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Implementation of Prudential Banking Principles: State Responsibility in Combating Banking Crimes in Indonesia

Article

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Abstract

The primary function of banks is to gather public deposits and extend credit. While banks aim for profit, they also play a crucial role in enhancing societal welfare, which requires adherence to prudential principles. Unfortunately, banking crimes committed by managers often occur, adversely affecting both the institutions and the public. This study explores the application of prudential principles in banking as a state responsibility, the nature of violations associated with banking crimes, and the enforcement of Banking Law in Indonesia. The research analyzes court decisions related to banking crimes from 2015 to 2020, focusing on the relevant legal substances. Employing a judicial normative method that includes statutory, conceptual, and case analyses, the findings indicate that violations typically arise from managers with decision-making authority and access to internal data, leading to breaches of Banking Law and standard operating procedures (SOPs). Courts respond to these violations with criminal sanctions, while the Financial Services Authority (OJK) revokes licenses as necessary. Recommendations include appointing OJK supervisors with banking expertise and clarifying Article 49, paragraph (2), letter b of the Banking Law to prevent misinterpretation.

Keywords: State responsibility; bank business activities; banking crimes; prudential principles.

INTRODUCTION

According to Law Number 10 of 1998, which amends Law Number 7 of 1992 concerning banking (hereinafter referred to as the Indonesian Banking Law), a bank is defined as a business

entity that collects funds from the public in the form of deposits and distributes them as credit or in other forms to improve the living standard of the community. This definition highlights that the core activities of banks involve collecting deposits from the public and providing credit or similar services.

In Indonesia, there are two distinct banking legal systems: the conventional banking system and the Islamic (Sharia) banking system.[1] As a result of these two systems, we recognize Conventional Banks and Sharia Banks. Conventional Banks operate under traditional business models, including conventional commercial banks (BUK) and rural credit banks (BPRK). In contrast, Sharia Banks conduct their operations in accordance with Sharia principles,[2] comprising of Sharia commercial banks (BUS) and Sharia rural financing banks (BPRS). Sharia Banks are governed by Law Number 21 of 2008 concerning Sharia Banking (hereinafter referred to as the Indonesian Sharia Banking Law), along with additional regulations such as the Compilation of Sharia Economic Law (KHES), the Compilation of Islamic Law (KHI), and the fatwas issued by the Indonesian Ulema Council (MUI), which are authoritative opinions as designated by the Indonesian Sharia Banking Law and subsequently outlined in Bank of Indonesia Regulations (PBI).

According to the Indonesian Banking Law and the Indonesian Sharia Banking Law, both Conventional Banks and Indonesian Sharia Banks must operate based on democratic economic principles and prudential standards. In addition to these two foundational principles, banks are also required to uphold the principles of trust, confidentiality, customer due diligence, and transparency. The prudential principle is essential and mandatory for all banks in Indonesia;[3] violations of these principles can lead to significant harm for both the banks and their depositors.[4]

The 2008 global financial crisis highlighted the inability of many institutions to manage risks effectively, which adversely affected overall financial stability and posed systemic risks.[5] This was evidenced by suspension of 38 banks, including Bank Ciputra, Bank Ganesha, Bank Pesona, Bank Alfa, and Bank Aspac. Additionally, the government took control of seven banks: Bank RSI, Bank Putera Sukapura, Bank POS, Bank Artha Pratama, Bank Nusa Nasional, Bank Jaya, and Bank IFI. Furthermore, four government banks—Bank Dagang, Bank Exim, Bank Bumi Daya, and Bapindo—were merged into Bank Mandiri.[6] To avoid bank failures, some banks may compromise on prudential principles in their operations, leading to various instances of banking crimes.

As defined by Pushkarev, "Banking Crime" differs from general criminal acts in the banking sector. Broadly, it encompasses any behaviors—whether through action (commission) or inaction

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1 Gabrielia Febrianty Shofiana, Abd. Shomad, and Rahadi Wasi Bintoro, "Transformation of Banking Law in Indonesia," *Jurnal Dinamika Hukum*, 2019, https://doi.org/10.20884/1.jdh.2019.19.2.2523.

2 Shofiana, Shomad, and Bintoro.

3 Rezandha Hutagalung, "Prinsip Kehati-Hatian Bagi Bank Selaku Kustodian Di Pasar Modal Indonesia," *Jurnal Suara Hukum*, 2020, https://doi.org/10.26740/jsh.v2n1.p1-20.

4 Ermanto Fahamsyah et al., "The Problem of Filing for Bankruptcy in Indonesian Law: Should the Insolvency Test Mechanism Be Applied?," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 7, no. 1 (June 30, 2024): 199–218, https://doi.org/10.24090/VOLKSGEIST.V7I1.10079.even if they are capable of continuing their business operations and repaying their debts to creditors. This issue arises from the provisions of Article 2, paragraph (1

5 Yener Altunbas, Mahir Binici, and Leonardo Gambacorta, "Macroprudential Policy and Bank Risk," *Journal of International Money and Finance* 81 (2018): 203–20, https://doi.org/10.1016/j.jimonfin.2017.11.012.

6 Andrew Shandy Utama, "Arah Kebijakan Pengawasan Terhadap Perbankan Syariah Dalam Sistem Perbankan Nasional Di Indonesia," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 3, no. 1 41 (2020): 52, https://doi.org/10.24090/volksgeist.v3i1.3498.

(omission)—that exploits banking products as the objective or target of the crime.[7] More specifically, "Banking Crimes" refer to actions deemed criminal under banking law.[8] The term has evolved to cover a wide range of illicit acts that utilize banks as instruments for legal violation.[9] In Indonesian Banking Law and the Indonesian Sharia Banking Law, several categories of Banking Crimes are recognized: those related to licensing, confidentiality, business activities, affiliated parties, and shareholders.

