
RESEARCH ARTICLE

Juridical Review of Law Enforcement against Criminal Acts in the Banking Sector

Donny Dwija Romansa¹ ✉ Budi Santoso² and Joko Setiono³

^{1,2,3}Master of Law Program, Faculty of Law, Diponegoro University, Semarang, Address: Street Prof. Soedarto, SH., Tembalang, Semarang, Indonesia

Corresponding Author: Donny Dwija Romansa, **E-mail:** donnnydwijaromansa@students.undip.ac.id

ABSTRACT

This study aims to analyze the juridical review of law enforcement against banking crimes. The research used a normative juridical method with a *perundang-undangan* approach. The results of the study indicate that Banking Crime is a behavior, either in the form of commissioning or omission, using banking products as a means of conduct for the perpetrators or banking products as behavioral targets. The perpetrator has been determined as a criminal offense by law. Banking crime is a crime that fulfills the elements as referred to in Article 46 to Article 50A of the Banking Law or Article 59 to Article 66 of the Sharia Banking Law. The scope of banking crimes contained in the Banking Law and the Sharia Banking Act are: 1) Criminal acts related to licensing; 2) Criminal acts relating to bank secrecy; 3) Criminal acts related to bank supervision; 4) Criminal acts related to bank business activities; 5) Criminal acts related to affiliated parties; 6) Criminal acts relating to shareholders; 7) Criminal acts related to compliance with the provisions.

KEYWORDS

Juridical, review, law enforcement, banking, crime

ARTICLE INFORMATION

ACCEPTED: 01 February 2023

PUBLISHED: 11 February 2023

DOI: 10.32996/ijlps.2023.5.1.18

1. Introduction

Banking, which is one of the pillars of economic development in Indonesia, has the main function of collecting and distributing public funds. In the Indonesian legal system, all forms of banking practice are based on the principles contained in the ideology of the Indonesian state, namely Pancasila and the objectives of the Indonesian state in the 1945 Constitution of the Republic of Indonesia. Banking institutions as one of the financial institutions that have strategic value in the economic life of a country. The institution is intended as an intermediary for parties who have excess funds (*surplus of funds*) with parties who are lacking and require funds (*lack of funds*). Thus, banks will be engaged in credit activities and various services provided; banks serve financing needs and streamline payment system mechanisms for all sectors of the economy.¹

The activities of banking institutions are generally carried out by actors whose functions and business objectives can be distinguished, namely in the form of *commercial banks* consisting of national foreign exchange banks, both government and private, national private non-governmental banks and foreign or mixed banks. The main activities of commercial banks, except for non-financial commercial banks, are collecting public funds in the form of current accounts, time deposits and savings, providing credit for working capital and investment purposes, and conducting foreign trade transactions.²

Banks, in carrying out their functions as described above, do not rule out the possibility of problems that lead to criminal acts. The criminal act referred to here is Banking Crime. In the community, there is no agreement on the use of the term banking crime

¹ Hermansyah, *Indonesian National Banking Law. Second Edition* (Jakarta: Prenadamedia Group, 2014).Pp 3

² Ibid, Pp. 20

because there are those who use the term criminal act in the field of banking and banking crime. The use of the term depends on which angle to look at it from, but according to the author, it is to use the term Banking Crime. However, in terms of juridical aspects, none of the laws and regulations was found that provide an understanding of banking crimes. Some argue that a banking crime is a criminal act that is only regulated in banking law, which is internal in nature.³

Banking crimes are more focused on prohibited acts, threatened with criminal penalties that are contained specifically only in the Banking Law and the Islamic Banking Law. Banking criminal charges are criminal acts that meet the elements as referred to in Article 46 to Article 50A of the Banking Law or Articles 59 to 66 of the Sharia Banking Law. Banking crimes that fall into the special criminal category because of banking criminal acts and their criminal sanctions have been regulated separately in the Banking Law.

