

Evaluation Of Prudential Principle Violations In Providing Credit To BUMN/BUMD Banks Which Leads To Corruption

Indra Gunawan Purba¹, Alvi Syahrin², Budiman Ginting³

^{1,2,3}*Faculty of Law, Universitas Sumatera Utara, Medan Indonesia.*
indrapurba2020@gmail.com, alviprofdr@gmail.com

Abstract: This paper evaluates the violations of precautionary principle in granting credit based on the APBN / APBD mechanism, so as to properly categorize it a criminal act of corruption. The research method is normative juridical and the results state that there is a dualism in the existing regulation which follows the provisions of the corporate mechanism and the state budget / regional budget mechanism, and that the precautionary principle is a bank obligation. It concludes that violation of the principle of prudence in granting credit to BUMN / BUMD banks following the APBN / APBD mechanism is a criminal act of corruption because it has been determined as a legal obligation, if the bank does not verify credit data / documents in accordance with the guidelines or SOP and it results in loss or bad credit, it should be considered as corruption which meets the element of intent. Also, in order for the violations of the precautionary principle to not lead to multiple interpretations, it must be affirmed in the UUP as a criminal act of banking and as a *lex specialis* for BUMN / BUMD Banks as a criminal act of corruption based on the UUPTPK.

Keywords: mechanism; criminal liability; Banks; Corporate mechanism; Criminal acts of corruption; Granting credit

I. INTRODUCTION

It is common knowledge that banks need to be careful in carrying out their business activities which include lending to debtors. The precautionary obligation for State-Owned Enterprises and Regional-Owned Enterprises (BUMN / BUMD Banks) is a form of legal protection for debtor customers, and creditors, depositors, including the government / state and / or the public because the capital deposited in the bank is a state capital participation from the State Expenditure Budget / Regional Expenditure Budget (APBN / APBD). The precautionary principle is used to protect various interests in order to support national economic growth and to create stable and healthy national financial system stability.

The bank functions as a financial intermediary between parties who have excess funds and those who need funds, mobilizing funds appropriately and quickly for effective and efficient investment. This function acts as a "blood flow" for the economy and an increase to living standards. However, the risk involved in lending to BUMN / BUMD banks can affect the economy and business continuity. The mechanism that must be put in place by BUMN / BUMD Banks is to minimize the risk within the limit that can still be tolerated, namely by committing to implementing prudential obligations.

Bank business activities must be carried out by prioritizing administrative mechanisms and procedural aspects. Therefore, in giving credit to prospective debtors, BUMN / BUMD

banks must comply with the provisions stipulated by the Financial Services Authority (OJK), which follows the standards and standard mechanisms that apply within the bank itself or the Standard Operating Procedure (SOP), for example the stages of filing an application credit, data verification or document, up to the stage of credit disbursement must follow the existing standard mechanism.

The element of trust required for providing credit is the most important thing for BUMN / BUMD banks as creditors. The process of instilling confidence in bank officials and / or management must certainly be done in a way that it involves an in-depth credit analysis of everything related to the debtor's requirements. In order to determine whether the debtor is truly trustworthy, they must consider his background, business prospects, guarantees provided, and other factors. This is done in the context of prudence, lest the requirements and mechanisms in granting credit are violated, in order to avoid corruption.

The precautionary principle for granting bank credit has been explicitly regulated in Article 8 of RI Law No.7 of 1992 jo. RI Law No.10 of 1998 concerning Banking (UUP), as an obligation. This means, BUMN / BUMD Banks must be careful in channeling loans based on in-depth analysis of the intention and ability of prospective borrowers to repay their loans according to the agreement and must be carried out according to the applicable SOP.

Prudence is a principle that must be adhered to in the implementation of lending activities by banks taking into account the potential risk of problem loans, since with regulations that follow the APBN / APBD mechanism, the lack of prudence can ensnare a person or employee and management of a BUMN / BUMD Bank in corruption. In addition, if *kekanism* is used as a corporate mechanism, then someone who violates the obligation of prudence can be charged with the provisions of banking

crime. Specifically for employees, management, directors, commissioners of BUMN / BUMD banks, who generally face issues of corruption when distributing credit in violations of prudential obligation. Therefore, this research paper is aimed at determining whether a violation of the precautionary principle in granting credit by a BUMN/ BUMD Bank that did not verify the data and / or credit application documents can be categorized as a criminal act of corruption or not.

