

Legal Certainty on Corruption in Banking offences in the Indonesian Criminal Justice System

Mohammad Choirul Anam^{1*}, Dien Nufitasari², Retno Catur Kusuma Dewi³, Bambang Sukarjono⁴

¹ Universitas Merdeka Madiun, Indonesia

² Universitas Merdeka Madiun, Indonesia

³ Universitas Merdeka Madiun, Indonesia

⁴ Universitas Merdeka Madiun, Indonesia

*Corresponding Author: mohammadchoirulanam@unmer-madiun.ac.id

Abstract

Introduction to the Problem: Corruption is one of the most damaging crimes to a country's economy. One of the corruption cases in Indonesian banking through a fictitious credit scheme as happened in Bank Jabar Banten (BJB) Tangerang Branch proves how important the application of law is to overcome corruption in banking.

Purpose/Study Objectives: The challenges that the author will study can be formulated based on the background of the problems described above, namely: 1). How is the legal analysis of banking corruption based on court decisions in Indonesia? 2). How is the construction of legal certainty governing criminal offences of banking corruption in Indonesia?.

Design/Methodology/Approach: Normative research was the methodology used. Banking crime is a broad category of crime that occurs within the banking industry, according to the research findings. Due to the complexity of these crimes, the Corruption Act is used in the prosecution of the perpetrators.

Findings: The results of this study indicate that criminal offences occurring in the banking sector in the case of Bank Jabar Banten (BJB) Tangerang Branch can be applied to the Corruption offence as "Lex Specialis" even though the *modus operandi* falls into the territory of other laws and regulations, namely the Banking Law, but the defendant's "Mens Rea" and the elements that are more fulfilled are the articles of corruption so that the application of the Corruption offence to the defendant Bank Jabar Banten (BJB) Tangerang Branch is appropriate. Juridical construction in the crime of banking corruption based on the justice system in Indonesia can be built through the approach of the principle of "logische specialiteit", the principle of "systematische specialiteit", the principle of "Lex Consumen Derogat Legi Consumptae".

Paper Type: General Review

Keywords: *Criminal; Corruption; Banks; Criminal Court System.*



Copyright ©2024 by Author(s); This work is licensed under a Creative Commons Attribution-ShareAlike 4.0 International License. All writings published in this journal are the personal views of the authors and do not represent the views of this journal and the author's affiliated institutions.

Introduction

Banks provide a substantial proportion of external finance to corporations around the globe (Beck. et al, 2006). banks are known for “doing the business of risk” due to the presence of various risk factors in their operational and other market-based activities (Rahman. et al, 2020). But If banks are unable to manage risk, this can result in systemic risk, which is the possibility that a bank failure will harm the economy as a whole (Usanti & Shomad, 2017). The banking sector itself is a sector that is rigid in terms of regulation and places great emphasis on prudential aspects in its business processes (Wibisono, 2023). The foundation of the bank's operations is essentially a trusting connection between the bank and its clientele (Howorth & Moro, 2006). Since banks primarily handle public monies that are deposited there out of faith, each bank must continue to uphold its soundness while also upholding the confidence of the general public, particularly those who deposit money (Chalim, 2017).

Each nation's financial system has developed through financial institutions for a number of reasons, including rising public income, information technology and industrial development, the unit value of financial instruments, high production and distribution costs of financial services, liquidity costs, long-term profits, and reduced risk levels (Imayanti & Putra, 2018). A cycle of financial system circulation from a particular community living context is present in banking operations. The communal living environment is typically a country, although in this age of globalization, the rapid flow of information might occasionally reach other countries. (Arrasjid, 2018).

Since Indonesia's banking sector is positively correlated with overall economic conditions, it serves as a financial intermediary that connects surplus and deficit units, making it one of the primary indicators of the nation's economic growth and decline (Munzil & Noval, 2016). A major contributing element to the rise of various new types of crime, including banking crime, is the periodic expansion in the volume of transactions in the economy. Owing to the national banking system, it is important to understand that, despite operating on a foundation of trust, the financial sector is subject to numerous rules that control the banking sector (Pratama. et al, 2014).

Corruption is one of the most destructive crimes for a country's economy (Arifin, 2024). Corruption leads to poverty, greed, unemployment, weak institutions, and lack of law enforcement. (Bahoo, 2020). The banking sector is one of the most

challenging areas to fight corruption in since it deals with the most intricate forms of wrongdoing. This is the fact that banking assets in monetary terms are near the country's GDP, potentially making the banking sector appealing to corrupt officials. (Antropov. et al, 2021). Various countries including Indonesia have classified corruption as an extraordinary crime. Various countries take a very tough approach to corruption because it is considered very dangerous (Mardani. et al, 2020).

Corruption in banking can have a very broad impact, not only harming the bank itself but also customers and society in general. Corruption in banking can lead to a crisis of confidence in banking institutions, destabilize the financial system, and endanger the country's economy.

Indonesia is one of the countries that often faces corruption problems in the banking sector (Firsanty & Sugandi, 2018). One of the corruption cases in Indonesian banking through a fictitious credit scheme as happened in Bank Jabar Banten (BJB) Tangerang Branch which proves how important the application of law is to overcome corruption in banking.

The case has made law enforcers realise that the criminal act of corruption has spread to Regionally Owned Enterprises / BUMD Regional Development Banks. The government has made special regulations on corruption offences to prevent problems in society. The regulation is set out in Article 2 of Law Number 31 of 1999 which has been amended by Law Number 20 of 2001 concerning the Eradication Of The Criminal Act Of Corruption. Criminal offences in the banking sector include any act that violates the provisions in the Corruption Act, the Banking Act, or other general criminal provisions and special laws and regulations related to criminal offences in the banking sector.

Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication Of The Criminal Act Of Corruption itself has an expansion provision in Article 14, so it is interesting in terms of law enforcement that dualism arises in relation to this research, namely the Banking Law on the application of which laws must be applied, which ones qualify as corruption offences and which ones can be qualified as banking offences, this will be in an area that can be confusing because of the vagueness or imperfection in the Law.

Corruption in the banking sector is a serious problem that can cause losses to state finances and the country's economy (Pakpahan & Firdaus, 2019). The bank lending corruption effects the credit and operational risk of banks and results in an increase in non-performing loans (Gjeçi & Marinč, 2022).

Every action that results in corruption is linked to criminal activity, and whether we are aware of it or not, corruption is a major issue in society. Therefore, the public must be more aware of the law so that they can distinguish between corruption and non-corruption, this paper would like to invite readers to further explore the criminal act of corruption in the banking sector.

Methodology

Peter Mahmud Marzuki explains that legal research is the process of finding legal rules, principles, and doctrines to address legal problems (Marzuki, 2017). The research method used in this research is normative legal research, which involves examining literature such as books, journals, official articles, legal doctrines and theories, and relevant laws and regulations. This study utilizes two problem-solving approaches: The statutory approach, which involves exploring all relevant laws and how judges decide legal issues in accordance with them, and the case approach, which includes examining related cases that have become legally binding decisions.

Results and Discussion

The subheading of the Analysis and Results

Banking crimes are not only prosecuted under banking rules, but the banking sector is prone to corruption. Because banking is a financial organization whose primary purpose is to receive and distribute government funds. Corruption in the banking sector is increasing in tandem with the banking industry's role as a driving force in national growth. Criminal actions of corruption in the banking industry have a detrimental impact not only on the victims but also on the financial / banking organizations themselves. This is because banks' operational procedures are founded on fiduciary ties, confident relations, and prudential relations (Sholehuddin, 1997).

Law enforcement in the prevention and eradication of corruption in the banking sector can be carried out through the means of criminal law and criminal administrative law, as well as through improving the supervisory system, applying the prudential principle, establishing a financial sector safety net, and strengthening the banking system with good corporate governance practices. In addition, socialization to the public is also important (Hindriana & Imaniyati, 2020).

The banking crime of giving credit using fraudulent projects, in the event of bad credit, will be charged with the Corruption Crime Law, for example in the case of Bandung District Court Decision Number 8/Pid.Sus-TPK/2021/PN.Srg In this case, the defendant Kunto Aji Cahyo Basuki, as the Head of Bank Jabar Banten (BJB) Tangerang Branch in 2015, committed the crime of corruption because the actions taken by the defendant to obtain a sum of money illegally from the funds of Bank BJB Tangerang Branch, causing state financial losses. The Defendant had previously authorized the credit of the company PT Artha Wibawa Mukti in 2013, which was filed by witness Dheerandra Alteza Widjaya, with the credit in the form of a project for the work of teaching aids in the field of education. After the monies were disbursed, witness Dheerandra Alteza Widjaya failed to make payments, causing the credit to default and become bad debts. Then the Defendant repeated the action with the same modus operandi, where when the witness Dheerandra Alteza Widjaya as the Debtor of the CV.Rana Pustaka company applied for credit again to Bank BJB Purwakarta, whose Branch Manager was the Defendant, the Defendant approved the

credit, and after the credit funds were disbursed on behalf of CV. Rana Pustaka, the Debtor, namely witness Dheerandra Alteza Widjaya, did not make payments, so the credit defaulted and was stuck.

Then the Defendant as Branch Manager of Bank BJB Tangerang in 2015 agreed and even as a party provided a solution with the witness Dheerandra Alteza Widjaya to apply for a similar credit on the basis of the work of the Sumedang Regency Education Office by involving and inviting parties related to the Sumedang Regency Education Office, namely inviting the witness Djuaningsih and the witness Djodi Setiawan, who were work partners at the Sumedang Regency Education Office. In order to apply for Construction Working Capital Credit (CWCC) at Bank BJB Tangerang, witness Dheerandra Alteza Wijaya and the defendant knew witness Unep Hidayat, who served as a Commitment Making Officer (CMO) at the Sumedang Regency Education Service. Witness Unep Hidayat issued and signed six (six) Contract Agreement Letters (CAL) for work at the Education Office Sumedang Regency.

Then, in a meeting at Suharti Fried Chicken Restaurant in Bandung, the defendant, witness Dheerandra Alteza Widjaya, witness Djuaningsih, witness Djodi Setiawan, and witness Unep Hidayat decided to apply for CWCC credit. Following this, witness Unep Hidayat signed six procurement contracts (CAL) at the Office of Education and Culture. Six CALs were subsequently given to witness Djuaningsih by way of her employee, witness Wawan Sumpena. The six contracts (CAL) were then signed by Dheerandra Alteza Widjaya at witness Djuaningsih's house in front of the defendant, witness Djuaningsih, and witness Djodi Setiawan. Then the signed contracts were handed over to the Defendant and the Defendant handed over the 6 (six) contracts to his subordinates at Bank BJB Tangerang for further processing as one of the requirements for an application (CWCC) at Bank BJB Tangerang where as the Debtor witness Dheerandra Alteza Widjaya on behalf of the company PT. Djaya Abadi Soraya and CV.Cahaya Rezeki.

