



Criteria of Bad Debt at National Banks That Have an Implication for Corruption

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Abstract

Banking is closely related to risk management as seen in Bank Indonesia Regulation number 11/25/2009 concerning Amendments to Bank Indonesia Regulation (PBI) Number: 5/8/2003 concerning Application of Risk Management for Commercial Banks. In Article 1 number 4 PBI 11/25/2009, explained risk is the potential loss due to the occurrence of certain events. The types of risks that might occur, are described in Article 4 PBI: 11/25/2009 namely Credit Risk, Market Risk, Liquidity Risk, Operational Risk, Legal Risk, Reputation Risk, Strategic Risk and Compliance Risk, but law enforcement officials cannot distinguish whether a state loss is the result of a Business Judgment Rule (BJR) or indeed an illegal act, focus on a state financial loss.

Keyword: Bad Credit; Criminal; Responsibility

INTRODUCTION

The role of banks in the economy in Indonesia is very large, because banks are able to manage and manage traffic and financial transactions quickly compared to other financial institutions. The impact of such a large role resulted in the emergence of various irregularities, both those carried out by the bank's own officials, the community using bank services or collaborations between bank officials and the community using bank services.

Deviations carried out by bank officials and the public who use bank services are related to the lending process. Giving credit is one of the business of a commercial bank to make a profit. Even though credit is basically a bank business that is very risky, because financing is given to future projections and is something that cannot yet be ascertained as planned (Syarif Arbi; 2013: 143).

The world of banking is closely related to risk management as seen in Bank Indonesia Regulation number 11/25/2009 concerning Amendments to Bank Indonesia Regulation (PBI) Number: 5/8/2003 concerning Application of Risk Management for Commercial Banks. In Article 1 number 4 PBI 11/25/2009, explained risk is the potential loss due to the occurrence of certain events. The definition of Risk

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Management is described in Article 1 number 5 which states: Risk Management is a series of methodologies and procedures used to identify, measure monitor, and control risks arising from all business activities of the Bank. Thus speaking this understanding, there are several criteria used to measure risk (Sentosa Sembiring; 2012: 57). The types of risks that might occur, are described in Article 4 PBI: 11/25/2009 namely Credit Risk, Market Risk, Liquidity Risk, Operational Risk, Legal Risk, Reputation Risk, Strategic Risk and Compliance Risk.

In the midst of the rapid development of business in the banking industry, there are still many problems including legal risk. If observed more deeply, the main causes of banking problems in general and especially in the field of credit are related to weaknesses and not the implementation of good corporate governance in addition to other problems, namely the condition of the business itself and the intense competition between banks both National and International, BUMN and Private Business Entities. It becomes a polemic whether against irregularities or violations of criminal acts in the banking industry, especially in the case of problems with bad loans (non-performing loans / NPLs) for BUMN Banks, the Corruption Act can be applied.

Deviations that occur in this activity include providing loans to customers that are not accompanied by binding on adequate guarantees, providing credit facilities to customers with fictitious guarantees, providing credit facilities to the families of bank officials with the guarantee of the personal bank official, giving overdraft facilities to troubled customers without careful analysis and consideration, granting credit to cover the lack of payment for speculation on foreign exchange buying and selling whose value exceeds the customer's deposit margin, avoiding LLL violations by manipulating fictitious credit disbursements for group interests related to the bank, and receiving loan installments those who have deleted the book are not deposited with the bank but are used for the personal benefit of the bank officer. These deviations are illegal acts, while bad credit is the effect of the occurrence of violating the law (Zulkarnaen Sitompul; 2011).

Legal problems that arise related to bad credit due to credit recipients (debtors) cannot complete their credit obligations according to the times specified in the credit agreement are purely the responsibility of the recipient of the credit (debtor) to the lender (creditor). This is because a loan is given based on the legal relationship between the debtor and creditor, which is in the form of a credit agreement and is in the realm of private law (civil). However, a lot of legal liability related to a bad credit is settled by using a public legal (criminal) path, because it is considered a criminal offense in giving credit. The use of public law (criminal) lines on the settlement of a non-performing loan can only be carried out on bad credit provided by banks whose shares are partially owned by the state or banks whose entire or 51% shares are owned by the state [State-Owned Bank].

To ensnare the perpetrators of banking crimes with various existing criminal instruments does not seem easy. There have been many changes to the product of legislation, both the law on banking, the coming of Bank Indonesia, on the Eradication of Corruption Crimes, on Money Laundering, and the Foreign Exchange Traffic Act, even though the heavy sanctions appear to have not been able to reduce banking crime rates in Indonesia. (Marwan Effendi; 2005: 3) Because of the reasons and background above, this study was discussed by referring to two problems, namely:

1. Does bad credit in state-owned banks imply a criminal act?
2. How do criminal liabilities related to bad credit at state-owned banks have implications for criminal acts of corruption?

