The Seybold Report
ISSN 1533-9211
DOI: 10.5281/zenodo.10847705

BANKING CRIMES CONCERNING THE COLLECTION OF FUNDS IN THE FORM OF DEPOSITS WITHOUT A BUSINESS LICENSE FROM THE HEAD OF BANK INDONESIA

YUYUT PRAYUTI [1], RIZKI NAUFAL SYAFIQ [2] and KUSNADI [3]

[1,2,3] Legal Studies, Nusantara Islamic University, Bandung, Indonesia.
Email: [1]yuyut.prayuti@uninus.ac.id, [2]rizkinaufalsyafiq@uninus.ac.id, [3]kusnadi@uninus.ac.id

Abstract

The main function of Indonesian banking is as a collector and distributor of public funds, whose purpose is to support the implementation of national development to increase equity, growth, and national economic stability for the welfare of the people. In achieving these goals, it is undeniable that problems will arise that will damage the image of banking, which will greatly impact the decline in public confidence in the banking sector. With the existence of Law Number 7 of 1992 which has been amended by Law Number 10 of 1998 concerning Banking, which specifically regulates criminal sanctions related to licensing, namely prohibiting the collection of funds from the public either in the form of deposits in the form of savings, deposits, demand deposits or in other forms equivalent thereto, which do not obtain a business license from the head of Bank Indonesia, as explained in Article 16 paragraph (1) of the Banking Law. This research uses a juridical-normative approach methodology, where law is seen as a rule or norm that regulates human behavior, and in this case statutory provisions are used as the main parameter in conducting this study, including to search for and find legal concepts and rules relating to the making of peace agreements in the settlement of a dispute in court. The result of this research is the criteria of banking criminal offense, which must raise funds from the public. The act of collecting funds from the public in a banking crime must or must be equipped with a license from the Chairman of Bank Indonesia, in accordance with Article 16 paragraph (1) of Law Number 10 of 1998 concerning Banking. Decision of the Tasikmalaya District Court Register Number: 27/Pid.B/2022/PN.Tsm. then revealed in the trial the Defendant committed the act of collecting public funds without the permission of the head of Bank Indonesia, the Defendant has fulfilled the elements of the crime as regulated in Article 46 paragraph 1 and paragraph 2 of Law Number 7 of 1992 jo. Law Number 10 of 1998 concerning Banking Law. While case number 524/Pdt.B/2008/PN.Tsm. The Panel of Judges was of the opinion that none of the defendants were categorized as collecting funds from the public which required a license from Bank Indonesia, because the funds collected from the public were not in the form of deposits as referred to in Article 16 of Law Number 10 of 1998, so the Panel of Judges held a different opinion by applying Article 378 of the Criminal Code. The consideration was because the defendant was proven to use a false name or false dignity, by deception or a series of lies, to move people to hand over goods or to give debts or write off receivables.

Keywords: Banking, Collecting Funds, Crime.

INTRODUCTION

The national development carried out so far is a continuous development effort in order to realize a just and prosperous society based on Pancasila and the 1945 Constitution. In order to achieve these goals, the implementation of development must always pay attention to the harmony, harmony and balance of various elements of development including the economic and financial fields. The development of the national economy today shows a direction that is increasingly integrated with the regional and international economy which can support as well as have an unfavorable impact. Meanwhile, the development of the national economy is always

The Seybold Report
ISSN 1533-9211
DOI: 10.5281/zenodo.10847705

moving fast with increasingly complex challenges. Therefore, various policy adjustments are needed in the economic sector including the banking sector so that it is expected to improve and strengthen the national economy.

The existence of deviations that occur resulting in natural development losses need to be overcome. In this age of development, the crime curve must be inversely proportional to the development curve. And the solution must be through legal channels because the law in this age of development is a means of facilitating societal change.

In GBHN 1993-1998, the policy of Pelita IV in the field of Law, among others, stipulated:

"The application of law and law enforcement is carried out firmly and straightforwardly but humanely based on justice and truth in order to realize order and legal certainty, improve social order and national discipline, support development and establish steady and dynamic stability". (Supramono, 1997)

Taking into account the formulation of GBHN above, in order to tackle crime, the legal apparatus in carrying out their duties must be in accordance with the applicable laws and regulations.

Normative arrangements in the law can be found in Chapter VIII on Criminal Provisions and Administrative Sanctions, namely in Article 46, Article 47, Article 47 A, Article 48, Article 49, Article 50, Article 50 A. Article 51, Article 52, and Article 53.

Indonesia as a state of law certainly has a juridical basis for the banking sector which is also part of a form of economic criminal law as an instrument in order to protect, order and provide justice for the community. This foundation has been legalized in Law Number 10 of 1998 concerning amendments to Law Number 7 of 1992 concerning Banking, hereinafter referred to as the Banking Law.

