



# Legal Liability for Banking Criminal Actions that are not Members of the Justice Board of Commissioners

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**Abstract.** This study discusses the formulation of the elements of Article 49 paragraph (1) of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, which reads that Members of the Board of Commissioners, Directors, or Bank Employees who intentionally create 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. The perpetrators of criminal acts in the banking sector cannot be held legally responsible according to Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking. The problem of this research is that the perpetrators of criminal acts in the banking sector who are not members of the Board of Commissioners, Directors, or Bank employees cannot be held legally responsible because the perpetrators are outside the banking structure. This research method uses an empirical juridical approach, namely statutory, conceptual, and case approaches supported by primary and secondary data. The results of the study indicate that there is a need for improvement in Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, in the provisions of Article 49 paragraph (1) it is better to begin with the sentence “everyone...” thus, the law The law can be used to hold legal accountability for perpetrators of criminal acts in the banking sector other than members of the board of commissioners, directors, or bank employees.

**Keywords:** Banking Crime Actors · Legal Liability · Member of the Board of Commissioners

## 1 Introduction

Banking is part of the driving force of a country’s economy, proving that banking institutions are the main pillars of national economic development. It is necessary to regulate the management of available economic resources in a directed and integrated manner and to be utilized optimally for improving the welfare of the community, financial institutions in general, and banking institutions in particular. To improve the country’s economy, various legal aspects of banking institutions are needed, including institutions, business activities, and methods and processes in carrying out the business activities of a bank.

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Economic crime is a crime that has a financial motive and is usually carried out by people who have intellectual abilities and influential positions in society and their work related to economic crimes, in an article made by the Directorate of Customs Training and Tax Center of New Delhi in 1986, it was stated that commercial crime is a crime related to economic, trade and financial crimes. These crimes are commonly referred to as economic crime, organized crime, and white collar crime.

Policies in the economic sector, including the banking sector, are expected to improve and strengthen the national economy. Completing the national banking system, the development of law in Indonesia essentially requires a change in mental attitude in such a way. It requires that the law is no longer seen as a mere set of norms but the law is also seen as a means to change society. Law no longer develops by following the community, but the law must be able to provide direction to the community following the stages of development carried out [1].

The strategic function of the banking sector is following Article 4 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, which stipulates that banking in Indonesia aims to support the implementation of national development to increase equitable distribution of economic growth and national stability towards improving the welfare of the people at large, this is never separated from various threats and actions that can harm public confidence in banking institutions, for example, banking crimes.

An act is said to be a criminal act or behavior that violates criminal law only if an existing criminal provision determines that the act is a criminal act. According to Sutan Remy Sjadeini, what is meant by a criminal act is behavior that violates the criminal provisions that apply when the perpetrator commits, whether the behavior is in the form of carrying out specific actions that are prohibited by criminal provisions or not committing certain acts required by criminal provisions [2].

Munir Fuady believes that bank crime is increasing nowadays, and the modus operandi is getting more sophisticated. In several cases involving mafia syndicates, both from within and abroad, more than 90% of bank crimes are committed through the cooperation of outsiders and bank insiders. Uniquely, the insiders consist of Indonesian professionals/young urban professionals with the same characteristics, namely young, intelligent, agile, workaholic, ambitious, have a good position, have income, and have high hopes, even using a computer as a means of crime, which is one of the crystals of white-collar crime [3].

In ensuring law order, law enforcement, and legal objectives, the functions of law enforcement agencies play an essential role, especially the law enforcement and supervisory positions. The supervision in question can be preventive and repressive through law enforcement agencies to ensure law order, law enforcement, and the achievement of the objectives of the law, order, and social justice for all citizens [3].

## 2 Research Method

This research method uses an empirical juridical approach, namely statutory, conceptual, and case approaches supported by primary and secondary data. This study uses various approaches to obtain information from multiple aspects of the problem. The approach

has a meaning as an attempt to establish a relationship with people or methods to achieve an understanding and meaning regarding the problem in research. The approach can also be understood as a means to direct the problem under study [2].