RESEARCH METHOD

The type of research used in this paper is Doctrinal Research (Peter Mahmud; 2007: 32-33). In this type of research, starting with compiling legal norms from the source of the norm originates, describing the sides or parts of the norms that are difficult, and gives an estimate of what will happen to the norm in the future. This set of norms can be found in various relevant laws and regulations, in this study specifically the regulations relating to corruption in the banking world.

The approach used in this writing is the statute approach and the conceptual approach. In the method of legislative approach researchers need to understand hierarchy, and the principles in legislation. In addition, a conceptual approach is also carried out, where the conceptual approach is carried out when the researcher does not move from the existing legal rules. This was done because there was no legal rule for the problem at hand. In using a conceptual approach, researchers need to refer to legal principles. These principles can be found in scholarly views or legal doctrines.

FINDING AND DISCUSSION

Criminal Implication of Bad Debts

The use of state financial formulations contained in the provisions of the State Finance Law and the Law on the Eradication of Corruption Crime are complementary (Makawimbang; 2014: 11). In addition, the basis of handling by law enforcers in following up on bad credit is strengthened by the Supreme Court Decision No. 1144 K / PID / 2006, where in its legal considerations state that the non-performing loans channeled by State-Owned Banks can apply the provisions of Article 2 of Law Number: 31 of 1999 in conjunction with Law Number 20 of 2001 concerning Eradication of Corruption Crimes [Act Law on the Eradication of Corruption Crimes] and the Decision of the Constitutional Court Number 48 / PUU-XI / 2013 related to the testing of article 2 letter g and Law Number 17 of 2003 have confirmed the status of state assets originating from state finances and separated from the State Budget to be included as equity participation in SOEs remains a part of the country's financial regime.

Even if referring to the State Finance Law, BUMN capital and finances are included in the state's financial sphere so that they are included in the Corruption Act based on the Corruption Law, but law enforcement officials cannot distinguish whether a state loss is the result of a Business Judgment Rule or indeed an act against the law, but only focuses on a state financial loss.

Referring to the Banking Law, it has regulated legal subjects that do not implement compliance with the applicable laws and regulations for banks, namely limited to affiliated parties, shareholders, members of the board of commissioners, directors or bank employees because they are seen as having influence and authority in implementation of the steps needed to ensure bank compliance with the provisions in this law and other statutory provisions that apply to the bank.

The Banking Law also only regulates actions that are prohibited in the scope of banking operations, so long as the act fulfills the element of crime or violation in the Banking Law, it can be subject to the Banking Act, which concerns the researcher, what about the consequences of the actions? As an example of the loss of state finances (referring to the discussion of the research thesis) due to the actions taken by the legal subject? How about the other parties who participated in carrying out these actions outside of the legal subjects specified in the Banking Act? In the Banking Law does not

regulate the consequences of state financial losses and legal subjects outside of the bank as a result of acts of crime regulated in Article 49 paragraph (2) letter b up to Article 50 A, this also applies to BUMN Banks. Meanwhile, state-owned banks are also not allowed to provide compensation due to actions carried out by legal subjects as stipulated in Article 49 paragraph (2) letter b up to Article 50A of the Banking Law, considering the losses arising from actions that are considered as personal liability of the subjects the law and not due to banking policy. In the Banking Law there is also no regulation regarding the return of state financial losses caused by banking crimes.

If we look at the Act on corruption, the legal subject in corruption offenses is that every person consisting of individuals and corporations (Article 1 point 3 of the Anti-Corruption Law) as long as fulfilling the offense of corruption can be subject to criminal liability in the form of criminal sanctions.

The position of members of the Board of Commissioners, Directors or bank employees is state administrators as stipulated in Article 2 of Law Number: 28 of 1999 concerning State Administrators that Are Clean and Free of Corruption, Collusion and Nepotism, in the state administration, such as:

1. State officials at the highest state institutions;
2. State Officials at the State High Institution;
3. Minister;
4. Governor;
5. Judge;
6. Other state officials in accordance with the provisions of the applicable legislation; and
7. Other officials who have strategic functions in relation to state administrators in accordance with the provisions of the applicable legislation.

Members of the Board of Commissioners, Directors or bank employees in state-owned banks as state administrators, based on the explanation of Article 2 point 7, which is meant by "other officials who have a strategic function" are officials whose duties and authorities are responsible for corruption, collusion, and nepotism, which includes:

1. Directors, Commissioners and other structural officials in State-Owned Enterprises and Regional-Owned Enterprises;
2. Head of Bank Indonesia and Chair of the National Bank Restructuring Agency;
3. State Higher Education Leaders;
4. Echelon I officials and other officials who are equated in the civil, military and National Police of the Republic of Indonesia;
5. Prosecutor;
6. Investigator;
7. Court Registrar; and
8. Leaders and project treasurers.

