



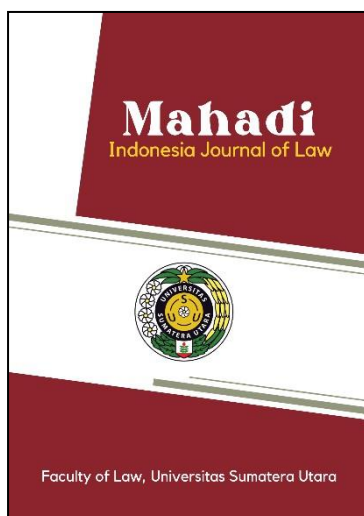
## Legal Analysis of Corruption Crimes Extending Credit to Banks (Case Study: Tipikor Court Decisions at the Medan District Court No. 79, 80, and 81/Pid.Sus.K/2012/PN.Mdn., date 29/04/2013)

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### Abstract

In this study, the corruption case focuses on the regulation of credit distribution at state-owned banks with the legal entity of a Perseroan Terbatas (PT). The bank appointed was Bank BNI '46 related to the fictitious credit case An. Boy Hermansyah (BY) who until now has not been tried until now, while the associated officials of Bank BNI '46 have been tried and have received a court decision with permanent legal force. In fact, some of the defendants from Bank BNI '46 committed suicide, due to severe depression, because they were about to be detained. The case stems from the existence of credit disbursement in 2009, amounting to Rp. 129 billion made by a businessman from Aceh, Boy Hermansyah. The defendant in this case, such as Defendant D.A., is the Former Leader of the BNI '46 Business Marketing Group Pemuda Medan-Branch, Defendant R.D., as the Former Leader of the BNI '46 Sentra Kredit Menengah (SKM) and Defendant T.I., as Former Relationship BNI '46 SKM Pemuda Medan. The credit intended for the plantation business was not according to its designation; the assets that were pledged as collateral were also problematic.

The disbursed funds are not used for business activities as stated. In the calculations, it was later discovered that the State suffered a loss of Rp. 117.5 billion and the public prosecutor assessed the involvement of the three defendants in the fictitious credit case. The problems, are: disbursement of credit that gives rise to criminal acts of corruption in state-owned bank PT; and the distribution of credit that led to criminal acts of corruption at Bank BNI'46 Pemuda Medan Branch. This study aims to analyze corruption crimes against the fictitious credit case of Bank BNI '46 Pemuda Medan-Branch. This type of research is normative research, with the nature of descriptive analysis research. The court's decision was obtained from the Registrar of the Corruption Court at the Medan District Court. The results of the study show that: 1) Credit disbursement that causes corruption at Bank BNI'46 Pemuda Medan Branch, the most important thing is that it must meet the element of "against the law in a formal sense", such as as stipulated in the laws and regulations in the banking sector, such as the application of the prudential banking principle. as mandated by Article 2 of the Banking Law. Only then is it associated with criminal acts of corruption as referred to in Article 2 paragraph (1) and Article 3, or even Article 5 and Article 12A of the Anti-Corruption Law, so that the distribution of credit can be categorized as a criminal act of corruption; and 2) Medan District Court Corruption Decisions No. 79, 80, and 81/Pid.Sus.K/2012/PN.Mdn., dated 29 April 2013 which has permanent legal force (inkracht) is not a criminal act of corruption, but only a case of bad credit at PT. Bank BNI'46 Pemuda Medan Branch with its customer PT. BDL.

**Keywords :** *Lending; Corruption Crimes; State-Owned Bank Incorporated as a Limited Liability Company*

### INTRODUCTION

Corruption cannot be eradicated in the short term, only the state can do it. It takes a long time to eradicate corruption, because it does not only occur in the territory of a country. The

boundaries between the state, the private sector and civil society are not sharp boundaries with clear lines. A corrupt country is also due to the corrupt private sector. Where government officials can easily take bribes and bribe policies, it is the private sector that provides the gifts and bribes. Similarly, politicians do not necessarily become corrupt once in power. Political corruption practices involving politicians have really begun since politicians began their careers as youth activists and students. If monetary policy is the norm at Ormas meetings and student body presidential elections, you will have the same circumstances and practices when they become party activists. The practice of monetary policy, which became a common strategy for winning presidential elections in mass organizations, then became a common strategy at party conventions and general elections.<sup>1</sup> This happened at the political party (Democratic Party) conference in Bandung, the Ambalang incident, and several incidents related to electoral victories. Corruption in human history is nothing new. Corruption comes with the age of human. When people start living in society, corruption begins. Control of territory and natural resources by a handful of people encourages people to fight and dominate each other. Various tactics and strategies were implemented.<sup>2</sup>

In this study, Corruption Cases focuses on the investigation of corruption crimes and investigative capabilities for bad credit cases of BUMN/D Bank. The bank in charge is BNI '46 bank, which is related to his fictitious credit case. Boy Hermansyah (BY) has not yet been put on trial, but his BNI '46 bank officials associated with him have been put on trial and are subject to a permanent final court decision. In fact, some of the bank's BNI '46 defendants committed suicide due to severe depression as they were about to be jailed.<sup>3</sup>

The case started with the distribution of credit in 2009, amounting to Rp. 129 billion made by a businessman from Aceh, Boy Hermansyah. The defendants in this case are Defendant D.A., former Head of the BNI Business Marketing Group '46 Cabang Pemuda, Medan, Defendant R.D., as a Former Head of the BNI '46 Sentra Kredit Menengah (SKM) Pemuda Branch, Medan and Defendant T.I., as a Former Relationship BNI '46 SKM Pemuda, Medan.

The loans provided to the plantation business proved inadequate and the assets pledged as collateral ran into trouble. The funds paid will not be used for the business operations described. It was later discovered in his calculations that the state suffered a loss of Rp. 117.5 billion, prosecutors are assessing the involvement of three defendants in a fictitious loan case. The decisions studied and analyzed in this thesis research are:

1. 1. Decision of the Corruption Court at the Medan District Court No. 79/Pid.Sus.K/2012/PN.Mdn., dated 29 April 2013 jo. Medan High Court Decision No. 31/Pid.Sus.K/2013/PT-MDN., dated 28 August 2013 jo. Decision of the Supreme Court of the Republic of Indonesia No. 756K/PID. SUS/2014 An. Defendant Radiyasto (Acting Head of Sentra Kredit Menengah (SKM) Bank BNI '46);
2. 2. Decision of the Corruption Court at the Medan District Court No. 80/Pid.Sus.K/2012/PN.Mdn., dated 23 April 2013 jo. Medan High Court Decision No. 30/Pid.Sus.K/2012/PT-MDN., dated 29 August 2013 jo. Decision of the Supreme Court of the Republic of Indonesia No. 757K/PID. SUS/2014 An. Defendant Titin Indriany (Employee of BNI '46 Sentra Kredit Menengah in Medan)
3. 3. Decision of the Corruption Court at the Medan District Court No. 81/Pid.Sus.K/2012/PN.Mdn., dated 29 April 2013 jo. Medan High Court Decision No.