The CWCC credit was unlawfully approved by the Defendant as Branch Manager of Bank BJB Tangerang assisted by his subordinates witness Dindin Syahbarudin, witness Jajang Nurjaman, witness Ershad Bangkit so that the CWCC credit funds that the Defendant had approved went into the accounts of the two companies PT Djaya Abadi Soraya and CV. Cahaya Rezeki. After the funds were disbursed, they were unlawfully divided by the parties who agreed at Suharti Fried Chicken Restaurant together, namely the Defendant, witness Dheerandra Alteza Widjaya, witness Djuaningsih and witness Djodi Setiawan and based on legal facts none of them were used at all for procurement at the Sumedang Regency Education Office as the basis for granting CWCC credit from Bank BJB Tangerang, which resulted in state financial losses of Rp8,145,000,000.00 (eight billion one hundred and forty-five million rupiah).

Bank BJB Tangerang Branch is one of the branches of PT. Bank Pembangunan Daerah Jawa Barat dan Banten, Tbk (Bank BJB), which operates in the banking industry as a Regional Owned Enterprise (BUMD) in the form of a Limited Liability Company, with 38.26% of its shares owned by the West Java Province Regional Government, 5.3% by the Banten Province Regional Government, and 23.61% by the Regency Cities Regional Government in West Java Province. Because it came from Regionally Owned Enterprises (BUMD) that were owned by the Regions of West Java and Banten in the banking industry, the funds for the Construction Working Capital Credit (CWCC) from Bank BJB Tangerang that were stolen by the Defendants jointly in this case in 2015 are therefore included in the definition of State Finance. Therefore, based on Constitutional Court Decision No 25/PUU-XII/2016 which states that the offence of Corruption causing State Financial Losses is a material offence.

When law enforcement investigated the case of credit granting based on false information that happened at the Bank BJB Tangerang Branch, they fabricated the defendant's actions by breaking the rules of credit granting. The defendant, Kunto Aji Cahyo Basuki, then used the money for personal benefit, which is considered a series of joint illegal violations under the Anti-Corruption Law. Although the defendant's actions have a position or position in the Bank, Bank BJB Tangerang Branch is a form of BUMD, 75% of whose capital comes from the Regional Finance of West Java and Banten. So that in its implementation, law enforcement officials use the provisions of Adresat or the subject of the purpose of the Provisions of the Anti-Corruption Law with elements:

- 1) *Anyone*, is Kunto Aji Cahyo Basuki who has an identity and as Branch Manager of Bank BJB Tangerang Branch in 2015 and as Commissioner of PT Djaya Abadi Soraya since 2014.
- 2) *Who illegally commits*, that the actions of the Defendant together with the witness Dheerandra Alteza Widjaya together with other witnesses, namely the witness Djuaningsih and the witness Djodi Setiawan who agreed to apply for CWCC credit in 2015 at Bank BJB Tangerang were deliberate acts where there was planning to take CWCC credit money to be distributed unlawfully to the detriment of State finances. If connected with the theory of crime, where the Defendant as the perpetrator of a criminal offence commits an act that violates the law is the actus reus objective element, while the subjective element (mental / intention) of the Defendant in this case there is a mens rea inner attitude of the Defendant who deliberately commits a criminal act.
- 3) *With the aim of enriching oneself or another person or a corporation*, based on the facts of the law, the money in the amount of Rp8,145,000,000.00 (eight billion one hundred forty five million rupiah) from the proceeds of credit disbursement which was unlawfully carried out which constituted a loss to the State in this case, was unlawfully distributed to the parties who planned and agreed to apply for CWCC credit at Bank BJB Tangerang, namely those involved and directly

related, used by the Defendant to enrich himself in the amount of Rp1.060,000,000.00 (one billion sixty million rupiah), enriching others, namely enriching witness Dheerandara Alteza Widjaya in the amount of Rp4,244,000,000.00 (four billion two hundred forty four million rupiah) and enriching witness Djuaningsih and witness Djodi Setiawan in the amount of Rp2,456,000,000.00 (two billion four hundred fifty six million rupiah);

- 4) *Which creates losses to the state finance or state economy*, Bank BJB Tangerang Branch is one of the branches of PT Bank Pembangunan Daerah Jawa Barat dan Banten, Tbk (Bank BJB), which is a Regional Owned Enterprise (BUMD) owned by the Region of West Java and Banten in the field of Banking with 75% share ownership in the form of a Company. The defendant as the Branch Manager of BJB Tangerang and as a real person, namely together with the parties, planned from the beginning to apply for CWCC credit at Bank BJB Tangerang to get money in the amount of Rp8,145,000,000.00 (eight billion one hundred and forty-five million rupiah) from the proceeds of credit disbursement which was carried out unlawfully, which is a loss to the State in this case to be distributed to the parties.
- 5) *Those who perpetrate, cause others to perpetrate, or take a direct part in the execution of the act*, based on the facts of the law the cooperation carried out by the Defendant together with the witness Dheerandra Alteza Widjaya together with the witness Djuaningsih and the witness Djodi Setiawan involved was in accordance with their respective roles and closely related to each other to achieve the same goal, namely the approval and acquisition of a sum of money from the application for a Construction Working Capital Credit (CWCC) from Bank BJB Tangerang in 2015 with the aim of being enjoyed and distributed unlawfully. This is when associated with the requirements of 'participation in the commission' in Article 55 paragraph (1) to 1 of the Indonesian Penal Code in the actions of the Defendant must be fulfilled by the existence of a person as the perpetrator of the criminal act, namely the person who commits a criminal act (*plegen*), the person who orders others to commit a criminal act (*doen plegen*), the person who participates (together) in committing a criminal act (*mede plegen*). As stated above, the actions of the Defendant can be qualified as a person who participates in committing a criminal act together with the witness Dheerandra Alteza Widjaya and together with the witness Djuaningsih and the witness Djodi Setiawan, namely as a participant or co-perpetrator, thus the element '*those who perpetrate, cause others to perpetrate, or take a direct part in the execution of the act*', has been fulfilled.