Based on this, the Directors, Commissioners, and other structural officials within the state-owned Bank who are involved in the lending process and leading to state financial losses can be asked for criminal responsibility under the Corruption Act.

To better understand how criminal liability in the case of bad credit at state-owned banks has implications for criminal acts of corruption, then in this discussion explaining criminal decisions that have permanent legal power related to cases of bad credit at state-owned banks. This presentation aims to show the application of criminal responsibility for criminal acts of corruption, namely elements in violation of the law, elements of committing acts enriching oneself, others, or a corporation that can harm state finances.

Decision of the Supreme Court of Cassation of the Republic of Indonesia Number: 579 K / Pid.Sus / 2017 which was decided on November 20, 2017, based on the consideration of the Panel of Judges of Cassation, in the ruling, stating:

1. Declare Defendant I. Ir. AYUSARI WULANDARI, MAF Binti H. WIWIN WINARDI, proven to be legally and convincingly guilty of committing a crime "Corruption jointly" as charged in Primair's indictment;
2. Imposing a sentence against Defendant I. Ir. AYUSARI WULANDARI, MAF Binti H. WIWIN WINARDI, therefore with imprisonment for 7 (seven) years and a fine of Rp. 500,000,000.00 (five hundred million rupiahs), provided that the fine cannot be paid then the penalty is imposed for 8 (eight) months of confinement;
3. Etc ...

The above decision is related to the Decision of the Decision of the Bandung District Court Number: 29 / Pid.Sus.TPK / 2016 / PN.Bdg., Dated September 1, 2016, in the ruling, stated:

1. Declare Defendant I Ir. AYUSARI WULANDARI Binti WIWIN WINARDI mentioned above, is not proven legally and convincingly guilty of committing a criminal act as charged in Primair and Subsidiary charges;
2. Free Defendant I from all public prosecutor charges;
3. Restoring the rights of Defendants in their abilities, position, dignity and dignity;
4. Charges case fees to the state.
5. Declare Defendant II ENUNG KURNIAWAN Bin PATMA and Defendant III Drs. DODIK VEVANTO Bin SRIJANTO was not legally and convincingly proven guilty of committing a crime as charged in Primair's charges;
6. Freeing Defendant II ENUNG KURNIAWAN Bin PATMA and Defendant III Drs. DODIK VEVANTO Bin SRIJANTO from the Primair indictment;
7. Declare Defendant II ENUNG KURNIAWAN Bin PATMA and Defendant III Drs. DODIK VEVANTO Bin SRIJANTO legally and convincingly guilty of committing criminal acts of Corruption together;
8. Imposing a sentence against Defendant II. ENUNG KURNIAWAN Bin PATMA and Defendant III. Drs. DODIK VEVANTO Bin SRIJANTO, therefore, with imprisonment for 1 (one) year and 6 (six) months and a fine of Rp. 50,000,000.00 (fifty million rupiahs), provided that the fine cannot be paid then replaced with a prison sentence of 1 (one) month;
9. Etc ...

Who decided that Defendant I. Ir. AYUSARI WULANDARI, MAF Binti H. WIWIN WINARDI, was free from all charges of the Public Prosecutor, while Defendant II ENUNG KURNIAWAN, S.Ip Bin PATMA and Defendant III Drs. DODIK VEVANTO Bin SRIJANTO, was convicted that it was found legally and convincingly guilty of violating Article 3 Jo. Article 18 of Law Number 31 Year 1999 concerning Eradication of Corruption Crime as amended and supplemented by Republic of Indonesia Law Number 20 Year 2001 concerning amendment to Law Number 31 Year 1999 concerning Eradication of Corruption Crime Jo. Article 55 paragraph (1) to 1 of the Criminal Code.

The position of Defendant I, Defendant II, and Defendant III at PT. Bank BNI as described in the indictment contained in the Cassation Decision. Defendant I is not a person who has a direct role in the process of distributing fictitious People's Business Credit (KUR) to H. DIDI SUPRIADI Bin MUSTOFA (prosecution in a separate file) as the Managing Director of PT. Simpang Jaya Dua (PT. SJD), which was conducted at SKC Bandung PT. BNI (Persero) Tbk, both as credit breaker or credit analyst on fictitious KUR distribution carried out by Defendant II as a signatory to the credit

agreement and Defendant III as a credit breaker, but because Defendant I had a very active role so that the state financial losses occurred to the defendant I is liable to criminal liability as above. Similarly, H. DIDI SUPRIADI Bin MUSTOFA, whose prosecution was carried out separately has been sentenced based on the Decision of Appeal Number: 32 / Tipikor / 2016 / PT.Bdg dated January 23, 2017, with a ruling:

