



Persero banking corruption criminal review from law number 10 of 1998 concerning banking

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Abstract

Banking as a financial intermediary institution that collects and distributes public funds. In carrying out its functions, banks can carry out various business activities, including fundraising, lending, and other activities. Criminal acts related to business activities are regulated in Article 49 paragraph (1) of Law no. 10 of 1998 concerning Banking which reads, if a bank violates criminal provisions in the implementation of its business activities, changes, obscures, hides, deletes, or eliminates a record in the books or in reports, as well as in documents or reports on business activities, transaction reports or accounts. a bank, or knowingly alter, obscure, omit, hide or damage the bookkeeping records, threatened with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a fine of at least Rp. 10,000,000,000.00 (ten billion rupiah) and a maximum of Rp. 200,000,000,000.00 (two hundred billion rupiah). A criminal act of bank business activity cannot be qualified as an act of corruption that causes state losses, due to capital participation by the State in the form of separated State assets. Whereas in fact, when the State includes its capital in the form of shares to a state-owned commercial bank, then the wealth becomes the assets of the state-owned commercial bank and does not become the wealth of the state. A criminal act of bank business activity cannot be qualified as an act of corruption that causes state losses, due to capital participation by the State in the form of separated State assets. Whereas in fact, when the State includes its capital in the form of shares to a state-owned commercial bank, then the wealth becomes the assets of the state-owned commercial bank and does not become the wealth of the state. A criminal act of bank business activity cannot be qualified as an act of corruption that causes state losses, due to capital participation by the State in the form of separated State assets. Whereas in fact, when the State includes its capital in the form of shares to a state-owned commercial bank, then the wealth becomes the assets of the state-owned commercial bank and does not become the wealth of the state.

Keywords: corruption crimes, persero banking, law number 10 of 1998 concerning banking

Introduction

Along with the progress of development in Indonesia and the development of the world economy globally, the demands of the public for banking services are increasing. The banking sector is growing rapidly and has a strategic role. Banking as a financial intermediary institution that collects and distributes public funds. In carrying out its business activities as a collector and distributor of public funds, the emergence of negative excesses in the form of the occurrence of a special crime committed by the banking elements themselves, customers or third parties as well as cooperation between the two may occur.

In line with the Era of the Digital System, the mode of banking crime that occurred in Indonesia has also developed towards a sophisticated mode in the form of white collar crime which is characterized by being difficult to track (untraceable crime), no written evidence (paperless crime), invisible (discernible crime). crimes) and carried out in a complicated way (intricate crimes). However, this does not mean that there are no conservative ones like what has happened recently, namely with the mode of counterfeiting, fraud and embezzlement of customer funds by bank employees or other people or cooperation between them.

They are the ones who must be supervised in carrying out their functions and authorities in the movement and dynamics of banking. Meanwhile, the provisions for banking crimes are as stated in Article 46, Article 47,

Article 47A, Article 48, Article 49, Article 50 and Article 50A of Law no. 10 of 1998 concerning amendments to Law no. 7 of 1992 concerning Banking (Banking Law).

In carrying out its functions, banks can carry out various business activities, including fundraising, lending, and other activities. Banks can carry out various business activities including fund raising, fund distribution, and other service provision activities, such as:

1. issue a debt acknowledgment letter;
2. buy, sell, or guarantee securities;
3. transfer money, either for its own benefit or for its customers;
4. placing funds in, borrowing funds from, or lending funds to other banks;
5. provide a place to store goods and securities;
6. conducting custody activities for the benefit of other parties based on a contract (custodian);
7. carry out factoring activities, credit card business, and trustee activities;
8. conduct capital participation activities in banks or other companies in the financial sector.

