

Domination of the implementation of corruption eradication law to banking law on banking crime

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Abstract

This study describes and analyzes based on a review of law enforcement theories on why the application of the corruption law is prioritized by law enforcement officials rather than the banking law in handling banking crime cases.

This study uses a normative-juridical research method which is an approach by examining secondary legal materials based on primary legal material by examining theories, concepts, legal principles and legislation relating to this research. The type of legal material presented by the author is qualitative legal material that is the writer will present legal material in the form of words or sentences, and then compiled in its entirety in the form of legal writing.

The results obtained from this study are the reasons of law enforcement officers prioritize corruption laws rather than banking laws in handling banking crimes, one of which is because the corruption laws mentioning the offense elements are formulated in general so that it will be more many cover the modus operandi of acts while banking laws are specifically formulated. The corruption law also expands the legal subject that can be held liable for criminal responsibility, namely the corporation (*recht persoon*), and also regulates the burden of responsibility for the creator of the trial, assistance, and consensus in corruption. The mechanism for disclosing criminal acts in the corruption law uses special investigative techniques such as wiretapping of communications and electronic monitoring devices which will later have a extremely strong evidentiary value so as to facilitate the verification process. The corruption law also has an in-absentia trial mechanism which can be used as a basis for seizing or freezing assets owned by defendants both domestically and abroad. The rules of the burden of proof is reversed. The priority handling of corruption cases is also known in the corruption law (vide article 25 of the corruption eradication law). The system of imposing sanctions in the corruption eradication law is extremely flexible, the types of additional crimes are very varied, and the threat of punishment for perpetrators is higher.

Related to law enforcement theory, from the law factor, law enforcement factor, facility factor, community or cultural factor, the corruption law is more effective and efficient to be applied in handling banking crime than the banking law which actually regulates specifically regarding banking crimes, but with the requirement that, in the banking crime, state financial losses or the economy of the state have been found based on calculations from law enforcement officials themselves or from institutions that are authorized to calculate state financial losses such as BPK (Audit Board), BPKP (Finance and Development Auditor), Inspectorate and Public Accountant.

Keywords: corruption, banking crime, state financial losses or the economy of the country

1. Introduction

This study aims to find out the reasons of law enforcement officers prioritizing corruption laws rather than banking laws in handling banking crime cases. This research refers to relevant research which includes: Syahril's research, with the title "Application of the corruption eradication law on banking crimes", focused on banking bad credit caused by an act against the law (crime). Hartiwingsih's research, with the title "critical study of the use of the corruption law to deal with banking crimes", focused on the reason the corruption law was used to resolve banking crime cases. Angraini and Dian Yustisia's research, with the title "juridical review of the application of corruption eradication law in dealing with criminal acts in the field of banking in the state-owned enterprise (BUMN)", focuses on the application of laws to eradicate corruption in dealing with criminal acts in the banking sector in the state-owned enterprise and the consequences juridical on capital participation by the state in the form of state assets separated from bank in the state-owned enterprise.

Banking crimes have been regulated in Law No. 7 of 1992 concerning Banking as amended by Law No. 10 of 1998 which is divided into two forms, namely crime and

violation. Banking crime with a crime category consists of seven articles, namely Article 46, 47, 47A, 48 paragraph (1), 49, 50, and Article 50A. Meanwhile, banking crimes in the category of violations with criminal sanctions are lighter than criminal acts classified as crimes, consist of one article, namely Article 48 paragraph (2). The classification of banking crimes into crimes is based on the imposition of a penalty that is more severe than the violation. This is due to the fact that banks are institutions that hold funds entrusted by the public so that it is necessary to avoid actions that can result in damage to public trust in banks, which in turn will also harm banks and the public^[1].