1. Declare the defendant H. DIDI SUPRIADI bin Alm MUSTOFA not present in court (in absentia);
2. Declare Defendant H. DIDI SUPRIADI Bin Alm. MUSTOFA mentioned above has been proven legally and convincingly guilty of committing corruption in a joint manner as charged in the First PRIMAIR indictment;
3. Imposing criminal charges against Defendant H. DIDI SUPRIADI Bin Alm. MUSTOFA, therefore, with imprisonment for 8 (eight) years, and a fine of Rp. 200,000,000.00 (two million rupiahs), provided that the fine cannot be paid then is replaced with a prison sentence of 3 (three) months;
4. Punish Defendant H. DIDI SUPRIADI Bin Alm. MUSTOFA to pay a replacement money of Rp.12,305,510,632.00 (twelve billion three hundred five million five hundred ten thousand six hundred and two rupiahs), provided that the convicted person does not pay the substitute money within a period of 1 (one) month after the court decision has obtained permanent legal force, the property can be confiscated by the prosecutor and auctioned off to cover the replacement money, in the event that the convict does not have sufficient assets to pay for the substitute money, then be imprisoned for 5 (five) years;
5. Evidence etc ...

The cassation verdict stated that the proof of Article 2 paragraph (1) of the Corruption Law was caused by the distribution of KUR by PT. BNI Bank, must be guided by the following conditions:

AGAINST THE LAW

1. Ministry of Agriculture, Indonesian Ministry of Forestry, Indonesian Ministry of Maritime Affairs and Fisheries, Ministry of Industry of the Republic of Indonesia, Republic of Indonesia Ministry of Cooperatives and SMEs with Perum Jamkrindo, PT. (Persero) Indonesian Credit Insurance and Implementing Bank granting KUR about guaranteeing credit / financing to MSMEs on September 16, 2010 Article 2 paragraph (3) concerning the scope of cooperation, stating that MSMEs that can be guaranteed by the Second Party are productive businesses that produce goods and / or services that are feasible but not yet bankable;
2. Regulation of the Minister of Finance (PMK) Number 189 / PMK.05 / 2010 dated November 2, 2010 concerning the third amendment to PMK Number 135 / PMK.05 / 2008 concerning KUR guarantee facility, Article 5 stating that KUMKMK can receive KUR guarantee facilities is a business of productive goods and services that is functional but not yet bankable as referred to in Article 3 paragraph (1);
3. Decree of the Deputy of the Coordination of Macro and Financial Economics of the Coordinating Ministry for Economic Affairs as Chair of the Implementation Team of the Credit / Financing Guarantee Policy Committee for Micro, Small, Medium Enterprises and Cooperatives Number KEP-20 / DIMEKON / 11/2010 dated 5 November 2010 concerning standards Operations and Procedures for the implementation of the People's Business Credit, attachment 1, Chapter II of KUR implementation, Letter A concerning general provisions state that KUR is working capital loans and / or investment loans to MSMEs in the productive and feasible business but not bankable with a ceiling of up to Rp500. 000,000.00 guaranteed by

- the guarantor company;
4. Revised KUR implementation guidelines in accordance with Addendum III MoU dated September 16, 2010 based on USK Division letter Number: USK / 2/2298 November 15, 2010, number 7 concerning debtor requirements, letter b special requirements for group debtors state that:
 - a. Location and type of business together / grouped;
 - b. Group business activities can be carried out independently or in collaboration with business partners made in writing in the form of an agreement;
 - c. The group has been registered with the relevant agency;
 - d. Have members who conduct productive business;
 - e. Having an organization with active management, minimum Chairperson, Secretary and Treasurer;
 - f. Have group rules agreed upon by all members;
 - g. Have simple books;
 - h. Make a *Rentang* Statement;
 - i. Points 02 Credit Policy sub point 16 b.1) (additional collateral) The KURLak KUR MoU III November 2010 stipulates that the value of additional collateral is a minimum of 30% of the maximum credit.

However, in the implementation, the distribution of KUR by Defendant I, Defendant II, and Defendant III did not carry out KUR distribution according to the provisions above, but according to the provisions of the defendants, this can be seen from the following:

1. All KUR recipient debtors do not have businesses that fulfill the conditions as recipients of KUR distribution that can be guaranteed, this is because these debtors are fictional debtors who are made as if they already have the business as required. (contrary to the provisions of the Ministry of Agriculture, the Indonesian Ministry of Forestry, the Indonesian Ministry of Maritime Affairs and Fisheries, the Indonesian Ministry of Industry, the Indonesian Ministry of Cooperatives and SMEs with Jamkrindo Corporation, PT. (Persero) Indonesian Credit Insurance and Implementing Bank KUR about guaranteeing credit / financing to UMKMK dated September 16, 2010 Article 2 paragraph (3) concerning the scope of cooperation and Minister of Finance Regulation (PMK) Number 189 / PMK.05 / 2010 dated November 2, 2010 concerning the third amendment to PMK Number 135 / PMK.05 / 2008 concerning guarantee facilities KUR, Article 5 which states that KUMKMK that can receive KUR guarantee facilities is a business of productive goods and services that is functional but not yet bankable as referred to in Article 3 paragraph (1);
2. That the determination of the ceiling by Defendant I to H. DIDI SUPRIADI Bin MUSTOFA as the President Director of PT. Simpang Jaya Dua (PT. SJD) of Rp. 25,000,000,000, - is not true, because H. SUPRIADI Bin MUSTOFA is not a debtor but as an insurance guarantor of the debtors, this is contrary to Points 02 Credit Policy sub point 16 e Juklak KUR MoU III November 2010 regulates that the amount of the ceiling value is adjusted with the needs and capabilities of the debtors;
3. That there is no verification of all debtors who submitted KUR applications through H. SUPRIADI Bin MUSTOFA, this is contrary to the Revised KUR Implementation Guidelines in accordance with Addendum III MoU dated September 16, 2010 based on USK Division letter Number: USK / 2/2298 November 15 2010, number 7 concerning the requirements of debtors, letter b special requirements for group debtors;

4. That the value of additional collateral is not fulfilled by at least 30% by the debtors as required by the KUR fund application, but KUR funds are still distributed;
5. That against H. DIDI SUPRIADI Bin MUSTOFA as President Director of PT. Simpang Jaya Dua (PT. SJD), which is an avalanche guarantor, has never made a guarantee agreement as required by the Decree of the Deputy of the Coordination of Macro and Financial Economics of the Coordinating Ministry for Economic Affairs as Chair of the Implementation Team of Credit / Financing Policy Guarantee to Micro, Small, and Medium Enterprises medium and Cooperative Number KEP-20 / DIMEKON / 11/2010 dated November 5, 2010 concerning Operational standards and Procedures for the implementation of People's Business Credit, attachment 1, Chapter II of KUR implementation, Letter A concerning general provisions stating that KUR is working capital credit / financing and / or investment in MSMEs in the productive and feasible business sector but not yet bankable with a ceiling of up to Rp. 500,000,000.00 guaranteed by the guarantor company;
6. That against H. DIDI SUPRIADI Bin MUSTOFA as President Director of PT. Simpang Jaya Dua (PT. SJD) as an avalars guarantor has never been analyzed in terms of the company's ability to fulfill the requirements as a guarantor company or not;
7. That towards H. DIDI SUPRIADI Bin MUSTOFA as President Director of PT. Simpang Jaya Dua (PT. SJD) as an avalis guarantor is not set to provide an additional collateral of 7.5% of the amount of KUR funds to be given;
8. That all debtors applying for KUR funds submitted by H. DIDI SUPRIADI Bin MUSTOFA as President Director of PT. Simpang Jaya Dua (PT. SJD), is fictitious and has no clear business.
9. Based on this, the distribution of KUR funds by the defendants was carried out did not fulfill the provisions in the distribution process, and it could be seen that the defendants had committed acts against the law.

Whereas from an illegal act committed by Defendant I along with Defendant II, and Defendant III who have processed and signed the provision of KUR facilities to 50 (fifty) Cattle Breeders Group assisted by PT. SJD namely H. Didi Supriadi in the amount of Rp. 25,000,000,000.00 (twenty five billion rupiahs) which has been obtained and used for the personal benefit of H. Didi Supriadi after Rp. 25,000,000,000.00 (twenty five billion rupiahs) is transferred from the account of 50 (fifty) Farmer Groups to the personal account of H. Didi Supriadi and the account of PT. SJD, so that the main purpose of giving KUR money is not due to the actions of the Defendants, thus the element of enriching oneself or others or a corporation has been proven.

Referring to article 1 number 22 of the State Treasury Law, it is stated that "State / Regional Losses are lack of money, securities, and goods, the amount of which is real and definite as a result of unlawful acts both intentionally and negligently." the country and related to the consequences of the defendants' actions, based on the Report of Examination on Counting State Losses on Cases of Alleged Corruption Crime Provision of People's Business Credit Facilities at BNI Bandung Small Credit Center (SKC) to 50 PT. Simpang Jaya Dua Key Person H. DIDI SUPRIADI Bin MUSTOFA, 2010, conducted by the Republic of Indonesia Supreme Audit Agency (BPK RI) Number: 46 / AUDITAMA VII / PDTT / 11/2015 on November 2, 2015, has caused financial losses due to not according to the provisions / designation of Rp. 25,000,000,000.00 (twenty five billion rupiahs). With full elements of Article 2 paragraph (1) of the Corruption Law, criminal liability can be requested for the defendants.