Criminal acts related to business activities, among others in the form of making or causing false records, omitting, not entering, causing non-recording, changing, obscuring or eliminating records in the books or reports of business

activities, transaction reports or accounts, or changing, obscuring, eliminating, hiding or destroying bookkeeping records, not carrying out the prudential principles in accordance with applicable regulations, requesting and/or receiving compensation from customers who obtain facilities from banks. Based on Article 49 of Law no. 10 of 1998 which reads:

1. "If a bank violates criminal provisions in the implementation of its business activities, the perpetrator may be subject to criminal sanctions as stipulated in Article 49 of the Banking Law, which reads:
 - a. Members of the Board of Commissioners, Board of Directors, or bank employees who intentionally: make or cause false records in the books or in reports, as well as in documents or reports on business activities, transaction reports or accounts of a bank;
 - b. omit or exclude or cause non-recording in the books or in reports as well as in documents or business activity reports, transaction reports or bank accounts;
 - c. changing, obscuring, hiding, deleting, or eliminating the existence of a record in the books or in a report, or in a document or business activity report, transaction report or bank account, or intentionally changing, obscuring, eliminating, hiding or damaging the bookkeeping records, threatened with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a fine of at least Rp. 10,000,000,000.00 (ten billion rupiah) and a maximum of Rp. 200,000,000,000.00 (two hundred billion rupiah)".

In the application of the provisions of Article 49 of this Banking Law, members of the board of commissioners, directors, or bank employees are subject to criminal sanctions if the person concerned intentionally makes or commits an act that causes a false record, resulting in a record/bookkeeping/report not showing the actual condition of the bank. condition of the bank as regulated in the Banking Law. In order to support this alleged bankruptcy, it should be proven with sufficient initial evidence, both written and unwritten, among others in the form of original documents as a comparison of documents/bookkeeping/reports.

However, in practice the enforcement of banking crimes is based on Article 2 paragraph (1) of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption (hereinafter referred to as the PTK Law), explaining that anyone who unlawfully commits an act of enriching oneself or another person or a corporation that can harm state finances or the state economy. Furthermore, Article 3 of the PTK Law also explains about corrupt behavior through abuse of authority. With tangible evidence with that power, public officials and state-owned companies can suppress or extort people who need services from the government or State-Owned Enterprises (BUMN).

The case that occurred, in the decision no. 41/Pid.Sus.TPK/2015/PN.Mks. In this case BUMN in the form of banking, namely PT. Bank Negara Indonesia (Persero) Tbk. The defendant's name was Asmiati Khumas ST.MM. accused of committing a criminal act of corruption which was carried out jointly with the prosecution carried out separately. Primary indictment with Article 2 paragraph (1) Jo. Article 18 paragraph (1) letter b of the PTK Law jo. Article 55 paragraph (1) of the 1st Criminal Code.

Subsidiary Article 3 Jo. Article 18 of the PTK Law jo. Article 55 paragraph (1) of the 1st Criminal Code.

The main action taken was the smooth granting of credit by the defendant as the Relation Officer (RO), together with Syahminal Yonndarma as the leader, Drs. Gusdi Hasanuddin as RO Supervisor in PT. BNI Small Credit Center (SKC) Parepare to Aming Gosal as director of PT. Griya Maricaya Gemilang (GMG) although there are deviations from the application process to the disbursement stage, the original guarantee is not held by PT. BNI is held by Bank Niaga but the disbursement of credit funds is still carried out by the defendant. Then it turned out that the credit funds used by Aming Gosal were not in accordance with the initial proposal, namely for the renovation of the Mall Of Makassar building and working capital loans. but instead it was used to redeem the certificate guarantee at Bank Niaga and the use of Aming Gosal's personal interests that were not in accordance with its designation. The defendant's actions were charged with enriching or benefiting Aming Gosal and harming the state's finances in the amount of Rp. 34,690,655,139 (thirty four billion six hundred ninety million six hundred fifty five thousand one hundred and thirty nine rupiah).

The second case, the Supreme Court's decision No.1144 K/Pid/2006 dated September 13, 2007 regarding the case of bad loans at PT Bank Mandiri (Persero) Tbk. Where, in the decision, the cassation panel decided ECW Neloe (Director of Bank Mandiri), I Wayan Pugeg (Director of Risk Management of Bank Mandiri), M Sholeh Tasripan (EVP Coordinator of Corporate and Government of Bank Mandiri) together with Edyson (President Director of PT Cipta Graha Nusantara) has violated the provisions in Article 2 paragraph (2) of the Corruption Law in conjunction with Article 55 paragraph (1) 1 in conjunction with Article 64 paragraph (1) of the Criminal Code

Thus, the public prosecutor is of the opinion that the PTPK Law can still be imposed on criminal acts within the scope of banking activities, as did the two defendants. Indeed, in his indictment, the public prosecutor described procedural errors, incomplete requirements, and misuse of credit facilities by PT Karya Putra Powerin (KPP). Dian Siswanto (Relationship Manager) and Rudy Wibisono (Commercial Banking Center Manager) are deemed not to have verified according to the 1999 Credit Implementation manual for PT Bank Mandiri Tbk and PT Bank Mandiri Tbk Circular Letter No. 024/KRD/RMN.POR/2003 dated 19 December 2003.