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<sup>1</sup> Danang Widoyoko, *Oligarki dan Korupsi Politik Indonesia, Strategi Memutus Oligarki dan Reproduksi Korupsi Politik*, (Malang: Intrans Publishing, 2013), page 105-106.

<sup>2</sup> Wijayanto, *Memahami Korupsi Dalam Korupsi di Indonesia*, (Jakarta: Gramedia, 2010), page 3.

<sup>3</sup> Harian Tribun Aceh, "Pegawai Bank Yang Menyetujui Kredit Fiktif Boy Hermansyah Bunuh Diri", published Wednesday, 20 April 2016.

29/Pid.Sus.K/2013/PT-Mdn., dated 15 August 2013 An. Defendant Darul Azli (Employee of BNI '46 Medan Middle Credit Center Unit).

The three defendants mentioned above, demanded eight years in prison and compensation of Rp. 500 million rupiah, a subsidiary of five months in prison. The panel of judges handed down a verdict against the three defendants by declaring the accused guilty and sentenced to three years in prison, a fine of Rp. 100 million subsidiaries of one month in prison according to the prosecutor's subsidiary indictment, such as Article 3 of the Corruption Law. As for the legal issues raised in this thesis research, such as: lending which gives rise to criminal acts of corruption at BUMN PT banks; and lending that causes corruption at BNI'46 Bank, Pemuda Branch, Medan.

In answering this problem, the theory of unlawful acts in a criminal context is used. In the context of criminal law, according to the opinion of Satochid Kartanegara, "against the law" (wederrechtelijk) in criminal law is distinguished, becoming: "Wederrechtelijk formal, such as if an action is prohibited and punishable by law; and Wederrechtelijk material, such as an act of "possible" wederrechtelijk, although it is not expressly prohibited and is punishable by law. But also the general principles contained in the field of law (beginsel algemeen)".<sup>4</sup>

According to Schaffmeister, quoted by Andi Hamza, he is of the opinion that "against the law" is mentioned in the crime text, which is "especially illegal", which is the heart of the crime (e.g. Article 372 of the Penal Code).<sup>5</sup> In relation to illegal activities in the banking sector under Law No. 7 of 1992 on Banking, as amended by Law No. 10 of 1998 on Amending Law No. 7 of 1992 on Banking (hereinafter referred to as Banking Law); hand. Banking crimes are crimes that meet the criteria set out in Article 46bis to Section 50A or Section 59 of the Banking Act to Section 66 of the Act 21, 2008 on Islamic Banking.<sup>6</sup>

The difference between unlawful acts in the context of criminal law and in the context of civil law is more emphasized on the differences in the nature of public criminal law and private law. For this reason, as a reference, according to Munir Fuady, basically what distinguishes criminal (unlawful) acts from (civil) unlawful acts is that in accordance with their nature as public law, with criminal acts, there is a public interest that is violated (besides maybe also individual interests), whereas with acts against the law (civil), only personal interests are violated.<sup>7</sup>

The difference between offenses under civil law and offenses under criminal law lies in their nature. In the context of this investigation, both banking crimes and corruption crimes are offenses in the context of crime (wederrechtelijkheid). What makes the difference is the laws and regulations that govern it. Corruption crimes are regulated in the Corruption Act, whereas banking crimes are regulated in the Banking Act. The legal structure of corruption laws between police investigators, Indonesian prosecutors and KPK investigators is still open.<sup>8</sup> On the other hand, under the Banking Act, the inspector is an inspector of the Otoritas Jasa Keuangan (OJK).

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<sup>4</sup> Satochid Kartanegara dalam Leden Marpaung, *Azas-Teori-Praktek Hukum Pidana*, Cet. Ke-1, (Jakarta : Sinar Grafika, 2005), page 45.

<sup>5</sup> Schaffmeister dalam A.Z. Abidin dan Andi Hamzah, *Pengantar Dalam Hukum Pidana Indonesia*, (Jakarta : Yarsif Watampone, 2010), page 168.

<sup>6</sup> Lebih lanjut lihat : Muhammad Firdaus, "Peran Otoritas Jasa Keuangan Dalam Pengawasan Perbankan Untuk Mencegah Tindak Pidana Korupsi di PT. Bank Sumut (Studi : Putusan Tipikor Pengadilan Negeri Medan No. 93/Pid.Sus-TPK/2016/PN.Mdn., jo. Putusan Pengadilan Tinggi Medan No. 06/Pid.Sus-TPK/2017/PN.Mdn.)", *Tesis*, Program Studi (S2) Magister Ilmu Hukum Fakultas Hukum Universitas Sumatera Utara, Medan, 2018, page 58-98.

<sup>7</sup> Munir Fuady, *Perbuatan Melawan Hukum (Pendekatan Kontemporer)*, (Bandung : Citra Aditya Bakti, 2005), page 22.

<sup>8</sup> Nova Indra Pratama, "Mekanisme Koordinasi Dalam Penanganan Tindak Pidana Korupsi (Studi di Kepolisian Resort Kota Besar Medan)", *Airlangga Development Journal*, DOI. 10.20473/adj.v5i2.31901., 2021, page 80-100.

Additionally, Polri investigators may continue to investigate banking crimes. Based on Law No. 21 Year 2011 on Otoritas Jasa Keuangan (OJK). The OJK Act expressly authorizes OJK investigators to investigate banking crimes. With the birth of the OJK Act, the OJK also has the ability to regulate the financial services industry. Therefore, there is overlap in OJK supervision, especially in the banking sector. The same applies to his OJK investigators, who will be looking for the same issues in the future as there is overlap with existing investigators.

Lawyer, police, KPK investigator. Therefore, in examining and analyzing whose authority is the legal basis for investigating the crime of distributing fictitious loans by bank BNI '46, I suspect "B.Y.". As a director of PT. Bahari Dwikenkana Lestari (PT. BDL).

In addition to the theory of misconduct, a theory of punishment is also used. Blame theory generally assumes that blame results in some form of suffering, implying that if suffering is the goal of punishment, then punishment is only a means of retribution. *een bijzonder leed,*' he said.<sup>9</sup> Simon said "punishment is a suffering that has been determined by law (*"het leed, door de strafwet als gevolg aan de overtrading van de norm verbonden"*).<sup>10</sup> Sudarto said that punishment is a form of suffering that is deliberately imposed on the guilty person.<sup>11</sup>

Roeslan Saleh put forward a theory that was somewhat softer but meant to be the same as suffering, who said, "punishment is a reaction to an offense and this takes the form of a misery that the state deliberately inflicts on the perpetrators of the offense".<sup>12</sup> Ted Honderich said, "Punishment is an authority's infliction of penalty, something involving deprivation or distress, on an offender for an offense".<sup>13</sup> Barda Nawawi Arief also said that punishment is the imposition of suffering or sorrow or the imposition of other unpleasant consequences.<sup>14</sup>

Punishment theories that lead to some form of suffering are too narrow. They are only models of retribution that lead to suffering. These theories are categorized as retribution theories, i.e. punishments that lead to enforcing punishment. A retaliatory view that punishment is aimed at punishing or coercing to use punishment. The retributive view is absolute, emphasizing retribution because perpetrators of crimes are seen as deserving of being punished for the crimes they have committed. This retaliatory view poses problems for its development. Because the more punishment, the higher the crime rate.<sup>15</sup>

