




Analysis of Criminal Crime Responsibility Against Perpetrators of Banking Corruption Crimes

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Abstract

Introduction: The Banks as service providers need to provide maximum service to their customers and protect them from third parties trying to take over part or all of the customers' deposits and trust in the bank. Therefore, banks should regulate and establish procedures and mechanisms for the protection and provide solutions in the event of an action or activity that is detrimental to the customer

Purposes of the Research: Based on the background of the problems described above, it can be formulated the problems that the writer will examine, namely: 1). How is the Criminal Accountability Against the Perpetrators of Banking Corruption Crimes in the City of Jambi? 2). What is the Basis of Consideration of the Panel of Judges to decide on the perpetrators of Banking Corruption Crimes (Case Study of District Court Orders No: 04/ Pid.Sus -TPK/2016/PN. Jmb)

Methods of the Research: The research method used was normative research. Based on the results of this study, it was concluded that banking crimes are a canteen of crimes that occur within the scope of banking. The complexity of these crimes causes the prosecution of perpetrators of these crimes to apply the Corruption Crime Act.

Results of the Research: The results show that or the findings of this study prove that the basis for the judge's decision for the perpetrators of criminal acts in the District Court decisions are aggravating and mitigating matters as stated in the decision.

1. INTRODUCTION

Banks are the main place where people keep money, usually for security reasons. While the second goal is to make an investment. To fulfill these objectives, banks prepare storage facilities and distribute funds to the public. The point is that in this case the bank provides loans (credit). Originating from out of town and abroad (inkaso), and other services¹, The legal basis used as the basis for this research regarding banking is contained in Law Number 7 of 1992 in conjunction with Law Number 10 of 1998 concerning Banking in Indonesia.

From the understanding of the criminal act of corruption above, it can be interpreted that the criminal act of corruption is very detrimental to state finances or the country's economy and hinders national development, so it must be eradicated in the context of creating a just and prosperous society based on Pancasila and the 1945 Constitution which

¹ Thomas Suyatno, *Kelembagaan Perbankan*, (Jakarta: Gramedia Pustaka Utama, 2014).

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is a threat to the principles of democracy, which upholds transparency, accountability and integrity, as well as the security and stability of the Indonesian nation.²

Corruption crimes in Indonesia still occur and continue to increase. Developments continue to increase from year to year, both in terms of the number of cases that occur and the amount of state financial losses as well as in terms of the quality of crimes committed that are increasingly systematic and the environment that enters all aspects of people's lives,³ The meaning of corruption has been explained in 13 articles in Law no. 31 of 1999 jo. UU no. 20 of 2001. The criminal act of corruption in general fulfills the elements such as acts against the law, abuse of authority, opportunity, or means, enrich themselves, other people, or corporations, and cause financial harm country or country's economy.⁴

Several acts of corruption in banking that may occur in the banking world are: they acted unprofessionally, there was a lack of caution in the implementation of banking administration. In terms of banking conditions, banks always cover up if something violates the law at their bank, this is to maintain the good name of the bank, which is a trusted institution, so that if the bank concedes, it is considered a disgrace that the customer cannot know, so the perpetrators are kept secret, even the problems are sometimes not resolved through channels. Judiciary and the existence of supporting factors in the form of collusion by banking actors⁵

This form of crime is very covert, because there are bank secrets in Law Number 7 of 1992 in conjunction with Law Number 10 of 1998 concerning Banking which are not easily penetrated by the police. In its development, the mode of money laundering is increasingly complex and sophisticated in line with advances in information technology, especially in the banking and financial sector. Money laundering actors always try to avoid tracking assets resulting from their crimes by law enforcement officials by taking advantage of weaknesses in existing laws and regulations.⁶

Corruption causes an individual's attitude to place his own interests above everything else and will only think about himself,⁷ Therefore the banking industry in Indonesia has a positive correlation with economic conditions in general, thus the banking industry as a financial intermediary institution that bridges surplus units with deficits units is one of the keys or barometers that describes the progress of the country's economy.⁸

² Irwan Sapta Putra, "Tindak Pidana Korupsi Ditinjau Dari Ham Di Indonesia." *Res Justitia: Jurnal Ilmu Hukum* 2, no. 1 (2022): 87-105. DOI: <https://doi.org/10.46306/rj.v2i1.27>.

³ Sinurat, Fransiskus David Ferdy, Prins David Jemil Tamba, and Syawal Amry Siregar. "Pelaksanaan Penuntutan Terhadap Perkara Tindak Pidana Korupsi Oleh Kejaksaan Negeri Medan." *JURNAL RECTUM: Tinjauan Yuridis Penanganan Tindak Pidana* 4, no. 1 (2022): 541-554. DOI: <http://dx.doi.org/10.46930/jurnalrectum.v4i1.1973>

⁴ liputan6.com, December 7, 2021, <https://hot.liputan6.com/read/4730252/pengertian-korupsi-menurut-para-ahli-penyebab-dan-dampaknya>.

