RENEWAL OF CORPORATE CRIMINAL LIABILITY LAW BANKING IN THE ERA OF DISRUPTION

Yenni Novita Wulandari

Doctoral Program in Law, Sultan Agung Islamic University, Semarang, Indonesia

yenni.novita92@gmail.com

ABSTRACT

The phenomenon of the Corona Virus Disease (COVID-19) pandemic which limits social interaction in people's lives, and the era of disruption with the advantages of rapid technological development, poses a huge challenge to the banking world. These challenges make the banking world innovate and transform into financial technology (fintech), and of course it has its own risks in running a banking business that must apply the prudential principle. The current regulation of the Banking Law (Law No. 10 of 1998 concerning Amendments to Law No. 7 of 1992 concerning Banking) has not yet determined a bank as the subject of a banking crime. What is regulated is only banking crimes committed by members of the Board of Directors, Commissioners, Directors, bank employees or other Affiliated Parties, without touching on criminal liability for the bank itself. The 2015 R-KUHP will become a legal umbrella for legal reform, especially in the banking sector by accommodating the principle of vicarious liability, which can then be applied in the Banking Law, so that banks can be charged with criminal liability. With this legal reform, it is hoped that it will become a legal certainty and justice in the enforcement of corporate law, especially in the banking sector.

Keywords: Criminal Liability, Corporations, Banking, Vicarious Liability, Era of Disruption.

A. Introduction

The national development that has been carried out is a sustainable development effort to realize a just and prosperous society in accordance with Pancasila and the 1945 Constitution of the Republic of Indonesia.[1]

The existence of banks in the era of disruption is very important, which no longer only applies to business people, but has also touched all elements of society. This is no exaggeration considering the role of banks in the national development strategy in order to create a just and prosperous Indonesian society based on Pancasila and the 1945 Constitution.[2]Law No. 10 of 1998 concerning Amendments to Law no. 7 of 1992 concerning Banking (hereinafter referred to as the Banking Law), in the provisions of Article 1 number 2, provides the definition of a bank as a business entity that collects public funds in the form of savings and distributes them to the public in the form of credit and/or other forms in order to increase the level of the lives of many people.

In order to carry out these duties, banks must apply the prudential principle, both in collecting public funds, channeling funds to the public, as well as maintaining customer data.

The virtue of the era of disruption itself lies in the power of technology, information and communication based on internet media, where internet media is a new force in providing convenience for everyone to help every movement without knowing the boundaries of space and time, with all forms of risk and responsibility. The law is caused by the behavior of people who use technology with various intentions and purposes.

A futurologist, Brett King, released a book with a fairly controversial title published last

1 *Andri Winjaya Laksana, Ida Musofiana, Pandangan Kritis Terkait Pertanggungjawaban Korporasiperbankanterhadap Tindak Pidana Pembobolan Rekening Nasabah, JPM : Jurnal Purnama Media, Vol 1 No 1, Agustus 2022, Page 50-64*

2 *Consideration of Law no. 10 of 1998 concerning Amendments to Law no. 7 of 1992 concerning Banking.*

year: Bank 4.0, Banking Everywhere, Never at a Bank to describe how "sadistic" the possible impact of technological disruption on this notoriously conservative industry. Brett King wasn't the first to prdict this; in 1994 Bill Gates was famous for his satire "Banking is essential; banks are not".[3]

The ease of use of technology offered in the era of disruption requires banks to continue to innovate and transform according to developments so as not to be left behind, by continuing to develop digital banking technology, preparing human resources (HR) who master technology, knowing customer desires that are customer-oriented.