II. RESEARCH METHOD

The research methodology used is qualitative, while the research type is normative juridical research, which includes research on legal principles and the comparative approach to law as a normative study, and legal norms of both positive Indonesian legal provisions governing issues related to prostitution.

This type of normative research is based on various written references, decisions, books, journals, and laws and regulations. The method of interpretation related to regulation used is semiotic interpretation (semiotic/literal interpretation) and systematic (systematic interpretation). Semiotic interpretation is done by limiting the interpretation limited to the wording of words in the legislation.

The character of normative research is doctrinal (theoretical research) and theories (theoretical research), that uses secondary data, examines positive legal norms, principles or legal principles, examines the provisions of laws and regulations and decisions - court decisions, theoretical framework used to analyze problems, and examine the legal methods.

III. DISCUSSION

3.1 BUMN/BUMD Bank

The Government of Indonesia is known to conduct business activities that seek the country's

economic benefits in order to improve the welfare of the people. One of such activities is establishing a bank called BUMN / BUMD Bank or Government / State Bank. BUMN / BUMD Bank is a Bank in the form of a State-Owned Enterprise (BUMN) and a Regionally-Owned Enterprise (BUMD), which was established by the Government of the Republic of Indonesia. Banks established by the Central Government are called BUMN Banks under the control of the BUMN Minister, which consists of PT. Bank BUMN / BUMD Indonesia (Persero) Tbk., PT. Bank Rakyat Indonesia (Persero) Tbk., PT. Bank Tabungan Negara (Persero) Tbk., And PT. Bank Mandiri (Persero) Tbk.

Banks established by regional governments are called BUMD banks or regional development banks spread across provinces, districts / cities, including: Aceh BPD, Bali BPD, Bengkulu BPD, DKI Bank, Jambi BPD, Central Java BPD, Java BPD West and Banten, East Java BPD, East Kalimantan BPD, Central Kalimantan BPD, West Kalimantan BPD, South Kalimantan BPD, Lampung BPD, Maluku and North Maluku, West Nusa Tenggara BPD, East Nusa Tenggara BPD, East Nusa Tenggara BPD, Papua BPD, Riau BPD, Southeast Sulawesi BPD, South and West Sulawesi BPD, Central Sulawesi BPD, North Sulawesi BPD, West Sumatra BPD, Yogyakarta BPD, North Sumatra BPD, and South Sumatra BPD and Bangka Belitung.

Article 1 number 1 of RI Law No.19 of 2003 Regarding SOEs, determines that SOEs are business entities who's entire or most of their capital is owned by the state through direct investments originating from separated state assets. Article 4 paragraph (1) and paragraph (2) of RI Law No.19 of 2003, determines that BUMN capital comes from separated state assets. The participation of state capital in the context of establishment or participation in SOEs is sourced from state finances or the State Budget (State Revenue and Expenditure Budget).

3.2. APBN / APBD Mechanism

APBN / APBD mechanism is a funding procedure that follows the provisions of state finances in the APBN and APBD. The National Budget is the planned Central Government budget from state finances for each year, approved by the House of Representatives (DPR), and determined by law. APBD is the budget of the Provincial, Regency and City Regional Government that is planned from the local government's regional finances for each year, and is approved by the Regional Representative Council (DPRD), and stipulated by a Regional Regulation.

The APBN / APBD mechanism emphasizes the management of BUMN / BUMD Banks, in addition to being subject to RI Law No.40 of 2007 concerning Limited Liability Companies (UUPT), RI Law No.10 of 1998 jo. RI Law No.7 of 1992 concerning Banking (UUP), RI Law No.23 of 1999 jo. RI Law No.3 of 2004 jo. RI Law No.6 of 2009 concerning Bank Indonesia (UUBI), RI Act No.19 of 2003 concerning BUMN (UUBUMN), RI Act No.21 of 2011 concerning Financial Services Authority (UUOJK), PBI, and POJK, are also subject to Article 2 letter g of RI Law No.17 of 2003 concerning State Finances (UUKN), Article 1 number 1 of RI Law No.1 of 2004 concerning State Treasury (UUPN), and Explanation of the 3rd paragraph of RI Law No.31 of 1999 jo. RI Law No.20 of 2001 concerning Eradication of Corruption Crimes (UUPTPK).

