021, p. 20

[2]Sumaryono and Sri Kusriyah, The Criminal Enforcement of the Fraud Mode of Multiple Money (Case study Decision No.61 / Pid.B / 2019 / PN.Blora) Jurnal Daulat Hukum: 3 (1), March 2020, p. 237

[3]People's Consultative Assembly of Indonesia, 1945 Constitution of the Republic of Indonesia, Jakarta: Secretariat General of the MPR RI, 2015, p. 116.

[4]Sulistiyawan Doni Ardiyanto, Eko Soponyono, and Achmad Sulchan, Judgment Considerations Policy in Decree of the Court Criminal Statement Based on Criminal Destination, Jurnal Daulat Hukum: 3 (1), March 2020, p. 180

[5]Didi Wahyudi Sunansyah, and Aryani Wirasari, Effectiveness Of Allotment Penalty Imposed By Judge In The Case Of Children For A Child Protection As Victims (Case Study at State Court of Sumber), Jurnal Sovereign Law: 3 (1), March 2020, p 88

[6]Saviera Chntyara, The Role of Visum Et Repertum at the Investigation Stage in Revealing Criminal Acts of Assault, Faculty of Law, UMS, Surakarta, 2018, p. 2.

[7]Barda Nawawi Arief, Anthology of Criminal Law Policy, Jakarta: Kencana, 2010, p. 29.

A bank is essentially a form of financial institution that aims to provide financing, loans, and other financial services. The existence of banks as financial service providers is inseparable from the public's need to apply for loans or financing from banks. Financing is a term often equated with debt or borrowing, which is repaid in installments. Meeting financial needs can be achieved by taking out a loan or financing from a bank.[8]

"A bank is a business entity that collects funds from the public in the form of savings and distributes them to the public in the form of credit and/or other forms in order to improve the standard of living of many people."[9]The primary function of banks, as further emphasized in Article 3 of Law of the Republic of Indonesia Number 10 of 1998 concerning Banking, is to collect and distribute public funds. In general, banking functions include collecting funds (accepting deposits) and distributing these funds in the form of loans. Banks act as intermediaries between those with excess funds and those with a shortage and need of funds.

The existence of banks as financial service providers is inseparable from the public's need to apply for loans or financing from banks. Financing is a term often equated with debt or loans that are repaid in installments. This indicates that a person's efforts to meet financial or funding needs can be achieved by borrowing or financing from a bank. All banking activities must comply with the principle of banking compliance, namely all banking activities are legally regulated in Law Number 10 of 1998 concerning Banking, including implementing banking principles (prudent banking) by using legal guidelines such as safe and sound. Banking activities, legally and generally, include withdrawing public funds, distributing funds to the public, fee-based activities, and activities in the form of investments.[10]

Various modus operandi are carried out in banking crimes, namely starting from falsifying bank documents, misuse of credit, bank leaders or managers running away with customer money, issuing fictitious Letters of Credit (L/C), disbursing credit to fictitious companies, deliberately establishing dark banks so that credit installments are problematic and the company is declared bankrupt, credit applications with false guarantees, criminal acts through falsifying securities (bonds and mutual funds) and foreign currency.[11]are some of the many examples of criminal acts in the banking sector that are generally known and occur in Indonesia.

Several cases uncovered at several Indonesian banks that are suspected of committing banking crimes are commonly referred to as banking crimes. However, Law Number 10 of 1998 concerning Banking (hereinafter referred to as the Banking Law) does not provide a specific definition of banking crimes.[12]The Banking Law only stipulates that Articles 46 to 50 A are crimes as explained in Article 51 of the Banking Law, which states that the criminal

[8]Neni Sri Imaniyati, Introduction to Indonesian Banking Law, Bandung: Refika Aditama, 2010, p. 173
[9]Anak Agung Sagung Ngurah Indradewi, Legal Responsibility of Credit Analysts for Determining Recommendations for Disbursement of Customer Credit at PT. Bank Tabungan Negara Denpasar Branch Office, Journal of Legal Communication (JKH), 6 (2), August 2020, p. 414
[10]Teguh Pudjo Mulyono, Credit Management for Commercial Banks. BPFE, Yogyakarta. 2006. p. 56.
[11]Evi Hartini, Economic Crimes, Sinar Grafika, Jakarta, 2011, p. 23.
[12]Thomas Suyatno, Credit Basics, PT. Gramedia Pustaka Utama, Jakarta, 2016, p. 38.

acts referred to in Article 46, Article 47, Article 48 Paragraph (1), Article 49, Article 50 and Article 50 A are crimes.

Regarding banking crimes in Indonesia, many cases of fictitious credit occur. The terminology of credit itself is the provision of money or equivalent bills, based on a loan agreement between a bank and another party that requires the borrower to repay the debt after a certain period of time with interest. Providing credit or financing based on sharia principles, commercial banks are required to have confidence based on a thorough analysis of the debtor's good faith and ability to repay the debt or repay the financing as agreed. The economic analysis used by banks for prospective debtors is based on principles known in the banking world as the "5C Principle" and the "4P Principle." The 5C Principle consists of character, capital, capacity, collateral, and condition. Meanwhile, the 4P Principle consists of Personality, Purpose, Payment, and Prospect.[13]

One of the legal facts that occurs in banking crimes is fictitious credit. Administrative errors in banking refer to procedural violations without malice (mens rea), such as errors in documentation, calculations, or data verification. This often occurs due to staff misunderstandings, weak oversight, or inefficient administrative systems. While these errors are generally not considered criminal offenses, their impact can cause significant harm to others.[14]Implementing risk management in the banking sector is crucial to avoid administrative errors that could lead to legal consequences. Therefore, a legal analysis is necessary to determine criminal liability.

In the banking sector, administrative errors can impact economic stability and public trust. Negligence in verifying customer data or granting loans without adequate analysis can open up opportunities for abuse. This creates loopholes for criminal acts such as fictitious loans, which can harm both banks and customers. This highlights the importance of criminal policy in anticipating loopholes in the administrative system to prevent them from being exploited for illegal activities. With this understanding, policies and regulations can be improved to prevent similar incidents in the future.

The case of fictitious loans illustrates how administrative errors can trigger criminal activity. Weaknesses in document verification, weak internal controls, or violations of operational standards are often exploited to apply for loans using forged documents. As a result, banks suffer significant losses, and legal proceedings are complicated by the difficulty of distinguishing between pure negligence and criminal acts. Corruption in the banking sector often begins with administrative errors that then escalate into criminal acts. By improving administrative systems, the risk of similar cases recurring can be reduced. Administrative errors that cause significant losses often present legal challenges in determining criminal liability. The ambiguity between administrative sanctions and criminal acts presents a dilemma in the legal system. To determine whether an administrative error meets the elements of a criminal offense, a thorough analysis of the elements of malicious intent (mens rea) and unlawful act (actus reus) is required.

