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# Legal Reconstruction of Criminal Accountability for Bank Employees Who Participate in the Criminal Acts of Money Laundering Based on Justice Value

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## Abstract

The objectives of this research are to analyze and find out the weaknesses in the criminal liability of Bank employees who are participating in money laundering crime and how to reconstruct the law based on the value of justice. The method used in this study uses a normative juridical approach with a constructivist paradigm. The results of the research and discussion show that the weaknesses of the law lie in the Criminal liability in the provisions of Law no. 10/1998 concerning Banking is not in line or there is no legal synchronization with the provisions of Law no. 8/2010 concerning TPPU, specifically the provisions of Article 6 paragraph (2) of Law no. 8/2010 concerning ML, which stipulates that a Bank in its position as a corporation can also be held criminally responsible. Provisions of Law no. 10/1998 concerning Banking, although it recognizes corporations as subjects of criminal law, the criminal responsibility system implemented still adheres to the individual criminal responsibility model, which only imposes accountability on controlling personnel. Therefore, the legal Reconstruction of criminal responsibility of Bank employees who participated in committing money laundering crimes based on the value of justice can be done by not only asking for and imposing criminal responsibility on controlling personnel (in this case the Board of Commissioners, Directors, and Bank Employees) but also being able to hold accountability for Banks as corporations implement an aggregation model corporate criminal liability system.

**Keywords:** Legal Reconstruction, Crime Accountability, Money Laundering, Justice Value.



## INTRODUCTION

Criminal liability regulated in Law no. 10/1998 concerning Banking in relation to banking crimes, is still limited to individual liability, namely to Bank employees, management or officers. Regarding the liability of the Bank, it can be seen from the provisions of Article 46 paragraph (2) which states that prosecution is carried out against the party giving the order to carry out the act or acting as the leader in the act, or both of them. The provisions of this article show that the criminal responsibility system in Law no. 10/1998, still applies the model of vicarious liability30 as a model or system of criminal responsibility for banking crimes.

The provisions of the article above basically acknowledge that corporations can commit criminal acts as referred to in paragraph (1), but those responsible in this case are not corporations, but those who give orders to carry out these actions, or those who act as leaders in these actions, or to both. In this way it can be seen that Law no. 10/1998 concerning Banking still adheres to the notion that only humans (*naturlijk persoon*) can commit crimes.

Judging from the articles of criminal provisions and administrative sanctions which explain that criminal responsibility is borne by those who act as corporate leaders. This accountability means that the employer is the main person responsible for the actions of the employees.

As an example of a case, it can be seen in the money laundering case resulting from the crime of corruption committed by Fuad Amin (Supreme Court, 2016), in which Bank employees actually participated in helping to facilitate Fuad Amin in placing funds resulting from corruption crimes in the financial system by opening accounts in the names of other people. The

closest person to Fuad Amin. In this case, the involvement of Bank employees here is not known with certainty whether based on orders from superiors or on the initiative of employees often referred to as surrogate liability.

The Bank itself, where the Bank employee concerned with the Fuad Amin case had falsified documents from Fuad Amin to assist in the crime of money laundering so that the provisions of Article 49 of Law No. 10/1998 concerning the Banking, Therefore, the provisions of this article deserve attention and need to be revised, related to the position of the Bank as a corporation and in relation to the responsibilities of the Bank as a corporation.

Regarding the criminal responsibility of the Bank in its position as a corporation as regulated and mentioned in Article 46 paragraph (2) of Law no. 10/1998 concerning Banking, which still adheres to the principle of personal or individual responsibility (naturalijk person) which is currently no longer in accordance with the development of the corporate criminal responsibility doctrine, which also implements a corporate criminal responsibility system in several models, such as: strict liability, the doctrine of delegation, the doctrine of identification, doctrine aggregation, the doctrine of corporate work culture models and combined teachings.

Likewise, with the provisions regarding obligations in Article 25 of Law No.8/2010 concerning PPATK, administrative sanctions are felt to be inconsistent with the role of reporting financial service providers (Banks) to PPATK regarding suspicious financial transactions that are indicated by money laundering crimes.

With regard to the obligation to submit suspicious financial transaction reports by Banks as PJK, in relation to secrecy crimes regulated in Article 48 of Law no. 10/1998 concerning Banking, in this case, it is necessary to reform the law, which is not only limited to regulating the Bank's obligation to report matters regulated in Article 41, Article 41 A and Article 42. However, it is more than that in the provisions of Article 48 Law no. 10/1998 concerning Banking, must also formulate the Bank's obligation to report suspicious financial transactions, so that there is legal synchronization between Article 48 of Law no. 10/1998 concerning Banking and Law no. 8/2010 concerning Money Laundering.

