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Unauthorized Banking Activities as Economic Crimes from the Perspective of Indonesian Criminal Law

Dini Liani Aliyudin¹¹Universitas Bengkulu, Bengkulu, Indonesia, diniiliana@gmail.comCorresponding Author: diniiliana@gmail.com¹

Abstract: The banking sector plays a strategic role as a financial intermediary institution tasked with collecting public funds and channeling them back to support national economic growth. The management of public funds demands high public trust and strict supervision, requiring any deposit-taking activity to obtain an official business license from the banking authority (Bank Indonesia/OJK). However, the proliferation of unlicensed banking practices (illegal banking) such as fraudulent investments, illegal cooperatives, and Ponzi schemes presents a severe threat. This study aims to analyze the legal status of unlicensed banking activities as economic crimes from the perspective of Indonesian criminal law, as well as to examine its legal regulations and criminal liability framework. Utilizing a normative legal research method, this study examines relevant statutory laws and legal literature. The findings reveal that unlicensed banking activities are not merely administrative infractions, but are qualified as economic crimes and systemic offenses that harm the wider community and disrupt financial system stability. Such actions satisfy the elements of unlawful acts, intentionality (*dolus*), and cause material losses to the public. In terms of legal regulation and liability, these activities are strictly prohibited under the Banking Law and can be cumulatively prosecuted alongside fraud, embezzlement, and Anti-Money Laundering (AML) statutes, applied to both individual perpetrators and corporate entities. Consequently, strict law enforcement synergy, adaptive regulatory updates responsive to digital technology, and continuous public financial literacy enhancements are necessary.

Keywords: Unlicensed Banking, Economic Crime, Criminal Liability, Banking Law, Criminal Law

Abstrak: Sektor perbankan memiliki peran strategis sebagai lembaga intermediasi keuangan yang bertugas menghimpun dana dari masyarakat dan menyalurkannya kembali untuk mendukung pertumbuhan ekonomi nasional. Pengelolaan dana masyarakat ini menuntut tingginya kepercayaan publik serta pengawasan ketat, sehingga setiap kegiatan penghimpunan dana simpanan wajib memperoleh izin usaha resmi dari otoritas perbankan (Bank Indonesia/OJK). Namun, maraknya praktik perbankan tanpa izin (*illegal banking*) seperti investasi bodong, koperasi ilegal, hingga skema Ponzi menjadi ancaman serius. Penelitian ini bertujuan untuk menganalisis kedudukan kegiatan perbankan tanpa izin sebagai

tindak pidana ekonomi dalam perspektif hukum pidana di Indonesia, serta mengkaji pengaturan hukum dan bentuk pertanggungjawaban pidananya. Penelitian ini menggunakan metode pendekatan yuridis normatif dengan mengkaji berbagai peraturan perundang-undangan dan literatur hukum terkait. Hasil penelitian menunjukkan bahwa kegiatan perbankan tanpa izin tidak sekadar pelanggaran administratif, melainkan dikualifikasikan sebagai tindak pidana ekonomi (economic crime) dan kejahatan sistemik yang merugikan masyarakat luas serta mengganggu stabilitas sistem keuangan. Perbuatan ini memenuhi unsur perbuatan melawan hukum, adanya kesengajaan (dolus), serta menimbulkan kerugian materiil bagi masyarakat. Dari segi pengaturan dan pertanggungjawaban hukum, tindakan ini secara tegas dilarang dalam Undang-Undang Perbankan dan dapat dijerat secara kumulatif dengan pasal penipuan, penggelapan, maupun Tindak Pidana Pencucian Uang (TPPU), baik yang dibebankan kepada subjek hukum perorangan (pribadi) maupun korporasi. Oleh karena itu, diperlukan sinergi penegakan hukum yang tegas, pembaruan regulasi yang adaptif terhadap teknologi digital, serta peningkatan literasi keuangan masyarakat secara berkelanjutan.

Kata Kunci: Perbankan Tanpa Izin, Tindak Pidana Ekonomi, Pertanggungjawaban Pidana, Undang-Undang Perbankan, Hukum Pidana

INTRODUCTION

The evolution of national economic activity in the current era of globalization reflects increasingly complex dynamics, particularly within the finance and banking sectors. Banks play a strategic role as intermediaries, mobilizing funds from the public in the form of deposits and channeling them back into the economy through credit or financing. This function establishes banking as a key pillar in supporting economic growth and maintaining the stability of the national financial system. Consequently, banking operations must be conducted prudently and transparently under the supervision of competent authorities to ensure the safety of public funds and uphold public confidence in the financial system (Kasmir, 2014).