In Indonesia, there have been many crimes in the banking sector with national level cases, namely the case of the Bali Bank, Century Bank, BLBI SKL (Certificate of Liquidity Assistance of Indonesian Bank) and most recently the fictitious letter of credit (L/C) of BNI Bank. Banking crimes also occur at the regional level such as the bad credit case of NTT bank, BRI Bank Teller case in the Gubeng Kertajaya Surabaya unit, the credit broker case of the Ambarawa

1 Financial Services Authority (OJK). Book of understanding and avoiding banking crimes p10.

Supporting Bank of Central Java branch, the fictitious credit case of BRI Bank of Kendal branch, Bank case of PD BPR in Salatiga, Bank of Sukoharjo Regency Market case, and a series of other cases, most of which have been brought to trial by law enforcement officers by implementing the provisions stipulated in the corruption eradication law. In fact, banking crimes and corruption are crimes committed by the *modus operandi* through technological means and carried out by scholars (intellectuals) or known as white collar crimes. Efforts to eradicate white collar crime are carried out in a special way that is different from the way to eradicate conventional crime so that the government makes Law No. 31 of 1999 concerning eradication of corruption as amended by Law No. 20 of 2001, however this is not for banking crimes because Law No. 7 of 1992 concerning Banking as amended by Law No. 10 of 1998 was formed with the spirit of advancing the banking sector which has a strategic position as an intermediary institution and supporting the national banking system in order to respond to the development of the national economy is always moving quickly with increasingly complex challenges for the implementation of harmonious, harmonious, and balanced development, although in it is regulated banking crime.

Corruption Eradication Law and Banking Law are special laws outside the Criminal Code (KUHP) that specifically regulates certain criminal acts so that the provisions of article 63 paragraph (2) of the Criminal Code apply "If an act is included in a general criminal rules, also regulated in specific criminal rules, then only those specifically applied "or known as *the lex specialis derogat legi generali* principle. Literally, *the postulate lex specialis derogat legi generali* means that the special law overrides general law or *de speciale regel verdringt de algemene*. In the context of criminal law, various crimes and violations regulated in separate laws outside the Criminal Code are specific criminal laws. *Bijzonder strafrecht* or special criminal law is a criminal law that deviates from the general provisions of criminal law both in material and formal terms. This means that these provisions deviate from the general provisions contained in the Criminal Code or deviate from the general provisions contained in the Criminal Code^[2].

Sometimes a criminal act complies with the offense contained in more than one specific criminal provision, such as the cases in the banking sector mentioned above which are included in the provisions on corruption eradication laws as well as being included in banking laws. This certainly raises problems in resolving such legal events because it involves which laws will be used, whether banking laws which include banking crimes or corruption eradication laws. In other words, between banking crime and corruption which must be used keeping in mind that both laws are *bijzonder delic* or special criminal acts. The answer to that question will certainly affect criminal law enforcement because the formal and material laws governed by the two laws are clearly different.

The author is very interested in the many cases in the banking sector that were submitted by law enforcement officers to the trial by applying the provisions of the corruption eradication law even though the cases in the banking sector have also fulfilled the formulation of

elements in the banking law which are also of a nature specifically so that it raises the question of what is the reason for law enforcement officials prioritizing the Corruption Eradication Law rather than the Banking Law in handling banking crime criminal cases.

The benefits of this research are expected to be able to increase understanding for all parties, especially in the legal field, and can provide input for the improvement of the statutory instruments regarding the procedure for implementing two or more laws which constitute *bijzonder delic* or special criminal acts. The results of this study are also expected to be secondary data in the field of law, specifically in the field of criminal law in order to support library materials for relevant research and can be a guide and reference material for observers of criminal law, the public, legal practitioners, and also law enforcement officials specifically.

2. Method

The method used in this study is normative-juridical, which is an approach by examining secondary legal material based on primary legal material by examining theories, concepts, legal principles and laws and regulations relating to this research. The type of legal material presented by the author is qualitative legal material that is the writer will present legal material in the form of words or sentences, then compiled in its entirety in the form of legal writing.

Furthermore, the author will analyze the problem formulation in terms of law enforcement theory proposed by Prof. Dr. Soerjono Soekanto that there are 5 (five) factors that influence law enforcement including the legal factor itself (the law), law enforcement factors, facility factors, community factors and Cultural factors^[3].

All data obtained from library research will be processed using descriptive qualitative analysis techniques. The data obtained will be described and analyzed, then linked to the problem under study. After that, it is described as realities, then the research results are compared with existing regulations so that they can be used to answer problems.

3. Discussion

Normatively, based on Chapter II. Corruption Article 2 of Law No. 31 of 1999 concerning the eradication of corruption, corruption can be understood as an act against the law to enrich themselves or corporations that can harm the country's finances. Meanwhile, the form of acts against the law in an act of corruption is formulated in Article 3 of Law No. 31 of 1999 concerning eradication of corruption as an abuse of the authority, opportunities, or facilities available to them because of a position or rank that can be detrimental to the country's finances.