The problem of criminal acts in the banking sector has been fully regulated in Law no. 10 of 1998 concerning Banking. However, the problem is that many banking cases which are categorized as pure business cases are resolved by using the PTPK Law which turns out to be in practice many obstacles and not optimal. So it would be inappropriate to use the corruption law in dealing with banking crimes, although it is possible for banking cases to be resolved using the PTPK Law, in its implementation there are many obstacles such as violating the principle of *concursum*, the barrenness of the banking law because it has never been implemented, causing confusion and doubts by enforcement officials the law when they want to enforce banking crimes, and have a bad impact on the banking service industry because the rules are too bad.

Then the application of the above case, based on the *lex specialis* principle, is dynamic and limitative, especially to

determine which special law must be enacted and to determine which provisions are applied in a particular banking law. To determine which special law is applied, the principle of systematic speciality is applied, meaning that the criminal provisions are special if the legislator intends to enforce the criminal provisions as a special criminal provision or it will be special. of the existing specialty. Therefore, the legal problem encountered is that the Banking Law and the PTK Law are special laws, however, law enforcement officers are more inclined to use the PTK Law.

Based on the description above, the problems that become the object of study in this study are: Can a criminal act of bank business be qualified as an act of corruption that causes state losses?

Research methods

This thesis writing research uses normative juridical research, namely research by prioritizing applicable norms with a statutory and conceptual approach. This legal material can be obtained by tracing several legal materials, namely primary, secondary and tertiary legal materials. As for the way of collecting data which is done in writing this thesis with library research (Library Research). The research analysis was carried out prescriptively, that is, recommending, not stating what it is.

Results and discussion

A. Banking Crime

1. Definition of Banking Crime

Among legal practitioners and academics, there is a diversity of use of terms in mentioning criminal acts that occur within the scope of banking. These terms include "crimes in the banking sector", "banking crimes", "crimes against banking", and banking crimes.

The difference in terms refers to the position of the bank in the crime. Banks as perpetrators of crime, banks as victims of crime, or banks as perpetrators and victims. Banking crime is usually defined as a crime "in the banking sector" which in this sense includes all acts that violate the law related to the banking business. This definition also includes the bank as the perpetrator and the bank as the victim.

Law Number 10 of 1998 concerning Banking does not specifically formulate the definition of a banking crime. The law only classifies criminal acts contained in the banking law as criminal offenses or crimes.

Moch. Anwar in his book "Criminal Actions in the Banking Sector" defines banking crimes as all types of unlawful acts related to activities in running a bank's business.

Literal interpretation can be used to define each of the terms. Crime in the banking sector is any crime related to banking. The term crime in banking has a very broad meaning. Meanwhile, banking crime is a form of action that has been created by the banking law which is a prohibition and necessity.

Criminal acts in the banking sector are all types of unlawful acts related to activities in running a bank's business, whether the bank is the target or the bank as a means. Meanwhile, a banking crime can have the meaning of a criminal act committed by a bank.

In accordance with the meaning of each term above, the author decides to then use the term criminal act in the banking sector in this paper. This the author does with the consideration that the term criminal offense in the banking sector has a broader meaning than other meanings.

2. Types of Crime in Banking

According to Law Number 7 of 1992 concerning Banking as amended by Law Number 10 of 1998 on Banking, there are thirteen forms of criminal acts within the scope of banking. The crime is regulated in Article 46 to Article 50A in the Chapter on Criminal Provisions and Administrative Sanctions of the law. Of the thirteen crimes, can be classified into four types of criminal acts in the banking sector, namely:

a. Criminal acts related to licensing.

This crime is regulated in Article 46 of the banking law, which is formulated as follows:

1. "Whoever collects funds from the public in the form of savings without a business license from the Management of Bank Indonesia as referred to in Article 16, is threatened with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a fine of at least Rp10. 000,000,000.00 (ten billion rupiah) and a maximum of Rp. 200,000,000,000.00 (two hundred billion rupiah).
2. In the event that the activities as referred to in paragraph (1) are carried out by legal entities in the form of limited liability companies, associations, foundations, or cooperatives, prosecution of these entities shall be carried out either against those who gave orders to carry out the acts or those who acted as leaders in the acts. that or both."