The legal consequences of the defendant's actions are subject to Article 2 paragraph (1) Jo Article 18 of Law Number 31 of 1999 as amended and supplemented by Law Number 20 of 2001 concerning Eradication Of The Criminal Act Of Corruption Jo Article 55 paragraph (1) to 1 of the Indonesian Penal Code (KUHP) have been fulfilled, so the defendant is declared to have been proven legally and convincingly guilty of committing the crime of corruption committed jointly with imprisonment and a fine.

The defendants can also be asked to pay compensation as an effort to save State Losses which is carried out based on the Anti-Corruption Law in Article 18, namely: Paragraph (1) *"In addition to the additional sentence as referred to in the Criminal Code, the additional sentences are: a. confiscation of mobile goods or immobile goods or immobile goods used for or obtained from the criminal act of corruption, including the company owned by the accused, in which the criminal act of corruption is committed and any goods that have replaced the initial goods. b. the compensation paid shall be to a maximum of twice the wealth obtained from the criminal act of corruption. c. whole or partial closing of the company for maximum period of 1 (one) year. d. revocation wholly or partially of rights or abolishment wholly or partially of profits, which have been or can be given by the government to the accused."*

Construction of Legal Certainty that regulates Banking Corruption Crimes in Indonesia

Criminal acts committed in banking are regulated separately, and are "Lex Specialis" in Criminal Provisions starting from Chapter VIII concerning Criminal Provisions and Administrative Sanctions from Article 46, Article 47, Article 47 A, Article 48, Article 49, Article 50, Article 50A, Article 51, Article 52 which is regulated outside the Penal Code as "Lex generalis". Criminal acts related to banking business itself are regulated in Article 49 Paragraph (1) letters a to c and Article 49 Paragraph (2) letters a and b of Law Number 7 of 1992 in conjunction with Law Number 10 of 1998 concerning Banking (Banking Law). The position of the Banking Law with the PTPK Law is equal in the hierarchy of Legislative Regulations, the punishment for Bad Credit cases that occur in BUMN and BUMD Banks using the Anti-Corruption Law instrument is due to bad credit resulting from acts of Collusion and Nepotism from bank officials and from Debtors who work together, causing losses to bank.

According to the Anti-Corruption Law, corporations, public personnel, and all individuals are considered legal subjects. People who receive salaries or wages from state or regional finances, people who receive salaries or wages from a corporation that receives assistance from state or regional finance, people who receive salaries or wages from other corporations that use capital or facilities from the state or society, and civil servants as defined by the Civil Service Law and the Penal Code are all included in the subject of civil servants in Article 1 Number 2. The defendant in the Bank BJB Tangerang Branch Case, if analyzed, received a salary or wages from a corporation that received assistance from state or regional finances. Supreme Court Circular Letter No. 7 of 2012 in the formulation of the criminal chamber for the Special Crimes section also states that the problem raised is whether Article 2 only applies to defendants who are not civil servants and Article 3 applies to civil servants or state administrators? The solution is that Article 2 and Article 3 are intended for everyone, both private and civil servants. So both article 2 and article 3 apply to both civil servants and non-civil servants so that referring to the definition of legal subject in Article 1 number 2 of the Anti-Corruption Law, the legal subject of both cases in both Bank BJB Tangerang Branch has been fulfilled.

The next element of illegally commits included in the formulation of a criminal act is seen as one of the elements of a criminal act, not the criminal act itself. Against the law means going against the law, or not complying with legal prohibitions or requirements, or attacking an interest protected by law (Wahyuni, 2017). Illegally commits is only one of the complexities of the elements of a criminal act, so a distinction must be made between criminal acts as an understanding of the complexity of the elements and their relationship to each other and the unlawful nature of the act which is one of the elements of the complexity of the elements of the criminal act.

The type of capital source of the bank itself is one of the characteristics that can be used to study judicial conflicts in the context of banking crimes and corruption crimes regarding which regulations to apply. In essence, state finances encompass all rights and obligations (in whatever form) that may be quantified in monetary terms, rather than only being in the form of money. According to Law Number 17 of 2003 concerning State Finances, the term "state finances" also has a comprehensive definition that encompasses state funds emanating from the APBN, APBD, BUMN, and BUMD. By confirming the status of state assets originating from state finances and separating them from the APBN for including capital participation in BUMN/BUMD, Constitutional Court Decision No. 48PUU-XI/2013 and 62/PUU-XI/2013, which was read on September 18, 2014, also put an end to the debate regarding the status of state finances in BUMN.