⁵ http://books.google.co.id/books?id=75i4AAAACAAJ&dq=hukum+perbankan+perbankan+di+indonesia&hl=id&ei=wTmATdjDK4q4rAeZ4d3BBw&sa=X&oi=book_result&ct=result&resnum=3&ved=0CDQQ6AEwAg,

⁶ Ida Rahma. "Urgensi Peran Pusat Pelaporan Dan Analisis Transaksi Keuangan Dalam Penegakkan Hukum Tindak Pidana Pencucian Uang." *MAQASIDI: Jurnal Syariah dan Hukum* (2022):113-126. DOI: <https://doi.org/10.47498/maqasidi.vi.1311>

⁷ Wicipto Setiadi, "Korupsi Di Indonesia Penyebab, Hambatan, Solusi Dan Regulasi," *Jurnal Legislasi Indonesia* 15, no. 3 (November 21, 2018): 249-62, <https://doi.org/10.54629/jli.v15i3.234>.

⁸ Fontian M. & H. Sayid MRN, "Konsep Perlindungan Hukum Perbankan Nasional Dikaitkan dengan Kebijakan Kepemilikan Tunggal terhadap Kepemilikan Saham oleh Pihak Asing dalam Rangka Mencapai

At least there are several strategies in developing sales quality for both products and services, namely by paying special attention to consumers, in this case, namely customers based on precise and fast service and providing the right quality of service to make consumers feel satisfied. According to Parasuraman in his journal, Ida Bagus explained that the development of good service quality on a regular basis and served by companies will get satisfaction from consumers because good service means that it can be presented in a way that is ready to run, has reason and moral values so that it is agile or agile in facing every obstacle.⁹

People's disappointment with the eradication of criminal acts of corruption in Indonesia still occurs to this day. Public concern and disappointment arose in line with the implementation of efforts to eradicate corruption. The public understands that the efforts made by the government and related institutions have not been maximized and even seem half measures, so that acts of corruption still occur in Indonesia. Corruption in Indonesia occurs not only in one area, but in various fields of life and within the executive, legislative and judiciary as well as the private sector.¹⁰ Efforts to eradicate corruption have been carried out with the hope of fostering a spirit of eradicating corruption throughout Indonesia.

The eradication of corruption in Indonesia cannot be separated from the view that it requires legal politics, namely legal policy or official policy lines regarding laws that will be enforced by making new laws or replacing old laws.¹¹ legal views and objectives to be properly achieved by the legal system in force in Indonesia. Criminal liability can be seen as a psychic state, in such a way that the maker is able to realize, or knows that the maker is breaking the law and in accordance with that conviction is able to determine his will.¹² According to Van Hamel: Criminal is a suffering that is specific in nature, which has been imposed by the competent authority to impose a sentence on behalf of the state as the person in charge of public law order for a violator, namely solely because that person has violated a legal regulation that must be enforced by the State.¹³ "Strafbaarfeit, consists of three syllables namely, straf which is translated as criminal and law, the word baar is translated as can and may be while for the word feit it is translated as actions, events, violations and actions, These crimes can be classified into four types, namely: Criminal acts related to licensing, bank secrecy, supervision and development, bank business.¹⁴

Criminal acts do not stand alone, they only have meaning when there is criminal responsibility. This means that everyone who commits a crime does not automatically have to be punished. To be convicted there must be criminal responsibility. applicable criminal law, and subjectively to the perpetrators of criminal acts who meet the requirements to be

Tujuan Negara Kesejahteraan", Fakultas Hukum Universitas Islam Nusantara, *Jurnal Hukum IUS QUIA IUSTUM* NO. 4 Vol. 19 Oktober 2012, p. 525. DOI : <https://doi.org/10.20885/iustum.vol30.iss1.art1>

⁹ Ida Bagus Ngurah Satwika Purwa and I Gusti Agung Ketut Sri Ardani, Peran Kepercayaan Nasabah Dalam Memediasi Pengaruh Kualitas Pelayanan Terhadap Kepuasan Nasabah, *E-jurnal Manajemen Universitas Udayana*, 7 no 1 2017, page.192. DOI : <https://doi.org/10.24843/EJMUNUD.2023.v12.i01>

¹⁰ Bambang Waluyo, "Optimalisasi Pemberantasan Korupsi Di Indonesia," *Jurnal Yuridis* 1 no 2 (August 25, 2017): 169-162, <https://doi.org/10.35586/.v1i2.149>

¹¹ Ade Juang Nirboyo, "Potensi Korupsi Dalam Perizinan Lingkungan Melalui Sistem Online Single Submission Pasca Peraturan Pemerintah Nomor 5 Tahun 2021 Tentang Penyelenggaraan Perizinan Berusaha Berbasis Risiko," *Jatiswara* 36 no 2 (August 2, 2021): 219-28, DOI: <https://doi.org/10.29303/jatiswara.v36i2.316>.