### 3 Findings and Discussion

#### 1. Application of Sanctions for Banking Crime Actors

Banking is the axis on which the financial system rotates from a particular community's living environment. The community's living environment is in the form of a state. Still, sometimes it reaches between countries due to the rapid flow of information, especially in the era of globalization. The bank is a financial institution that stores funds or money from companies, whether large, medium, or small business entities; both individuals and institutions; government and private [4].

Banking is a legal institution established to support the implementation of increasing equitable distribution of national development, economic growth, and national stability towards improving the people's standard of living. The strategic function of banking has been adjusted to Article 4 in Law Number 10 of 1998 concerning Amendments to of Law Number 7 of 1992 concerning Banking, that banking in Indonesia aims to support the implementation of national development to increase equitable distribution of economic growth and national stability towards improving people's welfare [5].

Provisions of Article 3 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking: The primary function of banking is as a collector and distributor of public funds. Until now, the primary income of a bank is from its credit operations. However, a bank's credit operation may only be carried out if the bank has sufficient funds. In fact, most of these funds come from public funds collected to be stored in the bank.

Banking crimes involve funds deposited in banks from the public so that banking crimes will harm the interests of various parties, such as the bank as a business entity, the depositor of funds, the government, and the wider community. As for the use of the terms banking crime and criminal acts in the banking sector, they do not have the same opinion. When viewed from a juridical point of view, there is not a single statutory regulation that provides an understanding related to criminal acts in the banking sector or banking crimes [6].

In terminology, criminal acts in the banking sector differ from the term banking crime. Criminal acts in the banking sector have a broader understanding, namely all types of unlawful acts that are related to activities in running a bank business. Then there are regulations regarding banking activities that contain criminal provisions and general/special criminal law regulations, as long as there are no criminal law regulations specifically made to threaten and punish such acts. This means that criminal acts in the banking sector involve actions related to banking and are subject to criminal sanctions.

Provisions in Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking and Law Number 21 of 2008 concerning Sharia Banking are also acts that violate provisions outside the Banking Law and Sharia Banking Law, which are subject to sanctions based on, among others, The Criminal Code (KUHP), the

Money Laundering Law, the Corruption Crime Act because these actions are related to activities that run a bank's business, namely money laundering or corruption involving banks. Banking crimes are more focused on prohibited actions and are subject to criminal penalties, specifically in Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking and Law Number 21 of 2008 concerning Islamic Banking [5].

National Law Development Agency (BPHN), Ministry of Justice gives a different meaning to banking and banking crimes [7]. Qualification as a bank crime must meet the elements contained in Article 46 to Article 50A of the Banking Law or Article 59 to Article 66 of the Sharia Banking Law. Because of the formulation of the Articles contained in the Banking Law and the Sharia Banking Law, they have many similarities. Even though banking crimes are classified as economic crimes, banking crimes are already criminal acts in the banking sector.

In Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, criminal acts have been regulated from Article 46 to Article 50A. The business activities of banks are increasingly varied, so banks need to maintain the trust of the public by using their customers' funds responsibly, which is manifested in the form of an accountability report that will be announced directly to the public, either through mass media, even given to Bank Indonesia and/or The Financial Services Authority.

Criminal acts related to bank business activities, namely making or causing false records, removing, changing, causing non-recording, not entering, obscuring, or eliminating forms in the books or reports of business activities, transaction or account reports, or changing, obscuring, eliminating, hiding or destroying bookkeeping records, not carrying out the prudential principles following applicable regulations, requesting and/or receiving compensation from customers who obtain facilities from banks [8].

Criminal acts related to bank business according to the Banking Law are regulated in Article 49 paragraph (1) of the Banking Law, which states that: (1) Members of the Board of Commissioners, Directors, or bank employees who intentionally:

- (a) Creating or causing false records in the books or the reporting process, as well as in documents or business activity reports, transaction reports, or bank accounts;
- (b) Eliminating or excluding or causing non-recording in the books or reports, as well as in documents or business activity reports, transaction reports, or bank accounts;
- (c) Altering, obscuring, hiding, deleting, or eliminating the existence of a record in the books or a report, or a document or business activity report, transaction report or bank account, or intentionally altering, obscuring, removing, hiding, or damaging the bookkeeping records, threatened with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a fine of at least IDR 10,000,000,000 (ten billion rupiahs) and a maximum of IDR 200,000,000,000 (two hundred billion rupiahs).