Corruption is not only related to unlawful acts or abuse of authority resulting in state losses, but there are still other corruption offenses, including bribery offenses, embezzlement offenses, extortion offenses in office, offenses related to chartering, suppliers, partners, and other offenses relating to corruption offenses that are difficult to prove (*vide* article 27 UUPTPK) which includes criminal acts of corruption in banking, taxation, capital markets, trade and industry, commodity futures, or in the monetary

2 Eddy O.S. Hiariej, "Criminal Law Principles, Revised Edition", Cahaya Atma Pustaka Yogyakarta 2015. p 415.

3<https://business-law.binus.ac.id/2018/12/26/penegakan-hukum-masalahnya-apa/> accessed on 17 July 2020;

and financial sector^[4].

The corruption eradication law does not explain further about what is meant by criminal acts of corruption in the banking sector, is it the same as banking criminal acts as regulated in banking law Law No. 7 of 1992 concerning Banking as amended by Law No. 10 of 1998 or a different crime. In terminology, criminal acts in the banking sector have a broad understanding that is all types of acts that violate the law relating to activities in conducting bank business so that these acts can be treated with regulations governing banking activities that contain criminal provisions or regulations. Criminal law regulations, general or special, as long as there are no criminal law regulations specifically made to threaten and punish these acts. This means that criminal acts in the banking sector involve acts related to banking and are threatened with crime, even if regulated in other regulations. Whereas, banking crime is a crime that meets the elements as referred to in Article 46 through Article 50A of the Banking Law or Article 59 through Article 66 of the Sharia Banking Law.

Law enforcement problems will arise when one act fulfills the formulation of the elements of corruption and banking crime because the corruption eradication law and banking law are both specific laws (*lex specialis*) while the provisions of article 63 paragraph (2) of the Criminal Code governing *samenloop van strafbaarstellingen* or merging of criminal determination to recognize the *lex specialis derogat legi generali* principle so that another principle is needed to solve the juridical problem, namely the *lex specialis* systematic principle as a derivative of the *lex specialis derogat generali* principle in the Netherlands according to *Rammelink* known as juridical speciality or the special systematic *lex systemic* besides *logicalche specialiteit*^[5].

The criteria for systematic specialties are objects of general definitions that are regulated more fully in the framework of special provisions. Whereas, logical specialties have detailed definition criteria for crime within the bounds of the general definition. There is also a *Lex consumen derogat legi consume* principle which means that one provision consumes the other provisions. In Germany, this term refers to a situation which is decided based on a concrete situation. For example, there are two criminal provisions that are the same nature, for example, both as *lex specialis*, then what is used as a guideline is the criminal provisions that dominate the most acts of violating the criminal provisions. In this principle, it is not the heaviest criminal sanction that will be applied but the criminal threat relating to actual or concrete acts is interpreted by violators of these provisions^[6].

There have been many cases in the banking sector that were brought before the court by law enforcement officers by applying the provisions of the corruption eradication law, especially those relating to state finances and there were indications of losses to the state finances. Law enforcers, in this case investigators, public prosecutors, and judges prefer to apply the provisions of the law on corruption eradication rather than banking laws on cases in the banking sector even though in reality law enforcement officials have known if the cases in the banking sector also fulfills the formulation

of the elements of criminal banking in the banking law. This is with the consideration that state financial losses have been found based on the calculation of law enforcement agencies themselves or from institutions authorized to calculate state financial losses such as the BPK (Audit Board), BPKP (Finance and Development Auditor), Inspectorate and Public Accountant. Besides, the reasons of law enforcement officers prioritize corruption laws rather than banking laws in handling banking crimes, one of which is because the corruption laws mentioning the offense elements are formulated in general so that it will be more many cover the modus operandi of acts while banking laws are specifically formulated. The corruption law also expands the legal subject that can be held liable for criminal responsibility, namely the corporation (*recht persoon*), and also regulates the burden of responsibility for the creator of the trial, assistance, and consensus in corruption. The mechanism for disclosing criminal acts in the corruption law uses special investigative techniques such as wiretapping of communications and electronic monitoring devices which will later have a very strong evidentiary value so as to facilitate the verification process. The corruption law also has an in-absentia trial mechanism which can be used as a basis for seizing or freezing assets owned by defendants both domestically and abroad. With the burden of proof being reversed, the priority in handling cases is also known in the corruption law (vide article 25 of the corruption eradication law). The system of imposing sanctions in the corruption eradication law is very flexible, the types of additional crimes are very varied, and the threat of punishment for perpetrators is higher.