By looking at and also paying attention to the criminal responsibility of the Bank in its position as a corporation, it is hoped that in the future efforts to prevent and eradicate money laundering crimes can be carried out optimally in accordance with the expectations and mandate of Law no. 8/2010 concerning Money Laundering, namely being able to prevent and eradicate money laundering through the financial sector, especially banking institutions. Therefore, based on this description, the author is interested in conducting research and examining the problem in a scientific paper titled "*Legal Reconstruction of Criminal Accountability for Bank Employees Who Participate in the Criminal Acts of Money Laundering Based on Justice Value*" where the main problem discussed in this article is as follows:

1. What Are the Weaknesses in the regulation regarding the criminal liability of Bank employees who are participating in money laundering crime?
2. How is the Legal Reconstruction of regulation regarding the criminal liability of Bank employees who are participating in money laundering crime Based on Justice Value?

## METHOD OF RESEARCH

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in research uses a method (*socio-legal approach).* The sociological juridical approach (*socio-legal approach*) is intended to study and examine the interrelationships associated in real with other social variables (Toebagus, 2020).

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of (Faisal, 2010):

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of Laws and regulations relating to the freedom to express opinions in public.
2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported

by secondary legal materials, in the form of writings by experts and legal policies.

## RESEARCH RESULT AND DISCUSSION

### 1. Weaknesses in the Regulation Regarding the Criminal Liability of Bank Employees Who are participating in Money Laundering Crime

The Criminal liability of Bank employees participating in money laundering according to Law no. 10/1998 is related that it still implements a corporate responsibility system based on identification theory or vicarious liability so that responsibility is borne by controlling personnel or bank employees. While the Bank in its position as a corporation (legal entity), based on the provisions of Law no. 10/1998 concerning Banking cannot be held criminally responsible.

As an example, the case of joint and continuous banking and money laundering crimes committed by Melati Bunga Sombe (Liputan 6, 2022) , who was a former employee of BNI Bank Makassar Branch, in a case of banking crime and money laundering which was decided and sentenced by the Court Makassar State. The panel of judges in their decision stated that the actions of the defendant were legally and convincingly proven to have committed banking crimes and money laundering as stipulated and threatened in the first primary indictment, Article 49 paragraph (1) letter (a) of Law No. 10/1998 concerning Banking Jo. Article 55 Paragraph (1) 1st Criminal Code Jo. Article 64 paragraph (1) of the Criminal Code and the Second First Indictment, Article 3 of Law No. 8/2010 concerning TPPU Jo. Article 55 Paragraph (1) 1st Criminal Code Jo. Article 64 Paragraph (1) of the Criminal Code and Law Number 8 of 1981 concerning the Criminal Procedure Code.

In the case example above, it can be seen that an employee of Bank BNI Makassar Branch (with defendant Melati Bunga Sombe) has committed a banking crime as stipulated in Article 49 paragraph (1) of Law No. 10/1998 concerning Banking together with his co-workers, the results of the banking crime were carried out by the Defendant by laundering money by purchasing a number of luxury goods and property.

The appropriate criminal liability system in cases of banking crimes and money laundering committed by unscrupulous employees of Bank BNI Makassar Branch mentioned above is a corporate criminal responsibility system based on the identification theory doctrine or based on the vicarious liability doctrine. This is because the errors in the crime were purely committed by Bank employees in the ways mentioned in Article 49 paragraph (1) so the most relevant party to be held accountable in this case is the bank employee concerned (defendant Melati Bunga Sombe together with other Bank employees).

The system of criminal liability for Bank employees related to money laundering crimes may be different when looking at the involvement of Bank employees in money laundering from the proceeds of corruption committed by H. Fuad Amin in his position as Chair of the Bangkalan Regency DPRD, East Java for the 2014-2019 period and former Regent of Bangkalan for the 2003-2008 period, as has been examined and tried by the court and has obtained permanent legal force based on the Supreme Court's cassation decision No. 980K/Pid.Sus/2016.