Based on the decomposition of the three decisions above, it shows that the

application of criminal liability in the case of bad credit at BUMN Banks that caused state financial losses based on the Corruption Law according to the researchers is correct, because all elements of Article 2 paragraph (1) corruption and Article 3 corruption laws have been fulfilled, and, therefore, based on the system of accountability in Indonesia, all legal subjects from the State-Owned Bank and the customer can be subject to criminal liability. The most important thing according to researchers, sanctions for payment of substitute money which is only regulated in the Corruption Law can be imposed on losses of state finances that occur in the process of granting credit.

The discussion regarding the specificity of the application of laws and regulations on criminal acts in the process of granting credit to BUMN Banks between the Banking Law and the Corruption Law does not need to be debated anymore, this refers to the article applied in the Banking Law and the Corruption Law clearly shows its specific nature. The Corruption Law and in criminal sanctions the Anti-Corruption Law Article 18 has regulated criminal penalties for the payment of substitute money derived from goods resulting from criminal acts worth the loss of state finances. According to the author, the application of the Corruption Law in handling cases of bad credit at state-owned banks aims to restore state finances, which is caused by illegal actions in the process of granting credit to state-owned banks.

Based on the description above, it can be concluded that commercial banks that do not apply the precautionary principle in the bank's business including giving credit are in conflict with Article 8 paragraph (2) and Article 29 paragraph (2) and paragraph (5) of the Banking Law, and to him can be penalized. Arrangement of criminal acts related to disobedience of commercial banks to the provisions of the Banking Act and other provisions in the bank's business including the granting of credit regulated in CHAPTER VIII of the Criminal Provisions and Administrative Sanctions Article 49, Article 50, and Article 50A of the Banking Law.

The legal subjects in Article 49 paragraph (2) of the Banking Law are Members of the Board of Commissioners, Directors or bank employees who fulfill the formulation of actions described in Article 49 paragraph (2) letter b:

“Does not implement the steps needed to ensure bank compliance with the provisions in this law and the provisions of other laws and regulations that apply to banks are threatened with imprisonment of at least 3 (three) years and a maximum of 8 (eight) year 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 rupiahs)”

The legal subject in Article 50 of the Banking Law is an affiliated party that fulfills the formulation of actions described in Article 50:

“Who intentionally did not implement the steps needed to ensure bank compliance with the provisions in this Law and other laws and regulations that apply to banks, are threatened with imprisonment of at least 3 (three) years and at most 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) ”

In Article 1 number 22 of the Banking Law, what is meant by affiliated parties is:

1. members of the Board of Commissioners, supervisors, Directors or proxies, officials, or bank employees;
2. members of the management, supervisors, managers or their proxies, officials, or employees of the bank, specifically for banks in the form of cooperatives in accordance with applicable laws and regulations;
3. parties that provide services to banks, including public accountants, appraisers, legal consultants and other consultants;
4. parties who, according to Bank Indonesia, participated in influencing the management of the bank, including shareholders and their families, the family of the Commissioner, the family of supervisors, the family of the Board of Directors, the family of the management.

The legal subjects in Article 50A of the Banking Law are shareholders who fulfill the formulation of actions described in Article 50 A:

“Intentionally instructing the Board of Commissioners, the Board of Directors, or bank employees to carry out or not take action which results in the bank not implementing the steps needed to ensure bank compliance with the provisions in this law and other statutory provisions that apply to the bank, threatened with imprisonment of at least 7 (seven) years and a maximum of 15 (fifteen) years and a fine of at least Rp.10,000,000,000.00 (ten billion rupiahs) and a maximum of Rp.200,000,000,000.00 (two hundred billion rupiah)”

Based on the description above, violations of provisions and criminal liability as well as criminal sanctions in Article 49 paragraph (2) letter b, Article 50, and Article 50A of the Banking Law, relate to disobedience of commercial banks to the Banking Law and other regulations stipulated by Bank Indonesia in implementation of the bank's business including in terms of providing credit by commercial banks. The provisions of Article 49 paragraph (2) letter b, Article 50, and Article 50A of the criminal offense of the Banking Law do not regulate the consequences of the offense, but only limited to the arrangement of acts violated, because they are not regulated. Conviction related to material losses arising from the criminal offense.

The implementation of accountability for corruption in relation to the occurrence of bad credit is only carried out on bad credit at state-owned banks that have been determined to have state financial losses by the Supreme Audit Agency both for their own audits and the results of investigative audits at the request of law enforcers. State losses are the most important condition to be able to hold accountable for the legal subjects of corruption in the case of bad credit either carried out by the state-owned bank as the debtor or by the customer as the creditor in a credit facility that has stalled.