Law enforcement is the process by which efforts are made to uphold or properly functioning legal norms as a code of conduct in legal relations in public and state life. Prof. Dr. Soerjono Soekanto stated that there are 5 (five) factors that influence law enforcement, including the legal factor itself (the law), law enforcement factors, facility factors, community factors and culture factors.

Legal factor itself; the intended law is the Law or written regulations that are generally accepted and made by the government. The legal factor in question is originated from the law itself which is problematic. The problem of law enforcement originating from the law was caused by not following the principles of the coming into effect of the Law, there were no implementing regulations that were needed to implement the law, the unclear meaning of the words in the law which would result in confusion in its interpretation and application, the ambiguity in the words used in the formulation of certain articles^[7].

Law enforcement factors; the meaning of the law enforcers are those who are directly or indirectly involved in law enforcement ranging from the Police, Prosecutors, Judges, Corruption Eradication Commission (KPK), Legal Counsel (Advocate) to prison officers (LAPAS). Every law enforcement profession has the authority or duties of each who must have experienced obstacles in the operational technical level in each law enforcement. The causes include the low quality of judges, prosecutors, police and advocates, heedless principles of the right man in the right place, low commitment to law enforcement, lack of integrated and modern law enforcement mechanisms, strong influence and

4 DR. Bambang Sugeng Rukmono, S.H., M.H. 2018. Testimony of Bank Officials in Handling Banking Crimes and Corruption in the Banking Sector. Jakarta Bhuana Ilmu Populer Kelompok Gramedia, p 97;
5 Eddy O.S. Hiarij, "Criminal Law Principles, Revised Edition", *Cahaya Atma Pustaka Yogyakarta* 2015. p 414-416;
6 *Ibid* Eddy O.S. Hiarij;

⁷<https://business-law.binus.ac.id/2018/12/26/penegakan-hukum-masalahnya-apa/> accessed on 17 July 2020;

political and power intervention, judicial mafia, weak coordination between law enforcers both at the level of terrorism and rules and at the operational level.

Facilities and facilities factors; without the support of adequate facilities, it is not easy for law enforcement to take place properly such as covering law enforcement officials who are highly educated and skilled, good organization, adequate equipment, sufficient finance, and so on. If these things are not fulfilled then it is difficult for law enforcement to achieve its objectives.

Community factors; from a social and cultural standpoint, Indonesia is a pluralistic society with so many ethnic groups with a variety of different cultures. A law enforcer must recognize the social stratification or layering of a community that exists in an environment along with the existing status / position and role structure so that it is easy to identify the values and norms or rules that apply in that environment.

Cultural Factors; cultural factors have similarities with community factors. However, the cultural factor is emphasized more about the problem of the existing value system in the midst of society. In community factors, the level of community compliance with community rules is still low. This is because of the compromise culture that often occurs in Indonesian society. In fact, there will be a tendency for the culture of the people to escape from the applicable rules.

In law enforcement, the five factors are closely interrelated with one another, affect each other in the course of enforcement, and weaknesses of one impact on other obstacles. Systematics of the effectiveness of law enforcement should begin to question how the law, how law enforcement, how the supporting facilities, then how people respond and the culture that is built.

Related to law enforcement theory above, the dominance of the application of corruption eradication laws on banking laws in banking crimes occurs because of the existence of unclear legal factors meaning of the words in the Law which will result in confusion in the interpretation and application. such as there is no definition of what is meant by corruption in the banking sector or elements of corruption offense that are formulated in general, namely the scope of the element of "harming state finances or the economy of the country" that is very broad so that more will cover the *modus operandi* of acts. In addition, the principles are not followed, such as the Law which is the principle of *lex specialis*, systematic banking laws over corruption eradication laws. On the other hand, the banking law was formed with the spirit of advancing the banking sector which has a strategic position as an intermediary institution and supporting the national banking system in order to respond to the development of the national economy is always moving quickly with increasingly complex challenges for the implementation of harmonious and balanced development, not to overcome banking crimes that are actually included in the white-collar crime group as corruption.

