

The Functionalization of Criminal Law in Response to Banking Crimes

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Abstract

The use of criminal law as a means of combating criminal acts is a dilemma, especially in the type of economic criminal act, including banking criminal acts. On the one hand, its use can cause complex negative impacts, but on the other hand, it becomes the most rational means of a criminal offense. There are important issues when the choice falls on the use of criminal law as a means of counteracting banking criminals. The functionalization of criminal law will be determined by the system of formulation of the criminal heaviness and the formulation of types of criminal sanctions used in the law. This article will discuss two problems, namely: 1) How the banking law formulates the weight of the criminal? 2) How banking legislation formulates the type of criminal sanctions? With normative juridical approach and qualitative analysis obtained the conclusion: that The Law Number 7 Year 1992 about the banking Juncto The Law Number 10 Year 1998 already using the system of criminal threat formulation for sure in formulating the weight of the criminal. While in formulating the type of criminal sanctions using a cumulative formulation system.

Keywords: functionalization of criminal law, criminal act, banking.

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1. Introduction

The international community's rise to economic crime has begun in the decade of the 1970s – 1990s (Muladi & Arief, 1992). The attention of the international community is evident from the development of the United Nations congresses on The Prevention of Crime and the Treatment of Offenders highlighting the forms and dimensions of crime against development. Included in this category are economic criminal acts often expressed in various terms, such as economic crimes, crime as a business, business crimes and abuses of economic power (Muladi & Arief, 1992). Forms of economic abuse (economic abuses), among others, evasion tax (tax evasion), cheating on crediting (credit fraud), evasion of public funds (misappropriation of public funds), violations of the Financial Regulations (violations of currency regulations) (Muladi & Arief, 1992). By looking at its type and characteristics, banking criminal acts can be categorized as a form of economic abuse (economic abuses) (Undang-Undang Nomor 10 Tahun 1998 tentang Perbankan, 1998).

As one form of the economic criminal act, the Banking criminal act until now still shows high enough figures with a tendency to increase both in quality and quantity (Abubakar & Handayani, 2017). The chief executive of the banking supervisor of the Financial Services Authority detailing, a total of 59 banking crimes cases have been bestowed on the banking supervisor to the Financial Services Authority Investigation Department in 2014. Then in 2015, as many as 23 cases were processed and this year until the Third quarter of 2016 recorded 26 cases were acted upon (Anonymous, 2017). Seeing statistics from the Financial Services Authority, it can be understood while banking crimes are still the spotlight of the community until now. Not only does it result from such a complex social-financial impact — such as undermining community confidence in the banking world, breaking down the economic joints of the community — but also because banking crimes are one of the most significant types of criminal acts utilizing the development of science and technology, especially through electronic transactions.

The negative impact and advanced mode of its operability, especially in utilizing information technology, is reasonable while there is serious attention to the efforts to counteract banking crimes. One of the efforts that can be done to overthrow banking criminal acts is to use criminal law means (Arief, 2014)(Tongat & Sidik Sunaryo, 2014). Although up to now criminal prosecution using criminal law is considered as the most rational way, the counteract of banking crimes using criminal law means is highly dilemmatic, given at least a few things. First, conceptual criminal Law is a subsidiary. His true criminal law is simply the last drug (ultimum remedium) and not the primary drug (primum remedium). Nevertheless, there is an increasing tendency to use criminal sanctions in various laws including the law on Banking. Second, given the hard nature of criminal sanctions, its improper and reasonable use potentially be a factor of viktimgen. The emergence of further victims as a result of the use of criminal law in cases of open banking criminal acts is so wide, considering banking activities always involve the community in enormous amounts. Thirdly, the negative impact of the use of criminal law in general — such as stigmatization, Prisonisasi, and dehumanization — would also be a followup impact in the banking criminal cases that could potentially cause complex social impacts.