[13]Anak Agung Sagung Ngurah Indradewi, Op.Cit, 6 (2), August 2020, p. 415
[14]Kayla Zefanya, Criminal Legal Liability Caused by Banking Administrative Errors, Jurnal Dimensi Hukum, 9 (2), February 2025, p. 17

Banking crime cases such as those above can involve people who work at banks, where the crime is committed alone, among insiders, or involving external parties. The mode of crime in the banking sector is carried out by obtaining credit from banks by using fake or fictitious documents or guarantees, misuse of credit, obtaining repeated credit with the same object as collateral, ordering, eliminating, writing off, not recording what should be fulfilled. In addition, the modus operandi also forces banks or affiliated parties to provide information that must be kept confidential, not providing information that must be fulfilled to Bank Indonesia or to State Investigators, accepting, requesting, allowing, agreeing to receive rewards, additional money, commission services, money or valuables for personal interests in order for others to obtain credit, down payments, credit priority or approval of others to violate the maximum credit limit (BMPK).[15]

Basically, Indonesian banking recognizes two types of banks: privately managed banks and government-managed banks. Government-managed banks can be either state-owned enterprises (BUMN) or regionally-owned enterprises (BUMD). Misconduct, such as fictitious loans, is criminally liable for the presence of intent from the outset, causing harm to state finances, committing unlawful acts, and profiting oneself. This constitutes banking crime. According to Elwi Danil,[16], in the practice of enforcing criminal law against banking crimes, there is a tendency to include the handling of banking cases within the scope of criminal law provisions on corruption, in addition to the criminal provisions in the banking law itself.

2. Research Methods

The approach used in this research is normative juridical or written legal approach (legislation)/*statute approach).*[17]The normative legal approach is an approach that is carried out based on the main legal material by examining the theory.-theory,draft-concept, principle-legal principles and applicable laws and regulationsrelation to this research.

This approach is also known as the library approach, namely by studying books.-books, laws and regulations and other documents related to this research.[18]

3. Results and Discussion

3.1. The Legal Nature of Criminal Policy in the Banking Sector

In the development of banking, history records the origins of banking activities during the era of empires in mainland Europe. This business then expanded to West Asia, brought by traders. Furthermore, banking rapidly spread to the continents of Asia, Africa, and the Americas, brought by Europeans during their colonial expansion.[19]

The first banking activity was money exchange. Therefore, in the history of banking, banks were known as money changers. Money was exchanged between kingdoms by traders. This

[15]Marfei Halim. Untangling the Tangled Thread, Bank Indonesia, Jakarta, 2002. p. 28.
[16]Elwi Danil, Corruption: The Concept of Criminal Acts and Their Eradication, PT. Raja Grafindo Persada, Depok. 2012. p. 166.
[17]Johny Ibrahim, Theory and Methodology of Normative Legal Research, Bayumedia, Malang, 2006, p. 295
[18]Soerjono Soekanto, Normative Legal Research, Raja Grafindo Persada, Jakarta, 2004, p. 10
[19]Nurul Ichsan Hasan, Introduction to Banking, Reference: Gaung Persada Group, First Edition, 2014, p. 6

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money exchange activity continues to this day. Today, money changers are known as foreign exchange traders (money changers).[20]

Banking operations then expanded to include the provision of safekeeping, or what is now known as savings. Subsequently, banking activities expanded to include lending (credit). The money deposited with banks in the form of savings is then lent back to those in need in the form of loans or credit.

Over time, banking services have evolved in line with the times and the increasingly diverse needs of society. With the increasing demand for financial services, the role of the banking sector has become increasingly needed by all levels of society, both in developed and developing countries. Examples include money transfer services, securities collection services, letters of credit services, bank guarantees, and credit card services. Credit cards have even replaced some of the functions of money as a means of payment. In short, today's banking world is developing rapidly and modernly. Banking increasingly dominates human life, especially in relation to a country's economy and business. In fact, the activities and existence of banks determine a nation's progress.[21]

The history of banking as known to the world began in Europe, beginning with the Babylonian era and continuing through the ancient Greek and Roman eras. Among the well-known banks in Europe at that time were the Bank of Venice in 1171, followed by the Bank of Genoa and the Bank of Barcelona in 1320. Meanwhile, the development of banking in England, as a country that colonized many other nations, only began in the 16th century. Because England was so active in seeking colonial territories, the development of banking was also brought to its colonies, such as the Americas, Africa, and Asia, which were already known at that time to play an important role in the field of trade. Along with the development of world trade, the development of banking also accelerated because the development of the banking world was inseparable from the development of trade. The development of trade that initially only developed and advanced in mainland Europe eventually spread throughout the continents of Asia, America, and Africa.

The history of modern banking in Indonesia began in 1827 with the establishment of De Javasche Bank. Although privately owned, the Dutch East Indies government authorized it to circulate banknotes and coins in Indonesia, then known as the Dutch East Indies.[22]Thus, bank management had to be approved by the Dutch government. Until World War II, banks operating in Indonesia included Dutch, British, Japanese, Chinese, and Indonesian banks. Nearly every one of these banks closed during the Japanese occupation, except for Yahohama Specia Bank and de Algemene Volkscrediet Bank, which were renamed Shomin Ginko although their functions remained the same.[23]

The banknotes in circulation at that time were issued by the Japanese military government. After Indonesia proclaimed its independence on August 17, 1945, the Government of the

[20]Ibid
[21]Ibid, p. 7
[22]Elyana Novira & Uning Pratimaratri, Social Change and Banking Law in Indonesia, Unes Law Review, 6 (3) March 2024, p. 9296
[23]Nurul Ichsan Hasan, Op.Cit, 2014, p. 8

Republic of Indonesia established Bank Negara Indonesia as its central bank in 1946. However, during negotiations towards the recognition of Indonesian sovereignty with the Dutch in late 1949, it was decided that De Javasche Bank would serve as Indonesia's central bank.[24]

In 1950, the currency circulating in Indonesia was issued by De Javasche Bank. Thus, Bank Negara Indonesia ceased its function as a central bank and became a commercial bank. In 1951, De Javasche Bank was nationalized and its name changed to Bank Indonesia, the central bank. Over the next few years, many other state-owned banks were established.

During the independence era, banking in Indonesia further advanced and developed. Several Dutch banks were nationalized by the Indonesian government. Banks that existed during the early years of independence included:

1) NV. Nederlandsch Indische Spaar En Deposito Bank (currently Bank OCBCNISP), founded on April 4, 1941 with its head office in Bandung;

2) Bank Negara Indonesia, which was founded on July 5, 1946, is now known as BNI '46;

3) Bank Rakyat Indonesia was founded on February 22, 1946. This bank originated from De Algemenevolks Crediet Bank or Syomin Ginko.

