

Corruption in Banking as One Form of Professional Crime

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Corruption in Banking as One Form of Professional Crime

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Keywords: corruption, banking, professional crime.

Abstract: This study focuses on acts of corruption in banks which must be interpreted as crimes in the profession of bankers. The goal is that bankers who commit corruption can be said as well as professional crimes, as well as prevention efforts. Professional crime as a form of occupational crime, which can occur because professionals in carrying out their profession have special rights. Because professional expertise requires standard service standards, usually to carry out professional work requires a license to practice from the bureaucratic authority. The method used in this study is qualitative with a normative, social and documentary juridical approach. As a result, bankers as individual businessmen using bank / institutional facilities both as authorities, also use bank property facilities. From the customer side as a party on the outside it often makes them feel facilitated, but in fact the customer as a tool to realize the intention is actually very detrimental to the bank materially and non materially. Material losses can be in the form of not making funds and profits from the transaction to the bank, but rather becoming the personal profit of the perpetrator.

1 INTRODUCTION

The development of criminal acts of corruption was first reported by the United Nations Congress (UN) on The Prevention of Crime and the Treatment of Offender. Members of the United Nations are aware that corruption crimes have exceeded the territorial boundaries of each country. But the pace of economic development and trade actually helped spur the development of criminal acts of corruption. Corruption is a very complex crime From a political standpoint, corruption is a factor that disturbs and reduces the government's credibility. From an economic standpoint, corruption is one of the factors that cause a large amount of state financial losses. From a cultural standpoint, corruption damages the morals and character of the Indonesian people who uphold noble values. 20

Corruption does not only occur in the public sector, but can also occur in the private sector whose business activities are related or related to the public sector such as taxation, banking and public service sectors. The banking sector is a sector / field that is prone to corruption. Because banking is a financial institution whose main function is to collect and channel public funds.

The development of criminal acts of corruption in the banking sector is developing along with the

increasing banking industry as a locomotive of national development. The impact of the occurrence of criminal acts of corruption in the banking sector is not only for the victims, but will also create a negative impression on the financial institutions / banks themselves. This is because banks are intermediary institutions whose operational mechanisms are based on fiduciary relations, confident relations and prudential relations. (Setiadi and Yulia, 2010)

The existence of trust factors from other parties and customers is the main thing for the smooth operation of the bank. This is also banking ethics in relation to other parties. For this reason, bankers have a role in having morals, morals and expertise in banking / finance.

2 LITERATURE REVIEW

The essence of a bank is how to transform commodities that are "intangible" in the form of trust, is the true value of a bank. How banks attract and use money from the community, and manage money from the community will form its own image or picture in the minds of the people. This commodity of trust gives rise to banks a sense of responsibility both morally and financially.

2.1 Corruption and Dimension of Banking Crime

In juridical sense, the definition of corruption can be identified from the formulations of acts that can be punished for corruption based on Law No. 31. 1999 Junto Law No. 20. Year 2001 concerning Eradication of Corruption Crimes.

Table 1: The Definition Of Corruption Between The Anti-Corruption Law and The Criminal Code

| Law No.31 1999 Junto Law No.20 2001 | Kitab Undang-undang Hukum Pidana | Article |
|---|--|--|
| Anyone is prohibited from enriching themselves, or other people, or corporations, which can harm the country's finances and the country's economy | | Article 2 Paragraph (1) |
| Any person who intends to see personal gain or another person or a corporation, by misusing the authority, opportunity or means they have, based on their position or position that can harm the country's finances or country's economy. | | Article 3 |
| Everyone who promises to give gifts to officials referred to in this Law will be subject to imprisonment of 1 to 5 years and/or a fine of Rp 50,000,000 to Rp 250,000,000. | Any person who gives a gift or makes a promise to an official with intent to move him to commit or omit something in his service contrary to his duty. | Article 5 Law No.31 Year 1999 and Article 209 KUHP |
| Any person committing a criminal acts as referred to in Article 210 of the Criminal Code | Any person who gives a gift or makes a promise to a judge with intent to exercise influence on the | Article 6 Law No.31 Year 1999 and Article 210 KUHP |