2. Research Methods

This research is Legal Research with several approaches, namely: approach, analytical approach and philosophical approach (philosophical approach) (Ibrahim, 2005). The study will depart from textual studies, especially studies on statutory regulations. This study will examine the legal norm contained in the regulatory texts. Nevertheless, this research will not only look at the regulatory language as meaning with static dimensions, but rather a regulatory language as event or discourse that has a vibrant and dynamic dimension. Therefore, this research will not merely perform the interpretation of the text but also captures the contextual meaning of the texts/languages of the Regulation (Warassih, 2006). This research will also explore the values contained in the law, therefore the research is a philosophical study as well (Yusriadi, 2009). This study will not only see the law in its textual appearance, but will see the law in its appearance as ideas, ideals, values, morals, and fairness that is referred to as ideological, philosophical, and moralistic legal concepts. (Soemitro, 1989)

3. Formulation of the quality of criminal sanctions in the Law of the Republic of Indonesia Number 7 of 1992 concerning Banking in conjunction with Law Number 10 of 1998 concerning Amendment to Law Number 7 of 1992 concerning Banking.

Before describing the results of research related to the severity of crime in banking laws, the concepts and theories will be put forward first. This presentation is intended to provide a theoretical picture of the direction of the research discussion. Etymologically, the term functionalization implies "things make function" or "functionalization" (Badan Pengembangan dan Pembinaan Bahasa (Pusat Bahasa), 2018). Refer to the etymological meaning, the term "functionalization of criminal law" can be interpreted as efforts to recreate or criminal law or also can be interpreted as "functionalization of criminal law". Things that make criminal law function or function of criminal law mean the functioning of criminal law (as a means of overcoming criminal acts) which can also mean the functioning of criminal law as a means of overcoming criminal acts.

Based on such an understanding, the essence of criminal law functionalization is essentially to make criminal law to function as a tool/means, namely as a tool to achieve the desired goals of criminal law. Departing from this latter meaning, it is natural that some legal experts give meaning to the functionalization of criminal law or enforcement of criminal law as an effort to translate and realize the wishes of criminal law into reality, namely by prohibiting what is contrary to law (on recht) and wearing misery (suffering) to those who break the prohibition (Sudarto, 1986).

While it is doctrinal, functionalization of criminal law can be interpreted as an attempt to make criminal law function, operate or work and concretely materialize (Muladi & Arief, 2009). Making criminal law work concretely is identical to the notion of criminal law enforcement (Muladi & Arief, 2009). Based on such meaning and understanding, the functionalization of criminal law (criminal law enforcement) requires the involvement of at least three components, each of which is a statutory component (legal substance), the component of law enforcement apparatus or bodies (legal structure), and the component of legal awareness (legal culture). Associated with such a concept, Barda Nawawi Arief in detail emphasized that the law enforcement system can be seen from several aspects: (Arief, 2009)

a. Viewed from the perspective of the legal substance

Viewed from this perspective, the real law enforcement system is nothing but a system for enforcing the substance of the law, both the substance of the material criminal law, the substance of the formal criminal law and the substance of the criminal law implementation. Therefore, from the perspective of legal substance, the real law enforcement system is nothing but an integrated legal system or also called an integrated legal substance system.

b. Viewed from the perspective of the legal structure.

Viewed from the perspective of the legal structure, the law enforcement system can be seen as a working system of the legal structure - that is, the legal apparatus - in carrying out their respective functions or authorities in the field of law enforcement. Therefore, from the perspective of the legal structure, the law enforcement system is also a system for the functioning of structures or law enforcement officers. Through the integration of this legal structure, the criminal law is known for example the concept of an integrated criminal justice system.

c. Viewed from the perspective of legal awareness or legal culture

Viewed from the perspective of legal or cultural awareness of law, the law enforcement system is nothing the implementation of cultural values or legal awareness. Therefore, from the perspective of legal culture, the law enforcement system can be seen as the implementation of legal culture values, which can include legal philosophy, legal principles, legal theory, legal science and awareness/attitudes towards legal behavior. From a cultural perspective, the law enforcement system can be said to be an integrated legal culture or an integrated cultural legal system, although there is an opinion that it is not easy to draw boundaries about legal culture.

Looking at the three aspects above, it is natural that people then refer to the law enforcement system as such

a complex system. The complexity of law enforcement is not only due to the large amount of legal substance used as a reference, but also the complexity of law enforcement officers which is very likely influenced by so many factors that build their capacity. Law enforcement is essentially an effort to bring the idea of legal certainty, social benefits, and justice into reality (Raharjo, 1980). Law enforcement is thus an effort to realize the basic values of law in people's lives.