Banking is everything related to banks, including institutions, business activities, as well as ways and processes in carrying out their business activities. Meanwhile, what is meant by Bank is a business entity that collects funds from the public in the form of deposits and distributes them to the public in the form of credit and or other forms in order to improve the lives of many people.

The main function of Indonesian banking itself is as a collector and distributor of public funds. By paying more attention to financing the activities of the national economic sector with priority to small and medium business communities, as well as various layers of society without discrimination so as to strengthen the structure of the national economy. This strategic role is found in the purpose of banking itself, namely to support the implementation of national development to increase equity, growth, and national economic stability for the welfare of many people. In achieving these goals, it is undeniable that problems will arise that will damage the image of banking as a collector and manager of public funds. Due to the actions of individuals who take advantage of the development of science and technology in committing crimes, it has a huge impact on the decline in public confidence in the banking sector.

The Seybold Report
ISSN 1533-9211
DOI: 10.5281/zenodo.10847705

With the Banking Law which specifically and explicitly regulates criminal sanctions, there is no hesitation for law enforcers to implement these regulations in the event of a violation in the banking business or misuse of the banking business.

In the current era of globalization, crimes in the banking world, there are many diverse cases with new modes of crime, but most of these crimes are committed by certain individuals with the aim of unlawfully enriching themselves and / or their groups without regard to the interests and rights of many people. (Fatmah, 2016) The Banking Law recognizes several types of banking criminal offenses, namely criminal offenses related to licensing, criminal offenses related to bank secrets, criminal offenses related to bank supervision and guidance, criminal offenses related to bank business and criminal offenses related to affiliated parties.

The regulation of criminal acts in the Banking Law related to licensing, namely prohibiting the collection of funds from the public in the form of deposits in the form of savings, deposits, demand deposits or in other forms equivalent to that which does not obtain a business license from the head of Bank Indonesia, has been explained in Article 16 paragraph (1) of the Banking Law which stipulates that:

"Every party carrying out activities to collect funds from the public in the form of deposits must first obtain a business license as a Commercial Bank or Rural Bank from the Chairman of Bank Indonesia, except when the activities of collecting funds from the public are regulated by a separate law." (Fatmah, 2016).

Violations of these provisions that have been regulated certainly get criminal threats and administrative sanctions when the party is proven to have violated these provisions. This is a consequence of the application of penalization in the scope of licensing, namely the change of administrative sanctions to criminal sanctions because the administrative sanctions violate the public interest. 3 This is regulated in Article 46 paragraph (1) of the Banking Law which stipulates that:

"Any person who collects funds from the public in the form of deposits without a business license from the Chairman of Bank Indonesia as referred to in Article 16, shall be punished with imprisonment of at least 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 20,000,000,000.00 (twenty billion rupiah)."

Although it has been regulated and threatened with criminal sanctions, in reality it does not make the perpetrators afraid to commit acts that violate the law. This is because the victim is promised a large profit which is the reason for the criminal act. The modus operandi that is often found in cases that have been revealed is usually a type of fraud and combined with embezzlement, such as inviting people around to make a type of investment with the Multi-Level Marketing (MLM) mode. As a preventive effort, it is very necessary to be supervised by state institutions to prevent the occurrence of banking crimes.

The Seybold Report
ISSN 1533-9211
DOI: 10.5281/zenodo.10847705

The birth of the Financial Services Authority (hereinafter OJK) is a new chapter in realizing these preventive efforts. This is because the supervisory function has shifted from Bank Indonesia to OJK as an independent financial institution which has been regulated in Article 34 paragraph (1) of Law No. 3 of 2004 concerning Amendments to Law No. 23 of 1999 concerning Bank Indonesia and Article 69 paragraph (1) letter b of Law No. 21 of 2011 concerning the Financial Services Authority.

Although the role of the OJK oversees these institutions, there are still many parties who commit criminal acts under the investment mode by raising funds without a license. As found in case Number 27/Pid.B/2022/PN.Tsm. where Investment data is obtained, namely there are unlicensed fraudulent investments that are dangerous to the public. This fraudulent investment takes advantage of the public's ignorance to deceive them by luring them with unreasonably high profits. The defendant launched his action by inviting his acquaintances to want to invest. By becoming an investor, it is promised that within 7 days the investment money will be returned along with 15% interest profit and within 10 days the investment money will be returned along with 30% interest profit.

In addition, actions involving forged documents and other actions that are not included in the elements of banking crimes have actually been regulated and the threats are in the Criminal Code (KUHP), such as Article 263 of the Criminal Code, Article 264 of the Criminal Code and Article 378 of the Criminal Code and or Article 372 of the Criminal Code.