In paragraph (1), it is explained that those who receive criminal sanctions in this group are from the internal bank itself, namely members of the board of commissioners, directors, or bank employees, who intentionally make or cause false records; omit or

exclude or cause non-recording; change, obscure, hide, delete or eliminate the existence of a record in the books or the report [4].

Regarding the articles concerning banking crimes, there have been significant changes in Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning the imposition of much more severe sanctions and set minimum and maximum in the case of a criminal act in the banking sector. Not all articles of the banking law can ensnare perpetrators of criminal acts as regulated in Article 49 paragraph (1) letter a in Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking. Then as long as this law does not regulate it, the Criminal Code (KUHP) can be applied, such as criminal acts related to falsifying documents or scripts. The provisions of Article 263 or Article 264 of the Criminal Code, which regulates forgery of letters or embezzlement, may be subject to Article 372 of the Criminal Code, which regulates embezzlement, Article 378 (fraud), Article 362 (theft).

One of the banking crimes often occurs and has an extraordinary impact, as stated in Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking. One banking crime that often occurs is the provision of credit facilities that are not under applicable regulations, resulting in non-performing loans. Non-performing loans in large numbers can have an unfavorable impact on credit-giving banks, the banking world in general, and also on a country's economic and monetary life [9]. Seeing such a significant impact on non-performing loans must be addressed immediately. In handling non-performing loans, the speed of returning costs to a minimum is an integral part of the bank's efforts to overcome problem credit problems.

According to Siswanto Sutojo, in dealing with non-performing loans, bank leaders must stick to the basic guidelines for handling non-performing loans, namely that efforts to save credit can be pursued in two ways, namely through legal channels and non-legal channels. One of the efforts to save credit through non-legal channels is credit restructuring. The legal basis for credit restructuring is the Letter of the Board of Directors of Bank Indonesia Number 31/150/KEP/DIR dated 12 November 1998. Restructuring is an effort the Bank makes to assist customers in completing their obligations.

Credit settlement through legal institutions can be done through a litigation approach (court line) and a non-litigation approach (out of court). The litigation approach will absorb considerable costs and take quite a long time due to the legal process. At the same time, the non-litigation approach absorbs relatively more minor costs and takes a somewhat shorter time. Non-litigation resolution efforts can be pursued through a mediation process currently being campaigned by law enforcement officials and are widely used by banks to resolve disputes against their customers.

## 2. Legal Liability for Banking Crime Perpetrators Who Are Not Members of the Board of Commissioners Based on Law Number 10 of 1998

Banking is a legal institution established to support the implementation of increasing equitable distribution of national development and its results, economic growth, and national stability to increase the standard of living of the people at large. The strategic function of the banking sector is under Article 4 of Law Number 7 of 1992, which stipulates that banking in Indonesia aims to support the implementation of national

development to increase equitable distribution of economic growth and national stability in the direction of improving people's welfare.

The very strategic role of banking in national development, especially in economic development, is inseparable from various actions that can harm public confidence in these banking institutions, for example, banking crimes. An act is said to be a criminal act or behavior that violates the criminal law only if an existing criminal provision determines that the act is a criminal act. Related to the problem of banking crimes, Sutan Remy Sjadeini stated that what is meant by criminal acts is behavior that violates the applicable criminal provisions when the perpetrator commits, whether the behavior is in the form of carrying out specific actions that are prohibited by criminal provisions or not committing certain acts required by criminal provisions [2].

