

## INDONESIAN CRIMINAL POLICY AGAINST FRAUD IN THE BANKING FIELD

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Article	Abstract
<p><b>Keywords:</b>  <b>Fraud, Banking, and Supervision.</b></p> <p><b>DOI:</b>  <b>10.28946/scls.v1i2.2921</b></p>	<p>Various fraud cases in the banking sector have recently tarnished the meaning of banking as a pillar of national economic development. Regulations regarding handling fraud have also been regulated in several regulations, such as the Criminal Code, the Banking Law, and other special regulations. So, an institution that is expected to restore stability to the national economy was formed, known as the Financial Services Authority. OJK and Bank Indonesia can coordinate and cooperate in joint supervision of financial services activities in the banking sector. This research looks at Indonesian criminal policies in enforcing and handling crimes in the banking sector, especially regarding fraud. By looking at the institutional relationship between Bank Indonesia and the Financial Services Authority, it is hoped that they can coordinate to reduce the number of frauds in Indonesia. The method used is documentary research, where researchers see and analyze problems using selected document data. From the results of this research, it was found that banking crimes committed by bank insiders (crimes against the bank) need special attention. "Insider" crimes are closely related to the domination of policy and administration by one or several people and weak supervision by internal and external supervisors (regulators). In addition, various applicable regulations often cause banks to take excessive risks, which causes a decrease in the level of internal supervision, so bank failures caused by fraud by insiders become higher.</p>

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## A. INTRODUCTION

Banking has an important role in economic development in Indonesia as a collector and provider of public funds. Its function is regulated in Article 3 of Law No. 10 of 1998 concerning Banking. In the Indonesian legal system, all banking activities are based on the principles contained in the ideology of the Indonesian State, namely Pancasila, as well as the objectives of the Indonesian State as stated in the 1945 Constitution of the Republic of Indonesia. In recent years, cases of banking crime in Indonesia have increased and become the public spotlight, with various modus operandi. This situation causes worry and concern among the people because their lives are becoming increasingly complex. Many look for shortcuts by taking advantage of their position or colluding with unscrupulous or bank employees. As a result, large amounts of public funds were easily stolen, resulting in deep feelings of concern.

Bank financial institutions in Indonesia have special missions and functions apart from the usual ones. Banks are directed to act as agents of development, namely as institutions whose aim is to support the implementation of national development to increase the distribution of development and its results, economic growth, and national stability towards improving the standard of living of many people. This function elaborates Article 4 of Law No. 7 of 1992, namely that Indonesian banking aims to support the implementation of national development to increase equality, economic growth, and national stability towards increasing the welfare of the people at large.<sup>1</sup>

With the rise in banking crime, many potential and real victims are certainly affected<sup>2</sup>. Banks, as legal entities or corporations, not only positively impact the country's economy. However, in its development, banks are increasingly showing a negative side, whether they are the result of the actions of people within the bank or people who are closely related to the bank, which is detrimental not only to the wider community but also to the instability of the country's economy and worsening the image of the banking industry and law enforcement in Indonesia. Corporations run their businesses to get capital back and make a profit, but in the process of achieving these goals, corporations often take detrimental actions to the general public.

Special attention is needed in relation to banking crimes committed by bank insiders (crimes against the bank). "Insider" crimes are closely related to the domination of policy and administration by one or several people and weak supervision by internal and external supervisors (regulators). In addition, various applicable regulations often cause banks to take excessive risks, which causes a decrease in the level of internal supervision, so bank failures caused by fraud by insiders become higher.

The Century Bank case proves the weakness of the supervisory function carried out by Bank Indonesia. This was revealed after the Deposit Insurance Corporation wanted to disburse its funds to Century Bank, but the amount was bigger than it should have been. Based on the results of a compromise to avoid a dead end in discussing the law on Bank Indonesia by the DPR. The banking supervision function, previously held by Bank Indonesia as the central bank, is now separated. This idea came from German consultant Helmut Schlesinger, former Governor of the Bundesbank (German Central Bank), who, at the time of

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<sup>1</sup> Budiyono, "Peran Bank Indonesia Dalam Penanggulangan Tindak Pidana Perbankan," *Jurnal Dinamika Hukum* 11 (2011): 118.

<sup>2</sup> Mandala Manurung, *Uang, Perbankan, Dan Ekonomi Moneter* (Jakarta: Fakultas Ekonomi Universitas Indonesia, 2004), p. 55.

drafting the bill (later Law No. 23 of 1999) acted as a consultant, taking the pattern of the German Central bank which did not supervise banks so that the OJK was formed which ratified through Law No.21 of 2011 concerning the Financial Services Authority. This institution is expected to comprehensively regulate and supervise financial services in the capital markets, banking, insurance, pension funds, and financing institutions.

According to Public Accountant Professional Standards (SPAP) - PSA No.70 section 316.2 paragraph 4: Fraud is the deliberate misstatement or omission of amounts or disclosures in financial reports to deceive users of financial statements. According to International Standard Auditing (ISA), it is "An intentional act by one or more individuals among management, those charged with governance, employees, or third parties, involving the use of deception to obtain an unjust or illegal advantage." Fraud is an intentional act by one or more individuals between management, those charged with governance, employees, or third parties, which involves using deception to obtain unfair or illegal advantages.