The corporate mechanism in managing banks is subject to the principles of a healthy company, as regulated in RI Law No.40 of 2007 concerning Limited Liability Companies (UUPT), RI Law No.10 of 1998 jo. RI Law No.7 of 1992 concerning Banking (UUP), RI Law No.23 of 1999 jo. RI Law No.3 of 2004 jo. RI Law No.6 of 2009 concerning Bank Indonesia (UUBI), RI Act No.19 of 2003 concerning BUMN (UUBUMN), RI Act No.21 of 2011 concerning Financial Services Authority

(UUOJK), PBI (Bank Indonesia Regulation), and POJK (OJK Regulation). If guided by corporate mechanism, the BUMN / BUMD Bank is not subject to the UUKN, UUPN, and UUPTPK. But when examined from both the legal and practical perspectives, BUMN / BUMD banks are still subject to the APBN / APBD mechanism.

State finance according to the UUKN includes state assets separated in state / regional companies, state treasury according to the UUPN is included as separated state assets stipulated in the APBN / APBD, capital in SOEs is included as capital participation under the UUBUMN. Separation and / or equity participation which is separated from state finance is a corporate mechanism. However, the definition and scope of the separated state treasury and state treasury follow the APBN / APBD mechanism because it is legally confirmed in the 3rd Paragraph of the General Explanation of UUPTPK as a criminal act of corruption.

Paragraph 3 General Explanation of UUPTPK stipulates that state finances are all state assets in any form, separated or not separated, including all parts of state assets and all rights and obligations arising from being in the possession, management and accountability of agency officials country, both at the central and regional levels. Also state finances which are in the possession, management and accountability of BUMN / BUMD, foundations, legal entities, and companies that include state capital, or companies that include third party capital based on agreements with the state. This is what is meant by the APBN / APBD mechanism.

The reason for the stipulation of state finances, including all state assets in any form, separated from BUMN / BUMD banks or not separated, in accordance with Paragraph 4 of the General Explanation of UUPTPK, is to be able to reach various modus operandi of irregularities in state finances or increasingly sophisticated and complicated state economies, then the criminal acts regulated in this law are formulated in such a

way that they include acts of enriching oneself or another person or a corporation in an illegal manner in a formal and material sense. With this formulation, the understanding in the law against corruption can also include disgraceful acts for which according to the sense of justice, the violators must be prosecuted and convicted.

3.3 Violation of the Prudential Principle in Providing Credit to BUMN / BUMD Banks as Corruption Crime

Violations of the principle of prudence in granting credit to BUMN / BUMD banks charged with corruption can be analyzed from the case of defendant Ahmad Fauzi (former Regional Leader 02 Padang of PT. BNI Tbk), the defendant Iphon Daffi Yassera (former credit analyst or Account Officer at Bank Aceh Karang Baru Sub-Branch, the defendant Agus Santoso (former Relationship Manager of Regional Business Marketing Manager at PT. BNI Tbk. Regional Office 05 Semarang), and defendant Zulkifli Thalib (former President Director of PT BPD Riau for the 2003-2007 Period, following).

a. Case of PT. BNI (Persero) Tbk Pekanbaru Branch

Decision Number 58 / Pid.Sus / Tipikor / 2014 / PN.Pbr., Debtor customers namely Ebron Napitupulu as President Director of PT. Barito Riau Jaya Pekanbaru (PT. BRJ) applied to PT. BNI (Persero) Tbk Small Credit Centers (SKC) Pekanbaru Branch, for a Refinancing Investment Credit of Rp. 17,000,000,000. The court ruled that the defendant named Ahmad Fauzi who is a former Padang 02 Regional Lead PT. BNI (Persero) Tbk is proven legally and convincingly guilty of committing a criminal act of corruption.

The defendant fulfilled all elements contained in Article 2 paragraph (1) jo. Article 18 RI Law No. 31 of 1999 RI Law No.20 of 2001, jo, and Article 55 paragraph (1) 1 of the Criminal Code. He was found guilty of committing corruption together with Atok Yudianto, Albert

Benny Caruso Manurung, Dedi Syaputra, Eson Napitupulu, Mulyawarman Muis, Dewi Farni Dja'afar, and Ashelfine.

The loan given by the defendant to PT. BRJ violated the precautionary principle because the defendant did not verify the credit data / documents regarding the ownership aspects and legal aspects of the principal collateral, namely land and oil palm plantations covering an area of 1004 ha in the form of 502 parcels of land that are still on behalf of others, including land and oil palm plantations covering an area of 162 ha that have been sold by Amat Rahmat Hidayat and bought by Bibit Supratno and 80 other buyers.