Public trust serves as the fundamental pillar of the banking system. Without such trust, the public would be reluctant to deposit funds in banks, a situation that could ultimately disrupt the intermediation function and overall economic stability. Consequently, through various regulations, the state mandates that any activity involving the collection of public funds in the form of deposits may only be conducted by institutions that have obtained an official license from the competent authority. Within the context of Indonesian banking law, this business license is essentially granted by Bank Indonesia as stipulated in the Banking Law which affirms that no party may engage in banking activities without valid legal authorization (Rachmadi Usman, 2012).

The requirement to obtain a license from Bank Indonesia constitutes a form of state oversight over banking activities, ensuring that operating institutions meet specific standards regarding capital, management, and governance. This licensing mechanism aims to foster banking operations that are sound, transparent, and accountable, while also safeguarding the interests of the public as customers. Consequently, any activity involving the collection of public funds without authorization from Bank Indonesia constitutes a serious violation of applicable law (Kasmir, 2014).

However, in practice, the unauthorized collection of public funds remains widespread. These activities are known as unauthorized banking or "illegal banking." This phenomenon manifests in various forms and schemes such as fraudulent investment scams, pyramid-style rotating savings clubs, illegal cooperatives, and even fictitious financial institutions that promise high returns within a short timeframe. These schemes generally exploit low levels of

public financial literacy and economic conditions that drive people to seek quick profits without considering legalities or associated risks (Neni Sri Imaniyati, 2017).

Unlicensed banking activity is fundamentally not merely an administrative violation; it has evolved into a serious form of economic crime. This is because the resulting impact is not limited to individuals but can extend to disrupting the stability of the national financial system. In many instances, these practices employ Ponzi schemes or "money games," wherein funds from new members are used to pay returns to existing members. When such a scheme becomes unsustainable, the system collapses, resulting in massive financial losses for the public the victims of the scheme (Adami Chazawi, 2016).

From a criminal law perspective, unauthorized banking activities can be classified as economic crimes because they are closely linked to the economic interests of the general public and the stability of the financial system. Economic crimes are unlawful acts that impact economic life, whether directly or indirectly. Consequently, the state has an interest in regulating and taking firm action against any form of irregularity in economic activities including unauthorized banking practices through criminal law instruments (Muladi dan Barda Nawawi Arief, 2005).

The legal framework governing unauthorized banking activities in Indonesia is clearly established under the Banking Law, which prohibits any party from soliciting public funds without a business license from Bank Indonesia. Furthermore, perpetrators may face criminal charges for other offenses such as fraud and money laundering if the elements defined in criminal law are met. This demonstrates a comprehensive legal approach to unauthorized banking crimes, aimed at creating a deterrent effect and protecting the broader public interest.

Nevertheless, in practice, addressing unauthorized banking activities continues to face various challenges, such as low public financial literacy, the exploitation of technological advancements by perpetrators, and weak supervision. Therefore, a comprehensive study of unauthorized banking activities viewed as economic crimes under Indonesian criminal law is essential to provide a deeper understanding and identify effective solutions for addressing the issue.

METHODS

This study employs a normative legal research method (juridical-normative), focusing on the analysis of legal norms governing unauthorized banking activities as economic crimes in Indonesia. The approaches utilized include the statute approach and the conceptual approach. The legal materials consist of primary sources specifically legislation related to banking and economic crimes; secondary sources such as books, scholarly journals, research findings, and expert legal opinions; and tertiary sources including legal dictionaries and other supporting materials. All materials were gathered through a literature review and analyzed using a qualitative-descriptive method, involving the identification, interpretation, and correlation of relevant legal provisions to address issues regarding the status of unauthorized banking activities as economic crimes, as well as the applicable regulations and criminal liability of the perpetrators.

RESULTS AND DISCUSSION

Unlicensed Banking Activities as Economic Crimes from the Perspective of Indonesian Criminal Law

Unauthorized banking activity constitutes a form of irregularity within the financial sector that carries serious implications for the national economy. Under the Indonesian legal system, banking activities may only be conducted by institutions that have obtained a business license from the competent authority which, in the context of the Banking Law, is Bank Indonesia. This requirement is not merely administrative in nature; it also serves as a form of

legal protection for the public, given that banking activities directly involve the management of public funds, which must be carried out professionally, transparently, and accountably (Rachmadi Usman, 2012).