In the crime of money laundering resulting from corruption crimes committed by H. Fuad Amin while still serving as Regent and Chairman of the Bangkalan Regional Representative Council, it was carried out in quite large quantities, namely 229,000,000,000. (Two hundred and twenty-nine billion rupiahs) which is carried out systematically, namely by transferring to accounts whose ownership is in the names of several close friends, so that these bank accounts are not registered in the LHKPN (State Organizers Wealth Report). Likewise, the bank accounts in his name were also different. According to the data presented, some were registered under the name Fuad Amin, RKH. Fuad Amin, H. Fuad Amin, and KH. Fuad Amin. It didn't stop there, Fuad Amin also used different names at several different banks in Bangkalan Regency, East Java, and other areas, Fuad also made accounts in the names of other people including children, family, and other people who borrowed IDs for opening an account by calling a bank person to come to Fuad's house to sign the application for opening an account and issuing an ATM, then the account book and ATM are controlled by Fuad Amin.

In the money laundering case carried out by Fuad Amin, it can be seen that there was the involvement of Bank employees, due to deviations from the application of the precautionary principle and the principle of recognizing customers which are required to be used as guidelines by the bank in carrying out the Bank's business activities (Ilma, 2022). From the involvement of Bank employees in money laundering cases resulting from corruption crimes committed by Fuad Amin, it is necessary to see how far the Bank benefits from the results of money laundering placed by Fuad Amin in the Bank concerned. If it turns out that the Bank in this case receives benefits from the placement of proceeds of crime, then based on developments in the corporate criminal responsibility doctrine and in accordance with the provisions of Article 6 paragraph (2) of Law no. 8/2010 concerning Money Laundering, against the Bank as a corporation can also be requested or charged with criminal responsibility (Widodo, 2019).

**2. Legal Reconstruction of regulation regarding the criminal liability of Bank employees who are participating in money laundering crime Based on Justice Value**

The issue of bank secrecy does not only apply within the national scope. But it also applies to the regional and international scope. Each country with another country has a different system that it adheres to. The theory of bank secrecy can be distinguished into 2 (two) types, namely the theory of absolute bank secrecy and the theory of bank secrecy which is absolute bank secrecy, meaning that the bank is obliged to keep the customer's financial secrets for their savings under any ordinary circumstances and or interests. or extraordinary (Japriyanto, 2022). While bank secrecy is relative, the bank is obliged to keep customers' financial secrets for their savings under normal circumstances, but in cases of urgent and extraordinary circumstances, said secrecy is exempted for certain motives in the interests of the state. The theory of absolute bank secrecy is more concerned with individuals so the interests of society and the state are often neglected. In contrast, the theory of bank secrecy is relatively more proportional, in certain matters the interests of society and the state are prioritized over individual interests (Toebagus, 2022). From the two theories of bank secrecy above, the Indonesian state seems to apply a bank secrecy system that is relative. In a sense, banks in the interests of society and the interests of the state in certain matters can be informed/opened to customers' financial access to their deposits. Meanwhile, those implementing an absolute bank secrecy system are Swiss banks, under any pretext/reasons that cannot be breached to disclose customer financial confidentiality data. However, over time, Swiss banks began to experience changes and/or shifts in the bank secrecy system adopted which was relatively (relative) when there was a willingness of the Swiss Bank to provide documents related to the wealth of former Philippine President Marcos (Chaikin, 2009).

The precautionary principle in managing funds must be used as a way of thinking by bankers. This also means that the precautionary principle must be adhered to proactively. The failure of the organizers of banking businesses is more common due to the lack of caution on the part of the banking sector in managing public funds. This in turn causes the bank to be in a difficult position and jeopardizes the obligation of bank secrecy which must be upheld by the bank, not solely for the interests of the customers themselves, but also for the bank concerned and for the interests of the general public themselves.

In its development, banking institutions have become the main means of storing assets originating from these criminal acts. The targets of money laundering actors are countries that have minimal provisions in the banking sector, namely countries that still uphold strict bank secrecy principles (Widodo, 2018). The lack of regulations in the field of banking and bank secrecy that are so strict in a country creates an opportunity for money launderers to more freely utilize banking service facilities as a means of laundering money from crime.

Furthermore, the provisions of Article 49 paragraph (1) of Law no. 10/1998 concerning Banking, stipulates that if the Board of Commissioners, Board of Directors, and employees of the Bank commit a crime as formulated in Article 49 paragraph (1) then criminal responsibility is borne by each controlling personnel, without mentioning the existence of a bank's responsibility in its position as a corporation. Even though the criminal acts mentioned in this article are closely related to the involvement of the Board of Commissioners, Directors, and Bank Employees in participating in money laundering, whether committed by insiders who are part of the bank or by Bank customers.