The land and oil palm plantations used as principal collateral in the loan application were not the legal property of PT. BRJ, instead they were in the name of another person individually, and the oil palm plantation was also not managed by PT. BRJ continuously since the loan application is disbursed until the credit period ends. However, the loan application was still approved by the defendant without proper verification of the validity of the credit documents.

The actions of the defendant were legally proven to be a criminal act of corruption, together with fulfilling the element of criminal liability that is "deliberate as a possibility" because even though the Credit data / documents submitted by the debtor were not verified by the defendant, yet they were still approved. Consequently, the Credit Agreement which was signed by Atok Yudianto as the President Director of PT BRJ and Eson Napitupulu (debtor) turned out to be an act of corruption, since PT. BRJ did not have the Plantation Business License (IUP) of the 1,004 ha of land and plantations.

The principal collateral submitted by the debtor Eson Napitupulu, namely land and oil palm plantations covering an area of 1004 ha in the form of 502, was apparently still in the name of others, including 162 hectares of oil palm land

and plantations that have been sold by Amat Rahmat Hidayat and purchased by Bibit Supratno and 80 other buyers.

The defendant's actions were contrary to the Circular of the Director of BI Decree Number 27/162 / KEP / DIR March 31, 1995, concerning the Obligation to Compile and Implement Credit Policies for Commercial Banks (PPKPB), stating that every process of applying for credit must be based on a honest, objective, and careful assessment, with an assurance that the credit to be given can be repaid in due time and that it will not develop into a non-performing loan.

Based on facts gathered from the knowledge of the crime of corruption, the defendant did not act alone, instead he committed the crime together and / or cooperated with Atok Yudianto, Albert Benny Caruso Manurung, Dedi Syaputra, Eson Napitupulu, Mulyawarman Muis, Dewi Farni Dja'afar, and Ashelfine, which resulted in loss of state finance amounting to Rp.37,095,000,000.00.

The construction of the offense inclusion (deelneming) in Article 55 paragraph (1) of the Criminal Code cannot be interpreted that each participant must carry out an act of implementation, because what is important is to carry out a close act of cooperation between each participant. Therefore, in order to realize a goal in the occurrence of a criminal act, it is not necessary for all the participants to do the actual deeds, but it is enough for them to have linkages to each act, and they do not need to be in agreement or plan in advance.

Although each participant's role is different, it is possible for it to lead to a complete or perfect act of corruption. The cooperation does not need to be planned in advance, but it is sufficient if at the time the crime is committed, every participant knows that they are working together. Thus according to the facts the actions of the defendants were joint actions of committing a criminal act of corruption, so that

the element of participation in this case was fulfilled.

b. Case of PT. BPD Aceh Karang Baru Supporting Branch

Decision Number 21 / Pid.Sus-TPK / 2017 / PN.Bna, debtor customers Julianti and Junaini applied for credit to PT. BPD Aceh Karang Baru Supporting Branch. Defendant Iphon Daffi Yassera, who is a credit analyst or Account Officer (AO) at the Branch Office of Bank Aceh Karang Baru was found guilty of corruption, violating Article 3 jo. Article 18 paragraph (1) letters a, b, paragraph (2), paragraph (3) of RI Law No.31 of 1999 RI Law No.20 of 2001 jo. Article 55 paragraph (1) of the Criminal Code jo. Article 64 paragraph (1) of the Criminal Code.

Although the defendant acted only as a credit analyst who is temporary (substitute) at PT. BPD Aceh Karang Baru Sub-Branch, he was still subject to criminal acts of corruption for violating the cautious obligation in granting credit, not doing work to process credit applications until the disbursement of credit in accordance with the SOP of the Bank. The defendant did not verify the data / documents submitted by the debtor customer, thereby making it a violation of the precautionary principle.

The classification of intentional elements is divided into three forms, namely (1) intentionality as an intention, (2) intentionality as a possibility, and (3) intentionality as certainty. The act of the defendant who did not verify the data / document is intentional as a possibility. The defendant's actions are included in the category of acts committed intentionally, that is "intentional as a possibility", not intentional as an intent. With deliberate as the possibility so that in giving credit it benefits others namely Julianti and Junaini fulfilled.

It is possible that the documents submitted by Julianti and Junaini were fictitious or fake. Although the loan application from the debtor has been approved by the Head of School where he

works and has been visited and accompanied by the school treasurer, Alfi Laila, the principle of prudential obligation must not be ignored. The defendant is still required to conduct on the spot (check) and verification of data / documents to the field or related institutions regarding the truth and validity of the data / documents.