Conceptually, the primary function of banking is to act as an intermediary institution that mobilizes funds from the public and channels them back in the form of credit or financing. This function places banks in a highly strategic position within the economic system; consequently, any activity resembling banking functions must comply with applicable legal regulations. Conducting such activities without authorization not only violates administrative law but also potentially disrupts the stability of the financial system (Kasmir, 2014).

In practice, unauthorized banking activities are often carried out by entities lacking the capacity and integrity required of financial institutions, yet they still attempt to solicit public funds through various schemes. Common methods include offering high-yield investments, collecting funds via membership schemes, and operating under the guise of legitimate entities such as cooperatives or foundations. This demonstrates that the perpetrators knowingly exploit loopholes in the regulatory oversight system and the public's low level of financial literacy to secure illicit profits (Neni Sri Imaniyati, 2017).

From a criminal law perspective, unauthorized banking activities can be classified as economic crimes. This is because such actions not only violate legal norms but also impact the economic interests of the public at large. Economic crimes generally possess specific characteristics: they involve economic activity, have widespread impact, and are often committed in an organized and systematic manner. Consequently, unauthorized banking activities meet the criteria for economic crimes that warrant a more serious criminal law approach (Adami Chazawi, 2016).

Furthermore, an analysis based on the elements of a criminal offense reveals that unauthorized banking activities satisfy the elements of an unlawful act, culpability, and consequence. The element of an unlawful act is evidenced by the collection of public funds without valid authorization from the competent authority. The element of culpability (*mens rea*) is demonstrated by the perpetrator's intentional conduct in carrying out these activities for the purpose of profit. Meanwhile, the element of consequence is evident in the losses suffered by the public, manifesting as both the loss of funds and the erosion of confidence in the financial system (Muladi dan Barda Nawawi Arief, 2005).

Beyond merely satisfying the elements of a criminal offense, unauthorized banking activities also possess a broader criminal dimension: that of a systemic crime. In some instances, these practices affect numerous victims and result in massive financial losses; consequently, they not only harm individuals but also have the potential to destabilize the national economy. Moreover, such activities are frequently linked to other offenses such as fraud, embezzlement, and money laundering further underscoring their nature as complex economic crimes (Barda Nawawi Arief, 2010).

Within the framework of criminal law policy, classifying unauthorized banking activities as economic crimes is an appropriate measure to protect the public interest and maintain economic stability. In this context, criminal law serves not only as a repressive tool to penalize offenders but also as a preventive mechanism to deter crime through strict regulations and sanctions that act as a deterrent. This approach aligns with the objectives of modern criminal law, which focuses not merely on retribution but also on the protection of society (social defense).

Thus, it can be concluded that unauthorized banking activity constitutes a form of crime that not only violates administrative law but also qualifies as an economic crime under Indonesian criminal law. Therefore, a comprehensive approach is required, involving both firm law enforcement and preventive measures such as enhancing public financial literacy and strengthening supervisory systems within the financial sector.

Beyond the normative aspects and the elements of the criminal offense, unauthorized banking activities can also be analyzed from the perspective of legal protection for the public as consumers of financial services. In this context, the public occupies a vulnerable position due to a lack of adequate information regarding the legality and risks associated with the institutions collecting their funds. This situation is exacerbated by information asymmetry between the perpetrators and the victims; the perpetrators possess the knowledge and strategies to persuade the public, whereas the public tends to be swayed simply by the promised returns (Neni Sri Imaniyati, 2017).

On the other hand, advancements in information technology have influenced the patterns of unauthorized banking crimes. Currently, many perpetrators exploit digital media to rapidly and widely solicit funds from the public. This makes such crimes increasingly difficult to detect and expands the pool of potential victims. Consequently, a criminal law approach that adapts to technological developments is required to effectively combat crime in the financial sector (Erman Rajagukguk, 2005).

Thus, unauthorized banking activities constitute not merely an administrative violation but also a complex economic crime that evolves with the times. Consequently, efforts to address this issue must be comprehensive, involving a firm criminal law approach alongside initiatives to enhance public financial literacy.

Legal Regulation and Criminal Liability of Perpetrators of Unauthorized Banking Activities in Indonesia

The legal framework governing unauthorized banking activities in Indonesia is explicitly established in various laws and regulations, particularly the Banking Law. These provisions mandate that any party collecting funds from the public in the form of deposits must first obtain a business license from Bank Indonesia. This requirement reflects the fact that the banking industry is a highly regulated sector, given its direct connection to the management of public funds and the stability of the national financial system (Nindyo Pramono, 2013).