¹² Roeslan Saleh, *Perbuatan Pidana dan Pertanggungjawaban Pidana*, (Jakarta: Aksara Baru, 1981) p. 82

¹³ Muhammad Ekaputra dan Abdul Kahir, *Sistem Pidana di Dalam KUHP dan Pengaturannya Menurut Konsep KUHP Baru*, Medan: Usu Press, 2010), p. 12

¹⁴ Adami Chazawi, *Pelajaran Hukum Pidana Bagian I*, (Jakarta: Raja Grafindo Persada, 2001), p. 69

criminally charged because of their actions¹⁵ The objectives expected to be achieved through this research are as follows: a) To find out and analyze Criminal Liability Against Perpetrators of Banking Corruption Crimes Based on Law Number 10 of 1992 concerning Banking and Based on Law No.31 of 1999 in conjunction with Law No. 20 of 2001 concerning the Eradication of Corruption Crimes¹⁶; b) To find out and analyze the Basis for Consideration the Panel of Judges passed a decision on the perpetrators of Banking Crimes (Criminal Case Case Study Number: 04/Pid.Sus-TPK/2016/PN. Jmb);¹⁷ c) Criminal liability can be seen as a psychic state, in such a way that the maker is able to realize, or knows that the maker is breaking the law and in accordance with that conviction is able to determine his will.¹⁸

2. METHOD

This type of research is normative legal research, namely research carried out by conducting a study of laws, legal principles, legal systematics, legal synchronization, and legal principles related to criminal responsibility for corruption against perpetrators of banking crimes. The specifications of this research are descriptive analysis, which in this writing is intended to provide an overview and description of the provisions of the laws and regulations governing criminal liability for perpetrators of banking crimes.

3. RESULTS AND DISCUSSION

Banking crimes as stated in the Banking Law are administrative crimes. Administrative crimes are crimes that arise through laws that are administrative in nature. Unlike crimes regulated in special criminal laws, administrative crimes arise from a preference for violations the provisions stipulated in a law are administrative in nature. Prohibitions in this law are generally punishable by administrative sanctions, but in several laws there are also articles that threaten criminal sanctions.

criminal acts in the field of banking involve acts related to banking and are punishable by criminal sanctions, even though they are regulated in other regulations, or in addition to being acts that violate provisions in the Banking Law and Sharia Banking Law, are also acts that violate provisions outside the Law -The Banking Law and the Sharia Banking Law which are subject to sanctions based on, among others, the Criminal Code (KUHP), the Corruption Crime Act, the Money Laundering Act, which acts are related to activities of running a bank business such as money laundering and corruption involving banks. Meanwhile, banking crimes are more focused on actions that are prohibited, subject to punishment specifically contained only in laws that regulate banking.

The meaning of banking crimes with criminal acts in the banking sector is based on the regulatory treatment of acts that have violated the law related to activities in running a bank's business.¹⁹ Specifically for banking crimes, and than sees it from two sides of

¹⁵ Naskah Rancangan KUHP Baru Buku I dan II Tahun 2004/2005 (penjelasan). Lihat juga Roeslan Saleh, *Tindak Pidana dan Pertanggungjawaban Pidana*, Lokakarya Masalah Pembaharuan Kodifikasi Hukum Pidana Nasional Buku I, BPHN Departemen Kehakiman, Jakarta, 13-15 Desember 1982

¹⁶ D. A. Tawang . Penerapan Ketentuan Pemberantasan Tindak Pidana Korupsi dalam Kasus Kredit Macet Perbankan. *Jurnal Hukum Prioris*, 2 no (4) (2010), 220-228

¹⁷ Decision of District Court Number: 04/Pid.Sus-TPK/2016/PN. Jmb

¹⁸ Roeslan Saleh, *Perbuatan Pidana dan Pertanggungjawaban Pidana*, (Jakarta: Aksara Baru, 1981), p. 82

¹⁹ Marjono Reksodiputro, *Kemajuan Pembangunan Ekonomi dan Kejahatan, Kumpulan Karangan, Buku Kesatu*, (Jakarta: Pusat Pelayanan Keadilan dan Pengabdian Hukum, 1994), p. 74

understanding, namely narrow and broad. In a narrow sense, banking crimes are limited to acts that are categorized as criminal acts according to the Banking Law.

Meanwhile, in a broad sense, banking crimes are not limited to those regulated by the Banking Law, but also include acts that are formulated in criminal acts that disrupt the economic sector broadly, which also includes capital market crimes, computer crime, both arising from losses to private companies, as well as the Government and BUMN, fiscal and customs (custom crime).²⁰

In the context of common perception of the meaning of banking crimes, Bank Indonesia in Bank Indonesia Circular Letter Number: 12/35/INTERN dated 23 July 2010 concerning Guidelines for Coordination Mechanisms for Handling Alleged Banking Crimes, provides the definition of banking crimes as a crime that fulfills the following elements: elements as referred to in Article 46 to Article 50A of the Banking Act or Article 59 to Article 66 of Law No. 21 of 2008 concerning Sharia Banking (Sharia Banking Law). The elements of a crime include the subject (perpetrator) and the form of the act, both positive, namely committing an act, and negative, namely not committing an act that must be done.