The defendant did not verify the data / documents submitted by the debtor to the Junior High School 2 Vocational School where the debtor works because the one who delivered the documents was directly the treasurer named Alfi Laila, thereby disbursing credit to the debtor Junaini and Julianti. The defendant's actions included fulfilling the element of "intentionality as a possibility" i.e., there was a possibility that the documents were fictitious or fake. Although credit applications from Junaini and Julianti debtors have been approved by the Head of School where he works and after which they were accompanied by the treasurer, the principle of prudential obligation must not be ignored. The defendant is still obliged to conduct on the spot or check and verify with the field or related institutions regarding the truth of the documents.

Criminal liability for subjective principal elements is based on the principle of no criminal without error (*geen straf zonder schuld*) and applies to "intentionally as an intent", "intentionally as certainty", or "intentionally as a possibility". Criminal liability that fulfills the element of "intentional as a possibility" is often associated with a nature of negligence or inaccuracy, and is identical with carelessness or carelessness in doing or not doing something. The fulfillment of the element of "intentional as a possibility" fulfills the element of purpose of the actions of the defendant who did not verify documents which turned out to be false or fictitious, and did not benefit others.

c. Case of PT. BNI (Persero) Tbk Region 05 Semarang

Semarang PN Decision Number: 40 / Pid.Sus / 2013 / PN.Tipikor Smg., Debtor customers who submitted credit applications namely Yupi Haryanto (president director), Goenawan (commissioner), and Garnidawati (director) respectively from PT. Guna Inti Permata (PT. GIP) to PT. BNI Tbk Region 05 Semarang. Those directly involved in applying for the credit facilities were Yupi Haryanto and Goenawan, who acted as the owners of 5 (five) SHM plots of land that were used as collateral.

Yupi Haryanto as Director of PT. GIP submitted an application for a Working Capital Credit (KMK) Number: 09 / GIP / VIII / 2002 to PT. BNI (Persero) Tbk Semarang 05 Regional Office in the amount of Rp.10,000,000,000.00 for additional business capital production and the gemstone trading industry. The credit request was followed up by the defendant Agus Santoso as a former Relationship Manager (RM) Manager of Regional Business Marketing at PT. BNI (Persero) Tbk Regional Office 05 Semarang.

The defendant had the task, authority and responsibility of verifying; confirming the truth and validity of the data / documents submitted / attached to the loan facility application and must ensure the truth of the collateral and the data / documents for the conditions for credit disbursement. But the defendant Agus Santoso did not do his duty to verify, confirm the truth and validity of the data / documents attached to the credit application.

The defendant who did not verify, or confirm the truth and validity of the data / documents submitted / attached to the loan application and about the truth of the collateral as well as the data / document regarding the conditions for disbursing the credit did so in violation of the principle of prudence. The defendant did not verify the validity of data / documents and information by going to Ahmad Hidayat, the Head of North Kembangan Village in Semarang in order to make inquiries about the

existence and actual ownership of the collateral which was five parcels of land.

The defendant also never bothered to ask why the ownership of the 5 SHM plots of land belonging to Mahalim Mamud, Yadih Majuk, Mujib Gering, Wahidin Bitra and Suharyono and guaranteed by Yupi Haryanto (PT. GIP), suddenly switched ownership / was sold to Goenawan. The defendant also did not make clarifications and confirmations to the local Land Agency or Agency.

Confirming the validity / validity of land ownership that is used as collateral for credit from the local Headman and from each owner is very important as a manifestation of the implementation of the precautionary principle for BUMN / BUMD Banks in order to prevent credit risk and legal problems. In this case, in addition to the legal problems faced by the defendant, the BUMN / BUMD Banks also ran losses due to the defendant's carelessness in the process of credit disbursement.

The defendant's mistake was due to negligence of duties as a Relationship Manager of PT. BNI (Persero), and this is not right. He did not fulfill the element of error because of negligence. In accordance with the facts that are fulfilled is the element "on purpose", that is "deliberate as a possibility". This fact is supported by the fulfillment of the element of unlawful acts committed by the defendant, namely realizing that his actions were not in accordance with the SOP of the Bank and PBI. The defendant did not verify with the relevant parties and he realized that this was in conflict with the SOP and PBI.