Below are the results of research related to the formulation of criminal sanctions in banking laws. To provide an overview of the formulation of the weight or severity of criminal sanctions in the Law of the Republic of Indonesia Number 7 of 1992 concerning Banking in conjunction with Law Number 10 of 1998 concerning Amendment to Law Number 7 of 1992 concerning Banking, in this section the results will be presented. the writer's findings on the issue. To make it easier to understand the formulation of the weight or severity of criminal sanctions in the Law of the Republic of Indonesia Number 7 of 1992 concerning Banking in conjunction with Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, the following findings are described in full. research related to the formulation of the weight or severity of criminal sanctions in the Law of the Republic of Indonesia Number 7 of 1992 concerning Banking in conjunction with Law Number 10 of 1998 concerning Amendment to Law Number 7 of 1992 concerning Banking.

Tabel. 1 Criminal Sanctions in Law Number 7 of 1992 concerning Banking in conjunction with Law Number 10 of 1998 concerning Amendment to Law Number 7 of 1992 concerning Banking

No	Article	Quality of the Criminal Threaten	SystemFormulation	
			Definite Sentence System	Indefinite Sentence System
1.	46 (1)	P min. 5 years and max. 15 years and D min. 10 billion and max. 200 billion	Min. custom & max. specifically	-
2.	47 (1)	P min. 2 years and max. 4 years and D min. 10 billion and max. 200 billion	Min. custom & max. specifically	-
3.	47 (2)	P min. 2 years and max. 4 years and D min. 4 billion and max. 8 billion	Min. custom & max. specifically	-
4.	47 A	P min. 2 years and max. 7 years and D min. 4 billion and max. 15 billion	Min. custom & max. specifically	-
5.	48 (1)	P min. 2 years and max. 10 years and D min. 5 billion and max. 100 billion	Min. custom & max. specifically	-
6.	48 (2)	K min. 1 year and max. 2 years and/or D min. 1 billion and max. 2 billion	Min. custom & max. specifically	-
7.	49 (1)	P min. 5 years and max. 15 years and D min. 10 billion and max. 200 billion	Min. custom & max. specifically	-
8.	49 (2)	P min. 3 years and max. 8 years and D min. 5 billion and max. 100 billion	Min. custom & max. specifically	-
9.	50	P min. 3 years and max. 8 years and D min. 5 billion and max. 100 billion	Min. custom & max. specifically	-
10.	50 A	P min. 7 years and max. 15 years and D min. 10 billion and max. 200 billion	Min. custom & max. specifically	-
Amount / Percentage			100%	0%

Source: Secondary data processed

Note:

- P = Prison (Criminal Prison)
- K = Criminal Confinement
- Min. = Minimum
- Max. = Maximum
- D = Penalty (Criminal Penalty)

Based on table 1. above it can be seen that in general, the Law of the Republic of Indonesia Number 7 of 1992 concerning Banking in conjunction with Law Number 10 of 1998 concerning Amendment to Law Number 7 of 1992 concerning Banking follows 2 (two) formulation systems. criminal weight "or" heavy/light ", namely the formulation system of" weight "or" heavy/light "criminal(indefinitely indefinite sentence system) and the formulation system" weight "or" heavy/light "of criminal with certainty (definite sentence system). Of the 10 (ten) provisions in the Law of the Republic of Indonesia Number 7 of 1992 concerning Banking in conjunction with Law Number 10 of 1998 concerning Amendment to Law Number 7 of 1992 concerning Banking which formulates criminal threats, all criminal threats are formulated in the law uses a system of the definite sentence (definite sentence system) using a specific minimum system and a special maximum both in terms of imprisonment and

finer.

Noting the formulation of criminal sanctions as shown in table 1 above, it appears that in the banking law, all criminal threats are formulated with certainty (definite sentence system). This shows that banking crime is a serious crime. To give a more complete picture, the following will describe the system of formulation of "weight" or "heavy/light" of the criminal law in the Republic of Indonesia Law Number 7 of 1992 concerning Banking in conjunction with Law Number 10 of 1998 concerning Amendment Law Number 7 of 1992 concerning Banking. Referring to table 1 above, it can be seen that the formulation system of "weight" or "heavy/light" criminal indefinite sentence system is not found in the Law of the Republic of Indonesia Number 7 of 1992 concerning Banking in conjunction with Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking.