Several issues emerged from the emergence of the digital banking era in the era of disruption, among others: *First,* changes in consumption patterns and the desire of people who want something easy and fast. There is a change in people's behavior patterns in utilizing services from financial service institutions such as banking. *Second*, the proliferation of financial technology (fintech) both for payments and funding or peer-to-peer (P2P) lending. *Third*, the factor of trust in security provided by the digital banking platform. *Fourth,* is the issue of regulation or applicable regulations. This will be the basis for digital banking players to the extent of their work. *Fifth*, develop customer profiles and characteristics, especially millennial and non-millennial customers. It means,[4]

Some of the issues mentioned above have been realized by the banking industry by continuing to respond to rapid technological developments by transforming through digital banking services while managing risk by implementing POJK rules No 12/POJK.03/2018 concerning Digital Banking Services.[5]

Despite the rapid digital development, conventional banking is still relatively successful even in developed countries. History still has to prove whether technology tycoons engaged in finance (known as Tech-Fin) such as Google, Facebook, Chime, Tencent and Ant Financial can eventually "bend" old giants such as Citi, Standard Chartered, HSBC and others. . It should be realized that the main raw material for the production of conventional banking "machines" is deposits, which have debt characteristics but are subsidized (Greenbaum, Thakor and Boot, 2016). In an accounting perspective, deposits are "debts" given by depositors. However, in the eyes of the regulator, deposits are not treated as debt like accounting standards.[6]

There is no other choice for banking than having to keep up with technological disruption. One of the equilibrium that is quite risky is the spread of shadow banking which is the biggest risk in the development of banking 4.0, such as Tech-Fin being able to sell an enhanced ewallet account that combines e-money and investment features through an automatic transfer link. If the product can be marketed massively, there will be a point in time where the regulator will be forced to bear the problem there with public funds (bail out).[7]

In order to prepare for the challenges in the era of disruption, not only technology development plays an active role, but banking regulations must also provide legal certainty against risks that will arise in the future, especially against criminal acts in the banking sector.

The Banking Law regulates Commercial Banks and Rural Banks. This means that the object of regulation is a corporation consisting of Commercial Banks and Rural Banks. But unfortunately, even though this law has not adopted the concept of corporate responsibility. In fact, this law was made after various special criminal law laws have adopted corporate responsibility.[8]

Of the various criminal provisions in the Banking Law, none of them determines the bank as the subject of a banking crime. Only banking crimes are regulated by members of the board of directors, commissioners, and bank employees. This shows the inconsistency of the legislators in terms of adopting corporate criminal liability.[9]

Events that often occur are the provision of credit by banks in violation of the Maximum Lending Limit (BMPK) as prohibited in Articles of the Banking Law, or providing credit without adequate analysis as required by Article 8 of the Banking Law. Where according to the provisions of Article 49 paragraph (2) letter b of the Banking Law, only members of the board of commissioners, directors, or employees of the bank concerned can be threatened with a criminal offense for such violations. While the bank itself can not be dragged and sentenced.[10]

Another legal event that is very likely to occur in the era of disruption is the leakage of customer data as a result of the use of financial technology. Whereas the Banking Law itself has

3 *Binus University. (2020, September). Banking Era 4.0: Potential, Risks and Challenges of Transformation [Online]. Available: https://maksi.binus.ac.id/2020/09/15/perbankan-era-4-0-potensi-risiko-dan-tantangan-transformation.*

4 *Economic News. (2020, March). Digital Bank 4.0 and Fintech Regulations in the Industrial Revolution 4.0 Era [Online]. Available: https://academy.warta Ekonomi.co.id/page/workshop/view/100/ regulation-digital-bank-40-dan-fintech-pada-era-revolution-industri-40.*

5 *Ibid.*

6 *Binus University. Loc.Cit.*

7 *Ibid.*

8 *Sutan Remy Sjahdeini, Teachings on Criminalization: Corporate Crime & Its Intricacies, Jakarta: Kencana, 2017, page .231.*

9 *Ibid.*

10 *Ibid.*

regulated bank secrecy as everything related to information regarding depositors and their deposits, see Article 1 number 28 of the Banking Law. Furthermore, in Article 40, Article 41, Article 41 A, Article 43 of the Banking Law, it stipulates the exceptions to bank secrecy, namely except for tax purposes, settlement of bank receivables, judicial interests in criminal cases that can be given to the legal apparatus such as Police, Prosecutors, or Judges with the permission of the Leader, in civil cases.

This provision implies that customer privacy protection is not only related to financial data, whether it is a deposit or other bank product, but also customer privacy data that is informational or information related to identity or other privacy data outside of financial data. Accountability for breaches of bank secrecy is only borne by members of the Board of Directors, Commissioners, Directors, bank employees or other affiliated parties, without touching on criminal liability for the bank itself.