The defendant should have acted with care and prudence in carrying out his duties (in accordance with the principle that must be obeyed in the process of providing credit facilities, namely the prudential banking principle so that the data obtained is the correct data and the credit facilities provided to debtors are truly supported by collateral. In fact, the defendant did

things that were contrary to what they should have been, namely not conducting direct verification of the validity of the ownership documents of the five plots of land that are collateralized, and located in Kembangan Utara district. He merely relied on the written data and information provided by the debtor.

The actions of the defendant who did not verify the validity of the five SHMs as collateral and the transfer of land rights contained in the written document submitted by the debtor, constitutes an act that does not follow the guidelines that have been determined internally by PT. BNI (Persero) Tbk. The defendant should cross check to the local land office as an institution authorized to record the transfer of land rights. The act was clearly an act that violated PT. BNI (Persero) Tbk.

d. Case of PT. BPD Riau Batam Branch

Pekanbaru District Court Decision Number: 40 / Pid.Sus / Tipikor / 2012 / PN.Pbr, the defendant Zulkifli Thalib as the former President Director of PT. Riau Regional Development Bank (BPD Riau) Period 2003-2007, was proven legally guilty of committing a criminal act of corruption together with violating Article 2 paragraph (1) jo. Article 18 RI Law No.31 of 1999 jo. RI Law No.20 of 2001 jo. Article 55 paragraph (1) 1 of the Criminal Code.

Debtor customer Arya Wijaya (Director of PT. Saras Perkasa) applied for credit to BPD Riau by taking over one mall and 39 shop houses from PT. Karyawira Wanatama to PT. Saras Perkasa which amounted to Rp.35,200,000,000 and followed up directly by the defendant Zulkifli Thalib by chairing a credit committee meeting to discuss and decide on a loan application to PT. Saras Perkasa, even though the credit request was incomplete / did not meet the requirements, the Credit Committee Meeting continued to approve without authorization from the BPD Riau Supervisory Board.

The agreement which was signed by the defendant was initialed by Buchari A Rahim (Marketing Director of Riau BPD) and addressed to Yumadris to be disbursed. Then the approval letter was signed by Yumadris (Head of the Riau BPD Cab. Batam Kepri) and addressed to Arya Wijaya (Director of PT. Saras Perkasa). After the defendant agreed, Yumadris gave a credit of Rp.35,200,000,000 to Arya. The money collected by Arya Wijaya was not done in accordance with its designation, so the credit position became bad.

The defendant asked Yumadris to come with Ferry Nasution who is a staff member of the Riau Branch of the Batam Branch to the defendant's workspace at the Riau Center BPD in Pekanbaru and in that workspace there was already the defendant, Bukhari A Rahim (marketing director), Sarjono Amnan (general director and compliance), Arya Wijaya and Aryawan Wicaksana. The defendant asked Yumadris to help with facilitating the credit process for Arya Wijaya (PT. Saras Perkasa). An agreement was reached between the defendant and Bukhari A Rahim, and Sarjono Amnan who agreed to plan the takeover of the loan application and give credit of Rp.33,000,000,000 to Arya Wijaya (PT. Saras Perkasa).

The defendant asked Syahrul (Head of Commercial Credit Section of BPD Riau Pekanbaru Central Office) to help Yumadris and Miswanto (Head of Marketing Section of BPD Riau Batam Branch) to make a credit application notation on behalf of PT. Saras Perkasa (Arya Wijaya). Syahrul said that the administrative requirements for PT. Saras Perkasa (Arya Wijaya) were incomplete.

Zuhri H Arsyad (Head of the Riau BPD Credit Division) was supposed to head the meeting, but the meeting was chaired directly by the defendant (Managing Director). Although the loan application was incomplete and did not meet the requirements, PT. Saras Perkasa (Arya Wijaya) still received a loan disbursement of Rp.35,200,000,000, which was led and decided

upon by the defendant. Criminal liability based on mistakes consists of willfulness and negligence. The principle of no criminal without error confirms criminal liability based on subjective mistakes, including "intentionally as an intention", "intentionally as a certainty", and "intentionally as a possibility". The defendant's actions fulfilled the element of "intentionally as an intention". The defendant intentionally forced the credit disbursement to the debtor Arya Wijaya (Director of PT. Saras Perkasa), and it was immediately approved by the defendant, even though this company had just been formed two days before the credit application.

The defendant did not carry out the arrangements carefully and professionally according to the provisions of the legislation and SOP. The defendant did not verify and assess the data and facts in accordance with the provisions, resulting in the approved credit process being inaccurate and wrong or mistakenly determining the person or corporation that was able to return the credit.