The requirement to obtain such a license is not merely an administrative formality; rather, it is a legal instrument serving as a screening mechanism to identify institutions qualified to conduct banking activities. Through the licensing process, the authority can assess an institution's capital, management, integrity, and business viability. Consequently, only institutions meeting specific standards are permitted to operate, thereby minimizing the risk of public financial loss. Therefore, any unauthorized fund-raising activity constitutes a serious violation with both administrative and criminal implications (Neni Sri Imaniyati, 2017).

From a criminal law perspective, the regulation of unauthorized banking activities reflects the criminalization of conduct deemed detrimental to the public's economic interests. This criminalization is part of penal policy aimed at protecting the public interest and maintaining national economic stability. The imposition of criminal sanctions is intended to create a deterrent effect for offenders while simultaneously preventing similar crimes in the future (Muladi dan Barda Nawawi Arief, 2005).

Furthermore, regarding criminal liability, a perpetrator engaging in unauthorized banking activities may be held accountable if the elements of the criminal offense are met namely, an unlawful act, culpability, and the resulting consequences. The element of culpability in this offense generally takes the form of intent (*dolus*), as the perpetrator is consciously aware that the activity lacks the necessary authorization yet proceeds with it to secure a profit. This reinforces the grounds for imposing criminal sanctions on the perpetrator (Erman Rajagukguk, 2005).

In addition to individual criminal liability, the evolution of modern criminal law also allows for corporate criminal liability in cases involving unauthorized banking activities. When such activities are carried out by a legal entity, liability is imposed not only on the individual

perpetrators but also on the corporation as a legal entity. In this context, the management or parties exercising control over the activities may be held accountable, either in their personal capacity or as representatives of the corporation. This approach is significant given that many illegal banking practices are conducted through business entities to disguise the true nature of the activities (Adami Chazawi, 2016).

Furthermore, the legal regulation of unauthorized banking activities does not exist in isolation but is linked to various other legal provisions. In practice, perpetrators often engage in related offenses such as fraud, embezzlement, and money laundering. Consequently, law enforcement actions against these crimes can be pursued cumulatively by utilizing the various criminal law instruments available. This approach aims to maximize the deterrent effect and ensure that all aspects of the criminal conduct fall within the reach of the law.

However, law enforcement efforts face various obstacles, including difficulties in establishing proof, the complexity, and limited coordination among law enforcement agencies. Furthermore, advancements in information technology present new challenges, as many unauthorized banking activities are conducted via digital platforms, making them difficult to trace. This situation necessitates enhancing the capacity of law enforcement personnel and updating regulations to ensure they are adaptable to technological developments (I Gede A.B. Wiranata, 2012).

Furthermore, the effectiveness of legal regulations governing unauthorized banking activities depends heavily on the public's level of legal awareness. In many instances, people are easily enticed by offers of high returns without considering legality. Therefore, alongside firm law enforcement, preventive measures such as enhancing financial literacy and providing legal education to the public are essential. This approach is crucial for preventing such crimes at an early stage and reducing the number of victims.

Thus, it can be concluded that the legal framework and criminal liability regarding unauthorized banking activities in Indonesia encompass various aspects, spanning both normative and implementation-related dimensions. However, achieving optimal effectiveness requires synergy among firm law enforcement, the strengthening of regulations, and heightened public awareness in addressing various forms of crime within the banking sector.

CONCLUSIONS AND RECOMMENDATIONS

Conclusion

1. Unauthorized banking activity constitutes a form of economic crime under Indonesian criminal law, as it not only violates prevailing legal provisions but also has far-reaching consequences for the public's economic interests and the stability of the national financial system. Such activity fulfills the elements of a criminal offense, including an unlawful act, culpability, and resulting financial loss to the public.
2. The legal framework governing unauthorized banking activities in Indonesia is clearly established through various legislative instruments most notably the Banking Law which mandates that any activity involving the collection of public funds must be licensed by Bank Indonesia. Furthermore, perpetrators may be held criminally liable whether as individuals or corporations and may also face prosecution under other criminal provisions, such as those concerning fraud and money laundering.

Recommendations

1. The government and relevant authorities need to step up oversight of public fund-raising activities particularly those lacking official authorization and strengthen law enforcement to deter perpetrators of unauthorized banking activities.

2. The public needs to heighten vigilance and financial literacy by avoiding the temptation of investment or savings offers that promise high returns without clear legal standing, and by ensuring that the institutions they use hold official licenses from Bank Indonesia.

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