The purpose of punishment is not to suffer, and must be integrated not only with the purpose of tormenting, but also with the purpose of improving the perpetrator of the crime. In addition to retaliatory (absolute) theories, relative theories (objective theories) are also being developed. The theory is relatively based on the purpose of the sentence. Then came the theory of treatment (treatment) aimed at directing punishment towards the treatment or compensation (rehabilitation) of offenders. This theory, advocated by the Positive Law School, claims that perpetrators of crimes are sick people in need of treatment and rehabilitation. Then came the theory of deterrence, which focused more on the threat of crime. This theory postulates that criminal threats established by law make people afraid to commit crimes. Nigel Walker called this theory the reduction theory. This is in an effort to reduce the ever-increasing number of crimes. The main goal of deterrence theory is to deter people from committing crimes by

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<sup>9</sup> Van Hamel dalam P.A.F. Lamintang, *Hukum Penitensir Indonesia*, (Bandung: Armico, 1984), page 34.

<sup>10</sup> *Ibid.*, page 35.

<sup>11</sup> Muladi dan Barda Nawawi Arief, *Teori-Teori dan Kebijakan Pidana*, (Bandung: Alumni, 2005), page 2.

<sup>12</sup> *Ibid.*

<sup>13</sup> Muhammad Taufik Makarao, *Pembaharuan Hukum Pidana Indonesia, Studi Tentang Bentuk-Bentuk Pidana Khususnya Pidana Cambuk Sebagai Suatu Bentuk Pemidanaan*, (Yogyakarta: Kreasi Wacana, 2005), page 18.

<sup>14</sup> Muladi dan Barda Nawawi Arief, *Op.cit.*, page 4.

<sup>15</sup> Mahmud Mulyadi dan Feri Antoni Surbakti, *Politik Hukum Pidana Terhadap Kejahatan Korporasi*, (Jakarta: Sofmedia, 2010), page 95-97.

increasing the number of legal crime threats.<sup>16</sup>

The theory of sentencing is used to answer the third problem. Legal analysis of lending that gave rise to criminal acts of corruption in the Decisions of the Tipikor Court at the Medan District Court.

## METHODOLOGY

This research is legal research<sup>17</sup>. The nature of the research is descriptive<sup>18</sup>. The approach used is the statutory approach. The type of data used is secondary data sourced from primary, secondary and tertiary legal materials<sup>19</sup>. Decision of the Supreme Court of the Republic of Indonesia No. 756K/PID.SUS/2014 on behalf of Radiyasto (Act. Head of Middle Credit Centers (SKM) Bank BNI '46); Decision of the Supreme Court of the Republic of Indonesia No. 757K/PID. SUS/2014 An. Titin Indriany (Employee of BNI '46 Sentra Kredit Menengah Medan); and the Decision of the Corruption Court at the Medan District Court No. 81/Pid.Sus.K/2012/PN.Mdn., dated 29 April 2013 jo. Medan High Court Decision No. 29/Pid.Sus.K/2013/PT-Mdn., dated 15 August 2013 An. Defendant Darul Azli (Employee of BNI '46 Sentra Kredit Menengah Medan who has permanent legal force (*inkracht*)) was obtained from the Registrar's Office of the Medan District Court. Furthermore, these data were analyzed using qualitative analysis methods. Primary data is used to support secondary data. Secondary data was collected using library research and field research techniques.<sup>20</sup>

Data collection tools are document studies and interviews using in-depth interviews without interview guidelines to focus more on research objectives.<sup>21</sup> Furthermore, these data were analyzed using qualitative analysis methods.<sup>22</sup> In-depth interviews with informants related to this research, such as Pid.Sus Corruption at the North Sumatra High Court (Kejati Sumut); BNI'46 Bank officer, Cabang Pemuda, Medan. BNI'46 Bank officer, Pemuda Branch, Medan.

## RESULT AND DISCUSSION

Credit Application submitted by PT. Bahari Dwikencana Lestari whose debts are guaranteed by PT. Dwi Kencana Semesta was approved by BNI SKM Medan and finally PT. Bahari Dwikencana Lestari whose debts are guaranteed by PT. Dwi Kencana Semesta received a credit facility of Rp. 129,000,000,000, - and has been disbursed from PT. BNI SKM Medan in the amount of Rp. 117,500,000,000.-.

Based on this case example, the arrangement for lending to customers from Bank BNI'46, the Pemuda Branch, Medan, basically must comply with the company's internal provisions. The takeover process must be carried out correctly and thoroughly and ensure that all credit documents are mastered, then binding and closing insurance is carried out on all guarantees in accordance with applicable regulations. Disposition takeover is carried out by overbooking/transfer from the debtor's loan account at BNI to the debtor's bank Mandiri account. Proof of credit settlement and Cover Letter of Collateral Roya to BPN to be requested

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<sup>16</sup> Mahmud Mulyadi, *Criminal Policy, Pendekatan Integral Penal Policy dan Non-Penal Policy Dalam Penanggulangan Kejahatan Kekerasan*, (Medan: Pustaka Bangsa Press, 2008), page 79.

<sup>17</sup> Soerjono Soekanto, *Penelitian Hukum Normatif : Suatu Tinjauan Singkat*, (Jakarta : Raja Grafindo Persada, 2001), page 6.

<sup>18</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta : Prenada Media Group, 2007), page 93-95.

<sup>19</sup> Mukti Fajar dan Yulianto Achmad, *Dualisme Penelitian Hukum-Normatif dan Empiris*, (Yogyakarta : Pustaka Pelajar, 2015), page 156.

<sup>20</sup> Mestika Zed, *Metode Penelitian Kepustakaan*, Ed. Ke-2, (Jakarta : Yayasan Obor Indonesia, Januari 2008), page 1.

<sup>21</sup> Mestika Zed, *Metode Penelitian Kepustakaan*, Ed. Ke-2, (Jakarta : Yayasan Obor Indonesia, Januari 2008), page 1.

<sup>22</sup> Burhan Bungin, *Penelitian Kualitatif : Komunikasi, Ekonomi, Kebijakan Publik, dan Ilmu Sosial Lainnya*, (Jakarta : Kencana, 2009), hlm. 153.

from Bank Mandiri. Before the Refinancing Investment Credit facility is realized, existing facilities at Bank Mandiri must be paid off first. Proof of payment submitted to Bank BNI and has been verified. Credit Disposition Investments in the purchase of plantations are carried out in accordance with the debtor's agreement with BNI, such as paying off the credit facility of PT. Atakana Company in BNI, the amount of liabilities that have been determined plus the current month's liabilities.

Arrangements for granting credit to BUMN PT Banks must comply with the provisions of OJK Regulation No. 42/POJK.03/2017 concerning Obligations for the Preparation and Implementation of Bank Credit Policies for Commercial Banks, basically requires banks to have a written credit or bank financing policy. The bank's credit or financing policies contain at least all the aspects stipulated in the Guidelines for Preparing Bank Credit or Financing Policies.