Based on the description above, there is a legal vacuum against criminal liability for banks as corporations that commit banking crimes, and therefore it is also interesting to study further in the context of reforming banking criminal law in order to provide legal certainty and justice in society.

B. **Research Methods**

To answer the writing questions that have been formulated above, the authors will use the normative research method.[11] This is applied to obtain scientific truth on the legal issues being studied.[12] The statute approach is studied by reviewing all laws and regulations related to the substance of this research problem.[13] While the conceptual approach examines matters relating to the notion of corporations, criminal acts, theories of criminal responsibility and others that are used as the author's support in building a legal argument against the issues studied.[14] The research specifications used in this study used descriptive analytical.[15]

This approach is carried out in relation to the criminal liability of banks in maintaining the confidentiality of their customer data as digital banking users in the era of disruption. While legal materials consist of primary legal materials, namely various existing and used statutory regulations, secondary materials in the form of textbooks related to problems, and tertiary legal materials are instructions or explanations for primary legal materials and secondary legal materials such as legal dictionaries. The collection of the three materials is carried out through library research by collecting and analyzing library materials such as banking crimes and the criminal liability of banks as corporations, which is then continued by analyzing research legal materials using inductive analysis methods.

C. **Results and Discussion**

1. **Liability According to Law no. 10 of 1998 concerning Amendments to Law no. 7 of 1992 concerning Banking**

Article 1 number 2 of the Banking Law states that a bank is a business entity that collects public funds 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 the people at large.

The term business entity is not something foreign in everyday life in society. In terminology, the word business entity is divided into two syllables, namely "body" and "business". The Big Indonesian Dictionary (KBBI) provides a definition of the word agency which can be interpreted as a group of people who are a unit to do something, while the definition of the word business can be interpreted as an activity in the field of trade (with the intention of seeking profit/profit); trading; company. There is no difference between a company and a business entity in principle.[16]

At the normative level, one example of legislation that uses the term entity is the Law on General Tax Provisions. More precisely in Article 1 point 3 of Law Number 28 of 2007 concerning the third amendment to Law Number 6 of 1983 concerning General Provisions on

11 Bimo Bayu Aji Kiswanto, and Anis Mashdurohatun, The Legal Protection Against Children Through A Restorative Justice Approach, Law Development Journal, Volume 3 Issue 2, June 2021, Page 223-231

12 Philipus M. Hadjon, Writing Legal Research Report, Surabaya : Airlangga University, 1999, page. 2.

13 Peter Mahmud Marzuki, Legal Research, Jakarta: Kencana, 2005, page. 126.

14 Peter Mahmud Marzuki, Legal Research Revised Edition, Jakarta : Praenada Media, 2017, page.173.

15 Julizar Bimo Perdana Suka , Bambang Tri Bawono , and Andri Winjaya Laksana, The Implementation of Code of Conduct for Members of Police as Accurators of Murder, Law Development Journal, Vol 4 No 2, June 2022, Page 197-204

16 Rifqotunnisa, Definition of Business Entity, Jakarta: Faculty of Law, Islamic University of Jakarta, 2013, page.1

Tax Procedures, which determines:

> *"Entity is a group of people and/or capital which is a unit, whether doing business or not doing business, which includes limited liability companies, limited liability companies, other companies, State-Owned Enterprises or Regional-Owned Enterprises in whatever name and form, firm , kongsi, cooperatives, pension funds, partnerships, associations, foundations, mass organizations, socio-political organizations, or other organizations, institutions and other forms of bodies including collective investment contracts and permanent business entities."*

The term corporation according to the Black's Law Dictionary, is defined as a legal entity that is under the existing legal institutions in a country. The purpose of this business is to gain profits consisting of many people and in the form of an association. Company members will benefit in accordance with the amount of capital and adjust any changes that may occur. Meanwhile, according to Satjipto Raharjo, a corporation is an entity created by law, so that the death of a corporation depends on the legal person who plays a role in it. When the law wants to shut down the corporation, it can do everything to make it happen.[17] The 2015 Draft Criminal Code-Revised Law (hereinafter referred to as R-KUHP 2015) also defines corporations in Article 189, namely an organized collection of people and/or assets, both legal entities and non-legal entities.