The dimensions of criminal acts in the banking sector can be in the form of individual criminal acts against banks, bank criminal acts against other banks, or bank criminal acts against individuals, so that banks can become victims or perpetrators. Meanwhile, the spatial dimensions of criminal acts in banking are not limited to one place. Certain conditions, but can cross the territorial boundaries of a country. Likewise with the dimension of time, criminal acts in the banking sector can occur immediately, but can also last for a long time. Meanwhile, the scope of occurrence of criminal acts in the banking sector can occur in all spheres of life the world of banking or which is closely related to banking activities and includes with other financial institutions.

The Banking Law distinguishes criminal sanctions into two forms, namely crimes and violations. Banking crimes with the category of crime consist of seven, namely Articles 46, 47, 47A, 48 paragraph (1), 49, 50, and Article 50A. Meanwhile, banking crimes in the category of violations with lighter criminal sanctions than criminal acts classified as crimes consist of one article, namely Article 48 paragraph (2). The classification of banking crimes into crimes is based on the imposition of a sentence that is more severe than the violation. This is bearing in mind that a bank is an institution that keeps funds entrusted by the public to it, so that actions that can damage public trust in banks, which basically will also harm the bank and the community, need to be avoided, It is hoped that the classification of banking crimes as crimes, so that high compliance with the provisions of the Banking Law can be formed. Meanwhile, the Sharia Banking Law does not distinguish banking criminal sanctions and includes them in eight articles, namely Article 59 to Article 66.

Comparison between the Banking Law which imposes cumulative sanctions of imprisonment with a minimum imposition of 2 years up to a maximum of 15 years plus a minimum fine of IDR 4 billion and a maximum of IDR 200 billion, with several sanctions regulated in other laws and regulations such as the Money Laundering Prevention and Eradication Act (UU TPPU) which only imposes the highest prison sentence of 20 years plus the highest fine of IDR 10 billion, the Corruption Act which imposes criminal sanctions with four variations, namely cumulative with imposition of imprisonment for a minimum of 1 year and a maximum of life imprisonment plus a minimum fine of IDR 50 million and a maximum of IDR 1 billion, cumulative with the highest sanction of imprisonment for a

²⁰ N.H.T. Siahaan, *Money Laundering & Kejahatan Perbankan*, (Jakarta: Jala Permata, 2008), p. 212

maximum of 3 years plus a fine of a maximum of IDR 50 million, cumulative and alternative with the highest sanction maximum imprisonment of 3 years and a maximum fine k Rp. 150 million, cumulative and alternative to imprisonment for a minimum of 1 year and a maximum of 20 years and/or a minimum fine of Rp. 50 million and a maximum of Rp. 1 billion,¹⁵ and the Criminal Code, such as embezzlement which imposes a maximum prison sentence of 4 years and a maximum fine of IDR 900, -, the criminal sanctions regulated in the Banking Act for imprisonment are balanced with the provisions in the AML Law, Corruption Law, and the Criminal Code, while for fines, the Criminal Code -The banking law imposes very high rates, even the highest can reach Rp. 200 billion.

According to Law Number 10 of 1998 concerning amendments to Law Number 7 of 1992 concerning Banking Article 1 paragraph (2) which reads: "a bank is a business entity that collects funds from the public in the form of savings and distributes them to the public in the form of credit and or other forms in order to improve the standard of living of the people at large"

The principles of Indonesian banking can be seen in Law Number 10 of 1998 concerning Banking in Article 2: "Indonesian banking in carrying out its business is based on economic democracy by using the precautionary principle". The economic democracy in question is economic democracy based on the 1945 Constitution. Regarding the principle of prudence as stated in the provisions of Article 2 of the Banking Law, there is no official explanation, but we can argue that banks and the people involved in them Everyone, especially in making policies and carrying out their business activities, must carry out their respective duties and authorities in a careful, thorough and professional manner so as to gain the public's trust. In addition, banks in carrying out their business must always comply with all applicable laws and regulations consistently based on good faith, Regarding the functions of banks, it is regulated in Article 3 of Law Number 10 of 1998 which reads: "the main function of Indonesian banking is as a collector and distributor of public funds". From this provision it can be seen that the function of the bank is to act as an intermediary between parties who have excess funds (surplus of funds) and parties who are short of funds and need funds (lacks of funds).

A financial institution is any company engaged in the financial sector where its activities are either only raising funds or only channeling funds or both.²¹ Banks as financial institutions have differences with Non-Bank Financial Institutions (LKBB). Non-Bank Financial Institutions, namely all entities through their activities in the financial sector to withdraw money from and distribute it to the public.²²

Meanwhile according to Law Number 7 of 1992 concerning Banking, as amended by Law Number 10 of 1998, a bank is a business entity that collects funds from the public in the form of savings and distributes them to the public in the form of credit and/or forms others in order to improve the standard of living of many people. Thus, from the two definitions mentioned above, as a consequence of the role of a bank as a financial institution, bank activities are carried out based on their position as a financial institution, namely:

Collect funds (money) from the public in the form of savings. The point in this case is the bank as a place to save money or invest for the community. The main purpose of people saving money is usually for security reasons. While the second goal is to make an investment. To fulfill these objectives, the bank prepares a facility called a depository.

