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Reconstruction of Law Enforcement against Crime in Banking Based on Justice Value

Marion Oemar[1*], Mahmutarom[2], Umar Ma'ruf[3]

[1]Doctorate Student of Faculty of Law Sultan Agung Islamic University Semarang, Indonesia
[2,3]Faculty of Law Sultan Agung Islamic University Semarang, Indonesia

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***Corresponding author:** Marion Oemar

Abstract

The purposes of this research are to understand the impact of law enforcement in the settlement of banking crimes and to understand the reconstruction of law enforcement in criminal cases that are just. The method used in this research is using a normative juridical approach with a constructivist paradigm used. The Research shows that the impact of law enforcement in the settlement of banking crimes, in general, can lead to problems in various ways or modes because new modes appear in the field of banking crimes, so there are many kinds of banking crimes that have emerged in Indonesia. There is misuse of credit, escaping customer money, establishing a type of banking business without a permit, falsification of demand deposits or savings, falsification of letters of credit, then criminal law enforcement against banking crimes that have not been maximized needs to be increased, because crimes continue to undergo significant additions with very extreme modes. sophisticated, therefore, a Law Reconstruction is needed on Law no. 10 of 1998 Article 29 point 3 by adding that in providing credit or financing based on Sharia Principles and conducting other business activities, banks are required to take methods that do not harm the bank and the interests of customers who entrust their funds to the bank. And in granting credit, a careful assessment is carried out on the character, ability, capital, Collateral, and business prospects of the prospective Customer Recipient of the Facility. Article 37 of the Republic of Indonesia Law No. 21 of 2008 concerning Islamic Banking by adding at the end of the sentence "Eliminating discrimination against users of banking funds so that there is a need for strict screening in granting credit, a careful assessment of the character, ability, capital, collateral, and business prospects of the prospective fund recipient is required".

Keywords: Reconstruction, Law Enforcement, Banking Crime, Justice.

INTRODUCTION

The banking industry is a form of financial industry that has a unique business characteristic that is different from other types of businesses. Therefore, banks as a business sector that is prone to irregularities and crime, as well as vulnerable to potential systemic failures, need to be monitored to ensure that management is carried out in a healthy and prudent manner in accordance with the principles of risk management and good governance [1]. Cases of irregularities and crimes in the banking sector always target customers as the lowest part of the banking network, because customer status is vulnerable due to practices in the field between customers and bank employees that provide opportunities for employees to abuse customer trust, resulting in criminal banking practices within the bank.

Crimes in the banking sector, in general, are crimes classified in the laws and regulations in the field of administrative law which contain criminal sanctions. The term crime in the banking sector is to accommodate all types of unlawful acts related to activities in running a bank business, while the term criminal offense in the banking sector is a crime committed in carrying out its functions and business as a bank and can be categorized as an economic crime. Crime in the banking sector is a form of economic crime that is often carried out by using banks as their means and activities that is very difficult to monitor or prove based on banking laws.

The modus operandi of crime in the banking sector is carried out by obtaining credit from the Bank in a fictitious way, using false documents or collateral, obtaining credit repeatedly with the guarantee of the same object, misuse of credit, ordering, eliminating,

writing off, not recording what should be fulfilled and many more[2]. In addition, it forces banks or affiliated parties to provide information that must be kept confidential, to not providing information that must be fulfilled to the Bank of Indonesia or to State Investigator first.

Every perpetrator of a banking crime must be held accountable for his actions in accordance with applicable law. Sentencing for criminal cases is basically a negative reward for deviant behavior committed by members of the community, as this view sees punishment only as retaliation for mistakes made on the basis of their respective moral responsibilities, produced by the imposition of a sentence.

A criminal act is an act in which the perpetrator is subjected to a criminal penalty under the law. Banking crimes involve public funds deposited in banks, because banking crimes harm the interests of various parties, both the bank itself as a business entity and the depositor of funds, the banking system, banking authorities, the government, and the wider community. Although the term banking crime and criminal acts in the banking sector do not yet have a common opinion, when viewed from a juridical point of view, none of the laws and regulations provides an understanding of banking crimes, this means that criminal acts in the banking sector is broader, because it involves actions related to banking and is threatened with criminality, even though it is regulated in other regulations [3].