"Whoever, with intent to benefit himself or another person under a false name or under false pretenses, either by artifice and deceit or by false words, induces a person to give goods, to incur debts or to extinguish debts, shall be punished for fraud with a maximum imprisonment of four years."

Based on the above, the author wants to examine, analyze and find out the criteria for banking crimes with general crimes in the Tasikmalaya District Court and what is the consideration of the decision of the panel of judges in case Number: 27/Pid.B/2022/PN.Tsm. and Number: 524/Pdt.B/2008/PN.Tsm..

RESEARCH METHODS

A research, as Adi stated, is basically an effort to find data that will be used to answer or solve certain problems, test hypotheses, or just to find out whether there is a problem or not. He further stated that in the preparation of research, researchers must determine what methods will be used to collect data that will be used to answer research problems (Rianto, 2014).

The method used in a study serves to explain how various available data are collected and how the data are analyzed and how the results of the analysis are presented.

Along with that, Soekanto and Sri Mamudji in his book on page 15 emphasized:

"Legal research conducted by examining library materials or secondary data only, can be called normative legal research or library legal research" (Soerjono, 2007).

The Seybold Report
ISSN 1533-9211
DOI: 10.5281/zenodo.10847705

In connection with this study, researchers used the juridical-normative approach method, where the law is seen as a rule or norm that regulates human behavior, and in this case statutory provisions are used as the main parameter in conducting this study, including to search for and find legal concepts and rules relating to the consideration of judges in deciding cases.

In accordance with the research objectives, the nature of this research is Descriptive Analytical, which is a research conducted in order to obtain a clear picture related to the problem of the object to be studied and then connected with the applicable laws and regulations, principles, theories, concepts and opinions of legal experts related to the problem to be studied.

In the research that will be carried out by researchers, the data collection technique used is through library research and at the same time conducting a study of documents related to the issue to be studied (documentary research). As a logical consequence of the data collection technique chosen earlier, the data referred to in the study as will be presented in the thesis will be secondary data, namely data and/or information that is ready to be presented as a result of work that has been made by other parties.

Along with that, Soerjono Soekanto and Mamudji emphasized that secondary data has the following general characteristics:

1. Secondary data generally exists in ready mode.
2. The form and content of secondary data have been shaped and filled in by previous researchers.
3. Secondary data can be obtained without being bound or limited by time and place (Soerjono, 2007).

The secondary data are laws and regulations and other references that are relevant to the issue to be studied, namely the judge's decision regarding the collection of funds without a Bank Indonesia license at the Tasikmalaya District Court.

In addition to data collection techniques as researchers will do above, researchers also conduct research through direct participation, because researchers are directly involved in the process of collecting this data, therefore the data obtained in this study are also included and can be categorized as primary data.

RESULTS AND DISCUSSION

Crime and criminal offenses are often identified, but criminal offenses have a broader definition than crimes. In The Lexicon Webster Dictonary the meaning of the word Crime is formulated as follows:

'*An act or ommision, especially one of grave bature, funishable by law as forbidden by statute or injurious to the public welfare".* (Lexicon Webster Dictonary, 1976).

The word injurious to the public welfare and considering that welfare is something that is expected and even aspired to by every society in the world.

The Seybold Report
ISSN 1533-9211
DOI: 10.5281/zenodo.10847705

In the Big Indonesian Dictionary, the word 'crime' is defined as follows:

Behavior that is contrary to the prevailing values and norms that have been authorized by written law (criminal law) (KBBI, 1989).

So the most appropriate meaning of the word crime is that contained in The Lexicon Webster Dictonary, if translated freely, the definition of crime is:

"An active or passive act, especially one that is scary (frightening) which is sanctioned by law as a violation of the statute (Law) or endangers public safety/welfare" (Marpaung, 2005).

Meanwhile, criminal acts other than crimes also include offenses. The word criminal offense is a translation of offense which comes from the Latin delictum.

The definition of offense according to the Big Indonesian Dictionary, is: "Actions that can be subject to punishment because they are violations of the criminal law (KBBI, 1989).

Moeljatno uses the term "criminal act" and he does not agree with the term "criminal offense" because according to him the criminal act is shorter than the act. The word act does not indicate an abstract thing like "action" but only states a concrete situation.

Mr. Utrecht uses the term "criminal event" because what is reviewed is an event (feit) from the point of view of criminal law. Mr. Tirta Amidjaja uses the term "criminal offense" but in general the experts use "strafbaarfeit" (Marpaung, 1991) In the Big Indonesian Dictionary, the word Bank is defined as follows:

Bank is a financial institution whose main business is to provide credit and services in terms of payment traffic and money circulation (Marpaung, 1991).