The rapid development of banking crime requires serious countermeasures in terms of supervision of banks considering the position of banks as public trust institutions so that those trusts are not misused for personal interests. Therefore, bank guidance and supervision are carried out by Bank Indonesia. Bank Indonesia is given the authority and obligation to foster and supervise banks by making efforts, both repressive and preventive, in the form of provisions, instructions, advice, guidance and direction.⁴

Therefore, the authority of Bank Indonesia in regulating and supervising banks is a tool or means to realize a sound banking system that guarantees the implementation of all laws and regulations related to the implementation of bank business by the bank concerned. In essence, BI's duties as the Central Bank have three tasks, namely establishing and implementing monetary policy, regulating and maintaining a smooth payment system and regulating and supervising banks.⁵

Law No. 21 of 2011 concerning the Financial Services Authority (OJK) basically contains provisions for the organization and governance of institutions that have regulatory and supervisory authorities for the financial services sector. To carry out its supervisory duties, OJK has the authority as stipulated in Article 7 of the Financial Services Authority (OJK) Law, including regulation and supervision regarding bank institutions, regulation and supervision regarding bank health, regulation and supervision regarding bank prudence aspects and bank examinations.⁶

2. Discussion

1. Scope of Banking Crimes

Banking Crime is behavior (*conduct*), either in the form of doing something (*commission*) or not doing something (*omission*), which uses banking products (*banking products*) as a means of the behavior of the perpetrators or banking products (*banking products*) as the target of the perpetrator's behavior and has been designated as a criminal act by law. Banking Crime is a behavior (*conduct*), whether in the form of doing something (*commission*) or not doing something (*omission*), which is designated as a criminal act by the Indonesian Banking Law (Law No. 7 of 1992 as amended by Law No. 10 of 1998).⁷

Criminal acts in the banking sector according to Law Number 7 of 1992 concerning Banking Principles, as amended by Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking. Criminal acts in the banking sector are criminal acts that make banks a means (*crime against the bank*).⁸

The scope of tipibank contained in the Banking Law and the Sharia Banking Law are:⁹

- a. Criminal acts relating to licensing;
- b. Criminal acts relating to bank secrets;
- c. Criminal acts relating to bank supervision;
- d. Criminal acts relating to the business activities of banks,
- e. Criminal acts relating to affiliated parties;
- f. Criminal acts relating to shareholders,
- g. Criminal acts related to the observance of the provisions.

The Banking Law distinguishes criminal sanctions into two forms, namely, crime and offense. Tipibank, with the category of crimes, consists of seven articles, namely Articles 46, 47, 47A, 48 paragraphs (1), 49, 50, and Article 50A. Meanwhile, tipibank, with the category of violations with criminal sanctions that are lighter than criminal acts classified as crimes, consists of one article, namely Article 48 paragraph (2). The classification of tipibank into crimes is based on the imposition of a threat of a more severe

³ Marulak Pardede, *Bank Criminal Law*. (Jakarta: PT Nusantara Lestari Ceria Pratama, 1995).Pp. 13

⁴ *Ibid*, Pp. 183

⁵ Uswatun Hasanah, *Banking Law* (East Java: Setara Press, 2017).Pp. 146

⁶ Hermansyah, *Indonesian Banking Law* (Jakarta: Kencana Prenada Media Group, 2006).p.216

⁷ Sutan Remy Syahdeini, "Indonesian Banking Crimes, Proceeding Special Criminal Law Training for High Judges" (Makassar: Judicial Commission of the Republic of Indonesia, 2012).Pp. 43

⁸ Hermansyah, *Indonesian Banking Law*.Pp. 149

⁹ Nelson Tampubolon, *Understanding and Avoiding Banking Crimes* (Jakarta: Financial Services Authority, 2019).Pp. 9

punishment compared to the offense. This is because a bank is an institution that stores funds entrusted to it by the public, so it is necessary to always avoid actions that can result in damage to public trust in the bank, which will basically also harm the bank and the public. Meanwhile, the Sharia Banking Law does not distinguish sanctions for bank crimes and includes them in eight articles, namely Articles 59 to 66.

2. Law Enforcement Against Banking Crimes in terms of Laws and Regulations

Law Enforcement in Banking Crimes based on applicable laws and regulations includes the following:

a. Banking Crimes Relating to Licensing

The banking industry is known as a *heavily regulated industry*. To run a bank business, a license from Bank Indonesia (currently OJK) is required as a regulator with strict requirements.

