

## Revitalizing Criminal Liability Models in Banking Regulations: Towards Achieving Justice

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### **Abstract**

*The current model of criminal liability for banking crimes does not provide certainty and justice. For this reason, legal reform is indispensable and can ensure justice in enforcing the law in the banking sector, ensuring that every offense receives appropriate punishment. The ultimate goal is to build a system that not only emphasizes sanctions but also prevention. Justness in banking regulation is not only about law enforcement but also about strengthening public confidence and maintaining financial sector stability. By integrating fairness as a key element, this article offers a view of how the banking sector can develop justness and sustainability for all parties involved.*

**Keywords:** Revitalization, Regulation, Criminal Liability, Banking, Justice

### **INTRODUCTION**

The banking industry is the essential pillar of the country's economy (Ecer, 2022). The existence of banking is not only a financial institution that carries out the activities of collecting and distributing funds from and to the public, but it also supports stability and spurs the country's economic growth. However, the banking industry is also faced with severe challenges and risks. One of the challenges of the banking industry today is the global economic instability that prompted Bank Indonesia, as the national monetary authority, to raise the benchmark interest rate of the Seven-Day Reverse Repo Rate from 5.75% to 6%. Another challenge is the need for the banking industry to continue to increase its vigilance in facing market risks, such as the decline in the rupiah exchange rate against the US dollar. Currently, the rupiah exchange rate against the US dollar is approaching IDR 16,000 (Pratama, 2024).

In addition to these challenges, the banking industry also faces legal risks in business activities arising from lawsuits or weaknesses in the legal aspects of banking regulations (Rum, 2017). The banking criminal liability model, based on Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, states in Article 49, paragraph (1), that corporations are not subjects of criminal law. Therefore, in the event of a criminal offense in the banking sector, the bank as a corporation cannot be held criminally liable. This kind of regulation has the potential to harm the wider community. Inadequate regulation and supervision are the core of the banking system, which, if not formulated properly, will have a broad impact on the downturn of the banking industry (Jones & Knaack, 2019). It must be remembered that the banking industry is an economic activity that relies solely on public trust.

For this reason, the stability and integrity of the banking sector are essential to maintaining public confidence and overall economic stability by creating well-formulated banking regulations. Banking rules or regulations are made to ensure the financial system's stability, protect customer interests, and prevent harmful practices (Hennie van Greuning, 2020; Noor & Heradhyaksa, 2020). However, in practice, various violations are often committed by parties in the banking industry. These violations can be fraud, money laundering, manipulation of financial data, and various other actions that harm both customers and banking stability (Thommandru & Chakka, 2023).

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These actions that harm the wider community must be handled properly so as not to reduce public confidence in the banking industry through a criminal liability model.

The criminal liability model plays a crucial role in enforcing rules and maintaining order in society, especially in the banking sector (Ponadi, 2023). This model allows for the prosecution and punishment of wrongdoers according to the severity of their crimes. However, due to the changing dynamics of business, technology, and new challenges in the banking sector, the current criminal liability models may need to be revitalized or renewed. One of the primary reasons for this is to ensure that the punishment given is proportional to the severity of the wrongdoing committed (Berman, 2021). Unfortunately, there are still many cases where offenders receive punishments that are not proportional to the harm caused, which raises questions about justice in the banking legal system.

In addition, revitalization is needed to overcome various gaps and weaknesses that exist in the old criminal liability model. Along with technological developments, there is the possibility of the emergence of new offenses that have never occurred before. Therefore, the criminal liability model needs to be adjusted and updated to remain relevant and effective in facing new challenges, depending on the level of guilt needed to realize justice. There are several reasons for the urgency of reforming the criminal liability model in the banking industry (H. D. P. Sinaga et al., 2020). First, the banking industry in the last decade has undergone a significant transformation in technological advances with increasingly complex and fast transactions, as well as high potential data and cyber security risks. Therefore, there is an urgent need to ensure that the criminal liability model can appropriately respond to these challenges. Second, the criminal liability model must be able to realize the principle of justice by sanctioning individuals or entities appropriately. Every individual or entity that violates the law is subject to sanctions that correspond to the level of the offense, according to the principle of fair justice.

Justice is the main objective of the criminal liability model (Peno & Bogucki, 2021). Therefore, reforming the model must take into account aspects of justice for all parties involved, including customers, investors, and the general public. An effective criminal liability model must be able to guarantee fair treatment for all parties involved in banking transactions, without discrimination or prejudice (Hijriani, et al., 2022). Realizing this model of criminal liability in the banking industry requires the involvement of stakeholders in the banking industry, including regulators, financial institutions, academics, and civil society. Their involvement is necessary to ensure that the new criminal liability model is not only relevant and effective but also acceptable and supported by the entire banking industry community.