The Indonesian Banking Law and the Indonesian Sharia Banking Law mandate that banks conduct their business activities in accordance with the prudential principle. However, neither law clearly defines what the prudential principle entails or how it should be applied in banking operations.[10] Unfortunately, there have been instances of banking crimes committed by the manager, resulting in financial losses for banks and, in some cases, even leading to their closure. Such events can significantly impact Indonesia's economic system, as banks serve as the backbone of the economy, functioning as a financial intermediaries that channel funds from those with surplus capital to those in need, while also acting as agents of development.

Therefore, it is essential to understand how the prudential principle is applied in banking operations, how violations of this principle can occur in cases of banking crimes, and how the Banking Law is enforced in such instances involving bank managers in Indonesia. This paper will analyze the state's responsibility in implementing prudential principles in the context of banking crimes in Indonesia. This analysis is crucial for banks, depositors, and society at large, as violations of the prudential principle can be detrimental not only to banks but also to their customers and the public.

The foundation of this research lies in the recognition that, while the Indonesian Banking Law and the Indonesian Sharia Banking Law require adherence to the prudential principle, they do not provide a clear explanation of what this principle means. The term "principle" refers to the fundamental basis, or truth that serve as the core idea behind a system of thought or belief. In the context of Indonesian Banking Law, the prudential principle is a foundational concept of banking law. Legal principles represent general ideas that form the basis for specific regulations found within legal systems, which are expressed through laws, regulations, and judicial decisions. Thus, the prudential principle in banking operations serve as the underlying rationale for the regulations governing these activities. Various literature sources contribute to the understanding and concept of the prudential principle.

According to Veithzal Rivai in his book "Islamic Financial Management,"[11] the prudential principle serves to safeguard financing from various issues by employing methods such as customer

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7 Viktor Victorovich Pushkarev et al., "Criminal Prosecution for Crimes Committed in the Banking Industry," *LAPLAGE EM REVISTA*, 2020, https://doi.org/10.24115/s2446-622020206extra-c647p.244-248.

8 Marsilan Marsilan et al., "Perspektif Hukum Pidana Terhadap Implementasi Undang-Undang Tentang Perbankan," *Sultra Research of Law*, 2023, https://doi.org/10.54297/surel.v5i2.68.

9 Piter Abdullah, "Banking Crime Analysis and the Effectiveness of Banking Supervision: Combining Game Theory and the Analytical Network Process Approach," *Buletin Ekonomi Moneter Dan Perbankan* 13, no. 2 (2010): 215–34, https://doi.org/10.21098/bemp.v13i2.391.

10 Istianah Zainal Asyiqin, M Fabian Akbar, and Manuel Beltrán Genovés, "Cryptocurrency as a Medium of Rupiah Exchange: Perspective Sharia Islamic Law and Jurisprudential Analysis," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 7, no. 2 SE-Articles (November 2024): 227–92, https://doi.org/10.24090/volksgeist.v7i2.10975.

11 Jihan Irbah Nadiah and Dian Filianti, "Hubungan Kualitas Audit, Komite Audit, Dan Dewan Pengawas Syariah Terhadap Kinerja Bank Umum Syariah Di Indonesia," *Jurnal Ekonomi Syariah Teori Dan Terapan*, 2022, https://doi.org/10.20473/vol9iss20225pp731-746.komite audit, dan Dewan Pengawas Syariah (DPS

identification, reviewing supporting documents, and gathering information about potential clients. Abdul Ghofur Anhori emphasizes that this principle requires banks to exercise caution in protecting public funds entrusted to them while carrying out their functions and business activities.[12] Various sources indicates that the prudential principle involves risk management through consistent adherence to laws and regulations, as well as maintaining an effective internal monitoring system capable of fulfilling its responsibilities.

Watt (2002) defines prudence, or conservatism, as a "differential verifiability" necessary for recognizing profits as opposed to losses. This involves acknowledging gains only when there is a legal and verifiable right to the associated revenue. There are two types of conservatism: profit conservatism and balance sheet conservatism. Profit conservatism entails asymmetric recognition, where potential losses are recognized immediately while profit recognition is delayed. In contrast, balance sheet conservatism involves ongoing assessment of net assets and the book value of equity.[13]

Scott C. Idleman (1995) associates wisdom and the ability to foresee outcomes, linking it to the concept of honesty theory (candor). He outlines three key concepts of honesty as part of the prudential principle:[14]

1. Honesty as Ethics: This concept views honesty as a subjective awareness of oneself, combined with the need for greater objectivity. It is a moral obligation that should exist in every individual, transcending their roles or position. Honesty must be ingrained in people as a virtue, both in terms of good outcome (teleologically) and the duty to act rightly (deontology). In practice, this is reflected in formal rules, religious regulations, and ethical codes—both professional and non-professional.
2. Honesty as Compliance: This aspect emphasizes the importance of honesty as a commitment to adherence to applicable laws and regulations. It serves as a reminder to all sectors of society, including individuals, businesses, law enforcement, government entities, and civil servants, about the necessity of compliance.
3. Honesty as Discretion: Here, honesty plays a crucial role in limiting discretion and power. It acknowledges that a judge's personal values and preferences significantly influences the law enforcement process, thereby curbing legal and political self-interest.

According to experts, the concept of "Banking Crime" encompasses all behaviors and actions—whether through commission (actively doing something) or omission (failing to act)—that involve banking products as either the objective or target of the crime. In a more specific context, "Banking Crime" refers to actions or inactions that are classified as crimes under the Banking Law".[15]

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[12] Zahrotul Uliya, Heri Sunandar, and Nurnasrina Nurnasrina, "Penyelesaian Sengketa Perbankan Syariah Di Indonesia," *MONEY: JOURNAL OF FINANCIAL AND ISLAMIC BANKING*, 2022, https://doi.org/10.31004/money.v1i1.10196.

[13] Geanina Măciucă, Elena Hlaciuc, and Antonela Ursache, "The Role of Prudence in Financial Reporting: IFRS versus Directive 34," *Procedia Economics and Finance* 32, no. 15 (2015): 738–44, https://doi.org/10.1016/s2212-5671(15)01456-2.

[14] Scott C Idleman, *Prudential Theory of Judicial Candor A Prudential Theory of Judicial Candor*, *Marquette University Law School*, 73rd ed. (Marquette: Faculty Publication, 2005).