One of the modes used in banking crimes is fictitious financing. This is regulated in Article 49 paragraph (2) letter a of Law Number 10 of 1998, which states that: "*Members of the board of commissioners, directors, or bank employees who knowingly request or receive, allow or agree to receive a reward, commission, additional money, service, money or valuables, for their personal benefit or for the benefit of their family, in order to obtain for themselves or for others in obtaining advances, bank guarantees, or credit facilities from banks, or in the context of purchasing or discounting by banks of bills of exchange, promissory notes, checks, and trading papers or other evidence of obligations, or in order to give approval for another person to withdraw funds that exceeds the credit limit at the bank, is threatened with imprisonment for a minimum of 3 (three) years and a maximum of 8 (eight) years and a fine of at least Rp. 5,000,000,000.00 (five billion rupiah) and a maximum of Rp. 100,000,000,000.00 (one hundred billion rupiah)".*

The above case's mode regarding fictitious financing has violated Article 49 paragraph (2) letter (a) of Law Number 10 of 1998 where the crime is carried out by bank employees, namely all bank officials and employees who have authority and responsibility on matters relating to the business concerned and committing a violation with fictitious financing as it uses fictitious or fake documents or guarantees, therefore, it can be processed according to the criminal justice system, where, If found guilty in the trial process, the judge will pass a sentence.

This problem, as a policy issue, shows that the use of criminal law is actually not a must. Likewise, because there is no absolutism in policy, it will also affect the workings of the criminal justice system. Because they will be faced with the problem of banking criminal cases related to violations of the Banking Law. This problem is what urges the author to study it further in a research with the main problem as follows:

1. What is the impact of law enforcement in the settlement of banking crimes?
2. How to reconstruct law enforcement in banking criminal cases based on justice value?

METHOD OF RESEARCH

The type of research method used in writing this journal is the method of normative legal research or library research, this is a study that studies document studies, namely using various secondary data such as laws and regulations , legal theory, namely by collecting data in a literature study (library research) [4]. The data used are primary and secondary data. The secondary data that have been obtained are then analyzed qualitatively, as much as possible using existing materials that are based on the principles, understanding and sources of existing law [5].

The data source used in this study is secondary data consists of primary legal materials, secondary legal materials and tertiary legal materials, namely; legislation, official records or minutes in making legislation and judges' decisions. In this study the primary data are the Related Regulation, while the Secondary legal material is material that provides an explanation of primary legal material, such as; books, theses, dissertations, other research results relevant to research, academic papers, professors' inaugural speeches. Tertiary legal materials are legal materials that provide instructions or explanations for primary and secondary legal materials, such as; legal dictionary, encyclopedia and others [6].

RESEARCH RESULT AND DISCUSSION

1. Impact of Law Enforcement In The Settlement Of Banking Crimes

The role of banking is indeed very important because banking as an intermediary institution is certainly one of the factors that trigger economic movements in all sectors. The increase in demand for bank credit, whether consumer credit, working capital, or investment, will certainly encourage purchasing power, business growth, and an increase in investment. In Indonesia alone, the ratio of banking assets to Gross Domestic Product (GDP) is still only at 55.01% at the end of 2019 [7].

The growth of bank credit has actually become the focus of the current government, because, in general in achieving the vision of Indonesia's economic development in 2045, the government needs to encourage the acceleration of structural reforms, considering several issues that are still being faced, including low national productivity caused by the low quality of Human Resources (HR) and the infrastructure gap as well as the low level of technology adoption. In responding to these development issues, Indonesia needs to increase its domestic financing capacity, including the banking intermediation function and the conditions for financial inclusion are still being improved. Nevertheless, the government, Bank of Indonesia, and Indonesia's Financial Services Authority (OJK) have coordinated and attempted to manage banking liquidity conditions, considering that in the two crisis episodes experienced by the domestic economy, both the 1997-1998 Asian financial crisis and the 2008 global financial crisis, liquidity in the financial sector, especially banking, needs to be managed in a timely manner and in a healthy condition. By managing the liquidity condition of the banking sector in a healthy condition, the stability of the banking sector can be realized. Therefore, efforts to encourage stability in the banking sector in the real sector are expected to remain optimal.