Article 161 of the Banking Act:

- (1) Every party that carries out activities to collect funds from the public in the form of deposits must first obtain a business license as a Commercial Bank or People's Credit Bank from the Head of Bank Indonesia unless the activity of collecting funds from the community is regulated by a separate law.
- (2) To obtain a business license for a Commercial Bank and a People's Credit Bank, as referred to in paragraph (1), it must be fulfilled the requirements at least: a. organizational and management structure; b. capitalization; c. ownership; d. expertise in banking, e., the feasibility of the work plan.
- (3) The requirements and procedures for bank licensing, as referred to in paragraph (2), are stipulated by Bank Indonesia."

Parties who carry out bank business activities before obtaining a license from Bank Indonesia (currently OJK) are categorized as criminal acts. This crime is called the crime of "illicit bank." Any party that collects funds from the public in the form of deposits without a business license from the Chairman of Bank Indonesia (currently the Head of the OJK) is threatened with severe "illicit bank" criminal sanctions; the threat of this punishment can even be imposed on the corporation by prosecuting the party who gave the order or its leader. This provision indicates the necessity of a permit from the Head of Bank Indonesia (currently the Head of the OJK) for public fund-raising activities because it is closely related to the problem of supervision of these activities by Bank Indonesia (currently the OJK).¹⁰

The threat of punishment for criminal acts related to licensing is regulated in Article 462 of the Banking Law, which reads:

- (1) Whoever collects funds from the public in the form of deposits without a business license from the Head of Bank Indonesia as referred to in Article 16 shall be punished with imprisonment for 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 rupiahs) and a maximum of Rp.200,000,000,000.00 (two hundred billion rupiahs).
- (2) In the event that the activities referred to in paragraph (1) are carried out by a legal entity in the form of a limited liability company, union, foundation or cooperative, then the prosecution of the bodies referred to is carried out either against those who gave orders to do the deed or who acted as leaders in the act or against both."

b. Banking Crimes Relating to Bank Secrets

The scope of bank secrets includes information about depository customers and their deposits. The Bank, as an intermediation institution in carrying out its business activities, always relies on elements of public trust, especially the trust of depository customers who place their deposits in banks. The bank, as a trust institution, is obliged to keep confidential everything related to information about the depository customer and customer deposits that are in the bank. The relationship between the bank and its customers is not like an ordinary contractual relationship, but in that relationship, there is also an obligation for the bank not to disclose the secrets of its customers to any party unless otherwise stipulated by applicable legislation. The norm that must be kept secret by the bank is all data and information about everything related to finances and other matters of persons and entities known by the bank because of its business activities. Bank secrets are needed as one of the factors to maintain the trust of depository customers.¹¹

¹⁰ Tampubolon.Pp. 12-14

¹¹ Tampubolon.Pp. 26

Exceptions to the provision of bank secrets include:¹²

- 1) for tax purposes, upon written order from the Chairman of Bank Indonesia (currently the Head of OJK);
- 2) for settlement of bank receivables that have been submitted to BUPLN/PUPN, with the permission of the Chairman of Bank Indonesia (currently the Head of OJK);
- 3) for the purposes of criminal case justice, with the permission of the Chairman of Bank Indonesia (currently the Head of OJK);
- 4) in civil cases between the bank and its customers, on information from the bank's directors to the court about the financial condition of its customers;
- 5) in the course of exchanging information between banks, on information from the directors of the bank to other banks about the financial state of its customers;
- 6) upon the request, consent, or proxy of the depository customer made in writing; and
- 7) at the request of the legal heirs of the deceased depository customer.

The implementation of the opening of bank secrets as in points 1) to 3) must first obtain written permission to open bank secrets from the Chairman of Bank Indonesia (currently the Chairman of the OJK). Meanwhile, items 4) to 7) do not require permission to open bank secrets from the Chairman of Bank Indonesia (currently the Head of OJK).