²¹ Kasmir, *Dasar-Dasar Perbankan*, (Jakarta: RajaGrafindo Persada, 2002), p. 3

²² Thomas Suyatno, *Kelembagaan Perbankan*, (Jakarta: Gramedia Pustaka Utama, 1987), p. 12.

Channeling funds to the community. The point is that in this case the bank provides loans (credit) to the people who apply. In other words, banks provide funds for people who need them.

Providing other banking services. The point is that banks carry out activities outside of activities to collect funds from the community and distribute funds to the community. For example, money transfers (transfers), collection of securities originating from within the city (clearing), collection of securities originating from outside the city and abroad (inkaso), and other services.²³

To be able to set up a bank, a permit is required from the regulatory agency for banking activities in Indonesia, namely Bank Indonesia. The obligation to obtain a business license as a Commercial Bank or Rural Bank is due to the activity of collecting funds from the public, by anyone, basically an activity that needs to be supervised because this activity is related to the interests of the public who deposit their funds in the bank.²⁴

The legal form of a bank in Indonesia refers to the type of bank itself, meaning that the legal form of a type of commercial bank can be different from the legal form of a people's credit bank, it can also be the same. The legal form of a bank is regulated in Chapter IV Part Two Article 21 of Law Number 7 of 1992 concerning Banking Fundamentals. Article 21 paragraph (1) Law Number 7 of 1992 concerning Banking.

The proverb says: "Hands carry, shoulders carry", meaning that a person must bear all the consequences of his actions or behavior. Criminal law also stipulates such a thing, which is called criminal responsibility. the difference is, if the saying above contains a very broad meaning, in criminal law criminal responsibility is limited by provisions in the law. Criminal liability leads to the punishment of the offender, if he has committed a crime and fulfills the elements specified in the law. From the point of view of the occurrence of a prohibited (required) action, a person will be held accountable for these actions if the said action is against the law (and there is no elimination of unlawfulness or *rechtsvaardigingsgrond* or justification reasons) for that person from the point of view of being responsible, then only someone who is capable of responsibility who can be held accountable for punishment.²⁵

Administrative law, banking law are not the only options in criminal justice practice. There are several other laws that are often used to punish suspects in banking cases. This is because banking crime itself has many sides that can be examined partially. This is in accordance with the non-criminal banking mode which is quite complicated and consists of stages which in the end can be seen as a combination of criminal acts (agreement).

In the criminal justice process, the Public Prosecutor is obliged to make an indictment that is in accordance with the results of the investigation so that it can become the basis or foundation for the judge in his examination through the trial. The formulation of the indictment must be in line with the examination of the suspect. Even though the Public Prosecutor has some discretion in drafting an indictment, this discretion must be legally justifiable.

Banking crimes are basically crimes committed within the scope of banking as a result of collusion from internal and external parties of the bank. The result of this crime is the

²³ *Ibid.*

²⁴ Rachmadi Usman, *Aspek-Aspek Hukum Perbankan di Indonesia*, (Jakarta: Gramedia Pustaka, 2001), p. 69

²⁵ E.Y.Kanter dan S.R Sianturi, *Asas-asas Hukum Pidana di Indonesia dan Penerapannya*. (Jakarta: Stora Grafika, 2002), p. 249

emergence of losses from customers which will ultimately harm the bank because they have to replace the customer's funds that have been harmed. Departing from this understanding, it can be drawn a line of similarity between banking crimes and corruption as stipulated in Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes. However, the similarity of the elements of the act does not necessarily make the Corruption Law directly applicable to banking crimes. The use of this law must be carried out with careful consideration by the Public Prosecutor to prevent errors in proving the crime itself. As it is known that an act can only be categorized as a criminal act if the act has matched the formulation of the elements of the criminal act punishable by the said act. Therefore, the application of the Corruption Crime Law can only be carried out if the banking crime stems from an act which match each element in certain articles of this law.

Referring to the actions and consequences arising from banking crimes, the articles that can be applied to this crime are Articles 2 and 3 of the Corruption Crime Eradication Law: Article 2 : Whoever unlawfully commits an act of enriching himself or another person or a corporation that can harm the state's finances or the state's economy, shall be punished with imprisonment for life or imprisonment for a minimum of 4 (four) years and imprisonment for a minimum of short 4 (four years), maximum 20 (twenty) years and fined a minimum of Rp. 200,000,000.- (two hundred million rupiahs) and a maximum of Rp. 1,000,000,000.- (one billion rupiahs) and In the event that the criminal act of corruption as referred to in paragraph (1) is committed under certain conditions, death penalty may be imposed.