Based on this, for the development of developing countries such as Indonesia, it is then must be directed to achieve an optimal growth rate of per-person income, this is estimated to be achieved if the amount of Gross National Product increases faster than its population growth. In line with the increase in the Gross National Product per person in developing countries, it appears that the share of national income received by 40% of the population did not increase during the development period. On the contrary, it will experience a decline and the share of the national product received by 20% of the population will actually increase substantially more than the national average level of increase.

Viewed from the point of view of Gross National Product, developing countries such as Indonesia show great progress, but from the point of view of income sharing, in this development period the rich are getting richer and the poor are getting poorer. So that the inequality that previously existed between developed countries and developing countries at the international level, now also spreads between community groups at the national level. However, the international income gap, which remains wide, seems to be more easily accepted by the ruling elites of the Third World, than the income gap within their respective countries, which is often worse than the international gap.

In such circumstances, it is not surprising that in international forums, there is a desire to overhaul the current economic order, in addition to the existence of groups of developing countries carrying out struggles to enforce the new international economic order. This struggle is essential to seek a development process in the international world that allows for a more equitable distribution of world income. At this time, it is increasingly clear that the actions of international institutions and several industrialized countries to prioritize improving the fate of the people who live in conditions of absolute poverty, which concurrently appears in many third world discussions about income distribution so that international credit is increasingly being demanded to direct its programs to the poor in general.

The presence of law in society, among others, is to integrate and coordinate interests that may conflict with one another [8]. In this regard, the law must be able to integrate it so that conflicts of interest can be minimized as the law protects a person's interests by allocating power to him to act in the context of that interest because the law is always moving, changing, following the dynamics of human life. Verily, the Law is for man as law does not exist for oneself and one's own needs, but for humans, especially human happiness.

Apart from the above discussion. One of the facilities that have a strategic role in harmonizing and balancing each element of the development of the nation is the bank itself. This strategic role is specifically mentioned by the main function of the bank as a vehicle that can collect funds and channel public funds effectively and efficiently, which is based on economic democracy to support the implementation of national development in order to increase equity of development and its results, the economic growth that is national stability towards the increase of the standard of living of many people.

This is the role of banks in protecting customers in the event of bank liquidation. Based on the Indonesian Banking Regulations, the Law provides a place for customers to protect themselves by [9]:

a. Implicit deposit protection, namely: protection generated by effective bank supervision and development, which can prevent bank bankruptcy. This protection is obtained through: (1) laws and regulations in the banking sector, (2) protection generated by effective supervision and guidance carried out by Bank Indonesia, (3) efforts to maintain the continuity of the bank's business as an institution in particular and protection of the banking system in general, (4) maintaining the credibility of banks, (5) conducting business in accordance with prudential principles, (6) providing ways of credit that do not harm the bank

and the interests of customers, and (7) providing risk information to customers.

b. Explicit deposit protection, namely: protection through the establishment of an institution that guarantees public savings, so that if the bank fails, the institution will replace the public funds deposited within the failed bank. This protection is obtained through the establishment of an institution that guarantees public savings, as regulated in Presidential Decree No. 26 of 1998 concerning guarantees against the Obligations of Commercial Banks.

The essence of legal protection, in this case, is to protect the interests of depositors and their deposits held in a certain bank against the risk of loss. This protection is also an effort to maintain and sort out public trust, especially customers, so the banking world should provide legal protection. However, by paying attention to the Banking Law, legal protection for customers is only done implicitly, for the sake of the continuity of the bank as an institution in particular and the banking system in general, the protection must be a unified whole.