Bank BUMN PT will only process every customer application that completes the requirements specified by the bank. These requirements, usually the purpose of use, sources of funding/returns, collateral used as bank collateral, and the character of the customer applying for a loan must not be included in the Sistem Informasi Debitur (SID) as a "blacklist".<sup>23</sup> If all requirements are met, the bank's BUMN PT will review the submitted application and submitted requirements and process them. BNI'<sup>46</sup> Based on field research by interviewing bank officials, the procedures that bank customers must go through are administrative review procedures, bank internal procedures, and on-site inspection procedures. After passing through, if there is no problem, the bank will pay the customer.

## **Distribution of Credit Causing Criminal Acts of Corruption at State-Owned Banks Legally Limited Liability Companies**

### **1. Banking Crimes as Corruption Crimes**

The practice of criminal prosecution of banking crimes also tends to include them in the area of criminal law provisions on corruption in addition to banking law provisions. For example, criminal proceedings for violations of legal lending limits and violations of Bank Indonesia's liquidation assistance. Such applications must be positioned and justified in a proportional manner.<sup>24</sup>

Given the procedural conveniences contained in corruption laws, the application of corruption laws to banking crimes is actually understandable. This also applies to the flexibility of legislation on corruption crimes, allowing many acts that could endanger finances to be classified as corruption crimes. However, in terms of legal certainty, such a development could lead to legal problems in relation to the existence of banking law.<sup>25</sup>

In the legal analysis of this issue, the positioning of banking law itself as a legal regulation in the field of administrative law, including criminal sanctions, deserves attention. Using Sudarto's classification, banking law may also fall under special criminal law.<sup>26</sup> Therefore, the Banking Law is equivalent to the Corruption Law, and both fall under the Special Penal Code. The next question that arises is how banking crimes regulated by the Banking Act

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<sup>23</sup> Peraturan Otoritas Jasa Keuangan RI No. 64/POJK.03/2020 tentang Perubahan Atas Peraturan Otoritas Jasa Keuangan RI No. 18/POJK.03/2017 tentang Pelaporan dan Permintaan Informasi Debitur Melalui Sistem Layanan Informasi Keuangan.

<sup>24</sup> Supaijo, "Tindak Pidana Korupsi Dalam Praktek Perbankan", Fakultas Syariah IAIN Raden Intan Lampung, <http://download.portalgaruda.org/article.php?article=160990&val=5885&title=TINDAK%20PIDANA%20KORUPSI%20DALAM%20PRAKTEK%20PERBANKAN.>, diakses Jumat, 17 Juni 2022, page 3.

<sup>25</sup> *Ibid.*

<sup>26</sup> Sudarto, *Kapita Selekta Hukum Pidana*, (Bandung: Alumni, 1986), page 63.

can develop into corruption crimes regulated by the Corruption Act.<sup>27</sup>

In fact, this problem can be solved by the teachings developed against Section 63(2) of the Penal Code, which contains the core of the principle "lex specialis derogat legi generali". This principle is so important to criminal law that the jurisprudence distinguishes between "logical specialization" (logical specificity) and systematic specificity.<sup>28</sup> However, what is related to the problem being discussed in this paper is systematic specificity. Regarding this systematic specificity A.Z. Abidin and Andi Hamzah presented examples of criminal acts of smuggling according to Law no. 10 of 1995 concerning Customs.<sup>29</sup> If people smuggle goods into Indonesia, it means that they do not pay duties, and that means they become part of what can be called self-enrichment and will definitely harm the country's finances. Therefore, this act has fulfilled all the core parts of the offense, corruption, which are listed in Article 2 of the Corruption Law. However, the Corruption Law cannot be applied because it is general in nature, while the criminal act of smuggling in Article 102 of Law no. 10 of 1995 concerning Customs is special.<sup>30</sup>

Based on an understanding of the principle of "lex specialis derogat legi generali" according to systematic specificities as described above, banking crimes specifically regulated in the Banking Law cannot develop or change as criminal acts of corruption within them.<sup>31</sup>

As an illustration, an example of a case can be put forward as follows: "An employee of a state-owned bank who solicits or receives compensation, bribes or gifts related to services to customers in disbursing credit. Acceptance of gifts or bribes in the construction of criminal law on corruption has complied with the formulation of Article 5 paragraph (2) of the Corruption Law, which stipulates: "For civil servants or state officials who receive gifts or promises as referred to in paragraph (1) letter (a) or letter (b), shall be punished with the same punishment as referred to in paragraph (1)". The criminal threat for this act is a minimum of 1 year and a maximum of 5 years. However, the actions of the bank employee also fulfill the formulation of Article 49 paragraph (2) point (a) of the Banking Law, which stipulates: "Members of the Board of Commissioners, Directors or Employees or Bank employees who deliberately request or receive, permit or agree to receive a reward, commissions, money, extras and so on". The criminal threat formulated for this crime by the legislators is a minimum of 3 years and a maximum of 8 years.<sup>32</sup>

Under conditions like what happened in the case illustration above, it is important to understand the principle of "lex specialis derogat legi generali" according to systematic specificities. Even though there is such a legal construction, that does not mean that there are absolutely no forms of banking crime that can be developed into criminal acts of corruption. Banking crimes as stipulated in Article 49 paragraph (2) b, Article 50 and Article 50 A of the Banking Law, in essence and in certain cases can occur criminal acts of corruption.<sup>33</sup>

Based on the substance of the article, the formulation of the elements of the crime is not explicitly described (for example, what is meant by carrying out the necessary steps to ensure the strength of the bank), then the banking crime can be positioned as a general crime in banking practice. The position will be the same, for example with the prohibition on extending credit regulated in a Bank Indonesia Circular Letter and a Decree of the Board of Directors of Bank Indonesia. For example, the prohibition of granting credit without a written agreement is a

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<sup>27</sup> Supaijo, *Op.cit.*, page 4.

<sup>28</sup> D. Schaffmeister, "Perbarengan Tindak Pidana (*Samenloop*)", dalam Andi Zainal Abidin dan Andi Hamzah, *Pengantar Dalam Hukum Pidana Indonesia*, (Jakarta: Yarsif Watampone, 2010), page 168.

<sup>29</sup> Andi Zainal Abidin dan Andi Hamzah, *Bentuk-Bentuk Perwujudan Delik*, (Jakarta: Bina Ilmu Jaya, 2001), page 26.

<sup>30</sup> *Ibid.*, page 4.

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.*, page 4-5.