[15] Maria Lúcia de Paula Oliveira, "Reflective Judgement and Prudential Rationality: A Contribution to an Inclusive Practical Application of Law," *International Journal for the Semiotics of Law*, 2020, https://doi.org/10.1007/s11196-019-09666-9.

The aim of this study is to analyze how banks apply prudential principles in their business activities, identify the forms of violations of these principles in cases of Banking Crime, and assess the enforcement of Banking Law in relation to these crimes committed by bank managers in Indonesia. This analysis is vital for both banks and depositors (the public) because violations of prudential principles in the context of Banking Crimes can harm the banks themselves, their customers, and the broader public.

The urgency of this research stems from the need for a comprehensive understanding of how such violations impact the stability of the banking sector and the safety of depositors. This topic is significant for advancing legal research, especially in comparing Indonesia with other countries that have similar legal frameworks. This study not only sheds light on international best practices but also aims to strengthen Indonesia's regulatory framework to prevent future banking crimes.

RESEARCH METHODS

This legal research is classified as normative legal research, focusing on the study of law as a comprehensive system that encompasses a set of legal principles, norms, and rules, both written and unwritten.[16] The research employs a statutory, conceptual, and case approach.

The statutory approach involves examining all relevant laws and regulations pertaining to the issue at hand.[17] In this study, the focus will be on laws and regulations related to the prudential principle in banking operations and banking crimes. The conceptual approach draws upon established views and doctrines within legal science, which generates relevant legal notions, concepts, and principles related to the prudential principle of banks in their activities and banking crimes. The case approach involves analyzing specific cases of banking crimes in relation to the adherence to prudential principles during banking operations.[18] This research examines decisions concerning banking crimes from 2015 to 2020, based on the correlation of the subjects studied.

This study utilizes secondary data, which include: a. Primary Legal Materials: These are authoritative legal sources, including laws and regulations, official records or minutes from legislative processes, and judicial decisions.[19] The research references Law Number 7 of 1992 concerning Banking, Law Number 10 of 1998 (the amendment to Law Number 7 of 1992), Law Number 21 of 2008 concerning Sharia Banking, Law Number 21 of 2011 concerning the Financial Services Authority (OJK Law), and decisions related to banking crimes; and b. Secondary Legal Materials: These include all non-official publications on law that discuss the fundamental principles of legal science and the perspectives of qualified scholars. Examples include textbooks, legal dictionaries, legal journals, and commentaries on court decisions. The data analysis method used in this research is qualitative normative analysis. This involves presenting information in a structured, coherent, and effective manner to facilitate interpretation and understanding of the analysis results, which are grounded in legal norms, principles, and theory.[20]

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16 Achmad Ali, *Menguak Tabir Hukum (Suatu Kajian Filosofis Dan Sosiologis)*, *Toko Gunung Agung*, 2002.

17 Peter Mahmud Marzuki, "Penelitian Hukum, Cetakan Ke-11," *Jurnal Pembangunan Hukum Indonesia*, 2022.

18 Ryo Crysna Ramli Koro, "Protection for Housing Loan Consumers in Building Insurance toward the Risk of Natural Disaster Loss during the Construction Process," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 5, no. 2 (2022): 279–95, https://doi.org/10.24090/volksgeist.v5i2.6842.

19 M. Hum Dr. Ishaq, S.H., *Metode Penelitian Hukum Dan Penulisan Skripsi, Tesis, Serta Disertasi*, *Cv. Alfabeta, Bandung*, 2020.

20 Zainuddin Ali, *Metode Penelitian Hukum, Jakarta*, *Sinar Grafika*, 2022.

ANALYSIS AND DISCUSSION

The findings this research are summarized in the table below:

Table: *Overview of Decisions Regarding Banking Crimes in Bank Business Activities*

No	Verdict, Indictment, Defendant	Bank Business Activities & Judge's Legal Considerations	Verdict & Sanctions	Bank & Customer Losses
1	Supreme Court Decision Number 796 K/Pid. Sus/2015 Indictment: Article 49 paragraph (1) letters a and b of Banking Law. Defendant: Director of PT BPR	Business Activities: Providing credit with false records Judge's Legal Consideration: The defendant was found to have approved credit for a bank employee to construct a PT BPR building. This credit was partly used to repay a loan from another bank (BNI). The defendant created receipts for expenses that were not recorded in the bank's books from November 2009 to August 2010, instructing the teller to issue the installments to obscure the actual expenditure, fabricated supporting documents like deposit slips, resulting in false records according to Bank Indonesia' checks.	Verdict: The defendant was found legally and convincingly guilty of committing banking crimes. Sanctions: Imprisonment for 5 years and 6 months, along with a fine of Rp. 10,000,000,000.00 (ten billion rupiah). If the fine is not paid, an additional 6 months of imprisonment will be imposed.	Bank
2	Supreme Court Decision Number 68 PK/Pid. Sus/2018. Indictment: (Primary) Article 49 Paragraph (1) letters a, b; and (Subsidiary) Article 49 paragraph (2) letter b of the Banking Law. Defendant: Commercial Bank Employee	Business Activities: Extending credit with gold pawn collateral. Judge's Legal Consideration: The convicted individual created a Credit Analysis Memorandum without a number, violating internal SOP, which are binding only within the bank. Therefore, the violation warrants administrative sanctions.	Verdict: The convicted person is found to have committed the act as charged but it was not classified as a criminal offense. They are released from all legal charges (*ontslag van alle rechtsvervolging*).	-
3	High Court Decision Number 90/Pid. Sus/2019/PT Pdg Indictment: Article 49 paragraph (2) letter b of the Banking Law in conjunction with Article 55 Paragraph (1) of the Criminal Code Defendant: PT BPR Branch Manager (Bank Employee)	Business Activities: Issuing credit. Judge's Legal Consideration: The defendant, as Branch Manager, issued credit to 15 customers, which violated the Credit SOP of PT BPR Mitra Danagung. Credit was disbursed without adhering to banking provisions and sound credit principles, resulting in non-compliance with applicable laws.	Verdict: The defendant was legally and convincingly found guilty of failing to ensure the bank's compliance with laws and regulations. Sanction: Imprisonment for 2 years and a fine of Rp 5,000,000,000.00 (five billion rupiah); if the fine is unpaid, it will be substituted with 1 month of imprisonment.	Bank