Problems of credit or bad credit that often occur in state-owned banks today are no longer mere business problems, but rather caused by deviations from Bank Indonesia's written policies that apply to commercial banks, including bank disobedience to the principle of prudence. Article 2 paragraph (1) of Law Number: 31 of 1999 jo. Law Number: 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning the Eradication of Corruption Crime emphasizes the "unlawful" nature of the precautionary principle that is not implemented, which is a form of bank compliance in the lending process and Article 3 which mentions the element "abuse of authority, opportunity and means due to position or position" from officials / bank employees in conducting the

process of granting credit is a provision that is most often used by investigators and public prosecutors to indict or prosecute banking players for disobedience to the principle of prudence (Effendi; 2012: 49). Marwan Effendi also gave an example of the Supreme Court in its various decisions agreeing on the basis of conducting investigations and prosecutions, namely Article 2 paragraph (1) and Article 3 of the Corruption Law, that the disobedience of the prudential banking principle was the basis for Supreme Court justices to prove the element against the law and the element of misusing authority in granting credit to state-owned banks, as in the decision of Hendro Budianto (Director of Bank Indonesia):

“Considering, however, specifically regarding the penalties imposed, the Supreme Court is of the opinion that it needs to be adjusted with a sense of justice for the defendant, since the defendant was not proven to have enjoyed the proceeds of the crime, and the defendant's actions were carried out in the government policy, but did not pay attention the precautionary principle adopted by banks (prudential banking)”.

Likewise in the Decision of the Supreme Court in the ECW Neloe case (Bank Mandiri Case), re-using the principle of prudential banking as the main thing in proving the element of being against the law or abusing the authority:

“That it turned out that it was proven in court, the Defendant was in the process and termination of giving credit to PT. Cipta Graha Nusantara, has committed an act that violates the provisions of the Banking Law (Law Number 10 of 1998) and Bank Mandiri Credit Policy (KPBM) of 2000, which violates the precautionary principle of Law No. 10 of 1998 in which the bank's prudential principles must meet 5 C, namely: Character, condition of economy, capital, collateral, and capacity, and the purpose of lending must be in the productive sector and in the framework of lending, banks must have in-depth analysis there is the ability for returns from the debtor and does not violate sound credit principles. From the description of the considerations and the facts, the actions of the defendants violated the principles of prudence and sound credit principles, essentially ignoring the principles of "Good Corporate Governance" in the realm of the Banking Law, but against the law. became a starting point and then expanded and entered into the area of criminal acts of criminal acts of corruption that resulted in the emergence of losses of a very large number of countries”

Based on the two decisions, violations of Article 29 paragraph (2) and paragraph (5) of the Banking Law are illegal forms and abuse of authority carried out by officials of BUMN Bank credit in a bad credit, and accountability can be requested to him as long as all elements are violated in Article 2 paragraph (1) and Article 3 of the Corruption Act can be proven. Formulation of Article 2 paragraph (1) and Article 3 of the Corruption Law:

Article 2 paragraph (1):

“Anyone who violently violates an act enriches himself or another person or a corporation that can harm state finances or the economy of the country, be sentenced to prison with life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20

(twenty) year and a fine of at least Rp. 200,000,000.00 (two hundred million rupiahs) and at most Rp. 1,000,000,000.00 (one billion rupiah).

Article (3):

“Everyone who aims to benefit himself or another person or a corporation, misusing the authority, opportunity or means available to him because of a position or position that can harm the state's finance or the country's economy, is punished with life imprisonment or the shortest imprisonment 1 (one) year and no later than 20 (twenty) years and / or a fine of at least Rp. 50,000,000 (fifty million rupiah) and at most Rp. 1,000,000,000.00 (one billion rupiah).

CONCLUSION

Effective corruption eradication is the eradication of corruption, which does not only have the perspective of punishment for having committed corruption offenses as stipulated in the Corruption Act, but the eradication of corruption must comprehensively pay attention to preventive measures in dealing with corruption.

Giving credit to state-owned banks that cause state financial losses as a result of the lending process does not refer to the Financial Services Authority Regulation Number: 42 / POJK.03 / 2017 dated 12 July 2017 concerning the Obligation of Preparing and Implementing Credit Policy or Bank Financing for Commercial Banks , Regulation of the Financial Services Authority Number: 18 / POJK.03 / 2016 dated March 16, 2016 concerning Application of Risk Management for Commercial Banks, and Standard Operational Procedure (SOP) in granting loans compiled by each State-Owned Bank, is a non-performing loan that has implications corruption crimes whose accountability can only be requested as long as the consequences of unlawful acts or misuse of authority because they do not apply the precautionary principle in granting credit to state-owned banks have caused losses to state finances.