The Dutch had a significant influence on Indonesian banking. As we know, Indonesia learned everything about the ins and outs of banking through the colonialists, and the first banks established during their time were all inherited from the Dutch. The Indonesian government began nationalizing Dutch banks in 1958. Starting with Nationale Handelsbank (1958), then Bank Umum Negara/BUNEG (later Bank Bumi Daya) in 1959, Escompto Bank became Bank Dagang Negara (BDN) and Nederlandsche Handelsmaatschappij/NHM became Bank Koperasi Tani dan Nelayan (1960), etc.

In 1965, there was a managerial reorganization of state-owned banks. All state-owned banks, except Bank Dagang Negara and Bank Pembangunan Indonesia, were merged into one, named Bank Negara Indonesia. After the fall of the Old Order government and the beginning of President Suharto's administration, new banking regulations came into effect, namely Law No. 14 of 1967 concerning the Indonesian banking system.[25]

Following the issuance of Law No. 1 of 1967 concerning foreign investment in Indonesia, several foreign banks, both their branches and representative offices, also began operating in Indonesia. Following the 1970 decree of the Minister of Finance concerning Financial Institutions, several non-bank financial institutions began operating, particularly those related to investment and long-term lending.

A general outline of the banking conditions prevailing in Indonesia can be summarized as follows: state-owned banks play a major role in short-term credit, as well as in financing government development projects and private companies. Foreign banks and financial institutions are most often used by private foreign commercial enterprises. Both local and

[24]Ibid

[25]Nurul Ichsan Hasan, Op.Cit, 2014, p. 10

foreign private banks have recently become more active in exports and imports and in foreign exchange transactions. State-owned banks have branches in every city in Indonesia. Private banks operate only in large cities, while foreign banks operate only in Jakarta, in accordance with central bank regulations.

Considering the relatively scarce resources of private banks, government policy has emphasized their mergers. Over the past five to ten years, several private banks have joined forces to continue their banking operations.

In today's modern world, the role of banking in advancing a country's economy is significant. Nearly all sectors related to various financial activities require banking services. Therefore, now and in the future, we will be inseparable from the banking world if we wish to conduct financial activities, whether as individuals or institutions, whether social or corporate.

Nowadays, numerous banks have sprung up, both government-owned and private, conventional and Islamic. Banks are one of the most needed institutions today and will continue to be so for the foreseeable future. We recognize this thanks to the development of global trade, which is inextricably linked to the development of banking.

According to Kasmir, a bank is a company that operates in the financial sector, meaning that banking activities are always related to the financial sector, so talking about banks cannot be separated from financial issues.[26]According to Verryn Stuart in Suyatno Tomas, a bank is an institution that aims to satisfy credit needs, either with its own means of payment or with money obtained from other people, or by circulating new means of exchange in the form of demand deposits.[27]According to Abdurrachman in Suyatno[28]that a bank is a type of financial institution that carries out various kinds of services, such as providing loans, circulating currency, supervising currency, acting as a place to store valuables, financing company businesses, and so on.

Ruddy Tri Santoso, is of the opinion that a bank is an industry that operates in the field of trust, which in this case is as a financial intermediary between debtors and creditors.[29]R. Tjipto Adinugroho, is of the opinion that "A bank is an institution or body whose job is to provide credit, receive credit in the form of savings (deposits) in addition to remittances and so on.[30]

The existence of laws and regulations that apply in a society is the soul of the nation in a country in the form of living law in society (living law) which is essentially contained in the outlook on life of the Indonesian nation, namely Pancasila and the 1945 Constitution which is adapted to the demands of progress of the times (developing/dynamic law).[31]

Komariah Emong Sapardjaja stated that legal norms are the result of societal norms designed to protect interests. Not all interests can be served by the law, as each person's

[26]Kasmir, Op.Cit, 2008, p. 24
[27]Suyatno Tomas, Op.Cit, 2007, p. 1
[28]Ibid
[29]Ruddy Tri Santoso, Op.Cit, 1996, p. 12
[30]R. Tjipto Adinugroho. R, Op.Cit, 1985, p. 5
[31]Satjipto Raharjo, Legal Science, Citra Aditya Bhakti, Bandung, 1996, p. 189

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interests are different and can even conflict with each other. Furthermore, not every interest deserves respect. In this regard, the state will prioritize the public interest in protecting those who could potentially become victims.[32]

In line with the objectives of Romli Atmasasmita's criminal law[33], states that the function of criminal law is to maintain a balance between the interests of the state and the interests of society, and between the interests of the state and the interests of individuals. Criminal law is recognized and felt to be beneficial to human life, even though we hear that criminal law will not have a deterrent effect on perpetrators of crime. At the very least, criminal law serves as a balance in life, preventing crime from occurring, and protecting victims.

Corporations are one of the pillars of the rapid development of global economic globalization. Corporations play a vital role and are always prioritized in every global economic transaction, as they are the primary driving force behind the global economy. In fact, every significant authority/role of a corporation inevitably creates significant opportunities for deviation, while also bringing positive impacts to human life. Muladi and Barda Nawawi Arief[34], stated that the authority and important role of corporations will trigger abuse of authority, fraud, embezzlement just like people who commit crimes.

Banks, as corporations, are business entities with the same legal structure and responsibilities as other companies. They collect funds from the public, distribute them through credit, and provide various other banking services. The concept of "bank as corporation" emphasizes how banks operate as structured legal entities, with the same responsibilities as other companies.

Banks, as legal entities or corporations, not only have a positive impact on the national economy. However, over time, banks have demonstrated many negative aspects that are detrimental to the wider community and the country's economic stability due to the actions of individuals within the banks or individuals closely associated with them.

In recent years, cases of banking crime have become increasingly prevalent and have been exposed to the public, involving a variety of criminal methods, making the public increasingly sad and concerned. In these difficult times, many people seek shortcuts by exploiting their positions to steal and steal public funds, known as white-collar crime. The number of these crimes is higher than the number of conventional crimes (blue-collar crime), because white-collar crime is an act or omission within a specific group of crimes that violate criminal law and are carried out by professionals.[35]Either individuals, organizations or crime syndicates carried out by legal entities.

The legal elements of white collar crime can be drawn as follows:

[32]Komariah Emong Sapardjaja, The Teaching of Material Unlawful Nature in Indonesian Criminal Law (Case Study on Its Application and Development in Jurisprudence), Alumni, Bandung, 2002, p. 3.
[33]Romli Atmasasmita, Introduction to Business Crime Law, Prenada Media, Jakarta, 2003, page xii
[34]Muladi and Barda Nawawi Arief, Criminal Law Anthology, ALUMNI, Bandung, 2007, p. 3
[35]Munir Fuady, Dirty Business: Anatomy of White Collar Crime, PT. Citra Aditya Bhakti, Bandung, 2004, p. 1.

There are actions (not actions) that are contrary to the law, both criminal law and/or civil law and/or state administrative law.