In this article, as stated in paragraph (2), criminal threats are imposed on corporations where the prosecution is carried out on those who gave orders and/or leaders of the corporations. This is in accordance with the provisions of the Emergency Law Number 7 of 1955 concerning Economic Crimes which expands the subject of criminal law. In Article 15 paragraph 1 of the UUPK it is stated that criminal charges can be made and criminal penalties and disciplinary actions can be imposed, both against legal entities and others as well as against those who give orders.

b. Crime related to bank secrecy

There are characteristics of criminal sanctions for violations of bank secrecy, namely:

1. There is a minimum threat of punishment in addition to the maximum threat;
2. Between the threat of imprisonment and fines is cumulative, not alternative; and
3. There is no correlation between the severity of the threat of imprisonment and a fine.

This crime is regulated in Article 47 paragraphs (1) and (2) and Article 47A. The formulation of Article 47 is as follows:

1. "Whoever, without bringing a written order or permission from the Management of Bank Indonesia as referred to in Article 41, Article 41A, and Article 42, intentionally compels a bank or affiliated party to provide information as referred to in Article 40, is threatened with imprisonment of at least 2 (two) years. two) years and a maximum of 4 (four) years and a fine of at least Rp. 10,000,000,000.00 (ten billion rupiah) and a maximum of Rp. 200,000,000,000.00 (two hundred billion rupiah).

2. Members of the board of commissioners, directors, bank employees or other affiliated parties who intentionally provide information that must be kept confidential according to article 40, shall be subject to imprisonment for a minimum of 2 (two) years and a maximum of 4 (four) years and a fine of at least Rp. . 4,000,000,000.00 (four billion rupiah) and a maximum of Rp. 8,000,000,000.00 (eight billion rupiah)".

The information referred to in the article above contained in Article 41 is for tax purposes. While Article 41A is for the settlement of bank receivables that have been submitted to the State Agency for Receivables and Auctions and Article 42 for the settlement of criminal cases. While Article 47A is formulated as follows:

Members of the board of commissioners, directors, or bank employees who intentionally do not provide information that must be fulfilled as referred to in Article 42A and Article 44A, are threatened with imprisonment for a minimum of 2 (two) years and a maximum of 7 (seven) years and a fine of at least 2 (two) years. - a minimum of Rp.4,000,000,000.00 (four billion rupiah) and a maximum of Rp.15,000,000.00 (fifteen billion rupiah).

Article 47A contains an exception to the bank secrecy provision. In relation to the exception to this bank secrecy provision, it has consequences for the bank to be obliged to provide the requested information.

c. Crimes Related to Bank Supervision and Guidance.

This crime is regulated in Article 48 paragraphs (1) and (2) of the Banking Law which is formulated as follows:

1. "Members of the board of commissioners, directors, or bank employees who intentionally fail to provide information that must be fulfilled as referred to in Article 30 paragraph (1) and paragraph (2) and Article 34 paragraph (1) and paragraph (2), are threatened with imprisonment. a minimum of 2 (two) years and a maximum of 10 (ten) years and a fine of at least Rp. 5,000,000,000.00 (five billion rupiah) and a maximum of Rp. 100,000,000,000.00 (one hundred billion rupiah).
2. Members of the board of commissioners, directors, or bank employees who fail to provide information that must be fulfilled as referred to in Article 30 paragraph (1) and paragraph (2) and Article 34 paragraph (1) and paragraph (2), are threatened with imprisonment of at least 1 (one) year and a maximum of 2 (two) years and/or a fine of at least Rp. 1,000,000,000.00 (one billion rupiah) and a maximum of Rp. 2,000,000,000.00 (two billion rupiah)".

Information referred to in this article contained in Article 30 is information relating to bank business activities that must be submitted to Bank Indonesia. Meanwhile, the information referred to in Article 34 is a financial report in the form of a financial balance sheet and an annual profit/loss calculation as well as other periodic reports that must be submitted to Bank Indonesia.

d. Crimes Related to Bank Business.