The Bank of Indonesia has the authority to develop and supervise in order to maintain the continuity of the bank's business, as well as to stipulate provisions regarding the health of banks by taking into account aspects of investors (capital), asset quality, management, liquidity, etc. In relation to protection and protection of customer interests in bank activities in the field of rehabilitation, it is necessary to establish an institution that can guarantee that customer funds deposited with banks are guaranteed to be collected. For example, if a bank is liquidated, the customers of the bank in concern will get their funds reimbursed from the guarantor institution. In addition, a more important issue is the need for fostering public trust in banking through the provision of legal certainty guarantees for customers, in addition to the implementation of prudential banking principles which are fostering customer trust and at the same time as protection for the depositor community still needs to be improved to achieve the expected targets.

The Discussion about legal protection according to the Civil Code for customers, is basically on how the legal protection is used by the customers, both customers who deposit funds or customers of creditors, as well as customers who receive credit or are called debtor customers and users of banking services if it is associated with Law No. 8 of 1999 concerning consumer protection which includes bank customers as consumers, the basis of the legal relationship between the two parties is rooted in an agreement. This can be seen from Article 2 point 5 of Law No. 10 of 1998 concerning Amendments to Law No. 7 of 1992 concerning Banking. It is stated that deposits are funds entrusted by the public to banks based on money deposit agreements in the form of demand deposits, deposits, certificates of deposit, savings and/or other equivalent forms.

In order to recover the deposited funds with interest, if possible, the customer is then treated as the concurrent party who gets the first attention to be paid from the proceeds of the sale of the assets of the bank concerned as stated in government regulation (PP) No. 25 of 1999 paragraph (2) letter (a), so that customers who are harmed by bank customers who are in trouble and are liquidated can claim their basic rights by suing the court, either by class action or individually.

Protection guarantees for depositors of funds in connection with the termination of a bank's business activities are absolutely necessary. To provide future protection for the interests of depositors from failed banks, especially depositors whose funds are relatively small, it is necessary to create a deposit insurance system. The mission of this deposit insurance institution is to maintain the stability of the state financial system by insuring bank depositors and reducing disruptions to the national economy caused by bank failures.

In addition, the bank is a business entity that has special characteristics compared to business entities in general. Therefore, the bank liquidation process cannot be equated with the procedures applicable to business materials other than banks. Thus, the provisions of this law are setting aside the general provisions. This is intended to strengthen the legal basis for the smooth revocation of business licenses, the dissolution of legal entities and the liquidation of banks.

Next, The Exit policy, through the Banking Law and its Implementing Regulations is the most appropriate corridor for BI to revoke company licenses, regulate the implementation of liquidation. The revision of the Bank Liquidation Bill must contain the following substances [10]:

a. Deposit Insurance Corporation (LPS) which is divided into 2, namely: Bank Restructuring Stage and Bank Liquidation Stage. Regarding the explanation above.
b. Main Priority Protection of Customer Depositing Funds. In the sense that refunds to customers who deposit funds must be the first priority. The principle of trust adopted by the Banking Law, namely the relationship between depositors and banks is a relationship of trust.
c. Dispute Resolution against Bank Assets in Liquidation (BDL). As stated, the disbursement of assets and/or collection of BDL receivables carried out during the implementation stage of bank liquidation by the Liquidation Team often cannot run smoothly. This was due to a third party who filed a lawsuit that BDL's assets belonged to him. This shows the need for support from the judicial system for the implementation of bank liquidation

that is oriented to the interests of the wider community by providing the possibility of a fast examination procedural law in lawsuits or third-party resistance to BDL assets.

d. Settlement of Assets and Liabilities: After the expiration of the period of the liquidation team as stipulated in article 12 paragraphs (1) of PP No. 25 of 1999, the liquidation team only has 5 years to carry out the liquidation of the bank. If the liquidation of the bank cannot be completed within that time period, then according to Article 12 paragraph (2) of PP No. 25 of 1999, the sale of bank assets in liquidation shall be conducted by auction.

In line with this, the rules for the national banking system need to be perfected. This improvement aims to create reliable individual banks and a healthy, efficient, and competitive banking system as well as to avoid national banking systemic risk. In this regard, the improvement of the national banking system will not only include the improvement of institutions and bank ownership but also includes the improvement of prudential regulation which is carried out by taking into account the applicable international standards.