Thus, a business entity is a form of embodiment of a corporation, both a business entity that is a legal entity and a business entity that is not a legal entity, and a corporation is a legal subject created by law originating from a combination of people in order to achieve a certain goal.

The Banking Law divides bank categories into 2 (two) namely Commercial Banks and Rural Banks. This means that the object of regulation of the Banking Law is a corporation consisting of Commercial Banks and Rural Banks. However, the Banking Law has not adopted the concept of corporate responsibility at all, even though this Banking Law was created after the concept of corporate responsibility was adopted by various other special criminal acts.[18]

The Banking Law regulates criminal provisions and administrative sanctions in Articles 46 to 53. Acts that are categorized as criminal acts in the Banking Law include, among others:

1) Collecting funds from the public in the form of deposits without permission from the Management of Bank Indonesia (Article 46);
2) Confidential information regarding depositors and their deposits, except for tax purposes, settlement of bank receivables that have been submitted to the State Receivables and Auctions Agency/State Receivable Affairs Committee, and for judicial purposes in criminal cases, must bring a written order or permission from the leadership of Bank Indonesia (Article 47 paragraph 1)
3) Deliberately not providing information that must be fulfilled for tax purposes, settlement of bank receivables that have been submitted to the State Receivables and Auctions Agency/State Receivable Affairs Committee, and for judicial purposes in criminal cases (Article 47A)
4) Obligations and omissions of banks to submit to Bank Indonesia all information and explanations regarding their business according to the procedures established by Bank Indonesia; provide an opportunity for examination of books and files at the bank and must provide the necessary assistance in order to obtain the truth of all information, documents and explanations reported by the bank concerned (Article 48)
5) Make or cause false records in the books or in the reporting process, as well as in documents or reports on business activities, transaction reports or bank accounts;
   omit or exclude or cause non-recording in the books or in reports, as well as in documents or reports on business activities, transaction reports or bank accounts;
   changing, obscuring, hiding, deleting, or eliminating the existence of a record in the books or in a report, or in a document or business activity report, transaction report or bank account, or intentionally altering, obscuring, eliminating, hiding or damaging the bookkeeping records;
   requesting or receiving, permitting or agreeing to receive a reward, commission, additional money, service, money or valuables, for his personal benefit or for the benefit of his family, in order to obtain or seek to obtain for another person a down payment, bank guarantee, or credit facilities from banks, or in the context of purchasing or discounting by banks on bills of lading, promissory notes, checks, and trading 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. ;
   fail to take the necessary steps to ensure the bank's compliance with the provisions of this Law and other laws and regulations applicable to banks;
   (Article 49)

17 *Ibid.*
18 *Sutan Remy Sjahdeini, Loc.Cit.*

6) Not carrying out the necessary steps to ensure the bank's compliance with all applicable laws and regulations (Article 50)
7) Taking or not taking action that results in the bank not carrying out the necessary steps to ensure the bank's compliance with all applicable laws and regulations (Article 50A)

All provisions regarding banking crimes are only regulated for and to members of the board of commissioners, directors, shareholders, and bank employees, with sanctions both imprisonment and fines. No one has determined that a bank is the subject of a banking crime that can be held accountable.

Meanwhile, the provisions regarding the provision of administrative sanctions to banks and to affiliated parties are related to:

1) Failure to fulfill the obligations as referred to in Article 47, Article 47A, Article 48, Article 49, and Article 50A (Article 52);
2) Does not fulfill its obligations as specified in this Law or submits considerations to the competent authority (Article 53).

Violation of the administrative actions, the bank may be subject to sanctions, among others:

a. monetary fines;
b. written warning;
c. decrease in bank soundness level;
d. prohibition from participating in clearing activities;
e. freezing of certain business activities, either for certain branch offices or for banks as a whole;
f. dismissal of bank management and subsequently appoint and appoint a temporary replacement until the General Meeting of Shareholders or the Meeting of Cooperative Members appoints a permanent replacement with the approval of Bank Indonesia;
g. inclusion of members, management, bank employees, shareholders in the list of disgraceful people in the banking sector.