This crime is regulated in Article 49 paragraph (1) and paragraph (2) as well as Article 50 and 50A. In this criminal act, the bank becomes the party that suffers losses due to actions both internal and external to the bank. The

formulation of Article 49 paragraphs (1) and (2) is as follows:

1. Members of the board of commissioners, directors, or bank employees who intentionally:
 - a. Make or cause false records in the books or in reports, as well as in documents or reports on business activities, transaction reports or bank accounts;
 - b. Eliminates or does not include or cause non-recording in the books or in reports, as well as in documents or reports on business activities, transaction reports or bank accounts;
 - c. Change, obscure, or hide, delete/eliminate the existence of a record in the books or in a report, or in a document or business activity report, transaction report or bank account, or intentionally alter, obscure, eliminate, hide or damage the bookkeeping records;
 - e. Threatened with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a fine of at least Rp. 10,000,000.00 (ten billion rupiah) and a maximum of Rp. 200,000,000.00 (two hundred billion). rupiah).
2. Members of the Board of Commissioners, directors, or bank employees who intentionally:
 - a. Requesting or receiving, permitting or agreeing to receive a reward, commission, additional money, service, money or valuables, for his personal benefit or for the benefit of his family, in order to obtain or seek to obtain for another person a down payment, bank guarantee, or credit facilities from banks, or in the context of purchasing or discounting by banks on bills of lading, promissory notes, checks, and trading papers or other evidence of obligations, or in order to give approval for other people to carry out withdrawals of funds that exceed their credit limit at the bank. ;
 - b. Not carrying out the necessary steps to ensure the bank's compliance with the provisions of this law and the provisions of other laws and regulations that apply to banks.

"Threatened with imprisonment for a minimum of 3 (three) years and a maximum of 8 (eight) years and a fine of at least Rp. 5,000,000,000.00 (five billion rupiah) and a maximum of Rp. 100,000,000,000.00 (one hundred billion rupiah).)".

Article 50 is an article whose threats are directed to external elements of the bank in accordance with the formulation of this article which begins with the word "affiliated parties". The following is the formulation of Article 50:

"Affiliate parties who intentionally do not carry out the necessary steps to ensure bank compliance with the provisions of this law and other laws and regulations applicable to banks are threatened with imprisonment for a minimum of 3 (three) years and a maximum of 8 years. (eight) years and a minimum fine of Rp. 5,000,000,000.00 (five billion rupiah) and a maximum of Rp. 100,000,000,000.00 (one hundred billion rupiah).

Article 50 A stipulates shareholders as parties who can be punished through this article if they commit:

- a. Deliberately ordering the bank's internal, namely the board of commissioners, directors, or bank employees;
- b. To perform or not to perform an action;
- c. As a result, the bank does not take the necessary steps to ensure the bank's compliance with this law and other statutory provisions that apply to banks.

The following is the formulation of Article 50 A:

“Shareholders who intentionally order the board of commissioners, directors, or bank employees to take or not to take actions that result in the bank not carrying out the necessary steps to ensure the bank's compliance with the provisions of this law and other statutory provisions. applicable to banks, shall be punished with imprisonment for a minimum of 7 (seven) years and a maximum of 15 (fifteen) years and a fine of at least Rp. 10,000,000.00 (ten billion rupiah) and a maximum of Rp. 200,000,000. 0000.00 (two hundred billion rupiah)”.

Chainur Arrasjid does not include criminal acts related to licensing as a group of criminal acts regulated in the banking law. He only classifies criminal acts in the banking law into three groups, namely:

- a. Type and business of the bank;
- b. Bank development and supervision; and
- c. Bank secrecy.

In addition to the division of criminal acts in the banking sector as described above, the Banking Law has also divided these criminal acts into two, namely:

1. Crime is a crime regulated in Article 46, Article 47, Article 47A, Article 48 paragraph (1), Article 49, Article 50, and Article 50A.
2. Violation is a criminal act as regulated in Article 48 paragraph (2).

The determination of these two forms of crime against criminal acts in the banking sector has consequences for the punishment of the perpetrators of these crimes later. Violation of Article 48 paragraph (2) is punishable by imprisonment and/or a fine. Meanwhile, violations of other articles which are classified as crimes are punished with imprisonment and fines.