The defendant did not conduct a thorough study of the actual value of the principal collateral in real terms from the credit applicant. The defendant also did not make sufficient consideration regarding the eligibility of the amount of credit submitted and to be financed. The defendant also did not consider the legality of PT. Suggestion on Case as a company that was just established two days before the credit application.

Based on the fact that the defendant ignored the principles of good corporate governance, it resulted to a significant amount of state losses. The actions of the defendant outside the provisions of the law were not carried out in a professional manner, and so they must be accounted for.

The accused directly chaired the credit committee meeting, even though such duty did not fall under his jurisdiction, thereby making the credit committee meeting to agree to approve the

loan of Rp.35,200,000,000, despite the fact that the credit application file was incomplete / did not meet the requirements, and it was not supported by the financial condition of PT Saras Perkasa because it did not align with the principle of self financing at the time of credit application. Thus, the defendant kept asking Yumadris to help facilitate the credit process for Arya Wijaya (PT. Saras Perkasa), and without approval from the BPD Riau Supervisory Board.

The fact that the defendant intentionally gave credit to PT. Saras Perkasa, which had just been formed two days before the credit application, certainly means that it did not meet the legality requirements of a business entity because it had not yet received the legal entity's approval from the Minister of Law and Human Rights, a Business Place Permit (SITU), a Mark Company Register (TDP), the domicile of SIUP and even its TDP was still being processed.

There was an intentional element in the defendant's issue of credit to Arya Wijaya (PT. Saras Perkasa). Even though the defendant did not act as the main perpetrator, he fulfilled the element of "intentionally as an intention" to commit corruption together. The evidence of the defendant's mistake was based on his carelessness, since he was not careful to verify the credit application data from the debtor. Such acts constitute violations of the prudent obligations in granting credit to debtors. The element "intentionally as an intention" confirms that the defendant did intend to enrich another person or a corporation.

The defendant's actions were seen as taking part in committing corruption together. Criminal responsibility also confirmed that all the participants were still punished even though each participant did not do the action perfectly. Every person who is qualified as participating in a criminal offense does not have to meet all elements of the formulation of a criminal offense. In this case there is a division of labor and

responsibility which is borne by groups together to commit corruption.

A person who participates is not required to completely fulfill all elements of the formulation of a criminal act, moreover the nature of the offense of participation is a formal offense, and thus the criminal liability is the same as the person who performs the formal formulation. The reason is because the system of accountability in criminal law embraces the understanding of everyone involved together in a criminal act which is viewed and accounted for as an equal offense with those who commit a criminal act alone by themselves, without discrimination regardless of the actions they carry out or what is in their inner attitudes.

Mistakes (schuld) include intentional and negligence. Deliberation (dolus) and neglect (culpa) are part of the error. Mistakes are related to psychiatry which is more closely related to a prohibited act because an important element in deliberate action is the intention (mensrea) of the perpetrator. The threat of criminal offense is more severe than negligence or negligence.

Both intentional and negligence or negligence as acts of error and mistakes according to criminal law must be accounted for. A criminal offense is an act that violates the law intentionally or because of negligence that can be accounted for by that act and by law, and has been declared as an act or action that can be punished.

Criminal acts can be realized either by an active (positive) or a passive (negative) behavior based on mistakes. The most important principle is that there is no punishment without error (geen straf zonder schuld). The unlawful nature of an act must match all the elements contained in the formulation of offense (acts against formal law) formulated in the law. So that acting against the law is the same as breaking the law (written law). Actions that do not verify credit data / documents by bank management are regarded as actions that are against the law, because SOP is the lowest

part of the legislation issued by the relevant agencies or institutions.

In general, all defendants in this description accounted for their actions based on mistakes, namely "deliberate as a possibility". It can be concluded that violations of the principle of prudence in granting credit to BUMN / BUMD banks in practice generally fulfilled the element of "intentionally as a possibility". The principle of prudence is an obligation to act carefully, cautiously, vigilantly, and thoroughly, so that it is still required to verify credit documents from the field.

Therefore, defendant Agus Santoso, defendant Iphon Daffi Yassera, and defendant Ahmad Fauzi's element of error were regarded as "deliberate as a possibility". Except in the case of the defendant Zulkifli Thalib, who was charged with deliberately forcing credit disbursement to the debtor Arya Wijaya (Director of PT. Saras Perkasa), even though PT. Case Advice was a newly formed company that was two days old before the loan application, yet the loan application had been approved by the defendant almost immediately, by asking people who occupied important positions in the bank to help with the credit disbursement process to the debtor.