<sup>33</sup> *Ibid.*, page 5.

prohibited act according to the Decree of the Directors of Bank Indonesia No. 27/162/KEP/Dir and Bank Indonesia Circular No. 27/7UPPB, and extending credit beyond the LLL is an act that is prohibited according to the Decree of the Directors of Bank Indonesia No. 21/Kep/Dir and Bank Indonesia Circular No. 21/11/BPPP, dated 29 May 1993.<sup>34</sup>

When the prohibitions contained in the regulations mentioned above are carried out by bank officials and are carried out to enrich themselves and other people or a corporation, then this is where there is a specificity of the criminal act, such as the existence of a cooperative element, and therefore it is in line with the way "lex specialis derogat legi generali" according to systematic specificity. Therefore, there are actions, such as violations of the BMPK, which are not explicitly formulated in the Banking Law as a form of action that is punishable by crime, the provisions of Article 2 of the Corruption Law can be applied.<sup>35</sup>

Banks that provide loans or credit beyond the BMPK to debtors who incidentally are companies that are included in their group (the group) often experience what is called bad credit. As a result of the delay in repaying credit, the bank experienced liquidity difficulties, so that the Indonesian bank was forced to provide the BLBI facility. However, in reality the BLBI funds tend to be misused or not used properly, so that banks continue to experience difficulties. In the end, it is the people and the state who lose out.<sup>36</sup>

Not much different from BMPK violations, the use of BLBI funds is also not specifically regulated in the Banking Law. Therefore, in accordance with the systematic specific teachings earlier, misuse of BLBI funds can be accounted for based on criminal provisions that exist outside the Banking Law, such as Article 372 of the Criminal Code concerning embezzlement or Article 2 of the Corruption Law.<sup>37</sup>

## 2. Bank BNI'46 Is Incorporated as A Limited Liability Company Whose Source of Funds Comes From Separated State/Regional Assets

According to Andi Zainal Abidin and Andi Hamzah, banking crimes as stipulated in Article 49 paragraph (2) b, Article 50 and Article 50 A of the Banking Law, in essence and in certain cases can occur criminal acts of corruption.<sup>38</sup> However, there is a condition that the criminal provisions in the Corruption Law can be applied to banking cases, such as that the bank must be in the form of a State-Owned Enterprise with the legal status of a Limited Liability Company.

The source of funds from the establishment of Bank BNI'46 as a State-Owned Enterprise comes from separated state assets. Based on Article 4 paragraph (1) of Law no. 19 of 2003 concerning BUMN states that BUMN capital comes from separated state assets. Elucidation of Article 4 paragraph (1) clearly states the meaning and purpose of the separation of State assets by stating that what is meant by being separated is the separation of State assets from the State Revenue and Expenditure Budget to be used as State capital participation in BUMN for further development and management which is no longer based on the system APBN, but the guidance and management is based on the principles of a healthy company.<sup>39</sup>

In contrast to Article 1 point 1 of Law no. 17 of 2003 concerning State Finances, what is meant by State Finances are all state rights and obligations that can be valued in money, as

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<sup>34</sup> Andi Zainal Abidin dan Andi Hamzah, *Op.cit.*, page 5-6.

<sup>35</sup> *Ibid.*, page 6.

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.*

<sup>38</sup> Andi Zainal Abidin dan Andi Hamzah, *Op.cit.*, hlm. 26.

<sup>39</sup> Muhammad Iqbal, "Analisa Yuridis Pertanggungjawaban Direksi Pada Pengadaan Barang/Jasa di PT. Bank Sumut (Studi Kasus : Putusan Tindak Pidana Korupsi PengadilanNegeri Medan No. 93/Pid.Sus-TPK/2016/PN.Mdn, tanggal 16 Februari 2017 Jo. Putusan Pengadilan Tinggi Medan No. 6/Pid.Sus-TPK/2017/PT.Mdn, tertanggal 02 Juni 2017 an. Terdakwa/Terbanding "MY")", *Tesis*, Program Studi Magister Ilmu Hukum Fakultas Hukum Universitas Sumatera Utara, Medan, 2018, hlm. 95.



well as everything either in the form of money or in the form of goods that can be owned by the state in connection with the implementation of these rights and obligations.<sup>40</sup> State Finance as referred to in Article 1 point 1 of Law no. 17 of 2003 concerning State Finance, including: 1) "The right of the State to collect taxes, issue and circulate money, and make loans; 2) The state's obligation to carry out public service tasks for the state government and pay third party bills; 3) State Revenue; 4) State Expenditures; 5) Regional Revenue; 6) Regional Expenditures; 7) State/Regional Assets that are managed by themselves or other parties in the form of money, securities, goods receivables and other rights that can be valued in money including assets that are separated into state companies/regional companies; 8) Wealth of other parties controlled by the government in the context of implementing governmental tasks and/or public interest; 9) Wealth of other parties obtained by using facilities provided by the government.<sup>41</sup>

In the elucidation of the article, the assets of other parties as referred to in letter i, include assets managed by other persons or entities based on government policies, foundations within the state ministries/agencies, or state/regional companies.<sup>42</sup>

In accordance with the discussion above, based on Law no. 17 of 2003 concerning State Finances, the financial management of BUMN, especially BUMN in the form of PT (Persero) is included in the scope of state finances. This cannot be separated from the approach that formulates state finances in Law no. 17 of 2003 is an approach in terms of objects, subjects, processes, and goals.<sup>43</sup>

The object-side approach states that state finances are understood to mean all the rights and obligations of the state that can be measured in money, including defined policies and activities relating to taxes, currency, and the management of state assets. . It may become national property if it is in the form of money or goods related to the performance of these rights and obligations. The subject side then states that government treasury means all the above objects owned and/or controlled by central governments, local governments, state/regional corporations, and other unrelated entities. It is government treasury.<sup>44</sup>

In the Corruption Law there is a General Explanation of Law No. 31 of 1999 concerning the Eradication of Corruption, that: "All state assets in whatever form, separated or not separated, including all parts of state assets and all rights and obligations arising from: a) are in control, management, and accountability of officials of State institutions, both at the central and regional levels; b) is under the control, management and accountability of State-Owned Enterprises/Regional-Owned Enterprises, Foundations, Legal Entities and Companies that include state capital, or companies that include third party capital based on agreements with the State".<sup>45</sup>

Based on this, the public prosecutor in carrying out investigations and investigations into banking crimes against Bank BNI<sup>46</sup>, Cabang Pemuda, Medan, always applies the criminal provisions referred to in the Corruption Law. However, in its application, investigators and investigators from the Attorney General's Office often apply it to the distribution of loans that give rise to criminal acts of corruption at state-owned banks with the legal status of PT.<sup>46</sup>

### **Legal Analysis of Credit Distribution That Leads to Corruption Crimes at BNI<sup>46</sup> Bank, Cabang Pemuda, Medan**

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<sup>40</sup> *Ibid.*, hlm. 56-57.

<sup>41</sup> Pasal 1 angka 1 Undang-Undang No. 17 Tahun 2003 tentang Keuangan Negara.

<sup>42</sup> Muhammad Iqbal, *Op.cit.*, hlm. 57.

<sup>43</sup> *Ibid.*, hlm. 58.

<sup>44</sup> *Ibid.*

<sup>45</sup> Penjelasan Umum Undang-Undang No. 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi.

<sup>46</sup> Hal inilah yang akan dibahas pada pembahasan selanjutnya dengan mengangkat Putusan-putusan Pengadilan Tipikor Pada Pengadilan Negeri Medan No. 79, 80, dan 81/Pid.Sus.K/2012/PN.Mdn., tertanggal 29 April 2013 untuk dikaji dan dianalisis lebih lanjut.

