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Justice Based Criminal Law Enforcement in the Implementation of Prudential Banking Principles on Banking Crime Management

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Abstract
The application of prudential banking principles in practice is very complex, given the many banking management activities. In addition, based on the provisions of Article 49 paragraph 2 (b), the implementation of the principle of prudential banking may be interpreted as an attempt to criminalize every banker if, according to this provision, there are actions that show bank disobedience to the provisions of laws and regulations concerning banking. This is, of course, a problem considering that only some real ones participate in the action. The research objective of this study is to describe the realization of justice-based law enforcement against violations of prudential banking principles as banking crimes and to analyze and describe prudential banking principles that have yet to be able to tackle justice-based banking crimes. The approach method uses normative juridical. The data collection technique used in this research is document study. The method of data analysis is qualitative normative. The conclusion that can be obtained based on the results of the analysis is the realization of justice-based law enforcement against violations of prudential banking principles as banking crimes, namely by making legal constructions of prudential banking principles by applying the business used by banks to assess their assets and absorb potential losses that have been estimated due to the risk of default in payment from the financing process. On the other hand, embedding elements of crime in implementing prudential banking is appropriate, considering that banking activities are activities related to the general public. The principle of prudential banking has not been able to tackle banking crimes based on justice, as seen in the objective of punishment, which is to repair individual and social damage caused by criminal acts. The thing that must be addressed regarding the existence of punishment for "bank employees" is that the punishment must be directed at the subject of the perpetrator, not at all "employees". This becomes a tendency to attach criminality when associated with the value of justice. This is very logical considering that not all "bank employees" are involved in a criminal act violating prudential banking principles, even though they are still within the scope of their job desk authority. The ideal criminal law enforcement policy in the application of prudential banking principles in dealing with justice-based banking crimes is that in addition to the need to increase the bank's control function, both carried out internally by banks and from Bank Indonesia (now the Financial Services Authority) must be tightened and strengthened by setting standard operational standards. Maintaining compliance with procedures and processes in banking activities, supervising management and strictly maintaining the principle of prudence and moral standards on the part of the bank. No less important is the regulation of laws and regulations as a legal basis for law enforcement officials in dealing with criminal acts in the banking sector.

Keywords: Law Enforcement, Prudential Banking, Justice

INTRODUCTION

In Law Number 7 of 1992 concerning Banking Fundamentals, as amended by Law Number 10 of 1998 concerning Banking, it is stated that criminal acts are included in the types of criminal acts related to bank obedience as a form of implementing the principle *prudential banking* found in Article 49 paragraph (1) and Article 49 paragraph (2) letter (b).
Responding to the existence of criminal provisions in Article 49 of Law Number 10 of 1998, the minimum fine can be imposed on every banker when proven to have deliberately done the following:[1]

1. Request or accept, allow or agree to receive a reward, commission, additional service money, money or valuables for personal gain or the benefit of his family in order to get or try to get it for other people in obtaining advance payments, bank guarantees, or facilities credit from the Bank for money orders, promissory notes, checks and trade papers or other proof of obligation, or in order to approve for other people to carry out withdrawals of funds that exceed the credit limit at the Bank.
2. Not implementing the necessary steps to ensure the Bank's compliance with the provisions of other Laws that apply to the Bank,

The criminal provisions in Article 49 paragraph (2), especially letter (b) of Law Number 10 of 1998 concerning Banking, is a special minimum sentence that is applied to perpetrators or people deemed to have violated the provisions of said article, while the clarity regarding compliance with these provisions is not explained. In detail and fundamentally so that the presence of such material content can be said to be part of the consequences that the parties-banker must accept. If an act is committed and considered part of his disobedience to banking regulations, he can be punished under that article.

The presence of this article is a separate threat to every person or business actor in the banking sector because this article can be used as a form of customer disappointment with good service or things that are not obtained, which are part of the customer's rights. Usually, the customer will report the party bank, and the police, in practice, will find it easier to use this article as a basis for suing the bankers. Here it can be seen that legal uncertainty occurs because if the act of disobedience is carried out by an ordinary bank employee who does not know the limits of bank compliance with the applicable regulatory provisions, criminal liability will also be imposed in this article.