No	Verdict, Indictment, Defendant	Bank Business Activities & Judge's Legal Considerations	Verdict & Sanctions	Bank & Customer Losses
4	Supreme Court Decision Number 1868 K/Pid.Sus /2019 Indictment: Article 49 Paragraph (1) letter a of Banking Law Defendant: Bank employee	Business Activities: Collecting deposit savings funds. Judge's Legal Consideration: The defendant was found to have unlawfully disbursed from customers Muhamad Mulyadi (Rp 500,000,000) and Yusnaniar (Rp 250,000,000) by forging their signatures and misusing authorization passwords obtained from the branch manager, using the funds for personal expenses. This caused a loss of Rp750,000,000) to the bank.	Verdict: The defendant was found legally and convincingly guilty of the banking crime as outlined in the first alternative indictment. Sanction: Imprisonment for 5 years and a fine of Rp 10,000,000,000 (ten billion rupiah); if unpaid, this will be replaced by 5 months of imprisonment.	Bank
5	District Court Decision Number 710/Pid. Sus/2020/PN Cbi Indictment: Article 49, paragraph (1) letters a and b of the Banking Law, in conjunction with Article 55 of the Criminal Code. Defendant: Bank Employee (Branch Manager of PT BPR)	Business Activities: Issuing credit Judge's Legal Considerations: The elements of Article 49, paragraph (1) letter a of the Banking Law include: 1) The defendant is a member of the Board of Commissioners, the Board of Directors, or a Bank employee. (2) The defendant caused or made false entries in the bank's accounting records and report, as well as in business activity documents. The evidence presented during the trial demonstrated that the defendant, as the Branch Manager of BPR Sekar, improperly disbursed loans, leading to false records characterized by incorrect or fictitious transactions. This ultimately resulted in inaccurate reports on non-performing loans, contributing to the current liquidation BPR Sekar. (3) The actions were intentional. Given that banking activities are crucial to the economy and the welfare of the community, including the bank's customers, any manipulation ofo banking operations for any purpose is unjustifiable. (4) The defendant, along with Fanny (the President Director of BPR Sekar), collectively engaged in improper credit disbursements, which resulted in false entries in the bank's records and inaccurate reporting on non-performing loans.	Verdict: The defendant has been legally and convincingly found guilty of jointly and intentionally causing false records in the bank's documentation process, as stated in the first alternative indictment. Sanction: The defendant is sentenced to 5 years and 6 months of imprisonment and a fine of Rp10,000,000.000 (ten billion rupiah). If the fine is not paid, it will be replaced by 3 months of imprisonment.	Banks and the public

Source: Processed by the authors from various court decisions related to banking crimes.

The Application of Prudential Principle and Form of Violation by Banks in Conducting Business Activities Related to Banking Crimes in Indonesia

Article 2 of the Banking Law states that the Indonesian banking system operates based on a democratic economy that employs prudential principles. However, the law does not define what these prudential principles entail. Generally, the term "principle" refers to a foundational basis or truth that serves as a core idea or framework of thought. In the context of Indonesian Banking Law, the prudential principle is a fundamental tenet of banking law. Legal principles represent basic concepts that are generally applicable and provide the foundation for specific regulations found within legal systems, as manifested in laws, regulations, and judicial decisions. Therefore, the prudential principle in banking is regarded as the underlying rationale for business activities, as articulated in banking laws and regulations.

Several scholarly works offer insights into the concept of the prudential principle. According to Scott C. Idleman, this principle dictates that banks must exercise caution in protecting the public funds entrusted to them during their operations.[21] Various sources indicate that the prudential principle involves risk management through the consistent application of relevant laws and regulations, as well as maintaining an effective internal monitoring system capable of fulfilling its responsibilities.

Article 1, number 2 of the Indonesian Banking Law defines a bank as a business entity that collects public funds in the form of deposits and distributes them through credit and other means to improve the welfare of the community. Thus, the primary business activities of banks include collecting funds via deposits, current accounts, demand deposits, and other forms established through agreements with depositors (Article 1, number 5), and providing funds to borrowers in the form of credit, based on lending agreements (Article 1, number 11).

Several articles in the Indonesian Banking Law incorporate the prudential principle in the context of credit issuance. For instance, Articles 8 and 11 stipulate that before granting credit, banks must conduct a thorough analysis of the *character, capacity, capital, collateral, and economic conditions* (commonly referred to as the 5C) of potential borrowers.[22] Banks are also required to adhere to maximum lending limits for borrowers. Additionally, credit agreements must be documented in writing. These provisions serve as a safeguard for the bank, ensuring that borrowers can repay the funds without causing harm to the bank or its depositors.

For this reason, when providing credit to prospective borrowers, banks typically require several documents, including:

1) A completed credit application form;
2) A photocopy of valid ID card for the applicant's spouse;
3) A photocopy of the valid family card;
4) A photocopy of the marriage certificate for married applicants;
5) A photocopy of the death certificate or divorce certificate for widows or widowers;
6) For non-individual loans, a photocopy of the ID card of the management, the company deed, the Business Identification Number (NIB), proof of legalization from the Ministry

[21] Idleman, *Prudential Theory of Judicial Candor A Prudential Theory of Judicial Candor*.
[22] Debora Damanik and Paramita Prananingtyas, "Prudential Banking Principles Dalam Pemberian Kredit Kepada Nasabah," *Notarius* 12 (2019): 718–30.

of Law and Rights, the institution's tax identification number (NPWP), the annual report (RAT), and the appointment letter;