Article 14 of the Anti-Corruption Law "*Anyone violating the provision in Law which strictly states that the violation of the provision in the law as a criminal act of corruption is subjected to the provision governed in this law*" is a bridge to reach other criminal acts related to losses to state finances and the state economy. The provisions of Article 14 of the Anti-Corruption Law can be said to be provisions that expand the scope of the provisions of the Corruption Eradication Law to other statutory provisions where this provision is a delegation that will be filled in by other statutory provisions. However, the provisions of Article 14 apart from expanding the scope also act as a limitation on the implementation of the Law on the Eradication of Corruption Crimes so that the corridor of the "lex specialist systematic" legal principle must be taken into account in expanding the scope of the Law on the Eradication of the Criminal Act of Corruption, however, Article 14 of the Anti-Corruption Law must be interpreted "extensively", that is, beyond the limits of a "restrictive" meaning which is based on its meaning according to language. This is in line with Supreme Court Circular Letter Number 7 of 2012 in the criminal chamber's formulation which states "*Even if the modus operandi falls into the area of other laws and regulations, if the elements of the criminal act of corruption have been fulfilled, then the Anti-Corruption Law can be applied*".

There are three criteria that determine whether a law is considered "lex specialist systematiche" in the context of criminal law with regard to crimes committed in the

banking industry. First, the law's substantive criminal provisions diverge from its general provisions. Second, formal criminal law, which is governed by the law, differs from general criminal procedural requirements. Third, the legal subject or address in the law is unique. The "specialist systematiché" Principle is a means to prevent, limit and realign the direction of the principles of "acts against the law" and "abuse of authority" in criminal acts of corruption (Hairiej, 2017). According to a doctrinal approach through the "lex specialis sistematis" principle, violations of the prudential principle are a category of banking crime, thus they are not just viewed as corrupt acts (Purba. et all, 2022).

The "lex specialis sistematis" principle doctrinal approach has not been able to resolve the norm dispute that occurred between the Banking Law and the Anti-Corruption Law. As stated in Article 1 point 1 of Law Number 17 of 2003 concerning State Finances, state finances are all of the state's rights and obligations that can be valued in monetary terms, as well as everything in the form of money or goods that can be made property of the state in connection with the implementation of the rights and obligations of the state in carrying out state government. The solution is to closely monitor the normative juridical construction of positive law in state finances so that separated state assets are not necessarily interpreted as not being part of state finances. The development of the concept of state finance places state finance as a public sector which makes the government the subject of every element or field of management in making decisions in accordance with their respective fields. The goal of separating state assets is to ensure that each sector may manage its own resources without being hindered by the typical pattern of government management. As a result, the distinct state finances are only dependent on how they are managed.

State assets that are separated as managed by BUMN and BUMD in the form of limited liability companies remain state finances or regional finances whose management is carried out outside the APBN/APBD system (Mulyana, 2018). So according to Eddy O.S. Hairiej in Asep Mulyana's principle of "Lex Specialis derogat legi generali" which has given birth to its derivatives, namely the principles of "systematische specialiteit" and "logische specialiteit". The "logische specialiteit" or specificity principle applies to the provisions of articles that will be applied in a special law. logical, meaning that criminal provisions are considered to have special features if they have aspects of a special nature in addition to all the elements of general criminal provisions (Mulyana, 2018). Meanwhile, the principle of "systematische specialiteit" applies to decide which special law will be enforced, meaning that the legislator specifically chooses from existing special laws to adopt criminal provisions in a special law. (Aji, 2009).

Eddy O.S. Hairiej also put forward the principle of "Lex consumer derogat legi consumtae" which means that one provision consumes another provision, the most dominant provision will be used for criminal acts. Literally, "Lex Consumen Derogat

Legi Consumptae" means that one provision consumes another provision (Hiariej, 2017). The principle "Lex Consumen Derogat Legi Consumptae" in Germany refers to a situation that decides based on a concrete situation. The criminal provision that most influences the behavior of those who violate it is used as a guideline, for instance, if two criminal laws are of the same type, such as being "lex specialis." Contrary to this principle, criminal threats pertaining to acts that violators of these rules genuinely or concretely manifest are used instead of the harshest criminal penalties. (Hiariej, 2017).

The purpose of the consuming provisions is that the criminal provisions are used as guidelines, namely the criminal provisions that most dominate the offender's actions if there are two criminal provisions of the same nature in the sense that they are both "lex specialis". The next juridical construction that can be built from banking business activities is to be subject to the crime of Corruption if the facts found are more dominant in the elements of the crime of corruption, where the elements of Article 2 paragraph (1) and Article 3 of the Anti-Corruption Law are: *Anyone, who illegally commits, enrich oneself or another person or a corporation, abuses the authority, opportunity or facilities given to him related to his post or position, which creates losses to the state finance or state economy.* Referring to the principle of "Lex specialis systematis" and its derivatives "systematische specialiteit" and "logische specialiteit" and the principle of "Lex Consumer derogat legi consumepte" regarding banking crimes or banking crimes that harm state finances. The classification of banking crimes based on the Banking Law is basically grouped as follows:

- 1) Licensing Crimes are regulated in Article 46;
- 2) Bank Secrecy Crime is regulated in Article 47;
- 3) The crime of disclosing bank secrets is regulated in Article 47A;
- 4) Bank Supervision Crimes are regulated in Article 48 paragraph (1);
- 5) Crimes of False Registration, Bribery, and the Precautionary Principle are regulated in Article 49;
- 6) Criminal acts of compliance with provisions regulated in Article 50;
- 7) Shareholder criminal acts are regulated in Article 50A

The focus of banking crimes is on punishing forbidden conduct, which might result in criminal liability for the perpetrator if the act is carried out. The Banking Law's Article 51 paragraph (1) makes it clear that while criminal actions of corruption include losses, criminal acts as defined by Articles 46, 47, 47A, 48 paragraph (1), 49, 50, and 50A are crimes. corruption offenses, which are governed by Articles 2 and 3 of the Anti-Corruption Law, and state finances, which are governed by those provisions, as decided by the Constitutional Court since 2016. This corruption changes the paradigm from formal offenses to material offenses, which is of course different from the Banking Law. When a criminal act occurs at a bank where in carrying out its business activities there is an element of intent, a banking offense can be applied as stated in Article 49 paragraph (1) and paragraph (2) of the

Banking Law, but this does not rule out the possibility that the bank will suffer losses.