As it is known that a criminal act only refers to being prohibited, and the act is threatened with a crime. However, a person who commits a crime is not necessarily subject to punishment as threatened, and this depends on "whether in committing this act the person has made a mistake", which refers to the principle of responsibility in criminal law: " is not convicted without fault *(geen straf zonder schuld ; actus non facit reum nisi mens sit rea)*".[2]

The step in determining whether a perpetrator of a crime can be held accountable in criminal law will be seen as whether the person at the time of committing the crime had any mistakes. Doctrinally, an error is defined as a particular psychological state in a person who commits a crime. There is a relationship between the mistake and the act committed, so the person can be reproached for committing a crime. Criminal liability here is intended to determine whether a person can be held accountable for the crime or not for his actions.[3]

Based on the formulation of criminal responsibility above, it can be seen that the element of error and intention committed by a person is an essential element in criminal responsibility concerning the provisions of Article 49 paragraph (2) in particular letter (b) above, it can be seen that the specific minimum punishment applied can apply for every bank employee, both directors and employees who serve as ordinary tellers, this criminal liability can be imposed on him if there is an act that is considered a form of bank disobedience to laws and regulations, while the existing laws and implementing regulations are not explicitly clearly regulates the issue of obedience in question, both the elements of the offense and the form of the error in a clear and detailed manner.

The formulation of Article 49 paragraph 2 (b) can be interpreted in various forms by parties wishing to criminalize every banker if, according to them, there are actions that show bank disobedience to the provisions of laws and regulations concerning banking. Meanwhile, the bank's obedience still has various interpretations because it could be better limiting regulations regarding the compliance issue of the bank. Doing so does not rule out the possibility of criminalization and various or multiple interpretations, which can result in losses to bankers and bank business activities.

In applying principles of prudential banking in Article 49, paragraph 2 (b), it can still be said that it still needs to fulfill the sense of justice and the principle of legal certainty, especially for every banker. The minimum criminal provisions in this article also concern every banker. Meanwhile, every bank activity must be given complete legal certainty and protection, considering the importance of the bank's presence in national development. One example of injustice (even though the court acquitted, the existence of a legal process shows the direction of the existing law) in banking management is the Decision of the Sorong District Court Number 157/Pid.Sus/2020/PN Son, with the defendant Arif Kartono who is a former Branch

Manager/Branch Manager of the Aimas Branch of the Sahabat Mitra Sejati Savings and Loans Cooperative, charged with committing a criminal act of "banking" as stipulated and subject to criminal penalties in the provisions Article 46 paragraph (1) Law number 10 of 1998 concerning amendments to RI Law number 7 of 1992 concerning Banking in the Public Prosecutor's single indictment. The defendant, as Branch Manager of the Savings and Loans Cooperative Sahabat Mitra Sejati Branch Aimas in carrying out the activities of the Savings and Loans Cooperative Sahabat Mitra Sejati of the Aimas Branch, which is engaged in the savings and loan business, has carried out activities to collect funds from the public in the form of savings/deposits of IDR 100,000,- (one hundred thousand rupiah) without a business license from the Management of Bank Indonesia or the Financial Services Authority (OJK) as a Commercial Bank or Rural Credit Bank that has obtained a license. However, the court stated that Defendant ARIF KARTONO had not been proven legally and convincingly guilty of committing the crime of "banking".
This study expects the objectives to be achieved, namely describing the realization of justice-based law enforcement against principal violations of prudential banking as a banking crime and analyzing and Describe Principle Prudential banking, which has yet to be able to tackle banking crimes based on justice.
Based on this, the authors identify the problem. The first is how the realization of justice-based law enforcement against principle violations of prudential banking as a banking crime; the second is why principle prudential banking has yet to tackle banking crimes based on justice.

METHOD

This journal contains descriptive-analytical research specifications, namely the existence and use of primary, secondary and legal materials that will be studied and analyzed to obtain an overview related to the issues studied. The method in this journal is to use a normative juridical approach, namely analyzing laws and regulations, which are secondary data. This also shows that the research conducted by the author was carried out in the literature and the field. Data analysis in the journal used by the author is a qualitative juridical analysis, namely analyzing data whose final result sentences.

RESULTS AND DISCUSSION

Realization of Justice-Based Law Enforcement against Principle Violations Prudential Banking as a Banking Crime