7) Photos of the customers, collateral, and locations of business and residence;
8) Acceptable forms of collateral include:
   (1) Motor Vehicles: For two-wheeled and four-wheeled vehicles, the following documents are required:
      a. Original and photocopy of the Vehicle Registration Certificate (BPKB) as well as photocopy of STNKB;
      b. Photocopy of the vehicle tax payment receipt;
      c. Minutes of the physical vehicle inspection, including the engine and frame numbers, signed by both the bank officer and the prospective customer for data verification;
      d. A statement confirming that the collateral vehicle belongs to the customer;
      e. A power of attorney from the vehicle owner if the vehicle is registered under someone else's name, along with a photocopy of the owner's valid ID;
      f. A statement confirming that the vehicle is not currently pawned or involved in any disputes or criminal cases.
   (2) Land Certificate: Ownership rights or building rights in the name of the credit applicant or someone else with a power of attorney, or owned by the applicant but not reserved.
   (3) Other Assets: Precious metals, savings/time deposits, gold jewelry, and business premises/ slots//kiosk or rights to use/cultivate.
9) Information document about the debtor (iDEB) and financial information from the Financial Services Authority (SLIK) for the prospective debtor and collateral owner, if necessary.

Additionally, the bank follows a Standard Operating Procedure (SOP) for granting credit:

1. The debtor completes the application form.
2. Credit marketing staff receive the form and check customer data against the SLIK and iDEB databases.
3. After verifying the data, a survey is conducted at the customer's residence with one witness present.
4. If the customer meets the loan criteria, the data is stored for re-survey by the head office.
5. The head office will review the application, resulting in a recommendation from the board of directors regarding loan approval.
6. If approved, the branch manager convenes a committee meeting.
7. Following the committee's approval, the file is returned to the branch office to prepare the credit agreement.
8. After the credit agreement is completed, an endorsement sheet is created.
9. The core process involves disbursing the credit, which must be attended by the spouse if the other is the borrower.
10. The supervisor collects collateral documents from the customer (such as land title or vehicle title).

11. An analysis discussion follows.
12. Once the analysis is complete, the file is submitted to a public notary for further documentation.
13. After finalization, the file is sent for the branch manager's signature as proof of approval.
14. Finally, customers can withdraw cash through the teller.

The provisions of the Indonesian Banking Law also encompass the prudential principle in business activities related to fundraising. For instance, POJK Number 12/POJK.01/2017 addresses the implementation of Anti-Money Laundering (APU) and Prevention of Terrorism Financing (PPT) programs in the financial services sector, later amended by POJK Number 23/POJK.01/2019. These regulations require banks to obtain comprehensive information about customer identities, monitor transaction activities, and report any suspicious transactions. The goal is to better understand customer profiles, transactions, and business activities. COnsequently, the Standard Operating Procedure (SOP) for deposits (savings and deposits) at PD BPR as follows:[23]

1. Prospective customer must complete an application form to open a savings account (Savings/Deposits), including their signatures (along with specimen signature) and a photocopy of their ID card (KTP) or driver's license (SIM).
2. Once the application data are verified for completeness and accuracy, it is registered by the Savings section and entered into the system to generate an account number.
3. Savings customers can then deposit funds with the teller, following the procedures outlined in the deposit slip.
4. For the deposited funds, customers earn interest according to the policies of PD BPR.

In practice, there have been violations of the prudential principle in Indonesian banking activities that have led to banking crimes. Research conducted from 2015 to 2020 reveals that these violations often occur during the granting of credit and the accumulation of funds (savings deposits). Common forms of these violation include non-compliance with the Banking Law and associated regulations (SOP) in credit issuance, as evidenced by several court decisions, including Supreme Court Decision Number 796 K/Pid.Sus/2015; Supreme Court Decision Number 68 PK/Pid.Sus/2018; High Court Decision Number 90/Pid.Sus/2019/PT Pdg; District Court Decision Number 710/Pid.Sus/2020/PN Cbi; and Supreme Court Decision Number 1868 K/Pid.Sus/2019.

The research indicates that violations stem from the failure of banks (and their managers) to conduct 5C analysis (*character, capacity, capital, collateral, and economic conditions*) for prospective customers. Instances of non-compliance include issuing credit contrary to SOPs, using someone else's name for credit applications without their knowledge, and misappropriating funds for personal interests after credit disbursement. Furthermore, bank managers have been found to forge signatures of depositors to withdraw funds, which are then used solely for their own benefit. Additionally, credit has been improperly granted and disbursed to multiple customers through falsified records, resulting in bad credit and harming many individuals.

The findings regarding banking crimes reveal that violations of the prudential principle are often perpetrated by the manager, including the Director (Chairperson) and bank employees, either

[23] Ninik Lukiana, "Analisis Rasio Kewajiban Penyediaan Modal Minimum Untuk Menilai Kecukupan Modal Bank Dalam Mendukung Kegiatannya Secara Efisien," *WIGA: Jurnal Penelitian Ilmu Ekonomi*, 2012.

individually or collaboratively.[24] These managers hold the authority to make credit policy decisions and manage data entry related to credit and fundraising, making it easier for them to disregard established SOPs. Such violations have significant negative implications for both the bank and the public at large.[25]

According to the Banking Law and the OJK Law, the OJK is responsible for regulating and supervising the banking sector. In its supervisory role, the OJK has the authority to oversee individual banks through micro-prudential supervision. This oversight is designed to ensure that banks adhere to all banking regulations established by the Banking Law and the OJK. The primary objective of these regulatory measures is to foster a healthy banking system and ensure the soundness of individual banks. As outlined in Article 29 of the Banking Law, there are eight criteria for assessing a bank's health: 1) Capital Adequacy; 2) Asset Quality; 3) Management Quality; 4) Liquidity; 5) Profitability; 6) Solvency; 7) Other relevant business aspects; and 8) Compliance with mandatory business activities according to prudential principles.