## **RESEARCH METHOD**

To obtain a complete and in-depth understanding of the current criminal liability model in the banking industry and the reform of the criminal liability model to realize justice in banking regulation, the researcher will start by conducting a literature study to identify and analyze the existing criminal liability model in the current banking regulation. In addition, a literature review will be conducted to understand the concepts of banking regulation and justice. In addition to the literature study, data collection techniques are also carried out by interviewing banking industry players and customers. This data collection technique with literature studies and interviews is called empirical juridical research (Noor, 2023). The data will be analyzed using descriptive analytical techniques and legal interpretation methods through teleological interpretation.

## **DISCUSSION**

### **The Concept of Criminal Liability in Banking Regulation**

In the study of criminal law, criminal responsibility is the imposition of punishment on the perpetrator of a criminal offense because his actions violate prohibitions or cause prohibited conditions (Fadlian, 2020). To determine the responsibility of a person in committing a criminal offense, it must be proven that the criminal act committed is unlawful. Although this unlawful nature can be lost or negated if there are legal reasons that negate it as stipulated in the law (Made et al., 2023). Before imposing criminal responsibility on someone, the existence of the main element related to criminal responsibility, namely guilt, must be considered. Fault has three elements:

first, the perpetrator can be responsible (a healthy soul); second, there is an element of fault, namely intent (*dolus*) or negligence (*culpa*); and third, the absence of excuses (Mikolajczuk, 2022).

Ability to be held accountable: The regulation on the ability to be held accountable is contained in Article 44 of the Criminal Code, which states that a person who commits an act for which he cannot be held accountable because his soul is defective in growth or impaired due to a defect shall not be punished. Two benchmarks are used as a tool to determine whether a person can be held responsible, namely: 1) the ability to distinguish between good and bad actions, those that are by the law and those that are against the law, and 2) the ability to determine his will according to his awareness of the good and bad of the action (Oratmangun, 2016).

Intentionality: In the Criminal Code 1809, it is stated that intentionality is the will to do or not to do an act that is prohibited or ordered by law. Other terms related to intentionality are intention (*voorhomen*) and premeditation (*meet voorberacterade*). About these two terms, Article 53 of the Criminal Code states that an attempt to commit a crime is punishable if the intention to do so is evident from the commencement of the execution and the non-completion of the execution is not solely due to his own will.

Absence of excuses: one of the things that becomes the benchmark for a person to be held criminally liable is the presence or absence of excuses as a reason for the elimination of punishment (Hefrida, Helmi, Permatasari, 2020). Forgiving reasons refer to the elimination of guilt from unlawful acts, thus making the person who committed the act unable to be prosecuted. The Criminal Code mentions several excuses, namely, force (Article 48 of the Criminal Code), forced defense that exceeds the limit (Article 49 paragraph 2 of the Criminal Code), and carrying out official orders without authority (Article 51 paragraph 2 of the Criminal Code).

These three elements become the benchmark for determining whether a person can be punished for committing a criminal offense. A person can be held criminally responsible if the person commits a criminal act, is capable of being responsible, with intent or negligence, and there is no excuse (Holcomb, 2022; Rudy-Hiller, 2022). Criminal responsibility is determined by the fault of the perpetrator and not only by the fulfillment of all elements of the criminal offense (Agustian Fery Fernando Sitanggang & T. Riza. Zarzani, 2023). Error is the determining factor of criminal responsibility and is not only seen as a mental element in a criminal offense.

In the banking industry, Law No. 7 of 1992, as amended by Law No. 10 of 2008 on Banking, mentions three types of criminal offenses for which the perpetrators can be held criminally liable. Banking crime or banking fraud, is a crime related to the banking industry, including institutions, devices, and products that involve banks and their customers as perpetrators and victims (Baidi & Yuherawan, 2023). Specifically, Article 51 of the Banking Law states that banking crimes are criminal offenses mentioned in Article 46, Article 47, Article 47A, Article 48 paragraph (1), Article 49, Article 50, and Article 50A. These banking crimes include thirteen types of criminal offenses, but can be summarized into four types: a) licensing criminal offenses; b) bank secrecy criminal offenses; c) criminal offenses related to bank supervision and guidance; and d) criminal offenses related to bank business (Otoritas Jasa Keuangan, 2017).

Licensing crime; The banking industry is known as a heavily regulated industry. To carry out banking business activities, a license must be obtained from the Financial Services Authority (OJK) by fulfilling its requirements. These requirements include organizational and management structure, capital, ownership, expertise in banking, and the feasibility of a work plan. The establishment of a bank that does not meet the requirements set by the Financial Services Authority classified as a criminal offense, and the bank established is classified as an illicit bank (Park & Kim, 2020). The formulation of non-criminal offenses included in this category contain in Article 46 of Law Number 7 of 1992, amended by Law Number 10 of 1998, on Banking.