## 1. Public Prosecutor's Indictment

The Defendants were brought before the Corruption Court at the Medan District Court by the Public Prosecutor with the charges arranged in subsidiary terms, such as: 1) Primary Indictment, the Defendants were charged with committing an act that violated Article 2 paragraph (1) Jo. Article 18 Law no. 31 of 1999 as amended by Law no. 20 in 2001 Jo. Article 55 paragraph (1) to 1 of the Criminal Code; 2) Subsidiary Indictment, the Defendants were charged with committing an act that violated Article 3 Jo. Article 18 Law no. 31 of 1999 as amended by Law no. 20 in 2001 Jo. Article 55 paragraph (1) to 1 of the Criminal Code.<sup>47</sup>

## 2. Claims of the Public Prosecutor

As for the demands of the Public Prosecutor against the Defendants, such as: 1) Proven legally and convincingly guilty of committing the "Criminal Act of Corruption Together" as stipulated and criminally punishable in Article 2 paragraph (1) Jo. Article 18 of the Corruption Law Jo. Article 55 Paragraph (1) 1st of the Criminal Code as in the Primary Indictment; 2) Freeing the Defendant from the Subsidiary Charges violated Article 3 jo. Article 18 of the Corruption Law Jo. Article 55 Paragraph (1) 1st of the Criminal Code as in the Subsidiary Indictment; 3) Sentence the Defendant with imprisonment for 8 (eight) years in prison reduced while the Defendant is serving detention with an order for the Defendant to remain in custody; 4) Punish the Defendant to pay a fine of Rp. 500 million subsidiary 5 months in prison.<sup>48</sup>

## 3. Amar Tipikor Court Decisions at the Medan District Court No. 79, 80 and 81/Pid.Sus.K/2012/PN.Mdn., dated 29 April 2013

### a. *First Instance Corruption Decision*

Article 3 jo. Article 18 of the Corruption Law jo. Article 55 paragraph (1) 1st of the Criminal Code, Law no. 8 of 1981 and other related regulations. Declare that the Defendants (Defendant "RD", Defendant "TI", and Defendant "DA"), were not proven legally and convincingly guilty of committing a crime as charged by the Public Prosecutor in the Primary Indictment. Therefore, acquitting the Defendant therefore from the Primary Indictment. Declare that the Defendants (Defendant "RD", Defendant "TI", and Defendant "DA"), mentioned above have been legally and convincingly proven guilty of committing a crime as charged by the Public Prosecutor in the Subsidiary Indictment. Sentenced punishment against the Defendants therefore with imprisonment for 3 (three) years and a fine of Rp. 100,000,000, - (one hundred million rupiah) provided that if the fine is not paid it must be replaced with imprisonment for 1 (one) month. Determine the detention period that has been served by the Defendant wholly deducted from the sentence imposed.

### b. *First Instance Corruption Decision*

Based on Medan High Court Decision No. 29/Pid.Sus.K/2013/PT.Mdn., An. Defendant "DA"; Medan High Court Decision No. 30/Pid.Sus.K/2013/PT.Mdn., An. Defendant "IT"; and Medan High Court Decision No. 31/Pid.Sus.K/2013/PT.Mdn., An. Defendant "RD", as for the verdict, as follows:

To cancel: Decision of the Corruption Court of the Medan District Court No. 79/Pid.Sus.K/2012/PN.Mdn., Medan District Court Tipikor Court Decision No. 80/Pid.Sus.K/2012/PN.Mdn., Medan District Court Tipikor Court Decision No. 81/Pid.Sus.K/2012/PN.Mdn., dated 29 April 2013 which was filed for the appeal.

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<sup>47</sup> Lihat: Dakwaan Penuntut Umum dalam Putusan-putusan Pengadilan Tipikor Pada Pengadilan Negeri Medan No. 79, 80, dan 81/Pid.Sus.K/2012/PN.Mdn., tertanggal 29 April 2013.

<sup>48</sup> Lihat: Tuntutan Penuntut Umum dalam Putusan-putusan Pengadilan Tipikor Pada Pengadilan Negeri Medan No. 79, 80, dan 81/Pid.Sus.K/2012/PN.Mdn., tertanggal 29 April 2013.

Declare Defendant "DA", Defendant "TI", and Defendant "RD" mentioned above have been proven legally and convincingly guilty of committing the crime of "Corruption together". Furthermore, imposing a sentence on Defendant "DA", therefore with imprisonment for 4 (four) years and a fine of Rp. 500 million with the condition that if the fine is not paid it must be replaced with imprisonment for 6 (six) months. Determine the detention period that the defendant has served to be deducted entirely from the sentence imposed.

*c. Corruption Court Verdict at Cassation Level*

Based on the Decision of the Supreme Court of the Republic of Indonesia No. 756K/Pid.Sus/2014, and Decision of the Indonesian Supreme Court No. 757K/Pid.Sus/2014, dated 17 December 2014 An. Defendant "RD" and Defendant "IT". The appeal filed by the Public Prosecutor was rejected by the Panel of Supreme Judges. Therefore, the decision remains at the Appellate Level Decision. Based on the results of an interview with a BNI'46 Bank officer, Cabang Pemuda, Medan, it turns out that the Defendant "DA", died by hanging himself when he received an Execution Letter from the North Sumatra High Prosecutor's Office.<sup>49</sup> Therefore, the Defendant "DA" did not file a cassation.

4. Analysis of Legal Considerations

Based on legal considerations on the Medan District Court Corruption Decisions No. 79, 80 and 81/Pid.Sus.K/2012/PN.Mdn., dated 29 April 2013 which were handed down against the defendants, were not criminal acts of corruption, but were merely bad credit cases at PT. Bank BNI'46 Cabang Pemuda, Medan with its customer PT. Bahari Dwikencana Lestari. However, because PT. Bank BNI'46 Cabang Pemuda, Medan is in the form of a State-Owned Enterprise with a Limited Liability Company legal entity, so the Investigator who also acts as a Public Prosecutor (ic. North Sumatra High Prosecutor's Office) applies the Corruption Law, not the Banking Law.

Based on the Decisions of the Corruption Court at the Medan District Court which were handed down against the defendants, BNI'46 Bank, Cabang Pemuda, Medan and PT. Bahari Dwi Kencana Lestari whose debt is guaranteed by PT. Dwi Kencana Semesta has absolutely no bad agreement with the process of granting credit facilities. Granting/distribution of credit is carried out in ways against the law in a civil context (onrechtmatigedaad). This is because Bank BNI'46, Cabang Pemuda, Medan, is processing, providing, and disbursing credit facilities to PT. Bahari Dwi Kencana Lestari whose debt is guaranteed by PT. Dwi Kencana Semesta was carried out contrary to and violating the prudential principle of the bank as required under positive law in accordance with Article 29 paragraph (3) of Law No. 10 of 1998 concerning Amendments to Law no. 7 of 1992 concerning Banking.<sup>50</sup>

Bad credit is a civil case because it is a dispute between the bank and its customers regarding debts. However, bad credit can also intersect with criminal law, if the occurrence of a bad credit is motivated by an act against the law (crime) in a criminal context (wederrechtelijkheid). To be regarded as a criminal act of corruption, a bad credit case that gives rise to a criminal act of corruption must fulfill the elements of a criminal act of corruption regulated in Article 2 paragraph (1) and Article 3 of the Corruption Law and these elements must be proven true. This is because banking crimes have been specifically regulated (lex

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<sup>49</sup> [Republika.co.id](https://www.republika.co.id), "Terpidana Korupsi Gantung Diri Seusai Terima Surat Eksekusi", diupload Rabu, 20 April 2016, <https://www.republika.co.id/berita/o5xh04354/terpidana-korupsi-gantung-diri-seusai-terima-surat-eksekusi>., diakses Sabtu, 18 Juni 2022.