Meanwhile, administrative sanctions against affiliated parties as referred to in Article 53 can be in the form of:

a. fines, namely the obligation to pay a certain amount of money as a result of non-compliance with the provisions of this Law;
b. delivery of written warnings;
c. prohibition to perform the function as directors or commissioners of banks;
d. prohibition to provide services to banks;
e. submission of proposals to authorized agencies to revoke or cancel business licenses as service providers for banks (among other things to consultants, legal consultants, public accountants, appraisers).

Thus, it is clear that the Banking Law does not yet regulate or adopt corporate criminal liability in the banking sector.

2. **Banking Criminal Liability Based on the Vicarious Liability Principle**

The development of progress and use of technology in the era of disruption or the digital era 4.0 is also coupled with the Corona Virus Diseases (Covid-19) pandemic which requires limiting social interaction between humans, making all aspects of business compete to create internet-based applications so that businesses can run their business. or keep it going. Banking is no exception, where banks are competing to overcome the challenges of the era of disruption or the digital era 4.0 by developing financial technology (fintech), with advantages and convenience for users during the COVID-19 pandemic.

The risk that is very likely to occur with the development of banking technology is related to maintaining bank confidentiality, both in the form of personal customer data, customer deposit data, and customer loan data. This is in line with the principle of Indonesian banking in conducting its business, namely the principle of democracy by using the principle of prudence.

One of the provisions that are most vulnerable to data leakage is in the provisions of Article 44 paragraph (1) of the Banking Law: "In the context of exchanging information between banks, bank directors may notify the financial condition of their customers to other banks", with the explanation: "Exchange information between banks. bank is intended to facilitate and secure bank business activities, among others, to prevent double credit and to know the condition and status of another bank. Thus the bank can assess the level of risk faced, before making a transaction with a customer or with another bank.

The vulnerability in question is related to the presence or absence of good faith from everyone related to their work functions in banking. In fact, marketing from other banks is often targeted at calling phone numbers that become personal data just for the purpose of offering banking products. This is what often results in undesirable things for other unlawful acts such as

legal cases of breaking into customer funds.[19]

Cases related to the leakage of customer data that occurred in Indonesia, including the Bank Jombang case that occurred in April 2018, where there was an alleged violation of the Standard Operating Procedure (SOP) carried out by Bank Jombang in order to smooth out credit applications for a number of customers, to the occurrence of data leaks to customers. outside.[20]The most recently discussed case also occurred in September 2021, namely the case of the alleged sale of data for 2 million BRI Life customers at a price of $7,000 or around Rp. 101.6 million.[21]

This has further extended the series of banking cases and their law enforcement. Moreover, there is no regulation of corporate criminal liability in the Banking Law itself.

a. **The Urgency of the Teaching of Vicarious Liability**

The teaching of vicarious liability is a doctrine or doctrine of corporate criminal responsibility adopted in civil law.[22] In the United States, this doctrine is called the "Doctrine of Respondeat Superior", which is used to criminalize corporations.[23] In civil law, this doctrine states that there is a relationship between employee and employer or principal and agents, and applies the maxim which reads qui facit per alium facit per se, which means that someone who acts through another person is considered to have committed the act himself.[24] This doctrine usually applies in civil law concerning acts against the law (the law of torts) based on the doctrine of respondeat superior.[25]

In civil acts, it is regulated regarding the relationship between superiors and subordinates or workers and employers, where the employer is responsible for the mistakes made by the employee. So that if there is an error made by the employee that results in the loss of one of the parties, the party can sue the employer or his superior to be responsible. However, the liability is limited as long as the actions committed by the worker or his subordinates are still within the scope of work or authority and accountability can be proven.[26]

This concept was later adopted into criminal law as the doctrine of vicarious liability which underlies one form of corporate criminal liability. This doctrine teaches about a criminal responsibility imposed on a person for the actions of others (the legal responsibility of one person for the wrongful acts of another).[27] Accountability as referred to is criminal liability that occurs in terms of actions committed by other people within the scope of work or position.[28]

According to Barda Nawawi Arief, vicarious liability is a concept of a person's responsibility for mistakes made by others, such as actions taken that are still within the scope of his work (the legal responsibility of one person for wrongful acts of another, as for example, when the acts are done within the scope of employment).[29]