This definition is identical to the formulation of Law Number 7 of 1992 jo. Law Number 10 of 1998 Concerning Banking Article 1 paragraph 1 explains Banking is everything related to banks, including institutions, business activities, as well as ways and processes in carrying out their business activities. Whereas in Article 1 paragraph 2 what is meant by Bank is a business entity that collects funds from the public in the form of deposits and distributes them to the public in the form of credit and or other forms in order to improve the lives of many people. And in Article 3, it is explained that the main function of Indonesian banking itself is as a collector and distributor of public funds.

Article 46 states in paragraph (1) "any person who collects funds from the public in the form of deposits without a business license from the Chairman of Bank Indonesia as referred to in Article 16, shall be punished with imprisonment of at least 5 (five) years and a maximum of 15 (fifteen) years and a fine of at least Rp. 10,000,000,000.00 and a maximum of Rp. 20,000,000,000.00" and paragraph (2). in the event that the activities referred to in paragraph (1) are carried out by legal entities in the form of limited liability companies, associations, foundations or cooperatives, then the prosecution of the said entities shall be carried out either against those who give orders to carry out the act or who act as leaders in the act or against both of them.

The Seybold Report
ISSN 1533-9211
DOI: 10.5281/zenodo.10847705

Based on the formulation of Article 46 paragraph (1), it can be stated that the paragraph contains: prohibited acts and threats of punishment (sanctions).

Elements of the Banking Criminal Article (unlicensed bank) that violate Article 46 paragraph 1 of Law Number 10 of 1998 on the amendment of Law Number 7 of 1992:

1. Whoever
2. Raises funds from the public
3. in the form of deposits
4. without a license

Raising funds from the public in the form of deposits, can be in the form of:

1. Giro;
2. Time deposits;
3. Certificate of Deposit;
4. Savings;
5. And / or other forms that are equated with it.

Regarding the meaning of each type of deposit is contained in Article 1, and regarding the definition and / or other forms that are equated with it are intended under the guise of, for example; running a general trading business by giving a certain profit every month. This is as if money is deposited but given a certain profit every month.

Without a license from the Head of Bank Indonesia, previously granted by the Minister of Finance but with the enactment of Law Number 10 of 1998, the business license is granted by the Head of Bank Indonesia, which is regulated in Article 16 which reads as follows:

".....except if the activity of collecting funds from the public in the form of deposits or similar deposits ...."

The definition of the perpetrator in Article 46 paragraph (2) needs to be examined carefully. There are essentially three parties related to the act, namely: The head of the Legal Entity, the one who orders and the one who commits or assists.

If the criminal offense of Article 46 paragraph (1) is committed by a legal entity, then Article 46 paragraph 2 applies, namely the head of the legal entity and / or the person who ordered the fund raising is threatened. However, this does not mean that the person who assists is not blamed as stipulated in Article 56 of the Criminal Code.

Likewise for the person involved under Article 55 of the Criminal Code, but it is applied as based on the science of criminal law.

The application of sanctions contained in Article 46 paragraph 1 needs to be observed carefully, especially imprisonment and fines, the punishment that must be imposed is cumulative, meaning that both are imposed, both imprisonment and fines.

The Seybold Report
ISSN 1533-9211
DOI: 10.5281/zenodo.10847705

Meanwhile, Article 46 paragraph 2 is an addition to the perpetrator (doer/dader) if it is a legal entity, namely:

a. the person giving the order;

b. the head of the legal entity;

Furthermore, the elements of Article 378 of the Criminal Code are those contained in the decision of the Tasikmalaya District Court No. 27/Pid.B/2022/PN.Tsm, outlining:

1. Whoever,
2. with intent to unlawfully benefit himself or others,
3. By using a false name or false dignity with deceit or a series of lies to induce another person to deliver any property to him or to give a debt or to cancel a debt.

Both articles can ensnare perpetrators of abuse or violations in banking, only law enforcers must be careful in applying the choice of the article in question. In the case of the case, the perpetrator was charged with Article 378 of the Criminal Code not the Banking Law, while in a similar case No. 27/Pid.B/2022/PN.Tsm. was charged with the Banking Law Article 46 of Law Number 10 of 1998 concerning amendments to Law Number 7 of 1992 Jo. Article 55 paragraph (1) to 1 Jo. Article 64 paragraph (1) of the Criminal Code In general, security or protection measures regarding fake documents have actually been regulated and the threats are in the Criminal Code (KUHP), namely:

1. Article 263 of the Penal Code

(1) Any person who forges or falsifies a document which may give rise to a debt or release from debt or which may serve as evidence of a fact, with intent to use or to cause others to use it as if it were genuine and unfalsified, shall, if from said use an injury may result, be punished by a maximum imprisonment of six years.