<sup>50</sup> Pasal 29 ayat (3) Undang-Undang No. 10 Tahun 1998 tentang Perubahan Atas Undang-Undang No. 7 Tahun 1992 tentang Perbankan.

specialis) in the Banking Law, so for bad loans, the Banking Law should have been applied instead of being included in the realm of corruption.<sup>51</sup>

Judging from the legal subject, groups of criminal acts, and the purpose of making the Corruption Law and the Banking Law, it can be concluded that in the making of the two laws there was no intention or purpose of making the law to regulate two things that are the same or related. This explains that the Corruption Law and the Banking Law are two legal products that regulate two different issues. Thus, between the Corruption Law and the Banking Law there is no *lex specialis* relationship between the two. The two laws are special rules because they are compiled in separate criminal rules outside the Criminal Code.<sup>52</sup>

The application of the indictment of corruption against bank bad loans is an inappropriate matter because based on the *systematische specialiteit* principle, the enforcement of the Banking Law must take precedence over the Corruption Law. This is reinforced by the provisions of Article 14 of the Corruption Law.<sup>53</sup> In line with Article 14 of the Corruption Law, in the Banking Law itself there is not a single article that states that criminal acts in the law are referred to as criminal acts of corruption.<sup>54</sup>

Bad credit that has been based on business considerations certainly cannot be called corruption, because this is part of a calculated business risk. The use of the Corruption Law on banking crimes is inappropriate. The handling of bad credit cases which are only seen as a manifestation of acts of corruption, as stipulated in Article 2 and Article 3 of the Corruption Law, can have implications for the breakdown of law enforcement and legal certainty in Indonesia.

In connection with the criminal cases studied in this decision which occurred around 2009 to.d. 2011, the regulation that applies is the Circular Letter of the Board of Directors of Bank Indonesia. Because in this case the case examples raised are credit at PT. BNI'46 Bank, Cabang Pemuda, Medan, apart from that, PT. Bank BNI'46 Cabang Pemuda, Medan may not be duplicated/photocopied related to bank secrecy, so an interview was conducted with one of the BNI'46 Bank Pemuda Medan Branch Officers.

After conducting an interview with Lithaviany, as an employee of PT. Bank BNI'46 regarding credit procedures and procedures at Bank BNI'46, the procedure for granting credit consists of three procedures contained in the Bank's Credit Policy Manual, such as:<sup>55</sup>

1. Bank Internal Procedures
  - a. Prospective debtors make requests to financial service providers (banks);
  - b. The Bank officer checks the completeness of the credit application file, complete or not;
  - c. Bank officers check Bank Indonesia through the Debtor Information System (S.I.D);
  - d. Bank officers carry out a clean check with the National Land Agency (BPN) on the collateral used as collateral (SHM, SHGB, SHGU, etc.), if the land certificate has not been certified, it is still SK.Camat, then it must be accompanied by a Cross Dispute Certificate;
  - e. The application file is submitted to the supervisor for re-examination and to arrange a survey schedule;
  - f. If the schedule has been determined, the supervisor orders the Credit Officer (Credit Admin) to conduct a survey (check on the spot);
2. Check On the Spot Procedure

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<sup>51</sup> Syahril, "Penerapan Undang-Undang Pemberantasan Tindak Pidana Korupsi Terhadap Kejahatan di Bidang Perbankan", *Syiah Kuala Law Journal Vol. 13*, Desember (2017), hlm. 26.

<sup>52</sup> *Ibid.*, hlm. 27.

<sup>53</sup> Pasal 14 UU Tipikor.

<sup>54</sup> Syahril, *Op.cit.*

<sup>55</sup> Wawancara dengan Lithaviany, Pegawai PT. Bank BNI'46 di Medan, pada hari Jumat, 17 Juni 2022.

- a. Survey officers are determined at least 2 (two) people;
  - b. The Survey Officer meets with the Prospective Debtor and conducts interviews regarding his business (return source);
  - c. The Survey Officer goes to the location/place that is used as collateral for credit;
  - d. The Survey Officer checks whether the collateral is in accordance with the documents submitted or not, including the boundaries;
  - e. Check the place of business;
3. Bank's Internal Procedure After Check on The Spot
- a. The Credit Officer/Survey makes detailed financial statements of the Prospective Debtor according to interviews and checks on the spot of the place of business;
  - b. The Credit Officer performs an estimation calculation related to the source of the return, whether it is feasible to be financed or not in accordance with the prospective debtor's ceiling;
  - c. Files that have been analyzed by the Credit Officer are submitted to supervision for inspection and then submitted to the head of the unit as the Credit Approval Committee;
  - d. If it is appropriate and feasible to get a loan according to the application, the Credit Officer contacts the Notary to make a binding schedule;
  - e. At the time of the binding, which was attended by the Notary and the Debtor, the Notary explained the contents of the agreement regarding the amount of the loan, term, collateral, payment schedule, and late fees, as well as provisional fees and the Notary;
  - f. After signing the agreement, the bank credits the loan to the customer's account.

Basically the credit distribution procedure from PT. Bank BNI'46 is related to the Decisions of the Corruption Court at the Medan District Court No. 79, 80 and 81/Pid.Sus.K/2012/PN.Mdn., date. 29/04/2013 which was raised in this study. The relation is that if the procedure is carried out properly and correctly, then no parties are harmed. However, if it is not carried out in accordance with applicable procedures, it will certainly have a negative impact, both for the bank, customers and other related parties.

In the event that the credit agreement is signed by the debtor using a third-party guarantee, then based on the Credit Analysis Memorandum (written "MAK") which is approved and known by the Group Leader of PT. BNI SKM Medan. The matters analyzed by MAK are: Basic Information Forms, Financial Analysis Forms, Customer Rating Forms, Local Visit Forms, Collateral Summary Forms.

The MAK was signed and approved by the Group Leader of PT. BNI SKM Medan and SKM Leaders, where the MAK recommends the following:

1. Take Over Working Capital Credit Facility from Bank Mandiri for a maximum of IDR 23,000,000,000.- (twenty three billion rupiah).
2. PKS Refinancing Investment Credit Facility with a capacity of 60 Tons of IDR 20,000,000,000 (twenty billion rupiah).
3. Investment Credit Facility for the purchase of PT. Atakana Company Rp. 74,500,000,000, - (seventy four billion five hundred million rupiah).
4. Investment Credit Facility for PT. Atakana Company Plantation Rehabilitation amounting to Rp.11,500,000,000.- (eleven billion five hundred million rupiah).