Defendant Zulkifli Thalib did not fulfill the element of error "intentionally as a possibility". The defendant wanted the realization of a criminal act of corruption even though he did not want the acquisition of the proceeds of crime, but his actions had enriched others, so that more precisely he met the element of error "intentionally as an intention" and not intentionally as a possibility. Therefore this case was not appropriately referred to as violating the precautionary principle because the defendant indeed wanted the criminal act to occur even though he regulated the procedure of getting the credit application granted to the debtor, Arya Wijaya (Director of PT. Saras Perkasa).

In general, corruption cases are carried out jointly as a participant offense. Criminal liability for corruption cases related to violations of the principle of prudence in granting credit to BUMN / BUMD banks are generally subject to criminal liability based on mistakes. Court judges generally see the element of error directed at each individual including senior officers or management as an error that can be accounted for and handed down as criminal.

The corruption case at Bank Mandiri indicated a violation of prudence in granting credit as a corruption. It involved Edyson as Director of PT. Cipta Graha Nusantara or President Director of PT. Medan Throne, Saiful Anwar (Ng Kim Seng) as Commissioner of PT. Cipta Graha Nusantara or Commissioner of PT. Medan Throne, and Diman Ponijan as Director of PT. Cipta Graha Nusantara or Director of PT. The Medan Throne who were charged with a criminal act of corruption over the process of granting credit to Edyson (PT. Cipta Graha Nusantara or the President Director of PT. Tahta Medan).

Edyson as Director of PT. CGN with its letter No. 001 / CGN / X / 2002 dated October 23, 2002 submitted an application for credit facilities (investment credit) to E.C.W. Neloe (President Director of Bank Mandiri) to buy ex-credit assets, IBRA on behalf of PT. Medan Throne with US \$ 18,500,000.00. The South Jakarta District Court stated that Edyson, Saiful Anwar (Ng Kim Seng), and Diman Ponijan, were not legally proven and were convincingly guilty of committing corrupt acts related to the credit granting process. The Supreme Court (MA) stated that Edyson, Saiful Anwar (Ng Kim Seng), and Diman Ponijan were legally and convincingly proven guilty of committing corruption together and continuing.

The corruption case at Bank Mandiri involved a senior officer. E.C.W. Neloe (former President Director of PT Bank Mandiri), M Sholeh Tasripan (former EVP Corporate & Government Coordinator of PT Bank Mandiri), and I Wayan Pugeg (former Director of Risk

Management of PT Bank Mandiri), respectively submitted as defendants in the file separate case, carrying out a series of actions that are related in such a way that must be seen as an act that is continued or continued, and unlawfully has done an act of enriching oneself or another person or a corporation that harms the country's finances or the country's economy.

These defendants were sentenced for crimes based on an element of error. Imprisonment is imposed on those who have been proven guilty and criminal fines can also be imposed on those who have been found to have fulfilled the element of wrongdoing. Consequently, based on the results of the study, it can be concluded that until now, there have been no cases of criminal acts of corruption related to violations of the precautionary principle in granting credit to BUMN / BUMD banks that were sentenced by criminal court judges without error.

IV. CONCLUSION

Violations of the principle of prudence in granting credit to BUMN / BUMD banks are categorized as corruption, not banking crimes. The use of the APBN / APBD mechanism reinforces the reason for violating the precautionary principle in granting credit as a criminal act of corruption. Based on existing regulations, the principle of prudence is a bank obligation. Violation of the principle of prudence in granting credit to BUMN / BUMD banks following the APBN / APBD mechanism is a criminal act of corruption because in the UUP it has been determined as a legal obligation, if the bank does not verify credit data / documents in accordance with the guidelines or SOP and it results in loss or bad credit, based on the UUKN, UUPN and UUPTPK, it would be considered as corruption that must meet the element of intent.

In order for the violations of the precautionary principle to not lead to multiple

interpretations, it must be affirmed in the UUP as a criminal act of banking and as a *lex specialis* for BUMN / BUMD Bank and confirmed as a criminal act of corruption based on the UUPTPK. Law enforcement officials must consistently interpret the state financial losses by following the APBN / APBD mechanism as an exception to the corporate mechanism for violating the principle of prudence in granting credit to BUMN / BUMD Banks.

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