The maximum sentence for imprisonment in the Law of the Republic of Indonesia Number 7 of 1992 concerning Banking in conjunction with Law Number 10 of 1998 concerning Amendment to Law Number 7 of 1992 concerning Banking is as follows. Article 46 (1) contains criminal threats with a specific maximum of 15 (fifteen) years in prison and 200 (two hundred) billion, respectively, for fines. The maximum prison sentence of 15 (fifteen) years in prison is the highest maximum for imprisonment in the Law of the Republic of Indonesia Number 7 of 1992 concerning Banking in conjunction with Law Number 10 of 1998 concerning Amendment to Law Number 7 of 1992 concerning Banking. Other articles containing criminal penalties for a maximum of 15 (fifteen) years respectively are Article 47 A, Article 49 (1), and Article 50A.

Meanwhile, the maximum criminal fine in the Republic of Indonesia Law Number 7 of 1992 concerning Banking in conjunction with Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking also varies. In the provisions of Article 46 (1) the maximum criminal penalty is 200 (two hundred) billion. Likewise in Article 47 (1), Article 49 (1) and Article 50A, the maximum penalty that is threatened is 200 (two hundred) billion. This fine constitutes the highest criminal threat in the Republic of Indonesia Law Number 7 of 1992 concerning Banking in conjunction with Law Number 10 of 1998 concerning Amendment to Law Number 7 of 1992 concerning Banking. With the formulation of criminal penalties of very high fines, the banking law seems to be very strict in threatening the criminal. However, because in the banking law there is no specific regulation regarding criminal fines, the provisions of criminal fines in banking laws must follow the provisions in the Criminal Code.

Theoretically, the use of a criminal "weight" or "severe/light" formulation system (definite sentence system) in the Law of the Republic of Indonesia Number 7 of 1992 concerning Banking in conjunction with Law Number 10 of 1998 concerning Amendment to Law Number 7 of 1992 concerning Banking is appropriate. Bearing in mind, theoretically the formulation system of a "definite sentence system" is usually used as a means to deal with a serious crime. This means that judging from the politics of criminal law, the provisions regarding the severity of the crime in banking laws are following the wishes of the community. Conceptually, the law is indeed demanded to be able to be a mirror for the will of the community, namely as a reflection of the will and desire of the community (Rahardjo, 2009) (Tongat, 2015).

4. Criminal Act Formulation System in the Republic of Indonesia Law Number 7 of 1992 concerning Banking in conjunction with Law Number 10 of 1998 concerning Amendment to Law Number 7 of 1992 concerning Banking.

Not different from the formulation system of "weight" or "heavy/light" of the criminal which only uses two systems of the formulation of criminal threats, namely the system of formulation of uncertain criminal threats and the system of formulation of definite criminal threats, the Law of the Republic of Indonesia Number 7 of 1992 concerning Banking in conjunction with Law Number 10 of 1998 concerning Amendment to Law Number 7 of 1992 concerning Banking is also not too varied in the formulation of types of criminal threats. To provide a complete picture of the system of formulation of "types" of criminal threats in the Law of the Republic of Indonesia Number 7 of 1992 concerning Banking in conjunction with Law Number 10 of 1998 concerning Amendment to Law Number 7 of 1992 concerning Banking, the following system is presented formulation of "types" of criminal threats used in the law as shown in the following table.

Table 2. The formulation system of criminal "types" in the Law of the Republic of Indonesia Number 7 of 1992 concerning Banking in conjunction with Law Number 10 of 1998 concerning Amendment to Law Number 7 of 1992 concerning Banking

No	Article	Criminal Type threatened	Sistem Perumusan			
			Single	Alternative	Cumulative	Alternative Cumulative
1.	46 (1)	P and D	-	-	V	-
2.	47 (1)	P and D	-	-	V	-
3.	47 (2)	P and D	-	-	V	-

No	Article	Criminal Type threatened	Sistem Perumusan			
			Single	Alternative	Cumulative	Alternative Cumulative
4.	47 A	P and D	-	-	V	-
5.	48 (1)	P and D	-	-	V	-
6.	48 (2)	K and/or D	-	-	-	V
7.	49 (1)	P and D	-	-	V	-
8.	49 (2)	P and D	-	-	V	-
9.	50	P and D	-	-	V	-
10.	50 A	P and D	-	-	V	-
Amount / Percentage					9/90%	1/10%

Source: secondary data processed

Note:

P = Prison (Criminal Prison)

D = Fines (Criminal Fines)