1) A specific group of crimes, and many different types.

2) The perpetrators are individuals, criminal organizations or legal entities.

For a crime to be considered a white collar crime, it must fulfill the following elements:

1) Intentionally committing an unlawful act;

2) Harming the community and/or state;

3) Prohibited by criminal law;

Intentionally committing an unlawful act means the act violates applicable law. The consequences of such an act are not only detrimental to individuals or small groups, but can also harm the wider community. Both directly and indirectly, it can harm state finances. This act is prohibited by criminal law and is punishable by criminal law, with the perpetrators being considered intellectuals.

The main differences between white-collar crime and ordinary crime lie in the perpetrators, the use of the proceeds, and the method of operation. White-collar crimes are typically committed by individuals with intellectual influence and power, position, and financial resources.[36]

Various crimes in the banking sector have frequently occurred, with various modus operandi employed by certain individuals within the banking sector. Throughout history, since the introduction of the banking system, banking crimes have been detected, and the modus operandi of banking crimes has continued to evolve in line with the sophistication of the banking world itself. These banking crimes come in many forms, the majority of which are white-collar crimes.[37]

According to Munir Fuadi, what is meant by banking crime or what is also called banking crime is a type of crime that is carried out against criminal law, either intentionally or unintentionally, which is related to banking institutions, devices and products, so that it causes material and/or immaterial losses for the bank itself or for customers or other third parties.

With the rise of banking crimes, many people have become victims, especially since these crimes are closely related to daily work to protect business interests and personal interests in order to obtain money/property, position and/or certain positions through unlawful means. White collar crimes are characterized by a technological mind, meaning that they carry out their actions using complex methods with sophisticated technological tools such as computers, mobile phones, internet/e-commerce so that they are not easily detected by law enforcement. Therefore, internal and external supervision and guidance policies are

[36]Ibid, p. 245
[37]Chamber of Commerce of the United States. White Collar Crime, USA, 1974. p 7

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very necessary to narrow the space that causes banks to dare to take risks that harm customers/the public. In the event of a crime, efforts to overcome it by implementing criminal sanctions through criminal policies are generally accepted efforts in law enforcement so that perpetrators are deterred and stop committing crimes.[38]The purpose of law is to uphold justice to create security and order in society.

Policy comes from the term "Policy" (English) or "Politiek" (Dutch), based on these two (2) foreign terms, the term criminal law policy can also be called "Criminal Law Politics" which in foreign literature criminal law policy is often known as "penal policy", "criminal law policy", or "Strafrechtspolitiek".[39]

Sudarto, formulated the meaning of criminal law policy as an effort to realize good regulations in accordance with the conditions and situations at that time.[40]Or the policy of a country through authorized bodies to establish the desired regulations which are expected to be used to express what is contained in society and to achieve what is aspired to.[41]

The goal of criminal law policy is to combat crime, which is essentially an integral part of social defense and social welfare efforts. Crime prevention policy, often referred to as criminal policy, has the ultimate or primary goal of protecting society to achieve social welfare. Criminal policy is part of law enforcement policy.

Given the rapid growth of banking crimes, with ever-evolving modus operandi, in line with the sophistication of the banking industry itself, such as money laundering, tax evasion, fictitious loans, window dressing, and illegal banking, law enforcement in the banking sector needs to be strengthened and given serious attention by improving and enforcing stricter regulations.

Simons is of the opinion that an offense in the sense of strafbaarfeit is an unlawful act committed intentionally or unintentionally by someone whose action can be accounted for and is declared by law to be a punishable act. Jonkers and Utrecht view Simons' formulation as a complete formulation, which includes:

a. Threatened with criminal penalties by law;

b. Contrary to the law;

These legal experts formulate the crime (straafbaarfeit) in a comprehensive manner, without separating the act and its consequences on the one hand and the responsibility on the other. AZ Abidin calls this way of formulating crimes as the monistic school of thought on crimes. Other legal experts, separating the act and its consequences on the one hand and responsibility on the other, are called the dualist school. Indeed, in England, a separation is

[38]Failin, Criminal System and Punishment in Indonesian Criminal Law Reform, Jurnal Cendekia Hukum, 3 (1), September 2017, p. 16
[39]Mawardi, Political Implementation of Criminal Law in Enforcement of Criminal of Human Trafficking, Jurnal Kompilasi Hukum, 5 (2), December 2020, p. 310
[40]Sudarto, Law and Criminal Law, alumni, Bandung, 1981, p. 159
[41]Sudarto, Law and Development ..Op.Cit, 1983, p. 20

made between acts prohibited by law and subject to criminal penalties (actus reus) on the one hand and responsibility (mens rea) on the other.

Based on the existing formulation, the crime (strafbaarfeit) contains several elements, namely:

a. A human act;

b. This act is prohibited and punishable by law;

Criminal acts are a term that contains a basic understanding in legal science, as a term that is formed with awareness in giving certain characteristics to criminal law events, criminal acts have an abstract meaning from concrete events in the field of criminal law, so that criminal acts must be given a scientific meaning and be clearly determined to be able to separate them from the terms used daily in community life.

Until now there has been no agreement on the use of the term regarding criminal acts whose actions are detrimental to the financial economy related to banking institutions. There are those who use the term banking crime, there are also those who use the term banking crime, and there are even those who use both terms based on the regulations they have violated.

In this regard, Moh Anwar[42], distinguishes the two definitions based on the different regulatory treatment of unlawful acts related to banking activities. First, there is "Banking Crime" and second, "Crime in the Banking Sector." The first contains the definition of the crime solely committed by the bank or bank personnel, while the second is broader because it can include crimes committed by people outside and inside the bank, or both.

The term "banking crimes" is intended to encompass all types of unlawful acts related to banking operations. There is no formal definition of banking crimes. Some popularly define banking crimes as crimes that use banks as a means (crimes through the bank) or as targets (crimes against the bank).[43]

The dimensions of banking crime can include crimes committed by individuals against banks, bank crimes against other banks, or bank crimes against individuals, allowing banks to become both victims and perpetrators. As for the spatial dimension, banking crime is not limited to a specific area and can transcend national boundaries. Similarly, the spatial dimension can occur immediately or persist for a period of time.

The scope of banking crimes can encompass all aspects of the banking world, or those closely related to banking activities, and more broadly, encompass other financial institutions. While the provisions that can be violated are customary norms in the banking sector, these are all regulated by criminal sanctions in the Criminal Code, the Banking Law, and related legal regulations. The scope of perpetrators and banking crimes can be committed by individuals or legal entities (corporations).

[42]Muhamad Djumhana, Banking Law in Indonesia. PT. Citra Aditya. Bakti. Bandung, 2003, p. 454
[43]Ibid

The laws and regulations related to banking began with Law No. 14 of 1967 concerning the Principles of Banking. Subsequently, this Law was replaced by Law No. 7 of 1992 concerning Banking, as amended by Law No. 10 of 1998 (the Banking Law).