BIBLIOGRAPHY

- Ali Zaidan, M. (2015). *Menuju Pembaruan Hukum Pidana*, Sinar Grafika, Jakarta.
- Arbi, Syarif. (2013). *Perbankan Keuangan Pembiayaan Lembaga*, BPFE, Yogyakarta.
- Chazawi, Adami. (2013). *Pelajaran Hukum Pidana Bagian I*, Rajawali Pers, Jakarta.
- Ferry Makawimbang, Harnold. (2014). *Kerugian Keuangan Negara*, Thafa Media, Yogyakarta.
- Hafidz Arsyad, Jawade. (2013). *Korupsi dalam Perspektif HAN*, Sinar Grafika, Jakarta.
- Hermansya. (2011). *Hukum Perbankan Nasional Indonesia*, Cetakan ke-6, Kencana, Jakarta.
- Muhammad, Abdulkadir. (2010). *Hukum Perusahaan Indonesia*, Citra Aditya Bakti, Bandung.
- Notohamidjojo, O. (2011). *Soal-Soal Pokok Filsafat Hukum*, Griya Media, Salatiga.
- Riawan Tjandra, W, *Hukum Keuangan Negara*, Grasindo, Jakarta 2014.
- S. Gazali, Djoni dan Rachmadi Usman, *Hukum Perbankan*, Sinar Grafika, Jakarta, 2012.
- Sedarmayanti, *Good Governance “Kepemerintahan yang Baik” & Good Corporate Governance “Tata Kelola Perusahaan yang Baik”*, Mandar Maju, Bandung, 2012.

Paper/Journal:

- Fitria, Nurul dan Raina Linda Sari, Analisis Kebijakan Pemberian Kredit Dan Pengaruh Non Performing Loan Terhadap Loan To Deposit Ratio Pada Pt. Bank Rakyat

- Indonesia (Persero), Tbk Cabang Rantau, Aceh Tamiang (Periode 2007-2011) , *Jurnal Ekonomi dan Keuangan*, Vol.1, No.1, Desember 2012.
- Halif, Pencegahan dan Pemberantasan Tindak Pidana Korupsi Melalui Undang-Undang Pencucian Uang, Vol 2 No. 2, 2012.
- Mohamad Aunurrohm, “Keadilan Kepastian dan Kemanfaatan Hukum di Indonesia”. website:<http://www.academia.edu/10691642/>,_Keadilan_Kepastian_dan_Kemanfaatan_Hukum_di_Indonesia_Disusun_guna_memenuhi_tugas_ujian_mata_kuliah_Perspektif_Global, diakses pada 11 November 2018.
- Muchlisin Riadi, ”Pengertian, Model, Bentuk, dan jenis-jenis Korupsi”, <http://www.kajianpustaka.com/2013/08/pengertian-model-bentuk-jenis-korupsi.html>, diakses pada tanggal 11 November 2018.
- Pramono, Widyó Menyikapi Prinsip “Business Judgment Rule” Dalam Penegakan Hukum Perkara Tindak Pidana Korupsi, Warta Badiklat Badan Pendidikan dan Pelatihan Kejaksaan RI, Tahun 3 – edisi 11-2015.
- Rosita Ayu Saraswati, Peranan Analisis Laporan Keuangan, Penilaian Prinsip 5c Calon Debitur Dan Pengawasan Kredit Terhadap Efektivitas Pemberian Kredit Pada PD BPR Bank Pasar Kabupaten Temanggung, *Jurnal Nominal / Volume I Nomor I / Tahun 2012*.

Article, Internet Source

- [...] Pemisahan Kekayaan Negara di BUMN. <http://www.bpk.go.id/news/>, diakses pada tanggal 5 Januari 2019.
- [...] Zulkarnaen Sitompul, Seluk Beluk Tindak Pidana Korupsi Di Sektor Perbankan. <https://zulsitompul.wordpress.com/2011/02/23/tipikor/>, diakses pada tanggal 10 Desember 2018.
- [...] Corruption Perception Index 2012. <https://ti.or.id>, diakses pada tanggal 6 Juni 2018.
- [...] KPK, Korupsi Bidang Pengadaan Barang dan Jasa Terbesar. <https://www.neraca.or.id>, diakses tanggal 6 Juni 2018.
- [...] Jaksa Agung ingatkan lima titik rawan korupsi. www.siwalimanews.com, diakses tanggal 10 Juni 2018.
- [...] Rawan korupsi, presiden minta empat sector diawasi ketat. www.skalanews.com, diakses tanggal 10 Juni 2018.
- [...] KPK tahan 7 anggota DPRD Riau. <http://nasional.kompas.com/read/>, diakses tanggal 10 Juni 2018.
- [...] Solo beri pendidikan gratis hingga SMA. <http://krjogja.com/read/149435/solo-beri-pendidikan-gratis-hingga-sma.kr>, diakses tanggal 10 Juni 2018.
- [...] Kajian Kejaksaan Agung, tindakan preventif dan represif dalam tindak pidana korupsi. http://www.kejaksaan.go.id/unit_kejaksaan.php?idu=28&idsu=35&id=1546 diakses tanggal 20 Juni 2018.
- [...] 70 persen laporan korupsi terkait pengelolaan APBD, <http://www.manadotoday.com/kpk-70-persen-laporan-korupsi-terkait-pengelolahan-apbd/1187.html>, diakses tanggal 15 Juni 2018.