K = Criminal Confinement

Based on table 2 above, it can be seen that the Law of the Republic of Indonesia Number 7 of 1992 concerning Banking in conjunction with Law Number 10 of 1998 concerning Amendment to Law Number 7 of 1992 concerning Banking uses 3 (three) types of principal crimes that are threatened, namely imprisonment, fines, and imprisonment. Prison convicts in the Law of the Republic of Indonesia Number 7 of 1992 concerning Banking in conjunction with Law Number 10 of 1998 concerning Amendment to Law Number 7 of 1992 concerning Banking are almost threatened with all types of banking criminal acts. Although according to its nature, imprisonment is a type of deprivation of liberty, in the Republic of Indonesia Law Number 7 of 1992 concerning Banking in conjunction with Law Number 10 of 1998 concerning Amendment to Law Number 7 of 1992 concerning Banking, imprisonment is formulated imperatively because it is formulated cumulatively with other crimes. Thus, in this law, imprisonment also means being formulated cumulatively with other types of crimes. In Article 46 (1) of the Law of the Republic of Indonesia Number 7 of 1992 concerning Banking in conjunction with Law Number 10 of 1998 concerning Amendment to Law Number 7 of 1992 concerning Banking, imprisonment is accumulated with a criminal fine.

Based on table 2 above, it can also be seen that criminal penalties in the Law of the Republic of Indonesia Number 7 of 1992 concerning Banking in conjunction with Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking are threatened with all types of criminal acts banking. Criminal fines are formulated as a type of criminal threat that is formulated cumulatively with other crimes. Therefore, the criminal fine will always accompany any criminal imposed by the judge. With such formulation, then in any banking law that is imposed by a judge — whether imprisonment or confinement — is always fine.

Based on table 2 above, it can be seen that from the 10 provisions in the Law of the Republic of Indonesia Number 7 of 1992 concerning Banking in conjunction with Law Number 10 of 1998 concerning Amendment to Law Number 7 of 1992 concerning Banking which formulates the types of criminal threats, all criminal provisions use the cumulative criminal threat formulation system, with variations in 9 (nine) articles using a pure cumulation system with the conjunction "and", and 1 (one) provision using alternative-cumulative formulation using the conjunction "and/or". Therefore, all criminal provisions in the Law of the Republic of Indonesia Number 7 of 1992 concerning Banking in conjunction with Law Number 10 of 1998 concerning Amendment to Law Number 7 of 1992 concerning Banking, no one uses a system of formulating sanctions in an alternative manner purely.

5. Conclusion

Basing on the description and analysis as stipulated in the previous chapter can be presented a few conclusions as follows:

1. The formulation of criminal sanctions in law Republic of Indonesia number 7 the year 1992 about the banking Jo Law Number 10 the year 1998 about the amendment to law Number 7 the year 1992 concerning banking covering the formulation of the weight of criminal and the formulation of criminal sanctions type. The formulation of the weight of the criminal in the overall banking law uses a definite system of criminal threat formulation (definite sentence system). While the type of criminal sanctions in the legislation is formulated in two models, namely the cumulative formulation and the cumulative-alternative formulation.
2. the formulation of criminal sanction in law Republic of Indonesia number 7 the year 1992 about the banking Jo Law Number 10 the year 1998 about the amendment to law Number 7 the year 1992 concerning banking is the absence of any further arrangements about criminal penalties in banking law. Without any further arrangement about fines in the banking law, it implicates that criminal penalties are

not to be effectively applied. Penalties in banking law tend to only be a crime that is a formality. Based on the conclusion to the above analysis, this research provides recommendations for forwarding improvement as follows:

1. about the formulation of criminal threats — both prison and criminal fines — need to be more definite formulations. The way that can be done is to minimize the range between special minimum criminal with the maximum in particular so that the range between the special minimum with the maximum, in particular, does not create a very wide space that precisely opens space injustice and uncertainty of the law.
2. To overcome the weaknesses regarding the formulation of criminal threats in banking laws, especially criminal penalties, it is necessary to carry out reconstruction of the formulation of criminal threats by adding provisions that allow criminal penalties to be applied by consideration of a sense of justice. The ways that can be done include, reformulating the provisions of criminal fines and providing special provisions governing how fines are applied, how much is to be paid and how they will be executed if fines are not paid, including the possibility of forced efforts to pay criminal fines with confiscation authority for authorities law enforcer.

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