Banking crimes are criminal acts that use banks as a means and/or as an object. Banking crimes are considered corporate crimes because they emphasize a criminological perspective, aiming to stimulate thought in developing concepts of corporate crime. Therefore, banking crimes are not part of the banking system; rather, they use the banking system as the object of their crimes.

Law No. 10 of 1998 concerning Banking, stipulates thirteen types of banking crimes (Articles 46 to 50), of which thirteen crimes can be classified into four types of crimes, namely:

1) Criminal acts related to licensing (Article 46);

2) Criminal acts related to bank secrecy (Article 47);

Furthermore, Article 50 of the Banking Law states that Affiliated Parties who intentionally fail to implement the necessary steps to ensure the bank's compliance with the provisions of the Law and other laws and regulations applicable to the bank are threatened with imprisonment and fines. Likewise, shareholders who intentionally instruct the Board of Commissioners, Directors, or bank employees to carry out or not carry out actions that result in the bank not implementing the necessary steps to ensure the bank's compliance with the provisions of the applicable laws and regulations.

It should be noted that banking law defines criminal acts, which broadly need to be distinguished and understood: banking crimes and crimes within the banking sector. Banking crimes are defined as crimes committed solely by banks or bank personnel, or any unlawful act related to the banking business.[44]

Law No. 10 of 1998 does not specifically define banking crimes but rather categorizes several acts that fall under the category of crimes or violations. However, banking crimes are defined more broadly, as they can be committed by individuals both inside and outside the bank. Banking crimes are any unlawful act related to the conduct of banking business, whether the bank is the target or the bank is the medium.[45]

In general, banking crimes are defined as crimes related to banking, while banking crimes are crimes as regulated by banking law. Therefore, the scope of banking crimes is broader than that of banking crimes. The scope of banking crimes is limited to the provisions of banking laws, while banking crimes, in addition to the provisions of banking laws, may also be covered by other laws and regulations related to banking.

This difference in understanding results in and/or influences law enforcement, where banking crimes/offenses will be prosecuted with criminal provisions regulated by banking

[44]Edi Setiadi and Rena Yulia, Economic Criminal Law, Yogyakarta: Graha Ilmu, 2010, p. 138
[45]Ibid, p. 140

laws, while crimes in the banking sector will be prosecuted through laws outside banking laws.[46]

The provisions regarding banks as victims are generally regulated in Articles 263, 264, and 378 of the Criminal Code (KUHP), while banks as perpetrators are stipulated in the Banking Law. The modus operandi of banks as victims is not extensive, usually involving document theft, embezzlement, and corruption. Perpetrators of banking crimes are individuals, not corporations/legal entities, so victims of banking crimes can be banks, individuals, or legal entities.[47]

The current state of law enforcement in banking crimes demonstrates that perpetrators can be prosecuted not only under the Banking Law but also under other laws. When banking crimes occur, the legal instruments used can vary, with some relying solely on banking laws, others on corruption laws, and still others on the Criminal Code (KUHP) or other laws and regulations.

The provisions for the use of several laws and regulations in a criminal act are indeed possible in the legal system in Indonesia, this is due to the similarity of the elements of the criminal act. For example, criminal acts in the banking sector fulfill the elements of the formulation of Article 49 paragraph (2) letters a and b of Law No. 7 of 1992 concerning Banking which was amended by Law No. 10 of 1998 and also fulfill the formulation of the elements of Article 2 paragraph (1) of Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption which was amended by Law No. 20 of 2001.[48]

The existence of similar elements in a crime makes an act meet the definition of a crime in different laws, naturally providing law enforcement with alternatives in determining which legal basis to use to prosecute the perpetrator. However, in determining the legal basis, greater care must be taken, particularly regarding the principles of criminal law, to achieve the objectives of punishment.

3.2. Criminal Liability for Disbursement of Fictitious Credit Funds by Banks

The concept of criminal responsibility concerns the mechanism that determines whether a perpetrator of a crime can be punished.[49]For criminal responsibility to exist, the perpetrator of the crime must be capable of taking responsibility. It is impossible to hold someone responsible if they are incapable of taking responsibility.[50]

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[46]Ibid

[47]Diana Kartika Suci, Modus Operandi of Banking Crimes and Efforts to Overcome Them in Indonesia, Journal of State and Justice, 10 (2), August 2021, p. 90

[48]Astrid Jansye Lestari, Legal Study of Banking Crimes Against Community Fund Associations Based on Law Number 10 of 1998, Lex Crimen, VII (3) May 2018, p. 42

[49]Chairul Huda, From "No Crime Without Fault" Towards "No Criminal Responsibility Without Fault" (A Critical Review of the Theory of Separation of Criminal Acts and Criminal Responsibility), Kencana Prenada Media Group, Jakarta, 2011, p. 67.

[50]Sudarto, Criminal Law 1, Faculty of Law Lecture Materials Provision Agency, Diponegoro University, Semarang, 1988, p. 93.

However, in this case the Criminal Code (KUHP) does not provide a formulation regarding when a person is capable of being responsible, but it contains provisions that lead to this, namely in Article 44 of the Criminal Code which states that: "Anyone who commits an act for which he cannot be held responsible[51]to him, because his soul is deformed in its development or his soul is disturbed due to illness, is not punished." In this provision, it is not actually stated what is meant by not being able to take responsibility, but rather it is stated about a reason that exists within the perpetrator of the crime which is the reason why the act committed cannot be accounted for by him. This reason is in the form of a biological personal condition of the perpetrator, namely in the form of a soul that is deformed in his body or disturbed due to illness. In this condition, the perpetrator does not have free will and cannot determine his will regarding his actions. So this condition can be a reason for the perpetrator not being held responsible for his actions.[52]

In criminal liability, there are two forms of wrongdoing: intentional (opzet) and carelessness (culpa). In intentional (opzet) acts, as mentioned, generally involve an intentional element inherent in the perpetrator. This is appropriate because those who usually deserve criminal punishment are those who commit a crime intentionally. This intention must fulfill the three elements of a criminal act: a prohibited act, the consequences that are the main reason for the prohibition, and the act being unlawful. This intention can be divided into three types:

a. intentional intent to achieve something;

b. intention that does not contain a goal, but is accompanied by the awareness that a consequence will definitely occur; and

c. intentional (like the second sub above) but accompanied by the awareness that there is only a possibility that an effect will occur.[53]

Meanwhile, the word culpa, in legal science, has a technical meaning, namely a mistake made by the perpetrator of a criminal act which is not as serious as the perpetrator of a criminal act who deliberately committed the crime, namely in the form of a lack of caution resulting in an unintentional consequence.[54]The punishment imposed on perpetrators of criminal acts who commit culpa is not as severe as the punishment imposed on perpetrators of criminal acts who commit crimes intentionally.[55]