| | | |
|--|--|--|
| shall be liable to a prison sentence of 3 to 15 years and a fine of Rp150.000.000 to Rp750.000.000. | decision on a case. | |
| Any person committing the criminal acts as referred to in Article 387 or Article 388 of the Criminal Code shall be liable to a prison term of 2 to 7 years and a fine of Rp100.000.000 to Rp350.000.000. | Any master builder or an architect who is performing the job or the delivery of the materials commits a fraudulent act, and also any person who charged with the supervision of the work with deliberate intent allows the fraudulent act. | Article 7 Law No.31 1999 and Article 387 or 388 KUHP |
| Any person committing the criminal acts as referred to in Article 415 of the Criminal Code shall be liable to a prison term of 3 to 15 years and a fine of Rp150.000.000 to Rp750.000.000. | Any official or any other person continuously or temporarily in charge of a public service who deliberately embezzles money or securities. | Article 8 Law 31 Year 1999 and Article 415 KUHP |
| Any person committing the criminal acts as referred to in Article 416 of the Criminal Code shall be liable to a prison term of 1 to 5 years and a fine of Rp50.000.000 to Rp250.000.000. | Any official or any other person continuously or temporarily in charge of a public who deliberate intent falsely draws up or falsifies books or registers. | Article 9 Law No.31 Year 1999 and Article 416 KUHP |
| Any person committing the criminal acts as referred to in Article 417 of the Criminal Code shall be liable to a prison term of 2 to 7 years and a fine of Rp100.000.000 to Rp350.000.000. | Any officials of any other person continuously or temporarily in charge of a public service who with deliberate intent embezzles, destroys, damages on evidence. | Article 10 Law No.31 Year 1999 and Article 417 KUHP |

| | | |
|---|---|---|
| Any person committing the criminal acts as referred to in Article 418 of the Criminal Code shall be liable to a prison term of 1 to 5 years and/or a fine of Rp50.000.000 to Rp250.000.000. | Any official who accepts a gift or promise related to his authority in office. | Article 11 Law No.31 Year 1999 and Article 418 KUHP |
| Any person committing the criminal acts as referred to in Article 419, Article 420, Article 423, Article 425 or Article 435 of the Criminal Code shall be liable to life imprisonment, or a prison term of 4 to 20 years and a fine of Rp200.000.000 to Rp1.000.000.000 | Any official who accepts a gift or promise in order to move him contrary to his duty, any judge who accepts a gift or promise in order to exercise influence on the decision of a case, any official who intent to unlawfully benefit himself or another by misuse of power, any official who in the exercise of his service demands or accepts or withholds payment, any official who with deliberate intent takes part directly or indirectly in tenders, deliveries or leases. | Article 12 Law No.31 Year 1999 and Articles 419, 420, 423, 425 and 435 KUHP |
| Any person rendering gifts or promises to civil servants in view of the powers and authority attached to their respective ranks or positions, or deemed by the person rendering such gifts or promises to be attached to the aforementioned rank or position. | | Article 13 |

| | | |
|---|--|------------|
| Any person violating the provision of the law which clearly states that violations against the provision of the aforementioned law shall be regarded as corruption shall be liable to the provisions of this law. | | Article 14 |
|---|--|------------|

Corruption has been considered as a very extraordinary crime or "extraordinary ordinary crime", so that this crime is often regarded as "beyond the law" because it involves the perpetrators of high-level economic crime (high level economic) and the bureaucracy of the high level (high level beurocratic), both economic and government bureaucrats (Seno Adji, 2007).

2.2 Dimensions of Banking Crime

There are several dimensions of banking crime namely, it can be a person's crime against a bank, a bank crime against another bank, or a bank crime against an individual. The dimension of banking crime space is not limited to a particular place, but can cross a country's territorial boundaries. Likewise, the time dimension can occur instantaneously, but it can also last for some time.

Qualifications of banking crimes that often occur, including:

- 1) Fraud, or fraud in the field of credit (credit fraud).
- 2) Embezzlement of public funds (embezzlement of public funds).
- 3) Misappropriation, or misuse of public funds (misappropriation of public funds).
- 4) Violations of financial regulations, or (violation of currency regulation) (Djumhana, 1996).

The pattern of banking crimes is often complicated, because the culprit is the average person who is an expert in his field, also often very neat, and veiled (disguise of purpose or intent / disguising the purpose of crime).

Gottschalk's research (2011) provides statistical evidence that top-level executives are involved in financial crime. Like Tillman's research (2009), his analysis shows that a network of collusion a financial statement fraud involves a large number of

board members, auditors, and bankers who help and conspire with senior managers in their efforts to deceive investors.

Banking crimes are categorized as criminal banking and are always carried out in an organized manner. In this sense, banking activities are merely camouflaged because all activities are systemic violations of the law for purposes of making a profit (a systematic act against the law for profit). Usually the most popular of criminal banking is money laundering and window dressing or in banking laws themselves have been determined for example doing banking activities without permission, dealing with bank secrets, the obligation to provide information to Bank Indonesia and provide incorrect information (Setiadi and Yulia, 2010).