If according to The Bank of Indonesia's assessment, a bank is thought to be experiencing difficulties that endanger its business continuity, The Bank of Indonesia shall notify the Minister of Finance and Bank Indonesia may take action so that the bank and/or affiliated parties take actions deemed necessary to improve their financial condition, or take other actions in accordance with applicable laws and regulations.

In terms of protection for customers regarding the liquidation of a bank, the bank itself has anticipated it through protection in the form of implicit rights and explicit rights. However, in the case of a criminal act, it is an act for which the perpetrator is threatened with criminal punishment based on the law. The element of a crime is the subject (perpetrator) and the form of good deeds that are positive, namely doing an act, or negative, namely not doing an act that must be done.

Efforts to eliminate (minimize) problems related to law enforcement in the banking sector, including rearranging the legal substance through reviewing and structuring legislation on banking and other laws related to banking that exists today, referring to the orderly laws and regulations. invitation with due observance of general principles and hierarchical legislation as reforming criminal law, including those with criminal sanctions, does not mean merely improving, but replacing it is better.

Law number 3 of 2004 concerning amendments to Law of the Republic of Indonesia number 23 of 1999 concerning Bank Indonesia includes banks (corporations) and individuals as legal subjects who can be held criminally accountable by considering the current condition of society (bank customers) and the provisions others, including:

a. Law of the Republic of Indonesia Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption, as regulated in Article 20.
b. Law of the Republic of Indonesia Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering, as regulated in Articles 6 and 7.
c. The Law of the Republic of Indonesia Number 24 of 1999 concerning Foreign Exchange Traffic and the Exchange Rate System as regulated in Article 6 jo. Article 1, paragraph 3.

2. Reconstruction of Law Enforcement in Banking Criminal Cases Based On Justice Value

The implementation of banking crimes enforcement that the author designed to achieve fair norms is that justice is something very subjective. The author argues that what is meant by the term justice is something that means the presence of a social condition in which everyone gets satisfaction and happiness in general.

Justice is something that has a very identical meaning to general happiness. This is the paradigm that the author wants to convey, for the greater interest and general nature of the need for legal norms that are able to lay down the principle of justice, both customers who have large deposits and those who have small deposits are equal, their rights without discrimination in lending (loans).

Bank credit agreements generally use the form of a standard contract in which the debtor is only in a position to accept or refuse without the possibility to negotiate or bargain which in the end gives birth to an agreement that is "*not very profitable*" for one party, and profitable for the other party. Thus the provisions of private law shall apply, in this case, to the provisions of the contract law contained in the Civil Code Book III. The credit agreement is regulated in Law Number 7 of 1992 as amended by Law Number 10 of 1998 concerning Banking. This law is can set aside the general one. this means that it relies on the thirteenth chapter of the KUHPdt Book III concerning borrowing and borrowing and in Chapter I to Chapter IV regarding general provisions.

Credit transactions for their customers in the banking sector enforce standard agreements in order to produce fast and efficient services. In practice, there are several terms that are often used for standard contracts, among others, in English it is called Standard Contract, Pad Contract and in Dutch, it is called *Standardregeling*. In the bank loan agreement, there are several standard clauses that contradict the provisions of Article 18

UUPK and are considered detrimental to the position of one party who is economically weaker than the other party, namely the customer, including additional guarantees and guarantees and how to bind them, execution of collateral goods, repayment before the repayment period and irrevocable power of attorney [11].

Contractually or professionally, there are civil sanctions in the event that the standard clause is filed in court by the customer, then the judge must make a declaratory decision that the clause is null and void (Article 18 paragraph (3) of the UUPK); and criminal sanctions in contractual liability are regulated in Article 62 paragraph (1) of the UUPK, namely being sentenced to a maximum imprisonment of 5 (five) years or a maximum fine of Rp. 2,000,000,000 (two billion rupiah). For criminal sanctions in professional responsibility as regulated in Article 62 paragraphs (1) and (2) of the UUPK, namely business actors who violate the above provisions are sentenced to a maximum imprisonment of 5 (five) years/2 (two) years, or a maximum fine of Rp. 2, 000, 000, 000,- (Two Billion Rupiah)/Rp.500,000,000, - (Five Hundred Million rupiah) in accordance with the article that was violated.