Furthermore, regarding the criminal acts mentioned in Article 49 paragraph (1) and paragraph (2) of Law no. 10/1998 concerning Banking, it is also possible to fulfill the elements of corporate crime as stated in Article 6 paragraph (2) of Law no. 8/2010 concerning Money Laundering. Therefore, related to the responsibility and imposition of criminal responsibility in the provisions of Article 49 paragraph (1) it is necessary to carry out A legal reconstruction so that it is in line with the results of the spirit of Article 46 paragraph (2) of Law No. 10/1998 concerning Banking, in which the burden of criminal liability is not only borne by the controlling personnel but also borne by the Bank in its position as a corporation.

The Legal Reconstruction of Article 49 paragraph (1) of Law no. 10/1998 concerning Banking, namely by changing the initial editorial in the formulation of the Article, namely by changing the editorial of the article which initially read: "*Members of Commissioners, Directors, or bank employees who intentionally*", musrt be changed in to: "*Banks, Board of Commissioners, Directors and Bank Employees who intentionally….* ".

The existence of the phrase Bank in the formulation of Article 49 paragraph (1) of Law no. 10/1998 concerning Banking after reconstruction, shows that a bank in its position as a corporation can also be held criminally responsible or charged with liability if it turns out that in the event that the actions referred to in Article 49 paragraph (1) occur it provides benefits or benefits to the Bank.

The Reconstruction of the articles mentioned above is very important and urgent in the context of preventing and eradicating money laundering crimes. In accordance with letter (b), the basis for weighing (considerations) of Law no. 8/2010 concerning TPPU

which states that: Prevention and eradication of Money Laundering Crimes requires a strong legal basis to guarantee legal certainty, the effectiveness of law enforcement, as well as tracing and returning assets resulting from criminal acts. With the reconstruction of these articles above, it is hoped that in the future the prevention and eradication of laundering crimes can run optimally, namely by encouraging the Bank to comply with every principle in carrying out Bank business activities, especially in applying the principle of identifying customers and reporting any suspicious transactions made by each customer Bank.

## CONCLUSION

Based on the results of the research, the following conclusions can be drawn:

1. Weaknesses of Indonesia's Current Land Dispute Regulations Fundamentally, is that land is an asset with high economic value and is very vital for human life so in this case, many parties seek to profit from various transactions related to land. Nowadays, Indonesia is experiencing an agrarian and land crisis, especially related to disparities in land tenure and ownership due to unfair land allocation policies inherited from the past. Ecological crises also occur as a result of land use which changes the natural landscape drastically. There is also a crisis of agricultural regeneration and reproduction which signals a shift in economic orientation to land-based reproduction. Government Regulation Number 24 of 1997 is an implementing regulation that explains that every citizen must first register his land in order to obtain guaranteed land rights, as stipulated in the 1945 Constitution and Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA). The government will then issue a land certificate as proof of land ownership. Land certificates issued by the government will guarantee legal certainty on ownership rights to a land which includes: legal certainty of rights, legal certainty of the object, and legal certainty of the subject, including administration of registration and issuance of certificates. Despite the fact that landowners are legally required to register their rights to their property, it is not uncommon to find a phenomenon nowadays of landowners who do not want to properly register their ownership rights to land. This usually happens due to various factors such as the process which is considered too long and will take up a lot of time and money they have.
2. The Legal Reconstruction of Indonesian Land Dispute Regulations Based on Pancasila Justice must be in accordance with the concept of natural law so that the availability of land is a right for every human being. The rule of law concept stipulates that the purpose of the law is not limited to guaranteeing security and public order (kamtibmas), but also to improve people's welfare, achieve legal goals, namely justice, and consistently apply the principles of fair law. The implementation of the concept of land law policy is fundamentally very dependent on the involvement of public leaders. This shows that public leaders are highly involved in formulating and implementing policies. Public leaders in government discourse can be identified by their ability to design policies with broad influence. Ideally, this opportunity should be used to respond to the aspirations of the residents, and the implemented policies should not discriminate against small groups. The policy design which includes organizational, analytical, executive, legislative, political, civil, and judicial leadership must be included in the policy design. Because the Policy cannot be considered successful if the underlying concept fails. This concept is presented as a reflection regarding how policy decisions must always be consistent with concepts that guarantee justice and people's welfare.

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