Bank secrecy offences; Bank secrecy includes information related to customer details and savings. As financial mediators, bank function based on public trust, particularly the trust of customers who deposit their money with the bank. As a trusted institution, banks have a responsibility to keep information about customers and their savings confidential (Wojciechowska-Filipek, 2019). While the relationship between a bank and its customers is not solely contractual, banks are committed to not disclosing confidential customer information, except where required by law. The information that banks must keep confidential includes all financial data and other information about individuals or entities obtained by the bank in the course of its operations. This

confidentiality is essential to maintain customer trust (Juwaini et al., 2022). The provision of bank secrecy is exempted for tax purposes, settlement of bank receivables, judicial proceedings and inheritance purposes.

Criminal offenses relating to bank supervision and guidance: the Banking Law stipulates that OJK is responsible for the guidance and supervision of banks (Afif Noor, Dwi Wulandari, 2023; K. R. Sinaga, 2022). Banks must provide information and clarifications related to their operations to OJK and provide access to inspection of documents and reports by the provisions stipulated by OJK. If a bank deliberately ignores these obligations, it may be subject to criminal sanctions as per Article 48, paragraph (1) of the Banking Law. In addition, if the bank does not comply with or ignores these obligations, it may also be subject to criminal sanctions by Article 48, paragraph (2) of the Banking Law. "*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 paragraph (1) and paragraph (2) and Article 34 paragraph (1) and paragraph (2) shall be punished with imprisonment of at least 2 (two) years and a maximum of 10 (ten) years and a fine of at least IDR 5,000,000,000.00 (five billion rupiah) and a maximum of IDR 100,000,000,000.00 (one hundred billion rupiah)*".

Criminal offences relating to the business of banks; Banks have various business activities, such as raising funds, providing credit, and providing other services. Banks may also issue acknowledgments of debt, deal in securities, and offer safekeeping services for valuable goods and documents. Offenses in bank activities, such as false record-keeping, omitting records, or not complying with prudential principles, may result in criminal sanctions (Yudanto et al., 2024). Article 49 of the Banking Act stipulates sanctions for members of the Board of Commissioners, Board of Directors, or bank employees who commit such acts, which carry a prison sentence of 5–15 years and a fine of between IDR 10 billion and IDR 200 billion.

The banking law establishes banking institutions and members of the Board of Commissioners, Directors, or bank employees who commit acts that violate banking crime regulations as parties that can be held criminally liable. The determination of banking institutions as parties held criminally liable for banking crimes makes banking crimes a corporate crime (Ricardo, 2023). This financial crime is classified as a white-collar crime (Rashid et al., 2022). Corporations become a new legal subject that places them on par with individuals as legal subjects. Therefore, if corporations are involved in criminal offenses, it can be held legal liability. Corporations that are proven to have committed offenses can be subject to criminal sanctions in the form of fines, as they cannot be sentenced to imprisonment. The main requirement for the corporation to be held criminally liable is that it is on statutory rules.

Article 4 of Supreme Court Regulation No. 13 of 2016 concerning Procedures for Handling Criminal Offenses by Corporations states that judges can determine whether a corporation is guilty or not from several aspects, namely: a) the criminal offense or offense committed provides profit or benefit to the corporation; b) the criminal offense or offense is allowed to occur by a corporation; or c) the absence of preventive measures from the corporation to prevent greater impact and ensure compliance with applicable legal provisions to avoid criminal offenses. According to Mardjono Reksodipuro, there are three models of corporate criminal liability (Djuniarti, 2021). First, the responsibility is imposed on the management as the maker, the management as the perpetrator of the crime, and the management as responsible for the crime. If the corporation commits a crime, then it is considered committed by the management of the corporation; second, the responsibility is required on the management, but the corporation as a maker or perpetrator is known as a legal subject, but the one responsible is the management; third, the responsibility is imposed on the corporation as the maker, the corporation as the perpetrator of the crime, and the corporation is responsible for the crime.