There is a debate about criminal acts contained in the banking law. There is an assumption that this crime is a general crime, considering that the banking law does not regulate the special judicial process for banking crimes. Another opinion states that the crime contained in the banking law is a special crime. The statement is based on the rules of banking crime that are outside the Criminal Code and the threat of serious criminal penalties with a cumulative by providing a minimum limit.

If referring to the Decree of the Minister of Justice of the Republic of Indonesia No. : M01.PW.07.03 of 1982 dated February 4, 1982 concerning Guidelines for the Implementation of the Criminal Procedure Code, criminal acts in the banking sector can be classified as special crimes. This is based on the explanation of article 284 of the Criminal Procedure Code which stipulates special provisions for criminal procedures.

A. Bank Business Activities Crime Can Be Qualified As Corruption That Causes State Loss

As for what is meant by "State Finances", in the general explanation of Law Number 31 of 1999 it is stated that State finances are all State assets in any form which are separated or not separated including all parts of State assets and all rights and liabilities arising from:

1. Being in the control, management, and accountability of state agency officials, both at the central and regional levels;

2. Being in the control, management, and accountability of State-Owned Enterprises/Regional- Owned Enterprises, foundations, legal entities and companies that include State capital, or companies that include third party capital based on agreements with the State.

Based on the descriptions above, it can be concluded that the finances in Law No. 17 of 2003 and Law No. 31 of 1999 are in line. State finances are not solely in the form of money, but include all rights and obligations (in any form) that can be measured by the value of money. The definition of state finance also has a broad meaning which includes state finances originating from the APBN, APBD, BUMN, BUMD, and essentially all state assets as a state financial system. If using the process approach, state finances can be interpreted as all activities or activities that are closely related to money received or formed based on state privileges for the public interest.

Starting from the differences in understanding above, the understanding of the meaning of state finances is carried out through various approaches as follows:

1. Theoretical Approach

State finances are all rights and obligations of everything that is worth money, as well as everything that can be valued in money related to the implementation of these rights and obligations.

2. Juridical Approach

This approach refers to the laws and regulations, including:

- a. Supplement to the State Gazette Number 2776. Stipulates that state finances do not only mean state money, but all state assets including all parts of the assets belonging to such assets, and all rights and obligations arising from both the wealth and the management of officials and or institutions -institutions that include general government and are under the control and management of government banks, government foundations with public and civil law status, companies and businesses in which the government has a special interest and in the control and management of other parties based on agreements with government participation or appointment from the government.
- b. Law Number 5 of 1973. In the explanation of Article 2 it is implied that the scope of responsibility for state finances includes, among others, the implementation of the APBN, APBD and the Budget of State-Owned Companies which are essentially all state assets.

3. Historical Approach.

Referring to the opinion of the factions in the DPR during the discussion of the draft Law (RUU) on BAPEKA (BPK) which later became Law Number 5 of 1973. In Minutes Number. 39 regarding amendments to the bill it is stated:

- a. basically the government agrees that the APBN is only a part of state finances;
- b. The formulation of state finances is not contained in Law Number 5 of 1973, because the government is preparing and drafting a Bill on State Treasury in which it is hoped that there will be a formulation on state finances.

4. Practical Approach

This approach refers to legal practitioners who interpret the notion of state finances in a broad sense, with evidence that various prosecutors' demands and or judges' decisions (District Courts) in certain cases state that an action or act of a person has actually harmed the person. absolutely nothing to do with the implementation of the state budget.

Based on the descriptions above, it can be concluded that the definition of state finances in the 1945 Constitution, Law No. 17 of 2003 and Law No. 31 of 1999 are in line. State finances are not solely in the form of money, but include all rights and obligations (in any form) that can be measured by the value of money. The definition of state finance also has a broad meaning which includes state finances originating from the APBN, APBD, BUMN, BUMD, and essentially all state assets as a state financial system. If using the process approach, state finances can be interpreted as all activities or activities that are closely related to money received or formed based on state privileges for the public interest.