In terms of the implications of the terminology of criminal liability with the scope of banking crimes, banking crimes are essentially unlawful acts committed, either intentionally or unintentionally, related to banking institutions, devices, and products, resulting in material and/or immaterial losses for the bank itself, customers, or other third parties.[56]One of the

[51]Wirjono Prodjodikoro, Principles of Criminal Law in Indonesia, Refika Aditama, Bandung, 2009, pp. 88-89. States that the term "cannot be held responsible" from Article 44 of the Criminal Code cannot be equated with "no fault in the form of intent or negligence." The meaning of this term is that even though the perpetrator has intent or negligence as a requirement for a criminal act, the perpetrator is freed from punishment.
[52]Sudarto, Criminal Law 1, Provision Agency ..Op. Cit, 1988, pp. 94-95
[53]Wirjono Prodjodikoro, Op.Cit, 2009, p. 61
[54]Ibid, p. 67.
[55]Ibid, p. 68
[56]Marfein Halim, Op.Cit, 2002, p. 28

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crimes that often arises from the banking sector is a crime related to credit businesses, and the crime that often arises as a result of the implementation of credit granting policies is fictitious credit.

In general terms from a legal perspective, Law Number 10 of 1998 concerning Banking, Article 1 paragraph 11 states that the definition of credit is the provision of money or bills that can be equated with it, based on a loan agreement or agreement between a bank and another party that requires the borrower to repay the debt after a certain period of time with the provision of interest.[57]

The Banking Law does not explicitly state the legal basis for credit. However, based on the definition of credit as outlined in Article 1 number 13, it can be concluded that the legal basis for granting credit is an agreement. Article 1754 of the Civil Code explains that lending and borrowing is an agreement whereby one party provides another party with a certain amount of goods that are used up due to use, with the condition that the latter party will return the same amount under the same conditions.[58]

According to the Big Indonesian Dictionary (KBBI), credit is a loan of money with installment payments. Credit is a financial facility that allows an individual or business entity to borrow money to purchase products and repay it within a specified period.[59]

Credit is a financial facility that allows an individual or business to borrow money to purchase products and repay them within a specified period. Several experts define credit as follows:

1) Tjiptonugroho stated that the essence of credit is actually trust, an element that must be held as a common thread across the philosophy of credit in its true sense, whatever its form, type and variety and wherever it comes from to whomever it is given;[60]

2) OP Simorangkir stated that credit is the granting of performance (for example money, goods) in return for performance (counter-performance) which will occur in the future;[61]

Credit is a source of profit for a bank. Credit can generate significant profits for a bank, but it also carries significant risks. The world of credit is inextricably linked to negotiations and credit agreements. Typically, upon initial credit application, the debtor and creditor will negotiate terms, including the loan term, collateral calculation, and interest rate.

Before discussing the credit granting mechanism, it is necessary to know first that basically the granting of credit by banks to debtor customers is guided by two principles, namely:

1) First, the principle of trust states that the provision of credit by banks to debtor customers is always based on trust, where the bank has confidence that the credit it

[57]Article 1 Paragraph 11 of Law Number 10 of 1998 concerning Banking
[58]Sentosa Sembiring, Op.Cit, 2012, p. 191
[59]Department of National Education, Big Indonesian Dictionary, Fourth Edition, Fourth Printing, Jakarta: Gramedia Pustaka Utama, 2012, p. 818
[60]Sentosa Sembiring, Op.Cit, 2012, p. 51
[61]Budi Untung, Banking Credit in Indonesia, Ganesha, Yogyakarta, 2000, p. 1

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provides is beneficial for the debtor customer according to its intended use and the bank believes that the debtor customer as referred to is able to repay the credit debt and interest within the specified time period.

2) Second, the principle of prudence states that banks in carrying out their business activities, including in providing credit to debtor customers, must always be guided by and apply the principle of prudence, which among other things is manifested in the form of consistent application based on good faith towards all requirements and laws and regulations related to the provision of credit by the bank.[62]

Credit application proposals to the board of directors/head office must be submitted by letter. If deemed necessary, proposals can be submitted via wire/telex and must always be confirmed by letter, accompanied by the necessary explanations. If the credit department or branch decides to propose a credit application to the board of directors/head office, the proposal letter must contain at least the following data: (1) Complete information about the customer; (2) Customer business activation; (3) Collateral; (4) Financial statement; (5) Cash flow projection; (6) Account activation.[63]

The credit application approval stage is where the bank decides to grant part or all of the prospective borrower's credit application. To protect the bank's interests in implementing this approval, the terms of the credit facility and the procedures the customer must follow are usually outlined beforehand.[64]The signing of the credit agreement, which follows the loan decision, requires the prospective customer to sign the loan agreement, binding the mortgage as collateral, and any necessary agreements or requirements. The signing takes place directly between the bank and the borrower or through a notary.[65]

The credit disbursement stage, which is the process for every transaction using credit approved by the bank, occurs. In practice, this credit disbursement involves payments and/or transfers of loan account balances or other facilities. The bank only approves a customer's credit disbursement if the customer has met the required conditions.

In essence, the mode of crime in the banking sector, especially fictitious credit, is carried out by using fake documents or guarantees, fictitious, misuse of credit, obtaining repeated credit with the same object as collateral, ordering, eliminating, deleting, not recording what should be fulfilled. In addition, the modus operandi also forces banks or affiliated parties to provide information that must be kept confidential, not providing information that must be fulfilled to Bank Indonesia or to State Investigators, receiving, requesting, allowing, agreeing to receive rewards, additional money, commission services, money or valuables for personal

[62]Hermansyah, Indonesian National Banking Law (Second Edition), Kencana Prenada Media Group, Jakarta, 2005, pp. 65-66
[63]Subagyo et al., Banks and Other Financial Institutions, STIE YKPN, Yogyakarta, 2002, pp. 47-48
[64]M. Bahsan, Indonesian Banking Credit Guarantee and Collateral Law, PT. Raja Grafindo Pesada, Jakarta, 2007, p. 132.
[65]Thamrin Abdullah and Francis Tantri, Banks and Financial Institutions, PT. Raja Grafindo Persada, Jakarta, 2014, p. 179.

interests in order for others to get credit, down payments, credit priority or approval from others to violate the Maximum Credit Granting Limit (BMPK).[66]

Fictitious credit is a crime committed by individuals who use another person's personal identity and false information to obtain credit. The perpetrators obtain personal data, such as ID cards, and use this data to apply for loans from legal or even illegal financial institutions.

Fictional crimes actually refer to various types of forgery, there are three (3) types of forgery, namely:

1) Making a fake letter means making a letter whose contents are not what they should be (not true) or making a letter in such a way that it is fictitious.

2) Forging a letter means altering it in such a way that its contents differ from the original or that the letter appears to be different from the original. There are various methods, including removing, adding, or changing elements from the letter. Forging a signature falls into this category. Similarly, attaching another person's photo to the original letter's place is also common.