A broad definition of state finances is given by the regulations pertaining to state finances found in Law Number 17 of 2003 concerning State Finances. These regulations cover everything that can be made property of the state in connection with the execution of these rights and obligations, including wealth. Law Number 19 of 2003 about State-Owned Enterprises divides the State, and Regional Assets are divided into Regional-Owned Enterprises.. According to Article 2 of Law Number 17 of 2003 concerning State Finances, BUMDs—in this case, the Regional Development Bank (BPD)—are responsible for managing the separated Regional Assets for the Regional Government. Therefore, if a criminal act occurs in the bank's business operations, it will be detrimental to the bank. Regional Finances are essentially state assets/regional assets managed by themselves or by other parties in the form of money, securities, receivables, goods, and other rights that can be assessed using money. The state, or in this case, the region, also suffers losses as a result of regional development (BPD).

Regional losses experienced as a result of losses experienced by a Regional Development Bank from a criminal act that occurred in carrying out the bank's business are the entry point for law enforcement officials to carry out corruption offenses. The principle of "Lex Specialis derogat legi generali" with its derivatives, namely the principles of "systematische specialiteit" and "logische specialiteit", plays a very important role for APH where the application of offenses requires a strong juridical construction so that the application of the law is applied appropriately and effectively. In determining the articles that will be applied in a special law, the principle of "logische specialiteit" is used, meaning that criminal provisions which have a special nature, apart from containing all the elements of general criminal provisions, also contain elements of a special nature, while to determine the Whichever special law is to be enforced, the principle of "systematische specialiteit" applies, in which case the criminal provisions in the law are specifically determined by the law maker to be specific from existing special laws, including the Banking Law or the Anti-Corruption Law. (Mulyana, 2018).

Activities that fall under the category of criminal conduct in bank business operations as defined by Article 49, paragraph (1) of the Banking Law and that meet the requirements for a banking crime: *"creates or causes to exist falsified records in the books or in a report, in a document or report on business operation, a transaction report or an account of a Bank; eliminates or fails to enter or cause not to be recorded in the books or in a report, or in a document or report on business operation, a transaction report or an account of a Bank; changes, obscures, conceals, erases, or eliminates the existence of a record in the books or in a report, in a document or report on business operations, a transaction report or an account of a Bank, or knowingly and willfully changes, obscures, conceals, erases, or destroys such accounting records"*, and

paragraph (2): *"requests or accepts, permits or approves to accept a remuneration, commission, gratuity, service, money or valuables for personal gain or for the benefit of his family in return of his efforts to obtain in favor of another person a down payment, Bank guarantee, or Credit facility from a Bank, or as part of the purchase or discounting by a Bank in bill of exchange (draft), promissory notes, cheques, and commercial paper, or other proof of liability, or in return of providing approval for another person to draw funds in excess of his Credit ceiling at the Bank; b. does not take the necessary measures to assure the adherence of the Bank to the provisions of this Act and the provisions in other prevailing laws and regulations applicable to Banks"*.

In terms of "expressive verbis" it can be applied to actions that meet the formulation of the elements of the article above, but if the banking crime occurs at a Regional Development Bank (BPD) and causes losses to the Regional Development Bank which constitute Regional/State Losses, then with the thought of "logische specialiteit" and "systematische specialiteit" The law applied is Article 2 or Article 3 of the Anti-Corruption Law with the fulfillment of its elements *"Anyone who illegally commits an act to enrich oneself or another person or a corporation; with the aim of enriching oneself or another person or a corporation, abuses the authority, opportunity or facilities given to him related to his post or position, which creates losses to the state finance or state economy"* which focuses its actions on the material consequences. This thinking is in line with the principle of "Lex Consumen derogat Legi Consumpte" where looking at the facts that occurred at Bank BJB Tangerang Branch, namely that there was a criminal act in the banking sphere and was detrimental to state finances, so with the lens of the principle of "Lex Consumen derogat Legi Consumpte" we look at the action. committed by the perpetrator of a criminal act can be applied as a banking offense, however, looking at the consequences resulting from State Losses then the construction becomes an unlawful act or misuse of the authority, opportunity or means available to him because of his position. or the position held by the perpetrator of the criminal act that resulted in State losses so that the offense of Corruption can be applied to the defendants.

The juridical construction in the application of Corruption offenses to Bank business activities which are detrimental to state finances can be constructed with the element of unlawfulness included in the formulation of the criminal act being seen as one of the elements in the criminal act, and not a criminal act itself. Every act that violates a regulation in all fields, including civil law, state administration and others, contains an unlawful nature in that act (Chazawi, 2014). There is no regulation that requires criminal acts committed in the banking sector which result in State/Regional losses to be applied as corporate offenses or banking offenses due to equality as a fellow "lex specialis" between the Anti-Corruption Law and the Banking Law.

If we look further than the category of "lex specialist systematic", its application needs to be seen contextually in the case. The Anti-Corruption Law and the Banking Law which are special regulations as "lex specialis" regulate material criminal provisions in the law in question that deviate from existing general provisions and the address or legal subject in the law is special, apart from the special provisions as "lex specialis", in its implementation there is conflict as with the "lex specialis" in its implementation by law enforcement officials when there are Banking Crimes in Regional Development Banks that are detrimental to the State. The principle is clear that the provisions in the special law "Lex specialis derogat legi generali" override provisions in general laws.