BUMN as a business entity established by the state in carrying out its business activities is divided into 2 (two) forms, namely: first, BUMN in the form of a Public Company (Perum), the second, BUMN in the form of a Company (Persero) in accordance with Article 9 of the BUMN Law. Based on Article 1 Number 4 of the BUMN Law, that "Public Company, hereinafter referred to as Perum, is a BUMN whose entire capital is owned by the State and is not divided into shares with the aim of providing public benefit in the form of providing high quality goods and/or services and at the same time pursuing profit based on management of the company" while in Article 1 Number 2 of the Law that "Company Company, hereinafter referred to as Persero,

BUMN Persero as a legal entity formed with the aim of pursuing the maximum profit in the event that there are shares owned by the state through direct participation in separated state assets, it is possible for BUMN Persero to be able to carry out legal actions in accordance with its purpose, namely managing company assets legally. independent assets that are separated from the assets of the founders, shareholders, and management, cooperate or enter into agreements with other parties as an effort to expand business networks, and place company assets to support the company's business activities. BUMN Persero is a legal entity that has the rights and obligations to perform an act like a human being, owning its own wealth,

According to Nindyo Pramono, the philosophical reason for the establishment of a corporate legal entity is that with the death of its founder, the assets of a corporate legal entity are expected to continue to provide benefits to others, so that the law creates creations of a corporate legal entity as 'something' which is recognized by law and considered as an independent legal subject. like people. According to Erman Rajagukguk, a company is a company formed with a capital association in the form of shares, so that when the state invests in state-owned enterprises, the assets are no longer owned by the state but belong to the state-owned enterprises themselves. Furthermore, what is owned by the state after the equity participation is shares in BUMN Persero, not the assets of the company.

Nowadays, different ideas are developing in viewing the position of bad loans, especially related to the role of bankers who previously had disbursed credit facilities that

became bad debts. The atmosphere seems to be getting more public attention if the bad loans occur in commercial banks whose shares are owned by the government (state-owned banks). Adherents of this understanding argue that because the capital from state-owned banks comes from separated state assets, it means that bad loans that occur in state-owned banks have reduced state wealth.

In relation to various business activities carried out by banks, there are several activities that are prone to irregularities that have indications of criminal acts in the banking sector which may also have elements of corruption, money laundering and other criminal acts.

The definition of a banking crime or criminal act needs to be formulated more clearly with the intention that the act cannot simply be claimed as a banking crime, in addition to having to fulfill the characteristics of a criminal act in general, it must also contain special characteristics that are not owned by the bank. by another crime. According to Remy, it is called a banking crime if the action, apart from being criminalized, must also contain the following characteristics:

1. The act can only be done against a bank, meaning that the act cannot be done against an institution other than a bank or against a person.
2. Such actions can only be carried out by using bank services (banking services) or bank products (banking products).

The juridical responsibilities of bankers cover both the criminal, civil and administrative fields. Seeing the wide scope of juridical responsibilities carried out by a banker, the mandate given by law to bankers is to always carry out their duties with full responsibility and adhere to prudent banking practices. The settlement is an agreement between a debtor and a creditor based on an element of agreement as in the principles of agreement according to civil law.

However, because banking has a function as an agent of development with the source of funds for granting credit coming from the community, other elements such as legal politics play a role in handling the settlement of credit facilities which then become non-performing. The government's legal politics in eradicating corruption are: considering that acts of corruption have caused enormous losses to the state which in turn can have a negative impact that causes crises in various fields, prevention and eradication efforts need to be further enhanced and intensified.

In line with that, the scope of acts of corruption is broadly defined, covering various forms of modus operandi of irregularities in state finances or the state economy which is increasingly sophisticated and complicated. The definition of corruption is formulated in such a way that it includes acts of enriching oneself or another person or a corporation against the law in a formal and material sense.

With a formulation like this, the definition of against the law in the criminal act of corruption is made in such a way that it includes despicable acts which according to the feeling of justice of the community must be prosecuted and sentenced. Although in the end the Constitutional Court has given a decision regarding the definition of unlawful acts contained in the Elucidation of Article 2 paragraph (1) and the Elucidation of Article 3 of Law Number 20 of 2001 in conjunction with Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption, the bad credit

experienced by State-owned banks are included in the category of state losses.