The obligation to implement prudential principle in banking activities is closely linked to the overall health of bank. Consequently, the OJK under Article 7 of the OJK Law, has the authority to impose administrative sanctions on banks, with the most severe penalty being revocation of their business licenses. For instance, in District Court Decision Number 710/Pid.Sus/2020/PN Cbi, there were violations of the prudential principle involving the issuance of fictitious credit to 38 customers by both the bank director and other bank officials. This fraudulent credit was partially diverted for personal use, leading to significant bad debts and ultimately resulting in the OJK revoking the bank's business licenses and its subsequent liquidation. The Judge noted that since banking activities directly impact public welfare, particularly for bank customers, any form of manipulation in banking is unjustifiable. Therefore, it is appropriate for perpetrators to face criminal penalties for committing banking crimes. Violation of the prudential principle not only jeopardize the bank's health but also harm the public.[26]

Thus, violations of prudential in banking activities often manifest a non-compliance with Banking Laws and established SOPs. The violators—be they directors, bank officers, or employees—usually possess the authority to set policies and manage internal data. Given the serious applications of these violations, including the potential harm to both the bank and the public, it is fitting to impose criminal sanctions on those involved in banking crimes, alongside administrative penalties such as revocation by the OJK.

Moreover, since violations of prudential in banking activities are often concealed and take time to uncover—primarily because they are typically perpetrated by the managers themselves—the OJK must be vigilant in its supervisory role. To effectively carry out this oversight, the OJK requires skilled human resources who are experts in the field.

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[24] Pui Ting Florence Yiu, "Piercing the Corporate Veil Post-Prest," *Law and Financial Markets Review*, n.d., 1–6, https://doi.org/10.1080/17521440.2024.2410501.

[25] Bagus Rahmanda and Kornelius Benuf, "Hambatan Dan Upaya Pemberantasan Tindak Pidana Perbankan Di Indonesia," *Law, Development and Justice Review* 3, no. 2 (2020): 169–78, https://doi.org/10.14710/ldjr.v3i2.9283.

[26] Herman and Fokke J. Fernhout, "Maximum Limitation of Fines for Economic Crimes In Law Number 1 of 2023," *Jurnal IUS Kajian Hukum Dan Keadilan* 11, no. 2 (August 29, 2023): 356–73, https://doi.org/10.29303/IUS.V11I2.1261.

The Application of Banking Law in Cases of Banking Crimes by Managers in Indonesia

Experts define "Banking Crime" broadly as any behavior or conduct—whether through commission (active wrongdoing) or omission (failure to act)—that involves banking products as either the objective or target of the crime.[27] More specifically, it refers to actions that are classified as crimes under the Banking Law. The Indonesian Banking Law and the Indonesian Sharia Banking Law identify several types of Banking Crimes, including those related to licensing, confidentiality, business activities, affiliated parties, and shareholders.[28]

In practice, many cases of Banking Crimes in Indonesia pertain to business activities, as outlined in Article 49 of the Banking Law and Article 63 of the Sharia Banking Law. These articles state that:

1. Members of the Board of Commissioners, Board of Directors, or bank employees who intentionally:
    a. create or cause false entries in bookkeeping or report related to business activities, transaction reports, or bank accounts;
    b. omit or fail to include necessary records in bookkeeping or reports;
    c. alter, obscure, delete, or destroy records in bookkeeping or reports, or intentionally modify these records, shall face imprisonment for a minimum of 5 years and a maximum of 15 years, along with fines ranging from a minimum of Rp10,000,000,000 (ten billion rupiah) and a maximum of Rp200,000,000,000 (two hundred billion rupiah).
2. Any member of the Board of Commissioners, Board of Directors, or bank employee who intentionally:
    a. requests or receive any rewards, commissions, or valuable goods for their personal gain during the process of obtaining bank guarantee or credit facilities, or when improving withdrawal exceeding credit limits;
    b. fails to implement necessary measures to ensure compliance with the law and other applicable regulations shall face imprisonment for a minimum of 3 years and a maximum of 8 years, along with fine ranging from Rp5,000,000,000 (five billion rupiah) and a maximum of Rp100,000,000,000 (one hundred billion rupiah).

Research into various banking crime cases in Indonesia indicates that charges often cite Article 49 paragraph (1), letter a of the Banking Law, although charges may also extend to other letters and paragraphs. Under Article 49, a perpetrator may face criminal sanctions if all elements of the article are met, including:1) the identity of the perpetrator, 2) intentional wrongdoing, and 3) the fulfillment of unlawful acts. These elements of the perpetrator's identity are consistent across paragraphs (1) and (2), involving members of the Board of Commissioners, Board of Directors, or bank employees, and the nature ow wrongdoing is similarly intentional. However, the specific unlawful acts differ, and Article 49 does not require evidence of causing losses to the bank, its customers, or the public.

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[27] Ribut Baidi and Deni Setya Bagus Yuherawan, "Pertanggungjawaban Tindak Pidana Perbankan Perspektif Hukum Pidana Dan Undang-Undang Perbankan," *Journal Justiciabelen (JJ)* 3, no. 1 (2023): 1, https://doi.org/10.35194/jj.v3i1.2112.

[28] Pratywi Precilia Soraya, "PENCEGAHAN DAN PEMBERANTASAN KEJAHATAN PERBANKAN MELALUI SARANA PENGAWASAN," *Lex Crimen* 2, no. 2 (2013): 87–97.

S. R Sianturi, referencing Moeljatno, translates "*strafbaar feit*" as a criminal act, which is defined as prohibited action subject to punishment for violations. Such acts must be recognized by the society as unacceptable and detrimental to social order. The definition of criminal acts must encompass formal elements that align with legal formulations *(tatbestandmaszigkeit)* and material elements that contradict societal ideals or legal norms *(rechtswirdigkeit)*.[29]

In District Court Decision Number 710/Pid.Sus/2020/PN Cbi, where the indictment was based on Article 49, paragraph (1), letter a of the Banking Law, the Judge noted that all elements of the article were satisfied. The judge emphasized that banking activities are directly linked to public welfare and the economy, stating that manipulation in banking for any purpose is unjustifiable. The judge concluded that the defendant's improper loan disbursement contributed to misleading reports on non-performing loans, indicating a clear violation of ethical and legal standards. This case illustrates that while some judges consider both material and formal elements in their rulings, not all judges do so consistently, as seen in Supreme Court Decision Number 796 K/Pid.Sus/2015 and High Court Decision Number 90/Pid.Sus/2019/PT Pdg.