(2) Any person who with deliberate intent makes use of a forged document as if it were genuine and unfalsified, shall, if from said use an injury may result, be punished by the same punishment."

Article 263 of the Criminal Code is generally required for the making/using of forged documents, while authentic documents, certificates, letters of credit, talons are subject to the rules and threats under Article 264 of the Criminal Code. In order to properly apply Article 623 of the Criminal Code, the elements need to be properly interpreted. The elements of Article 263 paragraph (1) of the Criminal Code are as follows:

(1) Letters that can:

a. issue a letter of right;

b. in the form of an agreement;

c. take the form of an extinguishment of debt;

d. be used to prove something.

The Seybold Report
ISSN 1533-9211
DOI: 10.5281/zenodo.10847705

The word "surat" in the Big Indonesian Dictionary, among others, is defined as follows:

"Paper (cloth and so on) with writing (various contents)." (Kamus Besar Bahasa Indonesia, 1989) Mr. M.H Tirtaamidjaja defines "surat" as follows:

"Any thought expressed by writing done by writing or mechanically, for example by using a writing machine, or by printing" (Tirtaamidjaja, 1955).

(2) Issuing a false or forged letter:

According to the doctrine, loading a forged or falsified letter is distinguished as follows:

a. Intellectual forgery, where the origin of the letter is correct, but the content is wholly or partially at odds with the actual situation. Such forgery is colloquially called original but fake (asphalt)

b. Material forgery, in which both the content and the origin of the letter contradict the truth. In other words, the alteration of a writing, either the content or/and the signature, is contrary to the actual situation.

(3) The intention to use the forged or falsified document as if it were genuine and unfalsified;

In this case, it is not necessary that the person who commits the act has the intention to deceive or harm another person. The act of presenting or showing or handing over the letter to another person is included in the definition of use.

(4) May bring about/cause loss;

The notion of "loss" in this case need not be a material loss and affect a specific person, but also an immaterial loss, such as a loss to decency or the general public.

The jurisprudence on Article 263 of the Criminal Code is as follows:

(1) Decision of the Supreme Court of Indonesia No. 194 K/Kr/1957, dated May 7, 1958, in which the Supreme Court stated, inter alia, as follows:

"According to Article 263 of the Criminal Code, the person who can be punished is the one who also made a false letter intended to prove that 10 teachers since January 1, 1953, in addition to their duties in the morning, also gave lessons in the evening at a public school and each of them was entitled to receive an honorarium of Rp.250,- per month. In fact, these 10 teachers did not give lessons in the evening and had never received such an order from the defendant."

(2) Decision of the Supreme Court of Indonesia No. 134K/Kr/1963 dated January 7, 1964, which contains the following opinion.

"What is meant by ordering the production of a false document is that the cassation prosecutor ordered the production of a document whose contents contradict the truth."

The Seybold Report
ISSN 1533-9211
DOI: 10.5281/zenodo.10847705

(3) Decision of the Supreme Court of Indonesia No. 10K/Kr/1965 dated May 29, 1965, which contains the opinion of the Supreme Court, among others as follows:

"The loss that may arise in relation to a forged document under Article 263 of the Criminal Code does not have to be a material loss, but also if the interests of the community may be harmed, for example if the use of the forged document may complicate a case.

1. Article 264 of the Penal Code

(1) The person guilty of forgery in writing shall, if the act has been committed in connection with:

1. Legal instrument;
2. Certificate of indebtedness of a state or of a public institution;
3. Bond or debenture or debenture or debenture of an association, a company foundation or a company;
4. Talon or sero profit letter or sero interest letter of one of the letters described in ad 2 and ad 3 or of a proof letter issued in lieu thereof;
5. Letters of credit or letters of commerce prepared for circulation.

(2) Any person who with deliberate intent makes use of a forged or falsified document referred to in the first paragraph as if it were genuine and unfalsified, shall, if from said use an injury may result, also be punished thereby."

Based on the formulation of Article 264 of the Criminal Code, it is necessary to further examine the meaning of:

a. authentic deed;

b. deed under hand.

The definition of "authentic deed" is contained in Article 1868 of the Civil Code, which reads as follows:

"An authentic deed is a deed in the form prescribed by law made by or in the presence of public servants authorized to do so at the place where the deed is made". Subekti, and R. Tjitrosudibio, Kitab Undang-Undang Hukum Perdata, Pradnya Paramita, Jakarta, 1974, p. 419). 419)

Furthermore, Article 1869 of the Civil Code explains that if the form of the deed is in a state of defect / not suitable, it is equated with an underhand writing.