1. Construction Principle Law Prudential Banking

Banking in the life of a country is one of the agents of development (agent of development). This is due to the primary function of banking itself, namely as an institution that collects funds from the public in the form of savings and distributes them back to the community through credit or financing. This function is commonly referred to as financial intermediation (intermediary financial function)[4], namely as an institution that carries out fundraising activities in the form of deposits such as savings, current accounts and deposits from the public and distributes them back to the community in the form of credit loans or financing with competitive interest[5].
Many principles are applied in banking management, including the prudence or prudential principle [6]. What can be said about the existence of this principle is that this principle is the highest in banking management because any action that can harm banks is always associated with the existence of this principle. Prudential Banking requires banks to always be careful in business activities. They must consistently implement laws and regulations in the banking sector based on professionalism and good faith.[7]
All violations or acts against the law contained in Law no. 7 of 1992 concerning banking, as amended by Law no. 10 of 1998, can be said to violate the principle of banking prudence. This shows the broad scope of the existence of the precautionary principle or prudential principle for every act of banking management, which also has high complexity and will affect the law enforcement process [8].
The precautionary principle or prudential principle is a principle that seeks to protect public funds so that public funds are safe, as stated in Article 2 of Law no. 10 of 1998 as an amendment to Law no. 7 of 1992 concerning banking which states that carrying out the principle of prudence in conducting banking business. In addition, the provisions of Article 29 paragraphs (2), (3) and (4) of Law no. 10 of 1998 also regulates prudence or prudential principle **[9]**, including the provisions of Articles 8 and 11 which regulate bank lending. Efforts in implementing banking prudence or prudential principle banking were strengthened by the existence of the Financial

Services Authority Regulation No: 32/POJK.03/2018 concerning Legal Lending Limits and Provision of Large Funds for Commercial Banks. As well as Financial Services Authority Regulation No: 42/POJK.03/2017 concerning Obligations for Compiling and Implementing Bank Credit or Financing Policies for Commercial Banks. The two POJKs focus on banking risk for extending productive asset quality (KAP) credit.

Construction KAP law as part of banking prudence or prudential principle banking regulated in Bank Indonesia Regulation No: 14/15/PBI/2012 concerning Asset Quality Rating for Commercial Banks. KAP assesses banking assets and potential losses that can be absorbed due to failure to pay to finance. In other words, KAP is an indicator that a bank can use to assess losses or even maximize the potential of assets owned to cover losses on financing or credit management.

Assessing the existence of regulations in granting credit, what must be known is that there is a long process with various stages that must be passed. In each process, this must also be accompanied by banking prudence or prudential *principle banking*. However, even though the banking action is carried out, it cannot erase the existence of banking negligence. What can be said is that granting credit is a complicated process if you want to achieve process perfection [10]

The thing that becomes the emphasis in the provision of bank credit is the assessment of character*, capital,* capacity, condition of the economy, and collateral.[11]"This assessment is a form of concretization of the implementation *Prudential Banking.* Implementation *Prudential Banking* can be based on several rules, namely:

a. Indonesian banking uses the principle of prudence [12]
b. Confidence based on banking analysis in lending [13]
c. The obligation to carry out methods that do not harm the bank [14]
d. Obligations for the implementation of BPR on Earning Assets [15]

2. Embedded Evil Elements in Prudential Banking

There are 5 (five) types of banking crimes, namely [16]:

1. Criminal offenses related to licensing
2. Criminal acts related to bank business
3. Criminal acts related to attitudes and/or action taken by bank management, bank employees, affiliated parties and shareholders
4. Criminal actas related to bank supervision and development
5. Criminal acts related to bank secrecy.

Based on the five types of banking crimes mentioned above, the position of crimes related to credit is in the types of crimes related to attitudes and/or actions committed by bank management, bank employees, affiliated parties and bank shareholders, which can be linked to provisions of Article 49 paragraph (2), Article 50, and Article 50A of Law no. 10 of 1998 concerning Amendments to Law no. 7 of 1992 concerning Banking and is also related to the existence of the know your customer principle and the principle of secrecy [17].

The bad problem of lousy credit regarding business prospects, financial condition and ability to pay shows the naturalness when lousy credit becomes a legal issue. Bankers, as a particular profession in the banking sector, must be careful because the criminal law doctrine says [18]:

"If there are special rules for people who pursue certain professions, then disobeying those rules, in general, this already contains an attitude of being careless."

Matters that should be considered in granting credit can be based on Article 6 letter (K) of the Banking Law No. 7 of 1992, Article 29 paragraph (3) of the Banking Law no. 10 of 1998 and Article 49 paragraph (2) of the Banking Law No. 10 of 1998.

As a consequence of lending, lousy credit is unavoidable. To what extent is legal liability a fault (debt) on bad credit, not only in terms of the process of granting credit or adherence to system operational procedure (SOP) internal banking along with regulations, binding guarantees or collateral but it must be seen from the factors that are the source of congestion[19]. Suppose the congestion is caused by the debtor's business or deteriorating economic conditions. In that case, the congestion condition cannot be charged as bank negligence but is referred to as the debtor's default.