Barda Nawawi Arief also mentions that in the implementation of vicarious liability, there are several limitations, where a person cannot be held accountable for actions committed by others if; (1) does not fall within the scope of work or authority; (2) what the employee does is an act of aiding and abetting; and (3) what the employee does is an attempt to commit an offense.[30]

Black's Law Dictionary defines vicarious liability as:

"Liability that a supervisory party (such as an employer) bears for the actionable conduct of a subordinate or associate (such as an employee) because of the relationship between the two parties".[31]

The application of this doctrine can only be carried out after it can be proven that there is indeed a subordinate relationship between the employer (employer), namely

19 *Sri Ayu Astuti, Era of Technology Disruption 4.0 and Legal Aspects of Personal Rights Data Protection, Pakuan Justice Journal of Law, Volume 01, Number 01, January-June 2020, page. 23-24.*

20 *FB Editor. (2018, April). Observing the Jombang Bank Case, From Leaking Customer Data to Alleged SOP (Online) Violations. Available : https://factualnews.co/2018/04/13/menilik-case-bank-jombang-kebocoran-data-nasabah-till-dugaan-pelanggaran-sop.*

21 *Caesar Akbar. (2021, September). 6 Cases of Leakage of Personal Data in Indonesia (online). Available : https://nasional.tempo.co/read/1501790/6-case-kebocoran-data-private-di-indonesia.*

22 *Loebby Luqman, Head of the Selection of Criminal Acts in the Economic Sector, Jakarta: Datacom, 2002, page. 93*

23 *Sutan Remy Sjahdeini, Op.Cit, page. 156.*

24 *Aulia Ali Reza, Corporate Accountability in the Draft Criminal Code, Jakarta: Institute for Criminal Justice Reform, 2015, pp.19.*

25 *Sutan Remy Sjahdeini, Op.Cit, page. 157.*

26 *Aulia Ali Reza, Loc. Cit.*

27 *Romli Atmasasmita, Comparative Principles of Criminal Law, Jakarta: Indonesian Legal Aid Foundation, 1989, page. 93*

28 *Muladi, Dwidja Priyatno, Corporate Criminal Liability, Jakarta: Kencana Prenada Media Group, 2011, page. 113*

29 *Ahmad Sofian. (2017, April). Vicarious Liability and Brake Blong Cases (Online). Available : https://business-law.binus.ac.id/2017/04/29/vicarious-liability-dan-case-rem-blong/*

30 *Ibid.*

31 *Aulia Ali Reza, Op.Cit, page.20*

a person or corporation, and the person who committed the crime. This subordination relationship then becomes the basis for imposing criminal responsibility on someone for the actions of others. This is due to the attribution of actions from employers to workers.[32]

In the vicarious liability doctrine, the attribution of actions from employers to workers can be divided into two levels, namely:

> *"The doctrine of vicarious liability is based on the attribution of the deed to the principal or the employer, in the two-stage process. First, there is an examination of whether the elements of the offense were established in the conduct of the agent or the employee. Once these elements are identified in the perpetrator's conduct, they are copied and ascribed to the principal or the employer as well, based on the legal relationship that exists between them, this relationship, in and of itself, is a legal and flawless relationship of agency or employment.*[33]

With the attribution of actions from the employer (employer), namely a person or corporation, with the person committing the crime, it turns out that it still raises doubts about the subordination relationship, which is caused by the extent of autonomy of a professional employee, representative, or proxy of the corporation, so that the burden of responsibility to the employer, in this case the corporation, for the actions of workers, agents, or representatives based on their work on the basis of a subordinate relationship becomes blurred how far the boundaries are.[34] Meanwhile, it is not always clear whether the criminal act has been committed in the context of its duties.[35]

In common law, vicarious responsibility can be imposed on a person or employer corporation for the actions of his subordinates that have caused public disturbance (public nuisance) or in the case of making statements that can damage the good name of others (criminal libel).[36]

The doctrine or teachings of the vicarious is a matter of interpretation of the law by considering the policy of the law and whether the doctrine of the vicarious will become a pillar in law enforcement.