### **Revitalization of Criminal Liability in Banking Regulation to Achieve Justice**

Justice is one of the values of law that emphasizes equality, balance, and fair treatment of all individuals, regardless of status, background, or social position, as very important (Arifin et al., 2023). Efforts to create a society that is fair and does not harm others must be sustained by regulations that place justice as the essential goal to be achieved by these regulations (Noor, 2022). Regulations are assembled to regulate behavior, actions, and interactions between individuals, groups, or entities in a community (Ian Brown, 2013). The primary purpose of regulation is to create good governance, prevent abuse, and protect the interests of all parties involved (OECD,

2011). However, without rigorous principles of fairness, regulation can become an oppressive or discriminatory tool. A fair regulation should be able to consider various aspects and implications of the action or decision taken. That means that when a rule is promulgated, it must ensure that all parties get equal rights to be recognized, protected, and treated in the same way under the law. In addition, fair regulation must also be able to assure that any individual or entity that violates the rules will get sanctions for the wrongdoing committed, without discrimination (Noor et al., 2023).

Fair and non-discriminatory regulations must also be implemented in banking regulations that have an important role in national economic activities (Dikko, 2024). The current banking regulation still leaves problems because the legal subjects of the parties held liable in banking criminal offenses are only limited to Members of the Board of Commissioners, Directors, or bank employees, and affiliated parties, which, among others, can be seen in the formulation of Article 49 and Article 50 of the Banking Law. The formulation of the norms in these articles does not reflect justice because it has limited the legal subjects and only applies to members of the Board of Commissioners, Directors, or bank employees and affiliated parties so that it cannot be universally applied, which results in disparities and gaps in legal decisions in the event of a criminal offense in the banking sector. In addition, the Banking Law does not regulate corporations as one of the legal subjects in banking criminal offenses amid the development of global financial activities that have begun to place corporations as one of the legal subjects (French, 1979).

For this reason, the regulations of banking criminal offenses require legal reform to create rules that can provide justice to all levels of society. Legal reform implies an effort to review and reassess the regulation of criminal liability by the central socio-political, socio-philosophical, and socio-cultural values of Indonesian society that underlie social policy, criminal policy, and law enforcement policy in Indonesia. Legal reform that is fair and by the reality rooted in the values of society is expressly stated in the preamble of the Criminal Code, which states that the material of the national criminal law must be adjusted to the legal politics, circumstances, and development of the life and state of the Indonesian nation.

Efforts to realize fair regulation of criminal liability in banking crimes must be carried out holistically and structurally by implementing several actions that need to be taken by policymakers, such as conducting an in-depth study of the applicable criminal liability regulations and identifying the prime causes, *modus operandi*, and impacts of these criminal offenses. In addition, several other things must be done by policymakers, such as providing opportunities for stakeholders to be involved in the formulation of banking regulations. In the establishment of regulations on criminal liability for banking offenses, it is valuable to involve bankers, legal experts, and the wider community (McGrath & Walker, 2023). Their involvement in discussions and consultations in the formulation of these regulations will provide a diverse and holistic perspective. In drafting laws and regulations, it is crucial to apply the principles of transparency and openness from the drafting process to evaluation (Androniceanu, 2021). In governance, community involvement is an integral part of effective governance in formulating rules. This community involvement is essential for a democracy-based country to strengthen a balanced relationship between the government and the people (Wardana et al., 2023).

In addition to an in-depth study of existing regulations and involving public participation from the formulation to the evaluation of laws and regulations, the renewal of the criminal liability model for banking crimes also needs to pay attention to the formulation of criminal sanctions in the regulation. The sanctions given must be proportional to the level of offense committed. Avoid sanctions that are excessive or not by the level of offense. Criminal sanctions in regulation are a significant mechanism in efforts to create justice (MacUlan & Gil Gil, 2020). Criminal sanctions must clearly explain whether the punishment imposed is cumulative, alternative, or cumulative alternative. The elements of a cumulative or alternative criminal offense must be indicated in the formulation of criminal provisions. If a legislative regulation includes elements of a criminal offense that will apply retroactively, then the criminal provisions must be excluded (Lukitasari, 2021). The legal revitalization of the criminal liability model, which uses a comprehensive, collaborative, and justice-focused approach, will create fair regulation. This will not only increase public confidence in the banking sector but will also support the stability and integrity of the national banking system.

## CONCLUSION

Revitalizing the criminal liability model in banking regulations is essential in ensuring justice in the financial sector. The criminal liability model in banking regulations toward fair banking law reform is imposed by imposing criminal sanctions on corporations as legal entities, such as criminal fines and criminal sanctions, while corporate administrators are given corporate criminal sanctions as in the Criminal Code. Through an approach that focuses on the proportionality of sanctions, stakeholder participation, and effective law enforcement mechanisms, this effort aims to ensure that every offense gets a punishment that matches the level of guilt. Achieving fairness in banking regulation is not only about enforcing the law but also building public trust, ensuring financial sector stability, and promoting sustainable economic growth. Therefore, placing fairness at the center of the criminal liability model can create a banking ecosystem that is safe, reliable, and fair for all stakeholders.

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