In terms of law enforcement factors, law enforcers actually know that banking laws are *lex specialis*, systematic in the laws against corruption, but corruption eradication laws are preferred to be applied to cases in the banking sector because they are considered effective and efficient. More benefits and convenience than the application of banking laws include legal subjects of corruption that can be held criminal responsibility not only for people but also

expanded including corporations (*recht persoon*). The corruption eradication law also regulates the burden of responsibility for the creator of the trial, assistance, and consensus in corruption, the mechanism of disclosure of a criminal act using special investigative techniques such as wiretapping of communications and electronic monitoring devices which will later have a very strong evidentiary value so as to facilitate the process proof, the in-absentia trial mechanism, the burden of reverse evidence in the trial of corruption cases. Corruption cases are priority matters that must be resolved immediately (vide article 25 of the Corruption Law). The system of imposing sanctions in the Corruption Law is very flexible, the types of additional crimes are very varied and the threat of punishment for perpetrators of corruption is higher.

In terms of facilities and facilities, the handling of corruption receives special facilities such as the existence of a special institution Corruption Eradication Commission (KPK), known as a superbody institution, a corruption court specializing in prosecuting corruption cases, the authority of law enforcement officials to request information from banks about the financial condition of the suspect or the defendant, the authority to block accounts suspected of being the result of corruption, the authority to order the leaders or superiors of suspects to suspend suspects from their positions, the authority to ask for assets and taxation data of suspects or defendants, the authority to suspend financial transactions, trade transactions and other agreements or temporary revocation of permits, as well as concessions made or owned by suspects or defendants, and conducting wiretapping. The budget for handling corruption cases is also specifically allocated for law enforcement officials ranging from investigations, prosecution, to trials including the procurement of bugging devices and electronic monitoring devices. Meanwhile, banking crimes do not get special facilities as corruption.

In terms of community factors, Indonesian people respond to corruption is an extraordinary crime that occurs widely, not only detrimental to state finances, but also has been a violation of social and economic rights of the community at large so handling cases corruption by law enforcement officers has always been a focus and concern for the community. Community support is also very strong for corruption eradication institutions such as the Corruption Eradication Commission (KPK) which when there is an effort to weaken the institution, the community took to the streets to support the strengthening of anti-corruption institutions for the massive eradication of corruption.

In terms of cultural factors, the value system in society has been built that corruptors are extraordinary criminals who must be punished as much as possible and even deserve death sentences. A corruptor is not only himself who sins but all of his children share the sin because the community not only knows the convicted corrupt but also his wife, children and grandchildren who are corrupt status is still attached even though the convicted criminal has committed a criminal sentence.

4. Conclusion

Based on the research objectives and the discussion above, it can be concluded that:

1. The reason law enforcers prioritize corruption law rather than banking law in handling banking crime crimes, including because corruption laws mentioning

offense elements are formulated in general so that more will cover the modus operandi of acts while banking laws are formulated specifically, the Corruption Law expands the legal subjects that can be held liable for criminal acts, namely individuals and / or corporations (*recht persoon*), as well as the burden of responsibility for the creator of the trial, assistance, and consensus in corruption, the mechanism for disclosing criminal offenses in the act corruption uses special investigative techniques such as wiretapping of communications and electronic monitoring tools which will later have a very strong evidentiary value making it easier to prove, the Corruption Law recognizes in-absentia trial mechanisms that can be used as a basis for seizing or freeze the assets owned by the defendant both inside and outside the country, the rules of the burden of proof is reversed, the priority handling of corruption cases is also known in the Corruption Law (vide article 25 of the act on corruption), the system of imposing sanctions in the Corruption Law is very flexible, additional types of crime are very varied and the threat of punishment for corruption is higher.

2. If related to law enforcement theory, the dominance of the application of corruption eradication laws on banking laws in banking crimes occurs because of the enactment of the principle of *Lex consumen derogat legi consume*, which means that one provision consumes the other provisions, from factors of law, enforcement law, facilities, society and culture. Corruption eradication laws are more dominant to be applied than banking laws in banking crimes even for banking crimes themselves but with the condition that it has been found a loss of state finances or the economy of the country based on calculations from law enforcement officials themselves or from agencies authorized to calculate losses state finances such as BPK (Audit Board), BPKP (Finance and Development Auditor), Inspectorate and Public Accountant.

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