P. A. F. Lamintang, in his book *Basics of Indonesian Criminal Law*, posits that every criminal offense outlined in the Criminal Code can be categorized into two types of elements: subjective and objective. The subjective elements pertains to characteristics inherent to the perpetrator, encompassing everything related to their intent and state of mind. In contrast, the objective elements relate to the circumstances surrounding the perpetrator's actions.[30]

The subjective elements of a criminal offense include intentionality (*dolus*) or unintentionality (*culpa*), as well as various forms of intent (*voormenen*) referenced in Article 53, paragraph (1) of the Criminal Code and Article 17, paragraph (1) of Law Number 1 of 2023. These elements also encompass different types of intent (*oogmerk)* found in crimes such as theft, fraud, extortion, and forgery; premeditation (*voorbedachte raad)*, evident in planned murder cases, as specified in Article 340 of the Criminal Code and Article 459 of Law Number 1 of 2023; and the feeling of fear (*vrees)*, which is recognized in criminal offenses under Article 308 of the Criminal Code and Article 430 of Law Number 1 of 2023.

The objective elements of a criminal offense include the unlawful nature (*wederrechtelijkbeid)* of the act, the qualifications of the perpetrator (such as being a civil servant in official crimes or a director in company-related offenses as per Article 398 of the Criminal Code or Article 516 of Law Number 1 of 2023), and causality, which refers to the connection between an act and its consequences. The element of unlawful nature (*wederrechttelijk*) must always be considered in any offense formulation, even if not explicitly stated by the legislator. Lamintang further explains that if the element of unlawful nature is explicitly included in an offense, failure to prove it in court will result in the judge issuing verdict of acquittal (*vrijkpraak*). Conversely, if this element is not explicitly mentioned, failure to prove it will lead to an acquittal from all legal charges (*ontslag van alle rechtsvervolging*).

For instance, in Supreme Court Decision Number 68 PK/Pid.Sus/2018, the indictment cited (Primary) Article 49, Paragraph (1) letters a and b, and (Subsidiary) Article 49, paragraph (2) letter

[29] Maryogi Maryogi, "PERTANGGUNGJAWABAN PIDANA PIHAK TERAFILIASI PADA PIDANA PERBANKAN," *Jurnal Ilmiah Publika*, 2023, https://doi.org/10.33603/publika.v11i1.8219.

[30] Rico A Wuisan, "Kajian Hukum Terhadap Tindak Pidana Dalam Perkembangan Hukum Pidana," *Lex Crimen* 9, no. 2 (2020): 182–83.

b of the Banking Law. The judge noted that the convicted individual's actions in creating a Credit Analysis Memorandum (MAK) without a number violate internal SOPs. However, since banking SOPs are only binding internally, the resulting sanction was administrative rather than criminal. The verdict stated: 1) The convicted person was found guilty of the actions described by the Public Prosecutor, but these actions did not constitute a criminal offense; 2) The convicted individual was released from all legal charges (*ontslag van alle rechtsvervolging*).

Linking this to Lamintang's perspective, the convicted individual's actions fell under the provisions of Article 49, paragraph (2) letter b, which states that they "did not carry out the necessary steps to ensure the bank's compliance with the provisions of this Law and other applicable laws and regulations." While the act of creating an unnumbered Credit Analysis Memorandum violated SOP, the element of unlawfulness was not explicitly identified as part of the offense, leading to the judge classify it as an administrative violation.

In Article 49, paragraph (2) letter b of the Banking Law, a criminal offense is defined as "not taking the necessary steps to ensure the bank's compliance with this Law and other applicable regulations," which can lead to issues such as collusion (cooperation that benefits individuals at the expense of public interest), bank inaccuracy, customer bad faith such as using fraudulent documents), misuse of credit, and fictitious credit (where the file exists but the customer does not.[31]

Thus, the application of the Banking Law in cases of Banking Crimes involving managers in Indonesia generally pertains to violations of Article 49, paragraphs (1) letter a and (2) letter b. Many judges still focuses primarily on the fulfillment of formal elements without addressing the material elements in their legal reasoning. In applying Article 49, paragraph (2) letter b, judges must consider not only the formulation but also whether the actions of the defendant contravene criminal law, rather than merely administrative law.

Careful application of Article 49, paragraph (2) letter b is essential to prevent misuse and ensure that it is not solely used to criminalize violations of banking regulations. TO avoid misinterpretation, an additional explanation is needed regarding what constitutes "not implementing the necessary steps to ensure the bank's compliance with the provisions of this Law and other applicable laws and regulations."

The regulation of the precautionary principle in banking crime prevention is highly developed in Singapore. The country boasts a robust legal and regulatory framework designed to enforce the prudential principle and prevent banking crime. Below is an overview of how the prudential principle is applied in the context of banking crime in Singapore:

1) Main Legal Foundations:
   a) Monetary Authority of Singapore Act (MAS Act):
      This act empowers the MAS to regulate and supervise the financial sector, establishing a framework for financial stability and market integrity.
   b) Banking Act:
      this act governs bank licensing and operations in Singapore, setting prudential standards and reporting requirements.

[31] R Ramiyanto, "PENJATUHAN PIDANA PENJARA BERSYARAT DALAM TINDAK PIDANA PERBANKAN," *Jurnal Yudisial*, 2016.

c) Financial Advisers Act:
This act oversees the provision of financial advice and the sale of investment products.
d) Securities and Futures Act:
This act regulates capital and derivative markets, aiming to prevent unfair trading practices and market manipulation.

2) Specific Regulations Related to the Precautionary Principle:
a) Notice 626 on Prevention of Money Laundering and Countering the Financing of Terrorism:
This notice mandates banks to implement strict Know Your Customer (KYC) procedures and to report suspicious transactions.
b) Notice 643 on Transactions with Related Parties:
This regulation limits and governs bank transactions with related parties to avoid conflicts of interest.
c) Notice 637 on Risk-Based Capital Adequacy Requirements for Banks Incorporated in Singapore:
this notice incorporates Basel III standards for capital adequacy.
d) Technology Risk Management Guidelines:
These guidelines set standards for managing technology-related risk in financial institutions.