In its application, this doctrine must be seen how far it can be carried out, because this doctrine is a form of deviation from the fundamental principle of the criminal law, the principle of mens rea, and therefore its application needs to be limited. In England, vicarious liability only applies to certain types of criminal acts, namely offenses that require quality and offenses that require a relationship between employer and worker. Likewise in America, vicarious liability can only be applied if it has been expressly stated in the applicable law.[37]

Lord Russell LJ, a judge in England, argued that vicariously criminal liability for the actions of his employees can only be charged to the employer if the employee is carrying out his duties, on the other hand, if the employee's actions are carried out outside or have nothing to do with his duties, the employer do not have to bear criminal responsibility.[38]

Controversy over this doctrine has been put forward by many scholars, because it is considered contrary to the basic principles of criminal law. One example is the exclusion of the element of guilt, where a person can be criminally responsible for actions committed by others. Boisvert says that this doctrine clearly deviates from the doctrine of mens rea because it holds that human error is automatically attributed to others who have done nothing wrong.[39]

Another controversy was also raised by Eric Colvin who divided it into two categories: First, it is said to be underinclusive on the grounds that criminal liability is imposed only through criminal liability from other parties. Meanwhile, criminal acts require the existence of a form of error that is only found in the perpetrator who is a human. If there is no fault with that person, then there is no criminal liability for the corporation either, regardless of the level of the corporation's fault. Second, it is said to be overinclusive on the grounds that if there is an error on the part of a person, then the corporation will be responsible, even though there is no element of error on the part of the corporation.[40]

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32 Sutan Remy Sjahdeini, Op.Cit, page. 159.
33 Ibid.
34 Sutan Remy Sjahdeini, Op.Cit, page. 159.
35 Anne-Marie Boisvert, Corporate Criminal Liability, as quoted by Sutan Remy S., Ibid.
36 Ibid, page.158
37 Sutan Remy Sjahdeini, Op.Cit, page.160
38 Gary Scanlan and Christopher Rian, An Introduction to Criminal Law, London: Backstone Press Limited, 1985, page. 121.
39 Aulia Ali Reza, Op.Cit, page.20
40 Eric Colvin, Corporate Personality and Criminal Liability, Rutgers University School of Law, 1996, page.3

However, the existence of this doctrine is also considered to have resolved several problems regarding corporate criminal liability, where this doctrine can be applied to acts committed by low-level employees, it can also include acts committed by people outside the corporate organization. , as long as there is an employment relationship with him. This is due to the wide scope of the subordinate relationship in vicarious liability as long as there is an employment relationship between the two parties and is limited to the attribution of the tasks assigned.

In addition, this doctrine is also useful in terms of prevention. According to Low, this prevention is carried out because an employer is considered responsible for what his workers do as long as it is done within the scope of work. Thus, the company as the employer will supervise what its employees do in order to prevent violations or criminal acts.[41]

b. **Application of the Vicarious Liability Principle in Banking Corporate Criminal Liability**

In Indonesia, the implementation of criminal liability against corporations has begun to be accommodated as in the 2015 R-KUHP, Article 48 which stipulates: "Corporations are the subject of criminal acts".[42]

The definition of a corporation in the 2015 R-KUHP itself is much broader than the corporation in civil law, where the 2015 R-KUHP Article 189 defines a corporation as an organized collection of people and/or assets, both legal entities and non-legal entities. Whereas in civil law defines a corporation as an entity or association that can have rights and can act like humans and has its own wealth and can be sued or sued before a judge.[43]

Regarding corporate criminal liability vicariously adopted and included in the 2015 R-KUHP, Article 39 paragraph (2), which stipulates: "In certain cases, everyone can be held accountable for criminal acts committed by other people, if specified in a law. -law".

Article 39 paragraph (2) of the 2015 R-KUHP is further explained in its explanation, as follows[44] :

> *"This provision is an exception to the principle of no crime without guilt. The birth of this exception is a refinement and deepening of the regulative principle of juridical morals, namely in certain cases a person's responsibility is deemed appropriate to be extended to the actions of his subordinates who do work or actions for him or within the limits of his orders. Therefore, even though a person does not in fact commit a crime, in the context of criminal liability, he is deemed to have a fault if the actions of other people in such a position constitute a crime. As an exception, the use of this provision must be limited to certain events that are expressly determined by law so as not to be used arbitrarily.*

Furthermore, the 2015 R-KUHP provides regulations regarding the types of criminal acts deemed committed by corporations, contained in Article 49, which stipulates:

> *"A criminal act is committed by a corporation if it is committed by people who have functional positions in the organizational structure of the corporation acting for and on behalf of the corporation or for the benefit of the corporation, based on an employment relationship or based on other relationships, within the scope of the corporation's business, either individually or together"*.