The application of corruption offenses to the Bank BJB Tangerang Branch case, law enforcement officers apply the definition of state loss as stated in the Corruption Eradication Law and in the State Treasury Law or State Finance Law for acts of deviant use and management of state finances that occur in in the banking sector, whether state-owned banks have capital partly or entirely from the APBN or Regional Development Banks (BPD) whose capital is partly or wholly from the APBD and causing state/regional losses is defined as an act detrimental to state finances or the state economy. So, in order to decide which legal equality to use, law enforcement officials must have knowledge of the principle of "Lex Specialis derogat legi generali" which has given birth to its derivatives, namely the principles of "systematische specialiteit" and "logische specialiteit". According to the "logische specialiteit" principle, criminal provisions are considered to have a special nature if they include features of a special nature in addition to all the elements of general criminal provisions. (Chazawi, 2014). Meanwhile, to determine which special law will be enforced, the principle of "systematische specialiteit" applies, in the sense that the enactment of criminal provisions in special laws is determined by the law maker specifically from existing special laws (Aji, 2009). Eddy O.S. Hairiej also put forward the principle of "Lex consumer derogat legi consumptae" which means that one provision consumes another provision, the most dominant provision will be used for criminal acts (Hiariej, 2017).

Based on the principles of "logische specialiteit", "systematische specialiteit" and the principle of "Lex Consumen Derogat Legi Consumptae", law enforcement officials, both the Police and Prosecutors, implement the definition of State Loss as stated in the Corruption Eradication Law and in the State Treasury Law, and According to the State Finance Law, any deviation in the use and management of state funds that takes place in the banking sector—whether it be in state-owned banks, whose capital comes entirely or in part from the APBN, or in Regional Development Banks (BPD), whose capital comes entirely or in part from the APBD—that results in losses for the State or Region qualifies as an act detrimental to state finances or the state economy by meeting the requirements of a criminal act of corruption, which are: (1) an unlawful act or misuse of authority, opportunities, or facilities available to him; and (2) the parties, whether they are enriched, third parties, or the corporation.

Referring to Article 1 number 2 of the Anti-Corruption Law, the legal subject of the Defendant Kunto Aji Cahyo Basuki received a salary or wages from Bank BJB Tangerang, obtained capital from finance belonging to the West Java and Banten Regions amounting to 75% so it is included in the category of legal subject of the Anti-Corruption Law, the actions of the defendant Kunto Aji Cahyo Basuki referred to Supreme Court Circular Letter No. 7 of 2012 "the *modus operandi*" for the defendant's criminal actions was within the scope of the Bank's business and the consequences of the defendant's actions caused state losses. This construction has been applied to the Bank BJB Tangerang case so that the Corruption offense can be applied to criminal acts that occur within the scope of the Bank in carrying out its business activities which are detrimental to the State Finances.

Conclusion

Criminal acts that occurred in the banking sector in the case of Bank Jabar Banten (BJB) Tangerang Branch can be applied as Corruption offenses in accordance with the Law on the Eradication of the Criminal Act of Corruption as "*Lex Specialis*" even though the *modus operandi* falls into the area of other statutory regulations, namely the Banking Law, however The defendant's "*Mens Rea*" and the elements that are more often fulfilled are the article on criminal acts of corruption so that the application of the Corruption offense to the defendant Bank Jabar Banten (BJB) Tangerang Branch is appropriate. The legal consequences of the application of corruption offenses in the fictitious credit financing case of Bank Jabar Banten (BJB) Tangerang Branch are that state losses can be sought to be recovered through a replacement money mechanism which has coercive measures in its implementation, and by implementing corruption offenses, other participants can be held criminally liable not bank employees or bank administrators or affiliated parties who also participate in criminal acts of corruption that result in state losses.

Juridical construction in criminal acts of corruption in the banking sector which is detrimental to state finances based on the justice system in Indonesia can be built through the approach of the "*logische specialiteit*" principle to decide on the provisions of articles that will be applied in a special law, the "*systematische specialiteit*" principle to determine the law. which special law will be applied and the principle of "*Lex Consumen Derogat Legi Consumptae*" to decide according to which criminal provisions dominate the actions of violators regulated in laws which have the same nature as "*lex specialis*" based on a concrete situation. The defendant Kunto Aji Cahyo Basuki is subject to Article 2 paragraph (1) of Law Number 31 of 1999, as amended and supplemented by Law Number 20 of 2001 concerning the Eradication of Corruption Crimes, according to this interpretation, which has been applied to the Bank BJB Tangerang Case. Jo The defendant's unlawful acts that took place while the Bank was conducting business and were harmful to State finances are the basis for Article 55, paragraph (1) of the Penal Code.

Acknowledgement

The author would like to thank the Merdeka University of Madiun for providing the opportunity and full support in this research process, and for their significant assistance and facilitation in this research, including access to adequate resources, guidance and administrative support. Hopefully the results of this research can make a positive contribution to the development of science and become a source of pride for the entire academic community of Merdeka University of Madiun.