Criminal provisions relating to bank secrets are regulated in Article 47, which reads:

- (1) Whoever, without bringing a written order or permission from the Head of Bank Indonesia as referred to in Article 41, Article 41A, and Article 42, intentionally forces a bank or affiliated party to provide information as referred to in Article 40, is threatened with imprisonment for at least 2 (two) years and a maximum of 4 (four) 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 rupiahs).
- (2) Members of the Board of Commissioners, Board of Directors, bank employees or other affiliated parties who deliberately provide information that must be kept confidential according to Article 40 are threatened with imprisonment for at least 2 (two) years and a maximum of 4 (four) years and a fine of at least Rp.4,000,000,000.00 (four billion rupiahs) and a maximum of Rp.8,000,000,000.00 (eight billion rupiahs)",

Section 47A of the 29 Banking Act reads:

"Members of the Board of Commissioners, Board of Directors, or bank employees who deliberately do not provide information that must be fulfilled as referred to in Article 42A and Article 44A, are threatened with imprisonment for at least 2 (two) years and a maximum of 7 (seven) years and a fine of at least Rp.4,000,000,000.00 (four billion rupiahs) and a maximum of Rp.15,000,000,000.00 (fifteen billion rupiahs)".

Article 40 paragraph (1) of the Banking Law has been amended based on the Constitutional Court Decision No.64/PUU-X/2012 dated July 27, 2012, to: "Banks are obliged to keep confidential information about depository customers and their deposits, except in matters as referred to in Article 41, Article 41A, Article 42, Article 43, Articles 44, 30 and Article 44A as well as for judicial purposes regarding common property in divorce cases".

c. Banking Crimes Related to Bank Supervision

In order to maintain the survival of a bank, the OJK, as the banking authority, requires banks to make reports on business activities. This is absolutely necessary because of the role of the bank as an institution that manages public funds based on trust. The Banking Law stipulates that bank guidance and supervision are carried out by the OJK.¹³

Banks are required to submit to the OJK all information and explanations about their business, provide an opportunity to check the books and files at the bank and submit reports within the time and form set by the OJK. If the bank intentionally fails to fulfill these obligations, it is threatened with criminal sanctions as stipulated in the provisions of Article 48 paragraph (1) of the Banking

¹² *Ibid*, Pp. 27

¹³ Tampubolon, *Understanding and Avoiding Banking Crimes*.Pp. 47

Act, and if the bank neglects to convey or carry out such obligations, the bank may be subject to criminal sanctions as stipulated in the provisions of Article 48 paragraph (2) of the Banking Law.

Criminal acts relating to bank supervision are regulated in Article 48 of the Banking Law, which reads:

- (1) Members of the Board of Commissioners, Board of Directors, or bank employees who deliberately do not provide information that must be fulfilled as referred to in Article 30, paragraphs (1) and (2) and Article 34, paragraphs (1) and paragraphs (2), are threatened with imprisonment for at least 2 (two) years and a maximum of 10 (ten) years and a fine of at least Rp.5,000,000,000.00 (five billion rupiahs) and a maximum of Rp.100,000,000,000, 00 (one hundred billion rupiahs).
- (2) Members of the Board of Commissioners, Board of Directors, or bank employees who neglect to provide information that must be fulfilled as referred to in Article 30, paragraphs (1) and (2) and Article 34, paragraphs (1) and (2), are threatened with imprisonment for at least 1 (one) year and a maximum of 2 (two) years and or a fine of at least Rp.1,000,000,000.00 (one billion rupiahs) and a maximum of Rp.2,000,000,000, 00 (two billion rupiahs)."

d. Banking Crimes Related to Bank Business Activities

Bank can carry out various business activities, including raising funds, lending, and other activities, such as:¹⁴

- 1) Issuing a letter of recognition of debts; 2) buying, selling, or warrant securities; 3) moving money, both for the benefit of oneself and its customers; 4) placing funds on, borrowing funds from, or lending funds to other banks; 5) provide a place to store goods and securities; 6) carrying out custody activities for the benefit of other parties under a contract (*custodian*); 7) carrying out factoring activities, credit card business, and trustee activities; 8) carrying out capital participation activities in banks or other companies in the field of finance.