Article 3 : Whoever, with the intention of benefiting himself or another person or a corporation, abuses the authority, opportunity or facilities available to him because of his position or position which can harm the state's finances or the state's economy, shall be punished with life imprisonment. for life or imprisonment for a minimum of 1 (one) year. one) year and a maximum of 20 (twenty) years and/or a fine of at least Rp. 50,000,000.00 (fifty million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah).

The two articles above are formal offenses. This is shown in the formulation of the two articles above which require the existence of an unlawful act from the act. Neither Article (2) nor Article (3) requires that there be a consequence of the crime. This is shown by elements "can be detrimental to state finances or the country's economy" which means that the existence of state losses is not a result that is a condition for criminal prosecution of corruptors. The elements of Article 2 of Law Number Eradication of Corruption, among others, Everyone, Enrich yourself, other people, or a corporation, By way of breaking the law, Can be detrimental to state finances or the country's economy and than Meanwhile, the elements of Article 3 of the Law on Corruption Eradication include, Everyone, With the aim of benefiting oneself or another person or a corporation, Misusing authority, opportunity or means. What he has because of his position or position and Can be detrimental to State finances or the State economy.

the problem is banking corruption which creates potential state losses due to banking crimes. Losses suffered by banks as a result of this crime will more or less have an impact on losses for shareholders. However, this should be of concern to investigators, public prosecutors and judges, that state losses may not only be based on accusations but must be clearly proven, This is because the element of state loss is an element that must be met in order to categorize banking crimes as criminal acts of corruption. The use of the Corruption

Crime Eradication Law against banking crimes which in the end is not proven to result in state losses will result in the defendant being acquitted.

Public prosecutors often override the use of the Banking Act in indicting perpetrators of banking crimes. In practice, there are still many charges against perpetrators of banking crimes that place the Banking Law under the Corruption Act. In certain cases, banking crimes considered as a criminal act of corruption. This is due to the similarity between banking crimes and corruption where both are criminal acts committed by people with certain qualities or positions.

In Indonesian criminal law, the principle of *Systemtische Specialiteit* is known, which can be interpreted as the principle of Systematic Specificity. This principle of Systematic Specificity is a derivative principle of the *Lex Specialis Derogat Lege Generalis* principle (special provisions override general provisions). In general, the *Lex Specialis* principle is only considered as a principle governing the application of legal rules imposed in a case if there are two rules, one of which is more specific than the other. However, if there are two rules that can be enforced but both are special rules, then the legal apparatus must adhere to the derivative of the *Lex Specialis* principle, namely the principle of Systematic Specificity.

The purpose of this principle is that criminal provisions are said to be specific in nature if the legislators intend to enforce these criminal provisions as a special criminal provision. Systematic Specificity means that in choosing between the two rules to be applied, systematic observation of the criminal acts that have occurred must be used. For example, if the personal subject, the object of the alleged act that was violated, the evidence obtained, or the environment in which the offense occurred is in the context of banking, then the special law that must be enforced or prioritized is the Banking Law even though there are other special laws that have provisions which may also include such acts.

If there is an act that violates more than one specific legal provision, law enforcers must comply with the principle of Systematic Specificity. Therefore, if there is a criminal act on customer funds which is part of a banking crime, then the rule that should be used is the Banking Law, of an administrative or criminal nature. Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions is a law that regulates the use of information technology in Indonesia. The purpose of the formulation of this law, according to what is stated in the Principles and Objectives Chapter of Article 4 letter e, is: "To provide a sense of security, justice and legal certainty for users and operators of information technology".

As one of the sectors that use and operate information technology in the form of electronic banking or internet banking, banking is also an object regulated by this law. Banking is one of the strategic bodies mentioned by this law, namely in Article 52 paragraph (3) According to the article, if a violation of this law is committed within the scope of banking, then the criminal threat that can be imposed on the perpetrators of the crime is heavier than if the crime is committed in the non-government sector and not a strategic agency.

The selection of articles in the Information and Electronic Transactions Law to be used in indictments for banking crimes is based on the *modus operandi* of the crime. In banking crimes, perpetrators often make changes to customer data. Considering that currently almost all records are in the banking system using technological assistance, customer data which is then owned by the bank is electronic data. Any act of changing, adding,

subtracting, transmitting, destroying, removing, transferring, hiding customer's electronic data can be considered as violating the provisions of Article 32 paragraph (1) of the Electronic Information and Transaction Law.

Even though Article 32 does not explicitly state that protected electronic data or electronic documents are customer data, this article is considered by the author to have the same power as the banking law in adjudicating banking crimes. The existence of Article 52 paragraph (3), which emphasizes that if a criminal act in this law is committed at a strategic agency, one of which is banking, then the penalty will be more severe, indicating that the articles in this law are also made with the aim of used in prosecuting perpetrators of banking crimes.