Banking crime cases (fictitious credit) can involve people who work at the bank (insiders), where the crime is carried out alone, among insiders, or involving outside parties.[67]This means that in committing fictitious credit crimes, certain bank officials abuse their authority. Fictitious credit is currently considered to be extremely detrimental to state finances, so even if it were classified as an extraordinary crime, it would be perfectly acceptable. Some fictitious credit cases that have cost the state hundreds of billions, even trillions, include the fictitious credit case at Bank BJB Syariah, the fictitious credit case at Bank Mandiri, and the fictitious credit case at Bank BTN.

1. The fictitious credit case of Bank BJB Syariah

In the 2019 fictitious loan case at Bank BJB Syariah, a subsidiary of Bank BJB, Bank BJB Syariah was also implicated in corruption. In this case, Bank BJB Syariah was suspected of corruptly disbursing fictitious loans to two companies: PT Hastuka Sarana Karya (HSK) and CV Dwi Manunggal Abadi. This corruption, or Tipikor, caused state losses of Rp 548 billion.

The funds were disbursed by Bank BJB Syariah to the two companies to finance the construction of the Garut Super Block in Garut, West Java, from 2014 to 2015. The debtor in this case is PT HSK. Based on the existing address, the HSK developer is located in the Regol area, Bandung City. In the alleged corruption case of Bank BJB Syariah, the Criminal Investigation Unit of the Indonesian National Police then named the former acting President Director of Bank Jabar Banten (BJB) Syariah Yocie Gusman as a suspect. He is the former

[66]Ichsan Ansari. Investigation of Banking Crimes in the Form of Fictitious Credit at the Mitra Danagung Rural Credit Bank (BPR), Unes Law Review, 4 (2) December 2021, p. 250
[67]Ichsan Ansari. Op.Cit, 4 (2) December 2021, p. 251

Chairman of the Bogor City PKS DPC, named as a suspect for his role in providing credit to PT HSK.[68]

Yocie Gusman is suspected of violating procedures when granting a loan to Andi Winarto, President Director of PT HSK, for a financing facility totaling Rp 548 billion. The funds were used by PT HSK to build 161 shophouses in the Garut Super Block. The loan was later discovered to have been disbursed without collateral and ultimately defaulted.

During the course of the case, Andi Winarto was also named a suspect, along with former BJB Syariah President Director Ali Nuridin. Yocie Gusman was subsequently sentenced to four years in prison and fined Rp 200 million. Andi was sentenced to 10 years in prison and fined Rp 1 billion. Ali Nuridin was sentenced to five years in prison and fined Rp 500 million.

In 2023, three employees of Bank BJB Semarang Branch were detained by the Central Java High Prosecutor's Office as suspects in an alleged corruption case involving the provision of fictitious loans to PT Seruni Prima Perkasa in 2017-2018, with state losses reaching Rp 25.1 billion. According to the Head of the Legal Information Section of the Central Java High Prosecutor's Office, Bambang Tedjo, the three suspects allegedly approved PT Seruni Prima Perkasa's working capital loan application of Rp 17 billion.[69]In the loan application, PT Seruni Prima Perkasa is suspected of using 14 fictitious purchase orders to procure spare parts for the PT Tanjung Jati B Power Service project in Jepara. The suspects allegedly failed to conduct a direct field inspection of PT Tanjung Jati B. As a result of their actions, the loan, which included a list of inaccurate spare parts suppliers, ultimately defaulted.

2. Fictitious credit case at Bank Mandiri

The fictitious credit case at Bank Mandiri Bandung involving three Bank Mandiri officials, namely Surya Beruna (commercial banking manager of Bank Mandiri Bandung), Teguh Kartika Wibowo (senior credit risk manager of Bank Mandiri Bandung), and Frans Eduard Zandstra (senior credit risk manager of Bank Mandiri Bandung), as well as one other defendant, director of PT TAB Roni Tedi, has resulted in state losses of up to Rp. 1.83 trillion.[70]During the trial, prosecutors stated that Roni was proven to have falsified financial reports, pretending to have assets and receivables totaling Rp 1.1 trillion. This enabled him to apply for credit from Bank Mandiri. However, in reality, the financial reports were fictitious. Prosecutors also stated that Roni applied for credit facilities from 2008 to 2012 using fictitious data.

In terms of the method of action, fictitious credit is closely related to false records and the provision of rewards from bank customers who receive facilities from the bank. Fictitious credit is an act of fraud in the credit sector carried out by internal parties (bank employees) by colluding with credit applicant customers, both of whom lack good faith because the

[68]https://www.tempo.co/ekonomi/dulu-kasus-korupsi-menjerat-bank-bjb-syariah-kini-menimpa-bank-bjb--1218597, Accessed on May 12, 2025

[69] https://www.tempo.co/hukum/kasus-korupsi-yang-pernah-terjadi-di-bank-bjb-terbaru-dana-iklan-1218919, HeKses On May 12, 2025

[70]https://news.detik.com/berita-jawa-barat/d-4188680/kredit-fiktif-rp-183-t-pejabat-bank-didakwa-20-tahun-bui, Accessed on May 12, 2025

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purpose of carrying out fictitious credit is to benefit themselves. In fictitious credit, forgery of credit guarantees is also found. As a result, customers whose identities are used without permission in fictitious credit are greatly harmed both in material and immaterial terms.

The crime of fictitious credit is a banking crime specifically regulated in Law No. 7 of 1992 concerning Banking, as amended by Law No. 10 of 1998 concerning Amendments to Law No. 7 of 1992 concerning Banking. Therefore, investigations do not use the Criminal Code (KUHP) but rather the Banking Law. This legal principle is known as (lex specialis derogate legi generali).[71]which means that specific legal provisions override general legal provisions (the provisions of the Banking Law override the Criminal Code).