Criminal acts related to business activities, including in the form of making or causing false records, eliminating, not entering, causing non-recording, changing, obscuring or eliminating records in the books or reports of business activities, transaction reports or accounts, or changing, obscuring, eliminating, hiding or damaging bookkeeping records, not carrying out principles- prudential principle in accordance with applicable regulations, requesting and/or receiving compensation from customers who obtain facilities from banks.¹⁵

If the bank violates the criminal provisions in the implementation of its business activities, the perpetrator may be subject to criminal sanctions as stipulated in Article 49 of the Banking Law, which reads:

- (1) Members of the Board of Commissioners, Board of Directors, or bank employees who intentionally:
 - a. Make or cause false records in the books or in reports, as well as in documents or reports of business activities, transaction reports or accounts of a bank;
 - b. Eliminate or not include or cause non-recording in the books or in reports or in documents or reports of business activities, transaction statements or accounts of a bank;
 - c. Alter, obscure, hide, delete, or eliminate the existence of a record in the books or in reports, as well as in documents or reports of business activities, transaction reports or accounts of a bank, or deliberately alter, obscure, eliminate, hide or damage the bookkeeping records, are threatened with imprisonment for 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 rupiahs) and a maximum of Rp.200.000.000.000,00 (two hundred billion rupiahs).
- (2) Members of the Board of Commissioners, Board of Directors or bank employees who intentionally:
 - a. solicits or accepts, permits or agrees to receive a reward, commission, additional money, service, money or valuables, for his personal benefit or for the benefit of his family, in order to obtain or attempt to obtain for another person in obtaining an advance, bank guarantee, or credit facility from the bank, or in the course of the purchase or discount by the bank of money orders, promissory notes, cheques, and trade papers or other proof of obligations, or in order to give consent for another person to carry out withdrawals of funds that exceed his credit limit to the bank;

¹⁴ Tampubolon.Pp. 47

¹⁵ Tampubolon.Pp. 54

- b. failure to implement the necessary measures to ensure the bank's compliance with the provisions of this Law and other provisions of laws and regulations applicable to banks is threatened with imprisonment for at least 3 (three) years and a maximum of 8 (eight) years and a fine of at least Rp.5,000,000,000.00 (five billion rupiahs) and a maximum of Rp.100,000,000,000.00 (one hundred billion rupiahs)",

e. Banking Crimes Relating to Affiliated Parties

Banking Crimes relating to Affiliated Parties are regulated in Article 50 of the Banking Law, which reads:

"Affiliated Parties who deliberately do not carry out the necessary measures to ensure the bank's compliance with the provisions of this Law and other laws and regulations applicable to banks, are threatened with imprisonment for at least 3 (three) years and a maximum of 8 (eight) years and a fine of at least Rp.5,000,000,000.00 (five billion rupiahs) and a maximum of Rp.100,000,000,000.00 (one hundred billion rupiahs)".

The explanation of tipibank in Article 50 of the Banking Act is:

- 1) Affiliated Party is the same as the description of the "Affiliated Party" element above. 2) Intentionally is the same as the description of the "Intentionally" element above. 3) Failure to implement the necessary measures to ensure the bank's compliance with the provisions of this Act and other laws and regulations applicable to the bank, meaning the Affiliated Party as referred to:
 - a) Letter a) and letter b) then refers to the explanation of the criminal element in Article 49 paragraph (2) letter b.
 - b) Letter c) if the person concerned knows, allows, advises and/or participates in doing so that the bank does not comply with applicable laws and regulations.
 - c) Letter d) if the person concerned takes action, including interfering with and affecting the management of the bank, either directly or indirectly, which results in the bank not complying with applicable laws and regulations.

f. Banking Crimes Relating to Shareholders

Banking crimes relating to owners/shareholders are regulated in Article 50A of the Banking Law, which reads:

"Shareholders who knowingly instruct the Board of Commissioners, The Board of Directors, or bank employees to take or not to take actions that result in the bank not implementing the necessary measures to ensure the compliance of the 88 banks with the provisions of this Law and other statutory provisions applicable to banks, are threatened with imprisonment for 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 rupiahs)".