Munir Fuady believes that bank crime is increasing nowadays, and the modus operandi is getting more sophisticated. In several cases, mafia syndicates were involved, both from within and abroad. Based on data, 90% of bank crimes are committed through the cooperation of outsiders and bank insiders. Uniquely, the insiders consist of young urban professionals from Indonesia with the same characteristics: young, intelligent, agile, workaholic, ambitious, well positioned, high-income earners, and ambitious. The crime of using a computer as a means of crime. Then popular what is often referred to as computer crime is one of the crystals of white collar crime [10].

Anwar argued that the difference between the definition of a banking crime and a criminal act in the banking sector is based on the difference in the treatment of regulations for actions that have violated the law related to activities in running a bank business. Banking crime consists of acts that violate the provisions of the law on banking, the violation of which is prohibited and is threatened with criminality by the law. Meanwhile, criminal acts in the banking sector consist of actions related to activities in carrying out the main business of the bank, which actions can be treated by criminal regulations outside the law on banking, such as the Criminal Procedure Code, the law on eradicating corruption, and others of the same type [11].

Banking life is the lifeblood of economic life. Talking about violations in the banking world cannot be separated from discussing economic crimes. In general, economic crimes are unlawful acts committed because of or for economic motives [12]. Entering the development of the era of globalization in all areas of life, including the rapid growth of the economy, finance, trade, banking, and social affairs, has brought specific legal implications for Indonesia. First, what is the role of law that must be put forward to support policy changes in various sectors of Indonesian people's lives for the present and the future? Second, which legal role is necessary and urgent to put forward to anticipate the development of legal needs for public funds in the era of globalization? [13].

According to G.P. Hoefnagels, crime prevention efforts can be pursued by the criminal law application, prevention without punishment, influencing society's views on crime and punishment through mass media [14]. Crime prevention efforts can be broadly divided into two, namely through the "penal" route (criminal law) and through the "non-penal" way (not/outside criminal law). In the distribution of G.P. Hoefnagels above, the efforts mentioned in points (b) and (c) can be included in the "non-penal" group. Roughly it can be distinguished that the attempt to overcome crime through the "penal" route focuses more on the "repressive" nature after the crime has occurred, while the

“non-penal” path focuses more on the “preventive” nature before the crime occurs. As a rough distinction because repressive measures can, in essence, be seen as preventive measures broadly [14].

Acts of violation of the bank’s system of procedures in each case, namely, bank employees who violate the bank’s system of procedures are prosecuted and found guilty based on the criminal provisions contained in the Banking Act. However, there are also bank employees who violate the bank’s procedural system and are not prosecuted under the criminal provisions contained in the Banking Act. Law enforcement officers carry out law enforcement against these criminal actors by referring to the provisions of the Banking law. Law enforcement officers conduct law enforcement by referring to criminal provisions outside the Banking Act, such as the Criminal Code or Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering.

One of the crimes related to the banking world is money laundering. In other words, money laundering is a form of a criminal act that uses banking services related to the proceeds of the crime committed. Money laundering is an act of an owner cleaning up his money by investing or storing it in a financial institution. The action is because the money is the result of an unlawful act. Money laundering follows the provisions contained in Article 1, number 1 of Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering, which reads as follows, “All actions that meet the elements of a criminal act are following the provisions of this Law.” In the Money Laundering Law, the word “every act.”

## 4 Conclusion

The application of sanctions is for perpetrators of banking crimes that harm the interests of various parties, both the bank itself as a business entity, customers, depositors of funds, the banking system, banking authorities, the state and the government, and the wider community. The number of assets managed by banks, the rapid development of products, and the use of Information Technology in the banking sector can provide opportunities for irregularities in the banking sector so that banks are often used as a means and target for criminal acts in the banking sector, corruption and money laundering. Criminal acts in the banking sector reduce public confidence in the banking world and cause cumulative financial losses that are quite large in number.

Legal liability for perpetrators of banking crimes who are not members of the board of commissioners based on Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking can be criminally accounted for, among others, must meet objective requirements, including (1) The action meets the formulation of the law; (2) There is an unlawful nature; and (3) No justification. While the subjective requirements include: (1) The ability to be responsible for the corporation; (2) The corporation’s intentional or negligence; and (3) Corporate excuses (fault-removal reasons).

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