Elements of error, either in the form of negligence (fault) or intentional (on purpose or trick) here as a tool to ensnare bank officials/employees who are not careful in extending bank credit. Bank officials who ignore the principle of prudence may be subject to administrative sanctions

following Article 52 paragraph (2) of Law no. 7 of 1992 concerning Banking as amended by Law no. 10 of 1998. As long as there is sufficient evidence and it meets the criminal elements stipulated in Article 49 paragraph (2) letter b, a violation of the precautionary principle can be categorized as a banking crime. According to Remy in Ifrani, it is called a banking crime if the action, besides being criminalized, must also contain the following characteristics [20]:

a. This action can only be committed against a bank, meaning that the act cannot be committed against an institution other than a bank or a person.
b. This action can only be done by using the services of a bank (banking service) or bank products (banking product).

Violation of the precautionary principle is used as the basis for the criminalization of lending if one of the criteria below is present [21]:

a. Corruption Crime at PT. Asian Development Bank
1) Providing credit without regard to the procedures and conditions that must be met for the benefit of the corporate group
2) Using credit in deviance from its designation

b. Corruption Crime at the Surabaya Branch of Majapahit Jaya Public Bank (BUMJ)
1) Credit is not covered by a good guarantee or not with a guarantee as usual
2) No credit analysis was carried out regarding the customer's ability to repay credit
3) Credit is given without a credit proposal (credit usage purposes)

c. Corruption Crime at the Batam Branch Dagang Bank
1) Giving credit beyond the authority of his superiors without obtaining permission and reporting to the head office
2) Guarantees controlled by banks have not been bound effectively

d. Corruption Crimes at several Branches of Bank Rakyat Indonesia
1) Manipulation of deposit money from customers by providing deposit receipts in the form of receipts by affixing signatures/initials to the customer's deposit book, but the money received is not recorded as receipts, and the money is not deposited into cash. The money is used for personal gain.
2) Providing fictitious credit, namely applying for credit as if it were from a customer using his signature and the money was taken for personal gain.

Thus, criminal acts in the banking sector are caused by 2 (two) things, namely: (1) irregularities and/or fraudulent lending and (2) misuse of credit facilities. Irregularities and/or fraudulent lending is a form of violating the precautionary principle, in the context of criminal law, as a mistake (schuld) or negligence (culpa). At the same time, misuse of credit facilities is intentional embezzlement or undermining trust by breaking promises without good behaviour (not good faith).

3. Banking Crime Law Enforcement Concept for Violation of Principles Prudential Banking

They were reviewing the existence of Article 49 of the Banking Law, which states that the actions of board members of commissioners, directors of bank employees are considered banking crimes and threats of punishment for such crimes. When connected with the Corruption Law, these provisions have provided limitations ordering law enforcers to apply the law as contained in Article 14 of the Corruption Law, which can be interpreted literally. Argument on the contrary, i.e. a violation of a provision that does not state and/or does not expressly state that the violation is a criminal act of corruption, then the violation is not a criminal act of corruption.

There is not a single provision which states that banking crimes regulated in the Banking Law are acts of corruption. Therefore, based on the Specialist Systematic**[22]** violation of prudential principles, which is a principle closely held in banking, which can also result in losses to state finances, does not necessarily mean acts or acts of corruption.

The author believes these violations are within the scope of banking crimes regulated in the Banking Law based on several arguments. First, the material provisions related to banking

crimes in Banking Law are specific. The formal provisions related to banking crimes in Banking Law regulate more dominant and systematic things. Second, the address or legal subject that can be charged in this case is also unique and is still within the scope of banking, namely state-owned bank employees.

In addition, Banking Law has its norms and legal sanctions, both criminal law and administrative, legal sanctions. Based on this, the principle The Consumer Law Derogates from the Consumer Law and essential Lex specialist systematically meet the requirements to be applied in criminal acts committed by employees of state-owned banks.

Thus, according to the author, Article 49 paragraph (2) of the Banking Law is a more appropriate article to be imposed on state-owned bank employees who receive or demand compensation for their gain in order to obtain for others in obtaining advances, bank guarantees, or a credit facility from a bank.

This is based on the scheme of thought that criminal law can be referred to as an **accessoir** or dependent on other fields of law, in which the position of criminal law does not set new norms but only strengthens norms in other fields of law with the threat of criminal sanctions.[23]. Based on this, the position of criminal law in administrative, criminal law is to strengthen administrative provisions with the threat of criminal sanctions.

Concerning violations of the Bank's prudential principles, how does the administrative and criminal Law view such violations? Administrative and criminal Law views these violations as administrative and legal provisions that carry threats in the form of criminal sanctions. This differs from the Law on the Eradication of Criminal Acts of Corruption, in which the legal provisions contain a criminal act (criminal act) and are also subject to criminal sanctions. Based on this, it is appropriate that violations of the principle of prudential banking (which are listed in the Banking Law) are subject to sanctions based on the Banking Law, not the Corruption Crime Eradication Law.