The explanation of tipibank in Section 50A of the Banking Act is as follows:¹⁶

- 1) Shareholders are parties who include shares in the bank.
- 2) Intentionally is the same as the description of the element "intentionally" above.
- 3) Ordering the board of commissioners, directors, or employees of the bank to take or not to take actions that result in the bank not carrying out the necessary steps to ensure the bank's compliance with the provisions of this Law and other laws and regulations applicable to the bank, the act of "ordering" is interpreted as commands to do or not to take action, it can be in the form of giving orders or instructions, either orally or in writing to the board of commissioners, directors, or employees of the bank, for the personal benefit of shareholders, resulting in the bank's disobedience to the applicable provisions.

The application of the provisions of Article 50A of the Banking Law, Shareholders are subject to cumulative criminal sanctions, namely imprisonment of 7 to 15 years and a fine of Rp.10,000,000,000.00 to Rp. 200,000,000,000.00 if the person concerned

¹⁶ Tampubolon.Pp. 89

intentionally instructs or gives orders orally or in writing to the board of commissioners, directors, or bank employees, which can be proven by documents, recordings of talks, or the testimony of witnesses, to do or not to do something so that the bank concerned violates the provisions of the Banking Act and other statutory provisions.

g. Banking Crimes Relating to Obedience

Against the Provisions of Banking Crimes in Sharia Banks or UUS relating to compliance with the provisions regulated in Article 66 of the Sharia Banking Law which reads:

- (1) Members of the board of directors or employees of Sharia Banks or Conventional Commercial Banks who have a UUS who deliberately:
 - a. Commit acts that are contrary to this Law and such acts have resulted in losses to Sharia Banks or UUS or caused the financial condition of Islamic Banks or UUS to be unhealthy;
 - b. Obstructing the examination or not assisting the examination conducted by the board of commissioners or the public accounting firm charged by the board of commissioners;
 - c. Providing disbursement of funds or guarantee facilities in violation of the applicable provisions required by Sharia Banks or UUS, which results in losses that endanger the business continuity of Sharia Banks or UUS; and/or
 - d. not taking the necessary steps to ensure the compliance of Sharia Banks or UUS to the provisions of the Maximum Limit for Disbursement of Funds as specified in this Law and/ or applicable provisions shall be punished with a maximum imprisonment of 1 (one) year and a maximum of 5 (five) years and a fine of at least Rp1,000,000,000.00 (one billion rupiahs) and a maximum of Rp2,000,000,000, 00 (two billion rupiahs).
- (2) Members of the board of directors or employees of Sharia Banks or Conventional Commercial Banks who have a UUS who deliberately misappropriate Customer funds, Sharia Banks or UUS are sentenced to a minimum imprisonment of 2 (two) years and a maximum of 8 (eight) years and a fine of at least Rp2,000,000,000.00 (two billion rupiahs) and a maximum of Rp4,000,000,000.00 (four billion rupiahs)".

The explanation of tipibank in Article 66, paragraph (1) letter a of the Sharia Banking Law is:¹⁷

- 1) Members of the board of directors or employees of Sharia Banks or Conventional Commercial Banks who have UUS are parties who:
 - a) Appointed as directors or employees in accordance with the provisions applicable to the bank concerned (both permanent and honorary employees, including outsourcing in accordance with applicable labor provisions);
 - b) Actively serves as a director or employee of the bank at the time of the criminal act. Employees of Islamic Banks or Conventional Commercial Banks include bank officials who are authorized and responsible for carrying out bank operational duties and employees who have access to information about the state of the bank.
- 2) Intentionally is the same as the description of the "Intentionally" element above.
- 3) The existence of acts that are contrary to this Law that result in losses to Sharia Banks or UUS or cause the financial condition of Islamic Banks or UUS to be unhealthy, members of the board of directors or employees of Islamic Banks or Conventional Commercial Banks who have UUS commit acts that are contrary to the Sharia Banking Law, resulting in losses for Islamic Banks or UUS, or the financial situation of Islamic Banks or UUS becomes unhealthy.