Furthermore, the implementation of article 29 in this Law does not explain the existence of the credit granting process through the SOP "credit is given a careful assessment of the character, ability, capital, Collateral, and business prospects of the prospective Customer Recipient of the Facility".

With the principle of prudence and according to the correct procedure. This increases the risk of criminal banking crimes so that the law needs to be reconstructed where the article in question is changed in to:

a. Article 29 of Law no. 10 of 1998 concerning Banking, paragraph (3) which must be changed to: "*In providing credit or financing based on Sharia Principles and conducting other business activities, banks are required to take methods that do not harm the bank and the interests of customers who entrust their funds to the bank. And in granting credit, a careful assessment is carried out on the character, ability, capital, Collateral, and business prospects of the prospective Customer Recipient of the Facility*".
b. Article 37 of the Republic of Indonesia Law No. 21 of 2008 concerning Sharia Banking which must be changed to: "*The distribution of funds based on Sharia Principles by Sharia Banks and UUS carries the risk of failure or delay in repayment so that it can affect the health of Sharia Banks and UUS. Bearing in mind that the distribution of funds is sourced from public funds deposited with Sharia Banks and UUS, the risks faced by Sharia Banks and UUS may also affect the security of these public funds. Therefore, to maintain health and increase resilience, banks are required to spread risk by regulating credit distribution or financing based on Sharia Principles, providing guarantees or other facilities in such a way that they are not centered on debtor customers or certain groups of debtor customers. Eliminating discrimination against users of banking funds so that strict screening is needed in granting credit, a careful assessment of the character, ability, capital, collateral, and business prospects of the prospective fund recipient is required*".

CONCLUSION

1. The impact of law enforcement in the settlement of banking crimes, in general, can lead to problems in various ways or modes because there are many kinds of banking crimes that have emerged recently in Indonesia such as the misuse of credit, escaping customer money, establishing a type of banking business without a permit, falsification of demand deposits or savings, falsification of letters of credit, then criminal law enforcement against banking crimes that have not been maximized needs to be increased because crimes continue to undergo significant additions with very extreme modes. Sophisticated. In the form of a bank credit agreement, it generally uses a standard contract form, so that the debtor is only in a position to accept. So what must be realized by the parties in the credit agreement, especially for the debtor, must comply with it once the agreement is signed. With the growth of bank credit, the government urgently needs to encourage the acceleration of structural reforms, given that there are several issues that are still being faced, including low national productivity caused by the low quality of human resources and infrastructure gaps as well as the low level of technology adoption. This is to improve service and increase professionalism in banking credit in accordance with international standards.
2. Legal Reconstruction as meant by the author is in Article 29 of Law no. 10 of 1998 concerning Banking, paragraph (3) which must be changed to: "*In providing credit or financing based on Sharia Principles and conducting other business activities, banks are required to take methods that do not harm the bank and the interests of customers who entrust their funds to the bank. And in granting credit, a careful assessment is carried out on the character, ability, capital, Collateral, and business prospects of the prospective Customer Recipient of the Facility*". And then, in article 37 of the law number 21 of 2008 concerning Sharia Banking which must be changed to: "*The distribution of funds based on Sharia Principles by Sharia Banks and UUS carries the risk of failure or delay in repayment so that it can affect the health of Sharia Banks and UUS. Bearing in mind that the distribution of funds is sourced from public funds deposited with Sharia*

Banks and UUS, the risks faced by Sharia Banks and UUS may also affect the security of these public funds. Therefore, to maintain health and increase resilience, banks are required to spread risk by regulating credit distribution or financing based on Sharia Principles, providing guarantees or other facilities in such a way that they are not centered on debtor customers or certain groups of debtor customers. Eliminating discrimination against users of banking funds so that there is a need for strict screening in granting credit, a careful assessment of the character, ability, capital, collateral, and business prospects of the prospective Fund Recipient are required".

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