The thing that must be emphasized in enforcing the Law on violations of prudential banking principles is that it will be risky if every bank employee labeled BUMN or BUMD who does not comply with or violates the principle of prudential banking is charged with the Corruption Crime Eradication Law. In contrast, employees of private banks who commit the same violation are not charged under the Corruption Eradication Law because there is no government capital participation in these private banks. This will result in the absence of legal certainty in society due to differences in the law enforcement process between bank employees labeled BUMN and BUMD and employees of private banks. Therefore, it is appropriate that the Banking Law as an administrative, criminal law be applied to cases of violations of the prudential principles of banks, both those committed by bank employees labeled BUMN and BUMD, and employees of private banks.

Principle Prudential Banking Who Have Not Been Able to Overcome Justice-Based Banking Crimes

A violation of the Bank's credit prudential principle is a crime as regulated in Article 49 of Law no. 7 of 1992 as amended by Law no. 10 of 1998 concerning Banking. This is in line with the objective of punishment according to the relative theory, namely, to prevent order in society from being disturbed. In other words, the punishment imposed on perpetrators of banking crimes is not only to avenge their crimes but also to maintain public order, where the Bank is a community service industry based on trust, meaning that customers believe that banks are safe institutions in terms of financial transactions, and funds customers.

There is no decision to grant credit without risk because no bank can develop its business if it always avoids risk, but not all risks can be accepted. Therefore, the credit breaker must pay attention to the prudential principle of the Bank in deciding to extend credit to the debtor. Likewise, in terms of credit analysis, the Bank must provide an in-depth assessment and analysis of a debtor's capacity in terms of business, collateral and even the characteristics of the person per the precautionary principle.

Not all crimes can be committed rationally. It is not uncommon for humans to commit crimes not based on their ratio but instead on a solid emotional impulse that defeats their ratio. When achieving the desired goal for the emotional drive of banking, criminals can easily abuse their authority and expertise without thinking about the impact that will be caused and the consequences that will be carried out in the future.

According to the author, crimes against the precautionary principle of banking can be classified into Crime of Banking, namely crimes or violations of the law committed by banks (through their organs) in achieving certain efforts and objectives to gain profit. It is the tendency for bank "employees" to be punished for violating the principle of banking prudence. Criminal acts are disturbances of balance, harmony and harmony in people's lives, which damage individuals or society. Thus, according to the author, punishment aims to repair the individual and social damage caused by a crime. Thus, punishment is protection for society and retribution for unlawful acts. When a violation of banking principles causes a loss, it is not wrong if the criminal attachment is carried out. This attachment is a concrete application of the value of justice in implementing banking activities.

The thing that must be addressed regarding the existence of punishment for "bank employees" is that the attached punishment must be directed at the subject of the perpetrator, not at all "employees". This becomes a tendency to attach criminality when associated with the value of justice. This is very logical considering that not all "bank employees" are involved in the crime of violating principles of prudential banking, although still within the realm of authority.

When the law is attached to an inappropriate subject, it has lost the value of justice in it. Therefore, the attachment of punishment in violation of prudential banking must focus on the subject of the perpetrator, not on the community.

CONCLUSION

1. Realization of justice-based law enforcement against principal violation of prudential banking as a banking crime, namely by making legal constructions of prudential banking principles by applying the business used by banks to assess their assets and absorb potential losses that have been estimated due to the risk of default in payment from the financing process. On the other hand, the attachment of elements of the crime to the implementation of prudential banking is the right action considering that banking activities are activities related to the general public.
2. Principle Prudential banking, which has not been able to tackle banking crimes based on justice, can be seen as the purpose of punishment is to repair the individual and social damage caused by a crime. Thus, punishment is protection for society and retribution for unlawful acts. When a violation of banking principles causes a loss, it is not wrong if the criminal attachment is carried out. This attachment is a concrete application of the value of justice in implementing banking activities. The thing that must be addressed regarding the existence of punishment for "bank employees' is that the punishment attached must be directed at the subject of the perpetrator, not at all "employees'. This becomes a tendency to attach criminality when associated with the value of justice. This is very logical considering that not all "bank employees' 'are involved in the crime of violating principles of prudential banking, although still within the realm of authority at the job desk.

SUGGESTION

1. Create a codification of rules that contain the concept of prudential banking
2. Make the target of punishment for prudential banking violations the subject of the violator to avoid joint responsibility

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