According to Sudikno Mertokusumo, general legal principles are legal principles that relate to all areas of law, such as the principle of restitution in integrum, the principle of lex posteriori derogate legi priori, namely that the principle that appears to be true, must be temporarily considered as such until decided (otherwise) by the court. Meanwhile, special legal principles function in narrower areas such as in the field of civil law, criminal law and so on, which are often an elaboration of general legal principles, such as the principle of pacta sun servanda, the principle of consensualism, or the principle of presumption of innocence.[72]

Implied by the provisions of the laws and regulations governing fictitious credit, the suspect can be held criminally liable under the provisions of Article 49 of Law No. 10 of 1998 concerning Amendments to Law No. 7 of 1992 concerning Banking. In paragraph (1) it is stated that: Members of the Board of Commissioners, Directors or bank employees who intentionally:

a. Making or causing false records to be made in bookkeeping or in reporting processes, or in documents or reports on business activities, transaction reports or bank accounts;

b. Eliminating or not including or causing no recording to be made in the books or in reports, or in documents or reports of business activities, transaction reports or bank accounts;

Meanwhile, criminal responsibility in paragraph (2) states: Members of the Board of Commissioners, Directors or bank employees who intentionally:

a. Requesting or accepting, permitting or agreeing to receive a reward, commission, additional money, service, money or valuables, for his/her personal benefit or for the benefit of his/her family, in order to obtain or attempt to obtain other people in obtaining advances, bank guarantees, or credit facilities from banks, or in order to purchase or discount by banks or bills of exchange, promissory notes, checks, and trade papers or other

[71]Jessica and R. Rahaditya, The Principle of Lex Specialis Derogat Legi Generalis Against Online Dating Application Fraud in Decision No. 431/Pid.B/2020/Pn.Jkt.Tim, Unes Law Review, 6 (4) June 2024, p. 10599
[72]Muslimah Hayati, Application of the Principles of Harmony and Balance of the Environment in the Regulations on Building Permits for Public Fuel Filling Stations (SPBU), Wasaka Law Journal, 8 (1) February 2020, p. 124

evidence of obligations, or in order to give approval for other people to carry out withdrawals of funds exceeding their credit limit at the bank;

b. Failure to take the necessary steps to ensure the bank's compliance with the provisions of this law and other applicable laws and regulations for banks shall be punishable by imprisonment for a minimum of 3 (three) years and a maximum of 8 (eight) years and a fine of a minimum of Rp. 5,000,000,000 (five billion rupiah) and a maximum of Rp. 100,000,000,000 (one hundred billion rupiah).

By implication, with the case of fictitious credit carried out by officials of government-owned banks (BUMN/BUMD) and causing losses to state finances, Article 603 of Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code also regulates sanctions for unlawful acts in an effort to enrich oneself which causes state losses, it is stated that: "Any person who unlawfully commits an act of enriching himself, another person or a corporation which is detrimental to state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 2 (two) years and a maximum of 20 (twenty) years and a fine of at least category II and a maximum of Category VI."

Meanwhile, if the criminal act of the perpetrator is associated with the misuse of authority, opportunity and means due to his position and position to take advantage resulting in state losses, it is regulated in Article 604 of the Republic of Indonesia Law Number 1 of 2023 concerning the Criminal Code that "any person who with the aim of benefiting himself, another person or a Corporation misuses the authority, opportunity or means available to him due to his position or position which is detrimental to state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 2 (two) years and a maximum of 20 (twenty) years and a fine of at least category II and a maximum of Category VI".[73]

Fictitious loans that cause state financial losses cannot in themselves be considered corruption. To be prosecuted under Article 2, paragraph 1 of the Corruption Law, the state losses must arise from unlawful acts intended to enrich oneself, another person, or a corporation. Meanwhile, Article 3 of the Corruption Law defines state losses as those arising from state officials abusing their authority to enrich themselves, another person, or a corporation.

However, in terms of the elements of corruption, fictitious loans made by officials or employees of state-owned or regionally-owned banks (central and regional government-owned banks) can be criminally liable because they were intentionally committed from the outset, causing harm to state finances, committing an unlawful act, and benefiting themselves. This also constitutes a banking crime.

Apart from the above definition, according to Jean Rivero and Waline, the terminology of abuse of authority in administrative law can be interpreted in 3 (three) forms, namely:

[73]Obed Junior, Shafira Karima Ardhanareswari, Monika Anjaswari and Muhamad Faathir Justiano Bravita, Criminal Code based on Law No. 1 of 2023, Yogyakarta: Anak Hebat, 2023, pp. 238-239

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a. Abuse of authority to carry out actions that are contrary to the public interest or to benefit personal, group or class interests;

b. Abuse of authority in the sense that the official's actions are correct and aimed at the public interest, but deviate from the purpose for which the authority was granted by law or other regulations;

c. Abuse of authority in the sense of misusing procedures that should be used to achieve a certain goal, but using other procedures to achieve it.[74]

Based on the coherent analyses above, it can be concluded that the practice of fictitious credit in government banks is said to have caused state financial losses when there has been a state financial shortfall in government banks which is known through the audit process (examination) where the loss arises as a result of unlawful acts, namely violations of the principle of prudence in banking for the distribution of fictitious credit.

The Indonesian banking industry faces acute challenges. First, banks' failure to adhere to prudential principles in absorbing credit growth. Furthermore, the lack of transparency in bank management practices makes it difficult to detect fraudulent practices by bank managers and officials. Second, the most serious issue is the failure of supervisory bodies to address negligence, fraud, and embezzlement through fictitious credit practices by bank officials/employees, which have inclusively spread to criminal banking laws, even to corruption within state-owned banks.

4. Conclusion

Implicated by the provisions of laws and regulations governing fictitious credit, the suspect can be subject to criminal liability under the provisions of Article 49 of Law No. 10 of 1998 concerning Amendments to Law No. 7 of 1992 concerning Banking. In paragraph (1) it is stated that: Members of the Board of Commissioners, Directors or bank employees who intentionally (a) make or cause false records to be made in the books or in the reporting process, or in documents or reports of business activities, transaction reports or accounts of a bank; (b) remove or do not include or cause no records to be made in the books or in reports, or in documents or reports of business activities, transaction reports or accounts of a bank; (c) changing, obscuring, hiding, deleting or eliminating any record in the books or in reports, or in documents or reports of business activities, transaction reports or bank accounts, or intentionally changing, obscuring, removing, hiding or damaging such bookkeeping records, shall be subject to a prison sentence of at least 5 (five) years and a maximum of 15 (fifteen) years and a fine of at least Rp. 10,000,000,000 (ten billion rupiah) and a maximum of Rp. 200,000,000,000 (two hundred billion rupiah). Meanwhile, criminal liability in paragraph (2) states: Members of the Board of Commissioners, Directors, or bank employees who intentionally: (a) Request or accept, permit or agree to receive a reward, commission, additional money, service, money or valuables, for their personal gain or for the benefit of their family, in order to obtain or try to obtain other people in obtaining advances, bank guarantees, or credit facilities from the bank, or in order to purchase or

[74]A'an Efendi, A Modern interpretation Over The Abuse of Authority in Corruption, Judicial Journal, 12 (3) December 2019, p 340

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discount by the bank or bills of exchange, promissory notes, checks, and trade papers or other evidence of obligations, or in order to give approval for other people to carry out withdrawals of funds that exceed their credit limit at the bank; (b) Do not carry out the necessary steps to ensure the bank's compliance with the provisions of this law and the provisions of other laws and regulations applicable to banks, shall be subject to imprisonment for a minimum of 3 (three) years and a maximum of 8 (eight) years and a fine of at least Rp. 5,000,000,000,- (five billion rupiah) and a maximum of Rp. 100,000,000,000,- (one hundred billion rupiah).

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