Before the Credit Agreement Letter is made, Bank BNI'46 Cabang Pemuda, Medan makes a Credit Approval Decree addressed to Debtor Boy Hermansyah. Letter No. MDM/2/1599/R, December 27 2010 is the basis for making the Credit Agreement Letter by making the provisions that apply, both for Creditors and Prospective Debtors (Boy

Hermansyah). The aim is to minimize risk so that these provisions are carried out before the credit is disbursed and especially with regard to SHGU No. 102 owned by PT. Atakana Company to do the Deed of Sale and Purchase by and between PT. Atakana Company with PT. Bahari Dwikencana Lestari whose debts are guaranteed by PT. Dwi Kencana Universe.

As for the disposition requirements contained in the Letter of Credit Approval No. MDM/2/1599/R dated 27 December 2010 and Letter of Credit Agreement No. 2010.058. MDM dated 28 December 2010 and Credit Agreement No. 2010.0056.MDM dated December 28, 2010, such as:

1. Credit Take Over

The first disposition is carried out by means of overbooking to the account concerned at Bank Mandiri in the amount of the outstanding loan and on the same day a credit takeover is carried out;

2. Investment Credit

Deed of sale and purchase between you and PT. Atakana Company has legally implemented the process of transferring the name to PT. Bahari Dwikencana Lestari has been implemented. The Deed of Sale and Purchase has been signed by the Parties and the binding of the Mortgage, for the collateral submitted has been carried out, signed and the cover note from the Notary has been received. The seller must submit a statement to the buyer that the payment for the sale and purchase transaction of assets in the form of plantations owned by PT. Atakana Company has been paid off, after payment by the Buyer from the Buyer's own funds, as well as funds from BNI financing have been realized for repayment to the buyer."

The additional conditions for granting credit from the Risk Manager are as follows:<sup>56</sup>

1. "The takeover process must be carried out correctly and thoroughly and ensure that all credit documents are mastered, then binding and closing insurance is carried out on all guarantees in accordance with applicable regulations.
2. Disposition takes over is carried out by book-entry/transfer from the debtor's loan account at BNI to the debtor's bank Mandiri account.
3. Proof of loan repayment and cover letter for collateral to BPN to be requested from Bank Mandiri.
4. Before the KI Refinancing facility is realized, the existing facilities at Bank Mandiri must be paid off first. Proof of payment submitted to BNI and has been verified.
5. The disposition of KI to purchase the plantation is carried out in accordance with the debtor's agreement with BNI, such as paying off the credit facility of PT. Atakana Company in BNI, the amount of liabilities that have been determined plus the current month's liabilities.
6. Proof of plantation sale and purchase transactions that have been signed by the Parties submitted to BNI.
7. Disposition of Rehabilitation KI on the basis of a predetermined work plan and taking into account the progress of plantation development with a reimbursement pattern.
8. The Debtor's Self-Financing Section must be deposited/available in the Debtor's Account or has been stated in the Company's Financial Statements.
9. The Key Person makes a Personal Guarantee on behalf of Boy Hermansyah.
10. Contra company guarantees are made between group companies, especially PT. Dwi Kencana Semesta with PT. Bahari Dwikencana Lestari.
11. SOL Deed of Shareholders is drawn up.

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<sup>56</sup> Lihat: Fakta-fakta hukum yang terungkap di depan persidangan dalam Putusan-putusan Pengadilan Tipikor Pada Pengadilan Negeri Medan No. 79, 80, dan 81/Pid.Sus.K/2012/PN.Mdn., tertanggal 29 April 2013.

12. Reports on the realization of production, as well as sales are made every month submitted to BNI ".

Credit Application submitted by PT. Bahari Dwikencana Lestari whose debts are guaranteed by PT. Dwi Kencana Semesta was approved by BNI SKM Medan and finally PT. Bahari Dwikencana Lestari whose debts are guaranteed by PT. Dwi Kencana Semesta received a credit facility of Rp. 129,000,000,000.- (one hundred twenty nine billion rupiah) and has been disbursed from PT. BNI SKM Medan in the amount of IDR 117,500,000,000, - (one hundred seventeen billion five hundred million rupiah).

The civil field includes the resolution of disputes regarding loan agreements or grants between banks and their customers. Because bank issues must be resolved under the Companies Act. Therefore, if a bank and a customer reach an agreement, but then a bad credit occurs, both sides must follow the civil law.

A bank credit agreement is a contract whose object is bank credit. Thus, the parties involved in the credit agreement are subject to civil law. If a dispute occurs, it must first be resolved civilly, then the General Meeting of Shareholders (GMS) will ask for accountability, not directly into the realm of crime. In running the credit business, banks usually apply a standard procedure that refers to the principle of prudence (prudential banking). This means that bad credit is part of the credit business itself, although the factors that cause it can vary, both from the internal and external sides of the bank.

The criminalization of bad debts in the environment of state-owned enterprises is permissible and all directors of BUMN bank are suspected. No bank has bad credit. Bad credit is part of the calculated risk. Unless it is a fictitious loan, in the case of Bank BNI'46, Cabang Pemuda, Medan, it is not really a fictitious loan as it has collateral. This is a business risk like bad credit in general.

It is said that as long as the loan is correct and granted with proper procedures, there is a risk of congestion. Bad credit should no longer be criminalized as a business risk. If this happens, it will set a bad precedent for state bankers. Bad credit is a daily occurrence in the banking sector.

## **CONCLUSION**

Distribution of credit that causes criminal acts of corruption at Bank BNI'46, the Youth Branch of Medan, the most important thing is that it must fulfill the element of "unlawful in the formal sense", such as in accordance with the provisions of laws and regulations in the banking sector, such as the application of the principle of bank prudence as an order of Article 2 of the Banking Law. Only then is it linked to the criminal act of corruption as referred to in Article 2 paragraph (1) and Article 3, or even Article 5 and Article 12A of the Corruption Law, so that the distribution of credit can be categorized as a criminal act of corruption.

Based on legal considerations in the Medan District Court Corruption Decisions No. 79, 80 and 81/Pid.Sus.K/2012/PN.Mdn., dated 29 April 2013 which have permanent legal force (inkracht) are not criminal acts of corruption, but only bad credit cases at PT. Bank BNI'46 Cabang Pemuda, Medan with its customer PT. Bahari Dwikencana Lestari. This case is actually a bad credit case, which in fact is a civil case regarding debts between banks and their customers. The application of the anti-corruption indictment to banking bad credit cases is inappropriate because based on the systematische specialiteit principle, the banking law must take priority over the anti-corruption law. Article 14 of the Corruption Law confirms that violations of the provisions of the Corruption Law apply to the provisions of the Corruption Law. In line with these provisions, in the Banking Law itself there is not a single article which states that a criminal act in the Banking Law is referred to as a criminal act of corruption. However, because PT. Bank BNI'46 Cabang Pemuda, Medan is in the form of a State-Owned

Enterprise (BUMN) with a Limited Liability Company (PT) legal entity, so investigators who also act as Public Prosecutors (ic. North Sumatra High Prosecutor's Office) apply the Corruption Law, not the Banking Law.

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