2.3 Banking Crimes as Professional Crimes

Generally professional crimes are very careful in choosing their victims. They believe that some people are more worthy of being victims than others. Professional robbers, for example, make a conscious effort to choose victims who are also capable of suffering losses, namely large organizations especially banks.

Sutherland, in Clinard-Quinney (1972) observed that professional thieves are characterized by (1) skill — there are complex techniques for committing crime; (2) professional crime status has a high prestige position in the crime world; (3) professional crime-consensus sharing shared values, beliefs and attitudes, with enthusiasm among members; (4) differential associations with other professional criminals the association rules out law-abiding persons and other criminals; and (5) organization activities in terms of general knowledge carried out through information and assistance in the informal system.

3 METHOD

This research uses a qualitative descriptive method using a formal, normative, and document study approach. The availability of legislation as an official document as a legal basis. The norms as a reference in banking regulations at each bank. Formal juridical analysis with reference to the laws and regulations that apply to banks, both written and customary practices in banking activities as a form of convention that still applies to the banking business.

4 RESULTS AND DISCUSSION

4.1 Several Factors That Cause Corruption in Banking

- 1) The Nonshareable aspect; in his book Cressey (1953) most managers in running their lives, especially in the face of financial difficulties in their families, it will be decided by taking a shortcut, that is, using the money of the company where they work.
- 2) Environmental / community aspects; Environmental or community aspects also influence a person's behavior to commit acts of corruption. In general, people will respect someone because of the wealth they have, without being balanced with a critical attitude from where the wealth comes or is obtained. Likewise, the culture of tribute or bribery of customers who want to get credit quickly even if it does not meet the criteria, then he will bribe bank employees for the smooth administration. The need for an active public role in fighting corruption, because it is not only the duty of the state. The normative active role of society can also help eradicate corruption.
- 3) Other factors that also influence are regulations that are less socialized to the public, so that ordinary people do not know. Dissemination or dissemination to the public can be used as a detective effect, namely the lack of corruption because the prospective karuptor is afraid of the penalties contained in the legislation, and of course he will be embarrassed when the public knows that his actions are corruption. Added to the application of sanctions that are too light and indiscriminate. Causing the weak eradication of corruption because it does not cause a deterrent effect to the perpetrators.

4.2 Efforts to Prevent Corruption in Banking through Law Enforcement

Law enforcement in banking and banking crime can be done in various ways, both in the fields of civil law, administrative law and criminal law. Related to law enforcement in the field of criminal law, eradication or efforts to tackle corruption in the banking sector can be pursued by means of penal (criminal law) and non-penal means. Means of punishment can be done through the application of criminal law and criminal administrative law as a means of shock therapy. Whereas non-penal facilities

can be carried out by means of supervision (built in control), improvement of the supervision system and strengthening regulations through the application of the precautionary principle, establishing a financial safety net (financial safety net), stabilizing the banking system that directs the bank to good practices corporate governance and the fulfillment of the principle of prudence, professionalism of the apparatus continues to be improved so that it has high integrity capabilities, has sufficient competence, and has a good financial reputation or non-judicial measures in the form of public opinion actions and socialization of the community.

Lewerissa (2013) states specifically, law enforcement and prevention of banking crimes can be pursued through:

1. It is necessary to increase the ability of investigators in the field of accounting and finance.
2. An effective bank supervision system and this can be done if employee recruitment emphasizes more on mental ideology.
3. Expansion of the authority of investigators in the context of carrying out their duties, not just concerning bank secrets.
4. Renewal of laws in the economic field in *casu banking law*.

Majority observations indicate that some businesses are in the process of becoming professions, some professions that take on some business characteristics, and other jobs that are appropriate and have even been firmly included in business and professional roles.

These two conflicting roles are likely to create a conflict of interest, which in turn can lead to a deviation and violation of the rules. If a profession on one side then doubles with a job that does not support the profession, even if it crosses business alone, then usually there will be a violation, because there are multiple roles that conflict with each other. This creates a conflict of interest.

Delegation of work roles is a common phenomenon in modern society, partly because of the frequency and speed with which changes in the definition of work roles occur and new job roles emerge. In particular, it seems clear that the role of business and professional work.

5 CONCLUSION

The bankers in carrying out their profession have operational guidelines, both in the form of formal provisions, and ethics which are conduct norms. In

carrying out there are two roles that he lived. It depends on how bankers can position themselves when acting as bankers and not as bankers. When they cannot play the two roles properly, there will be a role conflict that can lead to violations. However, if they can portray correctly, when as a banker and when as a non-banker, then this banker is not the violator. For this reason, it is necessary to understand by bankers, so that in carrying out these dual roles, they can truly be carried out in accordance with their conditions, both as bankers and as employees. And this is followed by making a good control mechanism continuously and consistently.

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