The Information and Electronic Transaction Law is a law that is considered to cover the legal vacuum in the banking criminal law. Where until now there is no specific law that regulates electronic fund transactions or electronic fund transfers. The vacuum of the rule of law is confronted with banking crimes committed through cyberspace that are growing rapidly. With the existence of an electronic transaction article in the law, although it is not specifically intended for electronic transactions of customer funds, it is still considered to be accommodative to be imposed on banking crimes to this day.

As this discussion is for consideration of judges in deciding cases of corruption with Jambi District Court Decision Number: 04/Pid.Sus-TPK/2016/PN. Jmb, then to study it the author will review the parts of the decision, the perpetrator in this case as the defendant is Ferry dwi adriansyah bin Chaidir Hakam, Gender Male, 44 Years Old, Nationality Indonesian Citizen, with a residential address Jl. Bogenvile complex block CL 6 Rt.23, Kenali Besar Village, Kota Baru District, Jambi City, by way of criminal acts of banking corruption as follows : That the defendant FERRI DWI ADRIANSAH bin Chaidir Hakam At that time the defendant was still the Head of the BRI Simpang IV Sipin-Jambi Unit, in carrying out procedures or procedures for Forward Repayment and the debtor did not apply for credit back (paid off) by Briguna customers from the period of 2011 until 2013, done by: Briguna customers who are going to pay off the loan come directly to witness Dedy Haryanto as Customer Service (CS), who then witness Dedy Haryanto as Customer Service (CS) calls debtors who will pay off in turn to face the defendant FERRI DWI ADRIANSAH as Head of the BRI Unit Simpang IV Sipin-Jambi whereupon the defendant informed the debtor of the remaining loan balance; After the defendant FERRI DWI ADRIANSAH as the Head of BRI Simpang IV Sipin-Jambi Unit received settlement money from Briguna's debtors, then the defendant asked Customer Service (CS) to hand over collateral to Briguna's debtors who had already made advanced repayments, but the advance settlement money from the Briguna debtors who had been received personally by the defendant FERRI DWI ADRIANSAH were not handed over to the Teller to be recorded in the Cash Unit and then the Customer Service (CS) placed the files of the debtor who had made advanced payments in the warehouse where the files had been paid off; So that the unpaid Briguna account would not be known to other workers, the defendant FERRI DWI ADRIANSAH as the Head of BRI Simpang IV Sipin-Jambi Unit transferred the debtor's name to the system by transferring the debtor's name from the agency's dealer code (for example, previously the SMA 5 agency Muaro Jambi was transferred to the NONR agency dealer code). This is done so that when the Customer Service (CS) and Mantri print the list of agencies at the end of each month, the names of the debtors do not appear.

Whereas from 2011 to 2013 when the defendant FERRI DWI ADRIANSAH was the Head of the BRI Simpang IV Sipin-Jambi Unit, there were 554 (five hundred and fifty four)

Briguna customers at the BRI Simpang IV Sipin-Jambi Unit and from 554 (five hundred and fifty four) of these Briguna customers are 100 (one hundred) Briguna customers who have made advanced payments until the period of 2013.

The Banking Law does not explicitly state the limits and types of criminal acts in the banking sector. However, when viewed from various literature and applicable laws and regulations, banking crimes can be interpreted as criminal acts as stipulated in Articles 46 to Article 50A of the banking law which broadly classify types of criminal acts in the banking sector²⁶. The types of criminal acts in the banking sector are as follows:

Criminal acts related to licensing (Article 46 in conjunction with Article 16), namely licensing for any party carrying out activities to collect funds from members of the public is a matter that is very important to monitor. This is in view of the fact that this activity is related to the protection of the public which is deposited in a bank, so that any party that collects public funds must first obtain a license as a bank from Bank Indonesia.

Criminal acts related to bank secrecy (Articles 40, 41, 42, 43, 44, 45, 47). Bank secrecy provisions are needed to maintain public trust so that information on depositors and their savings is not misused in order to ensure the continuity of the bank's business, so that the existence of bank secrecy is very strategic. For this reason, parties who violate bank secrecy provisions need to be given criminal sanctions.

Criminal acts related to bank supervision by Bank Indonesia (Articles 29, 30 & 48). In the context of bank supervision by Bank Indonesia, banks are required to submit to Bank Indonesia all information and explanations regarding their business, provide opportunities for inspection of books and files at the bank and submit reports in a time and form determined by Bank Indonesia. If this obligation is not carried out properly, the offender may be subject to criminal sanctions.