Over nearly two years, the Financial Services Authority (OJK) registered 108 occurrences of financial criminal activity. Credit instances, such as data from credit card leaks, improper capturing, and more, were among the most common fraud cases in banking. Nelson Tampubolon, part of the OJK Board of Commissioners or the Director General of Banking Supervision, stated at the Socialization event for Handling Alleged Banking Crimes and the Anti-Fraud Forum that banking operational functions are extremely intricate in terms of discrepancies, either operationally and leading to crimes or fraud. Nelson highlighted case data transferred to the OJK examinations section by the banking supervisory sector.

In total, there were 108 cases in the 2014-2016 period. The number was 59 cases in 2014, then fell in 2015 to 23 cases, and as many as 26 cases until the third quarter of 2016. Fraud perpetrators are usually individuals who have the authority to make decisions related to handling banking operational activities. Fraud in banking often occurs in Rural Banks (BPR), 80 percent of which close due to fraud. Anti-fraud forum members can increase from the current number of 40 commercial banks. The activities of this forum, through outreach and education, can prevent banking crimes from occurring, which can have major implications for disrupting the stability of the national financial system.<sup>3</sup>

From the description explained above, there is a problem to be discussed in this research, namely Indonesian criminal politics in handling crimes in the financial sector (fraud in the banking sector) and the role of Bank Indonesia (BI), the Financial Services Authority (OJK), in enforcing laws in the financial sector (fraud in the banking sector)?

## **B. RESEARCH METHOD**

In this research, the method used is documentary research, where the researcher looks at and analyzes problems using selected document data.

## **C. DISCUSSION**

### **1. Indonesian Criminal Politics Concerning Fraud in the Banking Sector**

#### **a. Regulations Regarding Fraud**

In one of the papers entitled *Criminology Australia*, Prof. Mardjono Reksodiputro showed increased crime in Indonesia from 1981 to 1986. In 1981, there were 13,592 fraud cases, increasing in 1982 to 13,955 and reaching a peak in 1983 with 15,215 cases. In 1984, fraud cases

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<sup>3</sup> Ariyanti F, "Dalam 2 Tahun Ada 108 Kasus Kejahatan Perbankan," 2016.

decreased to 14,910, and 13,617 in 1985, reaching their lowest point in 1985. 1986, with a total of 10,078 cases.<sup>4</sup>

Data from Banking Crime at POLRI Headquarters in 2011, which Statagic Indonesia collected through the Criminal Investigation Agency at POLRI Headquarters on February 4 2012, Fraud (cheating) or acts of fraud in 2005 were 25,206 and in 2006 there were 27,527 cases, with a percentage increase of 9, 21%. The statistical quotation above refers to various statutory provisions regarding several criminal acts of fraud regulated in the Criminal Code and several other statutory regulations. Several articles cover the understanding and regulations regarding Fraud, such as:

- 1) Article 362 concerning theft, Article 368 concerning Extortion and Threats, Article 372 concerning Embezzlement, Article 378 concerning Fraudulent Acts, Article 396 concerning Harming Debtors in Bankruptcy, Article 406 concerning Destroying or Damaging Property
- 2) Articles 209, 210, 387, 388, 415, 419, 420, 423, 425, and 435 are specifically regulated in the Corruption Eradication Law (Law Number 31 of 1999 in conjunction with Law Number 20 of 1999 2001).
- 3) Articles 46, 47, 47A, 48 paragraph (1), articles 49, 50, and 50A of Law Number 51 of 1998 concerning Banking.
- 4) Article 20 Bank Indonesia Regulation Number 18/40/PBI/2016 of 2016 concerning the Implementation of Payment Transaction Processing
- 5) Articles 4, 22, 23, 24, Bank Indonesia Regulation Number 11/31/PBI/2009 of 2009 concerning Fit and Proper Tests for Sharia Banks and Sharia Business Units.
- 6) Articles 62, 76, Bank Indonesia Regulation Number 11/33/PBI/2009 of 2009 concerning implementing Good Corporate Governance for Sharia Commercial Banks and Sharia Business Units.
- 7) Explanation of Article 16 of Bank Indonesia Regulation Number 8/20/PBI/2006 of 2006 concerning Transparency of Financial Conditions of Rural Banks
- 8) Article 61 Bank Indonesia Regulation Number 8/4/PBI/2006 of 2006 concerning the Implementation of Good Corporate Governance for Commercial Banks.
- 9) Article 19 Bank Indonesia Regulation Number 7/50/PBI/2005 of 2005 concerning Amendments to Bank Indonesia Regulation Number 3/22/pbi/2001 concerning Transparency of Bank Financial Conditions
- 10) Article 15 Bank Indonesia Regulation Number 7/47/PBI/2005 of 2005 concerning Transparency of Financial Conditions of Sharia Rural Banks
- 11) Article 18 Bank Indonesia Regulation Number 14/17/PBI/2012 of 2012 concerning Bank Business Activities in the Form of Custody with Management (trust)
- 12) Article 19 Bank Indonesia Regulation Number 15/3/PBI/2013 of 2013 concerning Transparency of Financial Conditions of Rural Banks
- 13) Article 11 Financial Services Authority Regulation Number 10/POJK.03/2015 of 2015 concerning Issuance of Deposit Certificates by Banks
- 14) Article 64 Financial Services Authority Regulation Number 55/POJK.03/2016 of 2016 concerning Implementation of Governance for Commercial Bank
- 15) Article 26 and Article 28 of the Financial Services Authority Regulation Number 45/POJK.03/2015 of 2015 concerning the Implementation of Governance in Providing Remuneration for Commercial Banks.