In line with the provisions of Article 49 of the 2015 R-KUHP, Remmelink said that corporations can always be said to do or not act through or be represented by individuals.[45]

If you look at the current provisions of the Banking Law, where there is no single article that determines banks as the subject of banking crimes, then based on the vicarious liability doctrine, corporations can be held criminally responsible. Moreover, with the rapid advancement of technology in this era of disruption, it is possible for banking crimes to occur, especially regarding bank secrecy in protecting customer data.

Through the doctrine of vicarious liability, the corporation can be held responsible for the actions of the parties who have been given task attribution by the corporation based on an employment relationship. This is not closed to workers who are within the company's organs, but also agents or representatives who are outside the company's organs, with limitations as long as the actions carried out by the worker, agent, or representative are

41 *Aulia Ali Reza, Op.Cit, page.22*

42 *National Law Development Agency, 2015 Draft Criminal Code, Article 48.*

43 *Chidir Ali, Legal Entities, Bandung: Alumni, 1991, page.11.*

44 *Sutan Remy Sjahdeini, Op.Cit, page. 169.*

45 *Jan Remmelink, Criminal Law: Comments on the Most Important Articles of the Dutch Criminal Code and their Equivalents in the Indonesian Criminal Code, Jakarta: PT. Gramedia Pustaka Utama, 2003, page.106.*

limited to the scope of work or attribution given. to the worker or agent.

According to the author, the application of the vicarious liability doctrine is more appropriate to use in the Banking Law, compared to the application of other doctrines, for example the identification doctrine which also adheres to the vicarious principle in its application, but the identification doctrine is only limited to workers in the high-level manager category, while the vicarious doctrine can reach up to lowly worker.

The author's belief is supported by the provisions in the Banking Law itself, in which the imposition of criminal liability is only addressed to members of the board of commissioners, directors, bank employees or other affiliated parties. This means that criminal acts that can be committed are not only limited to acts committed by high-level managers, but also allow bank employees or other affiliated parties to commit, as long as there is an employment relationship.

However, in the case of the application of the vicarious liability doctrine, the corporation is not necessarily criminally liable, but the public prosecutor must be able to prove the existence of mens rea as the basis for the perpetrator in carrying out the actus reus.[46]As well as the provisions of Article 39 paragraph (2) of the 2015 R-KUHP, the application of the doctrine of vicarious liability can only be carried out if it has been explicitly stipulated in a law. On the other hand, if the law does not stipulate such matters, the public prosecutor cannot apply the principle of vicarious responsibility for the actions of one person to another party, whether committed by individuals or the corporation itself.

Therefore, to provide legal certainty and justice in the enforcement of corporate law, especially in the banking sector, it is appropriate to make an amendment to the Banking Law by including provisions regarding criminal liability against corporations, namely banks.

D. Conclusion

Based on the description above, the existing Banking Law in Indonesia does not currently accommodate corporate criminal liability, the Banking Law only imposes criminal liability aimed at members of the board of commissioners, directors, bank employees or other affiliated parties. In cases of banking crimes involving corporations, it is necessary to apply the principle of vicarious liability, so that banks can be charged with criminal liability.

The application of the principle of vicarious liability to corporations suspected of committing banking crimes can provide legal certainty and justice in law enforcement in Indonesia, which is not only limited to acts committed by high-level managers, but also allows employees to do so. bank or other affiliated parties, as long as there is an employment relationship. However, the application of this principle does not necessarily place the corporation to always be subject to criminal responsibility, because the public prosecutor must first be able to prove the existence of mens rea as the basis for the perpetrator in carrying out the actus reus. With this legal reform, it is hoped that it will become a legal certainty and justice in the enforcement of corporate law, especially in the banking sector.

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