Regarding the meaning of "deed under hand" is explained in Article 1874 of the Civil Code, as follows:

Furthermore, it is explained that the "thumbprint" is equated with the signing of a writing / letter, if it has been explained and affixed before a public servant.

The Seybold Report
ISSN 1533-9211
DOI: 10.5281/zenodo.10847705

2. Article 378 of the Criminal Code

"Whoever, with intent to benefit himself or another person under a false name or under false pretenses, either by artifice and deceit or by false words, induces someone to give something, to create a debt or to cancel a debt, shall be punished for fraud with a maximum imprisonment of four years."

Based on the formulation of Article 378 of the Criminal Code, the elements of the crime of fraud are:

(1) To induce a person to deliver an item, to create a debt or to eliminate a debt. This is usually called the "object of fraud".

(2) Intent to benefit oneself or others unlawfully.

(3) Use of means:

a. using a false name;

b. using a false position;

c. using deceit;

d. lying.

The perception of "inducing a person to give ..." implies a causal relationship between "inducement" and giving". In this regard, Mr. Tirtaamidjaja, among others, emphasized the following:

"It must be borne in mind that the legislator is either credulous or ignorant. The series and relationship between the invented things and circumstances must be of such a nature that the deceived person by ten truths and possibilities has been misled. The deceiver must have known that benefiting himself or others is unlawful. (Mr. M.H. Tirtaamidjaja, Principles of Criminal Law, Fasco, Jakarta, 1955, p. 183) "

Jurisprudence on fraud

(1) The Hoge Raad on August 25, 1923 held, inter alia:

"There must be a causal connection between the means used and the intended delivery of the goods."

a. The High Court on March 7, 1932 held, inter alia:

"a lie does not constitute trickery."

b. The High Court on November 1, 1920, held, inter alia:

"Handing over a check knowing that it is insufficiently funded is fraud."

The Seybold Report
ISSN 1533-9211
DOI: 10.5281/zenodo.10847705

c. The Supreme Court of the Republic of Indonesia on August 11, 1959 based on decision No. 66K/Kr/1958, among others, opined:

"In relation to the act of inducing people to pay debts or write off receivables, it is directed against the induced person if the inducer makes the debt or writes off the debt, then it does not violate Article 378 of the Criminal Code."

d. The Supreme Court of the Republic of Indonesia on December 3, 1963 based on decision No. 18 K/Kr/1963, among others, opined:

"an entrepreneur is not linked solely to the implementation of the project for which credit is requested and if the entrepreneur implements a project other than that, then it does not constitute credit, then it does not constitute a criminal offense, what is important in granting credit is the repayment of the entire debt on the deed specified in the contract."

The term banking crime is also known as criminal offense in the field of banking, with almost the same meaning. A banking crime can be defined as a criminal offense in the formal sense or a formal offense and some are called material crimes or material offenses. In reality, there is no difference in the nature of the formulation as can be seen when reading the formulation of each offense.

Strictly speaking, in banking offenses in the formal sense, what is important is the existence of actions in the field of banking that are prohibited and punishable, while the consequences arising from these actions are not important, and so should be for banking offenses in the material sense.

The definition of collecting funds from the community is to know exactly and correctly the meaning of the sentence above, we should first understand the meaning of several words that make up the construction of the sentence, the words in question are, the words "collect", "funds" and "community" the word "collect" means "collect". While the word "fund" can be interpreted as "money provided for a purpose", "charity", "gift", or "gift", the word "society" means "a number of people in the broadest sense and bound by a culture that they consider the same" in the sense of the word "society", pointing to the existence of a number of people, or several people, or people who are more than one as members of society.

In line with the maximum lexical meaning of each of these words, the sentence or phrase "collecting funds from the community" can be interpreted as collecting funds or something that has monetary value from a number of community members.

The action or act of collecting funds from the public in the case of a banking crime must or must be equipped with a license. In accordance with the provisions of Article 16 paragraph (1) of Law Number 7 of 1992 concerning banking, which has been amended by Law Number 10 of 1998, the existence of the license is mandatory or imperative for anyone who will carry out activities to collect funds from the public in the form of deposits. The license must first

Obtained before the activity was carried out, and obtained from the head of Bank Indonesia.

The Seybold Report
ISSN 1533-9211
DOI: 10.5281/zenodo.10847705

The definition of "collecting" public funds means collecting funds or money or whatever it is called as long as it has a monetary value, from people or the public. Strictly speaking, the word "collecting" can be interpreted as an activity, activity, action, or deed that makes funds or money or something that has monetary value from the community become collected or collected.

The offense is said to be proven if it has fulfilled the formal and material formulations of the banking crime.