Declarations

- Author contribution : Author 1: played a key role in conceptualizing the study, developing the methodology, and made significant contributions to the initial manuscript; Author 2: compiled and managed research data, performed and played a key role in manuscript review and editing and visualization; Author 3: provided expertise in formal analysis contributions and research supervision. Collectively, all authors validated the research and provided final approval for the submission, demonstrating a collaborative commitment to the journal.
- Funding statement : This research did not receive any external funding from public, commercial, or not-for-profit sources. The work presented herein was carried out with resources available within our institution.
- Conflict of interest : The authors declare no conflict of interest
- Additional information : No additional information is available for this paper

References

- Aji, I. S. (2009). *Korupsi dan Penegakan Hukum*. Jakarta: Diadit Media.
- Antropov, K., Akhmadeev, R., Voronkova, O. Y., Kotova, X., Khoruzhaya, S., & Kurikov, V. M. (2021). Identification Of Corruption Risks In The Banking Sector Of The Economy. *Entrepreneurship And Sustainability Issues*, 9(2), 123-133.
- Arifin, M. Z. (2024). *Tindak Pidana Korupsi: Kerugian Ekonomi dan Keuangan Negara (Perspektif Hukum dan Praktik)*. Jakarta: Publica Indonesia Utama.
- Arrasjid, C. (2018). *Hukum Pidana Perbankan*. Jakarta: Sinar Grafika.
- Bahoo, S. (2020). Corruption In Banks: A Bibliometric Review And Agenda. *Finance Research Letters*, 35, 1-13.
- Beck, T., Demirgüç-Kunt, A., & Levine, R. (2006). Bank Supervision And Corruption In Lending. *Journal of monetary Economics*, 53(8), 2131-2163.

- Chalim, F. (2017). Hubungan Hukum Bank dan Nasabah Penyimpan Dana Menurut Undang-Undang Perbankan. *Lex Et Societatis*, 5(9), 120-127.
- Chazawi, A. (2014). *Hukum Pidana Materiil dan Formil Korupsi di Indonesia*. Malang: Bayumedia Publishing.
- Firsanty, F. P., & Sugandi, Y. S. (2018). Corruption Cases In Banking Practices. *Jurnal Manajemen Pelayanan Publik*, 2(1), 1-8.
- Gjeçi, A., & Marinč, M. (2022). Corruption and Non-Performing Loans. *Economic and Business Review*, 24(4), 240-259.
- Hiariej, E. O. (2017). *Prinsip-Prinsip Hukum Pidana*. Yogyakarta: Cahaya Atma Pustaka.
- Hindriana, L., & Imaniyati, N. S. (2020). Penerapan Undang-Undang Tindak Pidana Korupsi Dalam Menangani Kejahatan Perbankan. *Aktualita*, 3(1), 303-318.
- Howorth, C., & Moro, A. (2006). Trust Within Entrepreneur Bank Relationships: Insights From Italy. *Entrepreneurship Theory and Practice*, 30(4), 495-517.
- Imayanti, N. S., & Putra, P. A. (2018). *Hukum Pidana Perbankan*. Jakarta: Sinar Grafika.
- Mardani, M., Basri, Y. M., & Rasuli, M. (2020). Pengaruh Komite Audit, Audit Internal, Dan Ukuran Perusahaan Terhadap Pengungkapan Kecurangan Pada Perusahaan Perbankan Yang Terdaftar Di Bei 2018. *Jurnal Al-Iqtishad*, 16(1), 1-17.
- Marzuki, P. M. (2017). *Penelitian Hukum (Edisi Rev)*. Jakarta: Kencana Prenada Media.
- Mulyana, A. N. (2018). *Business Judgment Rule: Praktik Peradilan Terhadap Penyimpangan Dalam Pengelolaan BUMN/BUMD*. Jakarta: Grasindo.
- Munzil, F., & Noval, S. M. (2016). Konsep Perlindungan Hukum Perbankan Nasional Dikaitkan dengan Kebijakan Kepemilikan Tunggal terhadap Kepemilikan Saham oleh Pihak Asing dalam Rangka Mencapai Tujuan Negara Kesejahteraan. *Jurnal Hukum Ius Quia Iustum*, 19(4), 524 - 547.
- Pakpahan, R. H., & Firdaus, A. (2019). Pembaharuan Kebijakan Hukum Asset Recovery: Antara Ius Constitutum dan Ius Constituendum. *Jurnal Legislasi Indonesia*, 16(3), 369-378.
- Pratama, R. S., Melati, D. P., & Susanti, I. (2014). Implementasi Terhadap Tipologi Pencucian Uang Terkait Tindak Pidana Bidang Perbankan (Studi Kasus

Putusan Pengadilan Tinggi DKI Jakarta Nomor 222/Pid.Sus/2020/PT DKI).
Jurnal Marwah Hukum, 2(1), 15-29.

Purba, I. G., Syahrin, A., & Ginting, B. (2022). Evaluation Of Prudential Principle Violations In Providing Credit To BUMN/BUMD Banks Which Leads To Corruption. *Journal of Positive School Psychology*, 6(7), 5064-5075.

Rahman, A., Abdul Adzis, A., & Mohamed Arshad, S. B. (2020). The Relationship between Corruption and Credit Risk in Commercial Banks of Pakistan. *International Journal of Innovation, Creativity and Change*, 11(1), 701-715.

Sholehuddin, M. (1997). *Tindak Pidana Perbankan*. Jakarta: PT. Raja Grafindo Persada.

Wahyuni, F. (2017). *Dasar-Dasar Hukum Pidana Di Indonesia*. Tangerang: PT.Nusantara Persada Utama.

Wibisono, W. (2023). Preliminary Study on Corruption Case in the Indonesian Banking Sector: Overview of the Fraudster, Loss, and Fraud Modes. *Asia Pacific Fraud Journal*, 8(1), 31-37.

.