The application of the provisions of Article 66 paragraph (1) letter a of the Sharia Banking Law, members of the board of directors or employees of Sharia Banks or Conventional Commercial Banks that have a UUS are subject to cumulative criminal sanctions, namely imprisonment of 1 to 5 years and a fine of Rp.1,000,000,000.00 to Rp.2,000,000,000.00, if they intentionally commit acts that are contrary to the Sharia Banking Law and result in losses to Sharia Banks or UUS or cause a situation Islamic bank finance or UUS is not healthy.

The explanation of tipibank in Article 66, paragraph (1) letter b of the Sharia Banking Law is:¹⁸

¹⁷ Tampubolon.Pp. 93-94

¹⁸ Tampubolon.Pp. 97

- 1) Members of the board of directors or employees of Sharia Banks or Conventional Commercial Banks that have a UUS are the same as the description of the element "Members of the board of directors or employees of Sharia Banks or Conventional Commercial Banks 96 who have UUS" above
- 2) Intentionally is the same as the description of the "Intentionally" element above.
- 3) Obstructing the examination or not assisting in the examination, the board of commissioners, the public accounting firm, or the party assigned by the board of commissioners who obstructed the examination or did not assist with the examination. The examination is a series of activities to search, collect, and process data and/or other information in order to supervise compliance with the Sharia Banking Law and/or other applicable provisions. The purpose of the examination is to test the compliance of the Sharia Bank or UUS compliance with the Sharia Banking Law and/ or other applicable provisions.

3. Conclusion

Banks, in carrying out their functions, there occur problems that lead to criminal acts. The criminal act referred to here is Banking Crime. Banking Crime is behavior (*conduct*), either in the form of doing something (*commission*) or not doing something (*omission*), which uses banking products (*banking products*) as a means of the behavior of the perpetrators or banking products (*banking products*) as the target of the perpetrator's behavior and has been designated as a criminal act by law.

Banking crimes are more focused on prohibited acts, threatened with criminal penalties that are contained specifically only in the Banking Law and the Islamic Banking Law. Banking criminal charges are criminal acts that meet the elements as referred to in Articles 46 to 50A of the Banking Law or Articles 59 to 66 of the Sharia Banking Law. Banking crimes that fall into the special criminal category because of banking criminal acts and their criminal sanctions have been regulated separately in the Banking Law.

The scope of banking crimes contained in the Banking Law and the Sharia Banking Law are: 1) Criminal acts related to licensing; 2) Criminal acts relating to bank secrets; 3) Criminal acts related to bank supervision; 4) Criminal acts related to the bank's business activities; 5) Criminal acts related to affiliated parties; 6) Criminal acts relating to shareholders; 7) Criminal acts relating to the observance of provisions.

The Banking Law distinguishes criminal sanctions into two forms, namely, crime and offense. Banking crimes with a crime category consist of seven articles, namely Articles 46, 47, 47A, 48 paragraphs (1), 49, 50, and Article 50A. Meanwhile, banking crimes with the category of violations with fewer criminal sanctions 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 more severe penalty compared to violations.

Funding: This research received no external funding.

Conflicts of Interest: The authors declare no conflict of interest.

Publisher's Note: All claims expressed in this article are solely those of the authors and do not necessarily represent those of their affiliated organizations, or those of the publisher, the editors and the reviewers.

References

- [1] Hasanah, U (2017). *Banking Law*. East Java: Setara Press.
- [2] Hermansyah (2006). *Indonesian Banking Law*. Jakarta: Kencana Prenada Media Group.
- [3] ———. (2014) *Indonesian National Banking Law. Second Edition*. Jakarta: Prenadamedia Group.
- [4] Pardede, M (1995). *Bank Criminal Law*. Jakarta: PT Nusantara Lestari Ceria Pratama
- [5] Shahdeini, S R (2012). Indonesian Banking Crimes, Proceeding Special Criminal Law Training for High Judges. Makassar: Judicial Commission of the Republic of Indonesia.
- [6] Tampubolon, N (2019). *Understanding And Avoiding Banking Crimes*. Jakarta: Financial Services Authority,