In relation to the meaning of "state finances" this has also become a polemic at the level of implementing regulations regarding this matter. First, it is necessary to understand that the provisions of Article 1 of Law no. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, which regulates the meaning of "State Officials". Civil Servants in this provision are interpreted broadly so that the perspective of Civil Servants is analogous to including the leadership of BUMN as a company that receives salaries or wages from the State or Regional Finances or who receives salaries or wages from a corporation that receives assistance from State or Regional Finances. In fact, civil servants are also defined as people who receive salaries or wages from other corporations that use capital or facilities from the state or society. From a regulatory approach to corruption, The indecisive position of BUMN Persero as mentioned above has given rise to new doubts, namely whether state assets that have been separated into a company are still considered as state assets. Thus, it is necessary to clarify whether the assets of BUMN Persero cannot be said to be state assets, and whether the losses of BUMN Persero are losses to the state so that the Law on the Eradication of Corruption Crimes can be imposed.

The polemic occurred at the implementation level regarding the meaning of "state finance" with the status of "BUMN" in relation to the placement of state finances. UU no. 17 of 2003 concerning state finances, in particular regarding the scope of state finances, article 2 which is in line with the general explanation of Law no. 31 of 1999 concerning the Eradication of Corruption Crimes, so that state finances have an extensive meaning, including separated and inseparable state assets. In this sense, a shortage of even one rupiah will mean that state money will be reduced and considered detrimental to the state, so that its nature is still in the realm of criminal law.

In connection with the various laws and regulations governing criminal acts in the field of state finances, it should be noted that given the nature and extent of the consequences of their actions, the perpetrators may be involved in several criminal acts regulated in different laws and regulations, or vice versa. These include criminal acts that have been regulated not only in the Act concerning criminal acts in the field of state finances but also in other legislation.

The Law on Corruption Crimes does not explicitly state that it will regulate criminal acts in the field of state finances as criminal acts of corruption, but its scope is wide enough to cover acts of violating criminal acts in the field of state finances as a criminal act of corruption, with a record other than proven violations criminal acts in the field of state finances are also proven elements of other corruption crimes, such as: elements of unlawful acts, enriching oneself or another person or a corporation, abusing authority and which can harm state finances or the state economy.

Comparisons made on the formulation or elements of criminal acts in various laws and regulations show interesting things, namely for the same crime, the formulation of the offense or criminal threat is found to be regulated differently in other laws or regulations. For example, the criminal sanctions under the Banking Law for bribery are much lighter than those under the Corruption Eradication Law, thus suggesting that there are more

favorable options for criminals.

In addition, in the case of corruption, it is not sufficiently explained in terms of how the provisions in the corruption law are applied to the exclusion of the criminal provisions in the Banking Law so that harmonization is needed in the provisions of various laws and regulations.

Understanding state finances and the state economy can be seen in the general explanation of the Corruption Eradication Act. State finances are state assets in any form, separated or not separated, including all parts of state assets and including rights and obligations arising from:

1. Being in the control, management, and accountability of state agency officials, both at the central and regional levels;
2. Being under the supervision, management, and accountability of State-Owned Enterprises/Regional-Owned Enterprises, foundations, legal entities, and companies that include state capital, or companies that include third party capital based on agreements with the state.

Meanwhile, the state economy is the life of the state which is structured as a joint effort based on the principle of kinship or community based on government policies, both at the central and regional levels in accordance with the provisions of applicable laws and regulations aimed at providing benefits for prosperity and welfare for all people's lives. .

Actually, if viewed from the point of view of understanding, what is meant by "country economy" as stated in the explanation above is very vague. As a result, it is very difficult in evidence to determine what is meant by the element "harming the country's economy" in Article 2 paragraph (1).

On the other hand, to prove the existence of elements that can harm state finances, one can refer to the things contained in the explanation of the corruption law. The handling of corruption cases is often carried out on the basis of Article 2 paragraph (1) and Article 3 of the Corruption Law which defines corruption as a formal offense. Based on these two articles, the existence of state financial losses or the state's economy does not have to have occurred, but it is sufficient to fulfill the elements of the actions formulated.

Conclusion

A criminal act of bank business activity can be qualified as an act of corruption that causes state losses by the public prosecutor stating in his indictment the subsidiary has fulfilled the elements of a criminal act of corruption, but it must also be seen that the norms or legal rules contained specifically are regulated in the Banking Law, this to meet the qualifications in determining legal norms, so that they can be accounted for in accordance with the competence of each perpetrator of banking crimes. It is suggested to the government to regulate more clearly the specificity of norms contained in the law technically that can be applied by law enforcement officials, so that they can clearly qualify the legal norms contained therein.

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