3) Corporate Governance Regulations:
a) Guidelines on Corporate Governance for Financial Holding Companies, Banks, Direct Insurers, Reinsurers and Captive Insurers:
These guidelines establish standards for board composition and responsibilities, including the formation of independent committees such as the audit and risk committees.
b) Guidelines on Fit and Proper Criteria:
These guidelines set criteria for assessing the integrity, competence, and financial capability of individuals in key positions within banks.

4) Risk Management Framework:
a) Notice 637 on Risk Management:
This notice requires banks to implement a comprehensive risk management framework and appoint a Chief Risk Officer.
b) Guidelines on Risk Management Practices:
These guidelines provide recommendations for effective risk management across various risk types.

5) Financial Crime Prevention Regulations:
a) Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act:
This act criminalizes money laundering and terrorism financing, granting authorities the power to confiscate proceeds from crimes.
b) Terrorism (Suppression of Financing) Act:
This act makes the financing of terrorism a criminal offense.

6) Law Enforcement and Sanctions:

a) MAS Enforcement Monograph:
this document outlines MAS's approach to law enforcement and specifies the types of enforcement actions it can undertake.
b) Securities and Futures Act (Part XII):
This part establishes criminal and civil penalties for market violations.
c) Financial Advisers Act (Part IX):
this part sets forth sanctions for violations related to provision of financial advice.

7) Whistleblowing Regulations:
a) Guidelines on Whistleblowing Policies:
These guidelines require financial institutions to implement whistleblowing policies and protect whistleblowers from retaliation.

8) International Cooperation:
a) Mutual Assistance in Criminal Matters Act:
This act facilitates international collaboration in the investigation and prosecution of financial crimes.

This regulatory framework illustrates Singapore's comprehensive approach to implementing the prudential principle and preventing banking crime. The MAS actively updates these regulations to address challenges in the financial sector, including risks associated with new technologies and financial innovations.

The effectiveness of this framework is reflected in Singapore's reputation as a safe and reliable financial center. However, challenges persist, particularly with the rise of sophisticated cybercrime and fraud schemes. As a result, the MAS continues to collaborate closely with industry stakeholders and international regulators to enhance its regulatory and supervisory framework.

Singapore employs a comprehensive strategy to prevent banking crimes committed by managers, focusing on prudential principles. This strategy features a robust regulatory framework overseen by the Monetary Authority of Singapore (MAS), stringent supervision practices, strong corporate governance requirements, and thorough risk management protocols. Key components include strict anti-money laundering (AML) and counter-financing of terrorism (CFT) standards, advanced surveillance technology, protections for whistleblower, mandatory employee training, and severe penalties for violations. The system prioritizes transparency, clearly defined roles, and international collaboration. These integrated practices have positioned Singapore as a leading global financial center renowned for its banking integrity. They have proven effective in preventing and detecting banking crimes by bank managers. Singapore's commitment to maintaining the integrity of its banking system has earned it a reputation as one of the most respected financial centers worldwide. However, it is important to acknowledge that despite this rigorous framework, instances of violations can still occur. Consequently, Singapore continually assesses and enhances its supervisory system to address emerging challenges in the banking sector .

Singapore's approach to preventing banking crimes provides valuable insights. The country utilizes a robust legal framework managed by the Monetary Authority of Singapore (MAS), which includes comprehensive risk management, strong corporate governance, and stringent anti-money laundering and countering the financing of terrorism (AML/CFT) standards. Key measures involve detailed Know Your Customer (KYC) procedures, limitations on related-party transactions, and

rigorous enforcement of prudential standards. Singapore's ability to maintain banking integrity, despite ongoing challenges such as cybercrime, underscores the effectiveness of its regulatory environment. Indonesia's framework for addressing banking crimes committed by managers needs improvement to ensure the consistent application of both formal and material legal elements. By learning from Singapore, Indonesia can enhance the clarity and comprehensiveness of its legal provisions and their enforcement, ultimately improving the effectiveness of its banking law in preventing and addressing banking crimes. Adopting best practices from Singapore can significantly strengthen Indonesia's framework for combating banking crimes. Key recommendations include developing a comprehensive regulatory framework, empowering supervisory authorities, implementing stringent prudential standards, enhancing corporate governance, and leveraging advanced technology and international cooperation. These measures will help ensure the integrity and stability of Indonesia's banking sector, safeguarding it against misconduct and financial crimes. The uniqueness of this research lies in its correlation of aspects of Business Law—particularly banking law—with criminal law, specifically in examining banking criminal violations, through a comparative analysis of Indonesia and Singapore.

CONCLUSION

The violation of the prudential principle in banking operations often manifest as non-compliance with the Banking Laws and Standard Operating Procedures (SOPs). Those responsible for these violations—such as Directors, Bank Officers, and Employees—typically hold the authority to make policy decisions and manage internal data related to banking activities. When the consequences of such violations threaten the bank's health and harm the public, the imposition of criminal sanctions on the perpetrators, along with administrative penalties like the revocation of business licenses by the OJK, is justified. To ensure effective oversight, it is essential for OJK supervisors to possess banking expertise. In Indonesia, the application of the Banking Law in cases of banking crimes committed by managers generally involves violations of Article 49, paragraph (1) letter a and paragraph (2) letter b. However, in their legal reasoning, judges often focus solely on the formal elements of the law, neglecting the material aspects. Judges have applied Article 49, paragraph (2) letter b by recognizing that the defendant's actions not only fulfill the legal definition but also constitute a violation of criminal law, beyond mere administrative infractions. Therefore, the implementation of this article requires careful consideration to prevent misuse and ensure that it serves to penalize violations of banking regulations appropriately. To avoid misinterpretation, an additional clarification of Article 49, paragraph (2) b is necessary, specifically regarding what is meant by "not implementing the necessary steps to ensure the bank's compliance with this Law and other laws and regulations." This clarification is crucial to ensure consistent and accurate application of the law in practice.

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