Criminal acts related to Bank business activities (Article 49 paragraphs 1&2). As in the criminal charge filed by the public prosecutor that declared the defendant Ferry dwi adriansyah bin Chaidir Hakam legally and convincingly guilty of committing the crime of corruption as stated in the Primary indictment, he violated Article 2 paragraph (1) Jo Article 18 of Law Number 31 of 1999 concerning Eradication Corruption Crimes as amended by Law Number 20 of 2001 concerning amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes Jo Article 64 paragraph (1) of the Criminal Code, Sentenced a sentence against the defendant FERRI DWI ADRIANSAH bin Chaidir Hakam because it is punishable by imprisonment for 8 (eight) years reduced while the accused is in custody with an order so that the accused remains detained and fines of Rp. 200,000,000.- (two hundred million rupiah) subsidiary 6 (six) months in prison and impose an additional sentence on the defendant to pay replacement money of Rp. 3,728,200,842, - (three billion seven hundred twenty eight million two hundred thousand eight hundred forty-two rupiahs), and if the convict does not pay the replacement money no later than 1 (one) month after the court decision has permanent legal force, then the property can be confiscated by the prosecutor and auctioned off to cover the replacement money, in the event that the convict is not sufficient to pay replacement money shall be punished with imprisonment for 4 (four) years

²⁶ Arie Sundari, Tindak Pidana Perbankan ditinjau dari Undang-undang Perbankan dan Peraturan Perundang-undangan Terkait serta Permasalahan dalam Prakteknya, disampaikan dalam Seminar Tindak pidana di Bidang Perbankan, CFISEL, 2006, p. 9

Whereas as a result of the actions of the defendant FERRI DWI ADRIANSAH as the Former Head of the BRI Simpang IV Sipin-Jambi Unit, the state finances suffered a loss according to the decision in Letter Number: R.271/KI-III/07/2013 dated 105 July 2013 regarding the Report on the Implementation of BRI Fraud Audit Unit Talang Banjar & Implementation of Special Audit BRI Unit Sipin Kanca BRI Jambi. As for the details of the 100 (one hundred) Briguna customers who have made Continuing Repayment (paid off), the actions of the accused are as stipulated and subject to criminal penalties in Article 2 paragraph (1) juncto Article 18 of Law Number 31 of 1999 concerning Eradication of Corruption Crimes as amended with Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes juncto Article 64 paragraph (1) of the Criminal Code.

From a legal perspective, the meaning of corruption has been clearly explained in 13 articles in Law no. 31 of 1999 which has been amended by Law no. 20 of 2001 concerning the Eradication of Corruption Crimes. Based on these articles, corruption is regulated in 30 forms/types of criminal acts of corruption. These articles explain in detail the actions that can be subject to criminal sanctions. The 30 forms/types of corruption can basically be attacked as follows: Bribery, embezzlement, extortion, fraud, conflict of interest in procurement and gratuities. legal norms/rules, legal morals, and legal doctrine as considerations in deciding a case, for the sake of upholding justice, certainty, and legal order, which is the main goal of the law itself.²⁷

The basis for the judge's considerations in deciding that it was proven legally to have committed a criminal act of corruption against the defendant Ferri Dwi Adriansah Bin Chaidir Hakam in accordance with the Jambi District Court Decision Letter Number: 04/Pid.Sus-TPK/2016/PN. Jmb and aggravating circumstances the defendant did not support the government's program in eradicating corruption, the defendant did not really regret his actions, where there was a stark difference between giving testimony and the defendant's remorse when examined as a defendant and the defense put forward by the defendant and the defendant's legal counsel and other things mitigating the accused was never convicted, the accused was polite in court, the accused had family responsibilities.

4. CONCLUSION

Accountability for Banking Corruption Crimes is an unlawful act aimed at enriching oneself. Factors causing corruption in the banking sector can be seen from various aspects, both the perpetrators' aspects, environmental/society aspects and aspects of Corruption and banking laws, in addition to the weak internal control from the central bank as well as the economic or political position/status of the perpetrators and the circumstances surrounding what they did in such a way as to reduce the possibility of them being reported and prosecuted, prevention and eradication of criminal acts of corruption in the banking sector, The application of sanctions against perpetrators should not be discriminatory so that there is a deterrent effect for perpetrators so that in practice criminal law enforcement in Indonesia can be realized properly based on applicable law, the basis for consideration of the judge's decision sentencing the perpetrators of crimes in the Jambi District Court Decision Number: 04/ Pid. Sus-TPK/2016/PN. Jmb, among others, aggravating circumstances and mitigating circumstances as stated on the decision page, The judge's consideration is one of the most important aspects in determining the realization of the

²⁷ A S Maggalatung, "Hubungan Antara Fakta, Norma, Moral, dan Doktrin Hukum Dalam Pertimbangan Putusan Hakim". *Jurnal Cita Hukum* 2 no (2) (2012)

value of a judge's decision which contains justice and contains legal certainty, besides that it also contains benefits for the parties concerned so this judge's consideration must be addressed carefully, properly and carefully, then the judge's decision originating from the Judge's consideration will be canceled by the High Court or the Supreme Court, The judge in examining a case also requires evidence, where the results of the evidence will be used as material for consideration in deciding the case. The panel of judges who tried the case considered the charges put forward by the public prosecutor. This indictment is very important in the examination of criminal cases because the indictment forms the basis and determines the limits for the judge's examination. The decision made by the Judge may only concern events that fall within the limits determined by the indictment.

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