In terms of its relationship with the decision of the Tasikmalaya District Court Register Number: 27/Pid.B/2022/PN.Tsm. it was revealed in the trial that the defendant committed the act of collecting public funds without the permission of the head of Bank Indonesia. It turned out that the business was running for only a few years, which eventually dissolved. If you look at the chronology with the facts revealed in court, the Defendant has fulfilled the elements of the crime as stipulated in Article 46 paragraph 1 and paragraph 2 of Law Number 7 of 1992 jo. Law Number 10 of 1998 concerning the Banking Law, but the Panel of Judges was of another opinion by applying Article 378 of the Criminal Code. And the consideration is because the defendant is proven to use a false name or false dignity, by deception or a series of lies, moving people to hand over goods or to give debts or write off receivables. The theoretical framework is several theories used for research so that it is systematically described which is temporary in nature which will be proven by research.

1. Theory of Legal Effectiveness

This theory explains the operation of a legislation when applied in society. This includes an explanation of the obstacles. The method of thinking used is the rational deductive method, giving rise to a dogmatic way of thinking. On the other hand, there are those who view law as an attitude of action or regular behavior. The method used is inductive-empirical, so that the law is seen as an act that is repeated in the same form, which has a certain purpose (Soekanto, 1976). The concept of legal effectiveness theory is a theory that examines and analyzes the success, failure, and influencing factors in the implementation of legal applications. There are three focuses of the study of legal effectiveness theory, which include:

a. Success in implementing the law;

b. Failure in the implementation of the law;

c. Factors influencing the implementation of the law.

The word effective comes from English which means successful or something that is done well. The popular scientific dictionary defines effectiveness as accuracy of use, results in use or supporting objectives. According to the Big Indonesian Dictionary, effective is something that has an effect (consequence, influence, impression) since the entry into force of a law or regulation.

The Seybold Report
ISSN 1533-9211
DOI: 10.5281/zenodo.10847705

Based on the theory of Legal effectiveness is determined by 5 (five) factors, namely:

a. The legal factor itself (law) (Soekanto, 1976).
b. Law enforcement factors, namely the parties who form and apply the law. (Soekanto, 1976)
c. Factors of facilities or facilities that support law enforcement (Soekanto, 1976).
d. Community factors, namely the environment where the law applies or is applied (Raharjo, 1980)
e. Cultural factors, namely as a result of work, creation and taste based on human nature in the association of life (Siswosebroto, 1988)

These factors have a neutral meaning, so that the positive or negative impact lies in the content of these factors. The first factor is the legal factor itself, namely the regulations that are the basis of this research are such as Law Number 10 of 1998 concerning amendments to Law Number 7 of 1992 concerning Banking and Article 263 of the Criminal Code, Article 264 of the Criminal Code and Article 378 of the Criminal Code and or Article 372 of the Criminal Code.

The second is the law enforcement factor, namely the legal employees of the court in the Tasikmalaya District Court.

The third is the means or facilities that support law enforcement, because without certain means or facilities, it is impossible for law enforcement to run smoothly. The fourth is the community, which is the environment where the law applies or is applied.

And the fifth is the cultural factor which basically includes the values underlying the applicable law, values which are abstract conceptions of what is considered good so that it is obeyed and what is considered bad so that it is not obeyed.

2. Theory of Legal Awareness

There are four successive indicators of legal awareness (stage by stage), namely as follows:

a. Knowledge of the law is a person's knowledge regarding certain behaviors regulated by written law, namely about what is prohibited and what is obtained;
b. Understanding of the law is the amount of information a person has about the content of (written) rules, namely about the content, purpose and benefits of these regulations;
c. Attitude towards the law is a tendency to accept or reject the law because of the appreciation that the law is beneficial to human life in this case there is already an element of appreciation for the rule of law;
d. Legal behavior is about whether or not a rule of law behaves in society, if a rule of law applies, to what extent it applies and to what extent the community obeys it (Soekanto, 1982).

The Seybold Report
ISSN 1533-9211
DOI: 10.5281/zenodo.10847705

3. Justice Theory

The word fair is Indonesian which comes from the word Al Adlu, literally fair means not one-sided and impartial.

Placing everything professionally in order to create order and discipline. In relation to the problem of the case settlement process, this can be interpreted as a balance between rights and obligations and a balance between what is obtained and its needs and uses (Santoso, 2014).

CONCLUSIONS AND SUGGESTIONS

1. Conclusions

From the description above, the author tries to conclude as follows:

1. The criterion of banking crime is that there must be a collection of funds from the public, namely collecting funds or money or whatever it is called as long as it has a monetary value from people or the public. The act or acts of collecting funds from the public in a banking crime must or must be equipped with a license from the Chairman of Bank Indonesia, in accordance with Article 16 paragraph (1) of Law Number 7 of 1992 which has been amended by Law Number 10 of 1998 concerning Banking.

The offense is said to be proven if it has fulfilled the definition of a criminal offense in the formulation of a formal offense, namely as any act relating to banking activities which by legal provisions is declared a criminal offense and punishable for those who violate it and material offense, namely any consequences arising from acts relating to banking activities which by legal provisions is declared a criminal offense and punishable for those who violate it.

2. In the decision of case number: 27/Pid.B/2022/PN.Tsm. The Panel of Judges is of the opinion that the Defendant has fulfilled the element of collecting funds from the public without a license from Bank Indonesia, so that he is proven to have violated Article 46 paragraph 1 and paragraph 2 of Law Number 7 of 1992 jo. Law Number 10 of 1998 concerning Banking Law.

Whereas in the decision of case number: 524/Pdt.B/2008/PN.Tsm. The Panel of Judges is of the opinion that none of the Defendants are categorized as collecting funds from the public that require a license from Bank Indonesia, because the funds collected from the public are not in the form of deposits as referred to in Article 16 of Law Number 10 of 1998. Whereas in article 1 point 5 of Law Number 10 of 1998 on the amendment of Law Number 7 of 1992 concerning Banking, defines deposits as funds entrusted by the public to banks, based on deposit agreements in the form of demand deposits, deposits, certificates, savings and or other forms equivalent thereto, so that it is proven to violate article 378 of the Criminal Code.

2. Suggestions

According to the author, there are three theories that must be considered in giving consideration to decisions other than the facts in the trial, namely Legal Certainty, Justice, and the Benefit of the decision for the Defendant.

The Seybold Report
ISSN 1533-9211
DOI: 10.5281/zenodo.10847705

References

1) Adi, Rianto, *Metodologi Penelitian Sosial dan Hukum*, Cet. 1, Granit, Jakarta, 2004.
2) Anwar, Achmad, *Praktek Perbankan Indonesia*, Balai Aksara, Bandung, 1981
3) Fuady, Munir, *Hukum Perbankan Modern*, Buku Kesatu, cet. 1, Citra Aditya Bhakti, Jakarta, 1999.
4) Harahap, M. Yahya, *Pembahasan Permasalahan dan Penetapan KUHAP*, Puspita Buku Bermutu, Sarana Bakti Semesta 1985.
5) Hermansyah, *Hukum Perbankan Nasional Indonesia*, Kencana, Jakarta, 2007.
6) Isnaeni, Mohamad, *Hakim dan Undang-Undang*, IKAHI. Semarang, 1971.
7) Marpaung, *Laden, Pemberantasan dan Pencegahan Tindak Pidana Terhadap Perbankan*, Djambatan, Jakarta, 2005.
8) Muladi dan Barda Nawawi Arif, *Teori-Teori dan Kebijakan Pidana*, Alumni, Bandung, 2005.
9) Prodjohamidjojo, Martiman, *Komentar Atas Kitab Undang-Undang Hukum Acara Pidana,* Pradnya Paramita. Jakarta. 1982.
10) Sembiring, Sentosa, *Hukum Perbankan*, Cet. 1, Mandiri Maju, Bandung, 2000.
11) Setiawan, *Pokok-Pokok Hukum Perikatan*, Binacipta, Bandung, 1979
12) Subekti dan Tjitosudibio, *Kitab Undang-Undang Hukum Perdata*, Pradnya Paramita, Jakarta, 1990.
13) Simorangkir dan B Mang Reng Say, *Undang-Undang Dasar 1945 (Dalam Kancah Penetapan Undang-Undang Dasar Tetap Indonesia*), Jambatan, 1959.
14) Sitompul, Zulkarnaen, *Hukum Perbankan*, STIH IBLAM, Program Pasca Sarjana, Jakarta, 2002.
15) ----------, *Hukum Perbankan*, IBLAM, Jakarta, 2002
16) ----------, *Peraturan Perbankan Indonesia*, IBLAM, Jakarta, 2002.
17) Soedewi Masjhoen Sofyan, Sri, Hukum *Jaminan Di Indonesia*, Binacipta, Bandung 1979.
18) Soekamto, Soerjono dan Sri Mamuji, *Penelitian Hukum Normatif*, Raja Grafindo, Jakarta, 2001.
19) Sutarno, *Aspek-Aspek Hukum Perkreditan Pada Bank*, Alpabeta, Bandung, 2005.
20) Supramono, Gatot, *Tindak Pidana Korupsi di Bidang Perkreditan*, Alumni, Bandung, 1997.
21) Undang-Undang No. 7 tahun 1992 Jo. Undang-Undang No. 10 tahun 1998 Tentang Perbankan