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<sup>4</sup> Mardjono Reksodiputro, "The State of Crime in Indonesia: A Preliminary Overview," in *International Trends in Crime: East Meets West - Proceedings of a Conference Held 10-13 December 1990*, ed. Sandra McKillop (Australian Institute of Criminology, 1992), 5-14.

**b. 2008 Report To The Nation**

The ACFE regularly publishes its studies of fraud in the United States. The latest ACFE report on this matter is known as the 2008 Report to the Nation on Occupational Fraud and Abuse, in the sense of:

- 1) It is a report to the United States;
- 2) Regarding fraud and abuse in the workplace, or fraud and abuse relating to abuse of position.
- 3) Concerning a particular year, in this case, 2008

This report provides many clues to detect fraud. Some lessons from this report regarding fraud detection, namely:

- 1) The average duration of fraud before it is detected is more than one year, namely between 17 to 30 months;
- 2) Nearly half (46.25% in 2008) were discovered because someone "leaked" (tip). Meanwhile, 25.4% (in 2006) and 20% (in 2008) of all frauds were discovered by accident, not by fraud examiners, internal auditors or external auditors.
- 3) Even if the employer or owner committed the fraud, more than half (51.7%) was discovered because of a tip. Leaks (tips) mainly (57.7%) come from employees.

Unfortunately, there has been no national-scale research regarding fraud disclosure in Indonesia. As in the case of Bank Century, there was already fraud before the merger of the three banks that gave birth to Bank Century. If calculated from the time of the merger (2004) until it was revealed by the National Police (2009), the non-disclosure period was 60 months. The event that led to the Bank Century fraud finally being discovered was testimony at the Special Committee for Inquiry into the Bank Century case, which revealed that Vice President Jusuf Kalla's order to the National Police Chief was the trigger, not from Bank Indonesia as a supervisor in the banking sector, not the internal auditor (whose movement was limited), and also not a public accounting firm.

**2. The role of Bank Indonesia (BI) and the Financial Services Authority (OJK) in Law Enforcement in the Financial Sector (fraud in the banking sector)**

**a. Bank Regulation and Supervision by Bank Indonesia**

According to Law Number 23 of 1999 in conjunction with Law Number 3 of 2004 concerning Bank Indonesia and Law Number 7 of 1992 in conjunction with Law Number 10 of 1998, in essence, Bank Indonesia as the central bank has three areas of duties, namely: 1. Establish and implement monetary policy; 2. Manage and maintain the smooth running of the payment system; 3. Regulate and supervise banks.

Bank Indonesia establishes regulations, grants, and revokes permits for certain institutions and business activities of banks, conducts bank supervision, and imposes sanctions on banks by statutory provisions to regulate and supervise banks according to Article 24 of Law Number 23 of 1999 concerning Bank Indonesia. In this context, regulatory rules involve Banking Law No. 7 of 1992, as revised by Banking Law No. 10 of 1998.

Bank Indonesia, as the central bank, can supervise banks directly or indirectly. What is meant by direct supervision, according to the interpretation of the provisions of Article 27 of Law Number 23 of 1999 concerning Bank Indonesia, is an inspection accompanied by remedial actions. Indirect supervision is essentially defined as early supervision through research, analysis, and review of bank reports.

Bank Indonesia, as the central bank, has the authority to perform the following about the role of regulating and supervising banks:<sup>5</sup>

- 1) Establish banking regulations, including banking provisions that contain the precautionary principle.
- 2) Granting and revoking permits for certain institutional and business activities of banks, including granting and revoking bank business permits, granting permits to open, close, and move bank offices, granting approval for bank ownership and management, and granting permits to banks to carry out certain business activities.
- 3) Carry out bank supervision directly and indirectly through the submission of reports, statements by the bank, and the results of bank audits periodically or at any time if necessary.
- 4) Assign other parties for and on behalf of Bank Indonesia to carry out audits. Other parties conducting the examination must keep the information and data obtained confidential.
- 5) Order the bank to temporarily suspend some or all of certain transaction activities if, according to the Bank of Indonesia assessment, a transaction is reasonably suspected to constitute a criminal act in the banking sector.
- 6) Taking certain actions as a result of Bank Indonesia's assessment of a bank for activities that could harm the bank's business and/or the banking system as a whole.
- 7) The task of supervising banks will be carried out by an independent financial services sector supervisory institution and is established by law.
- 8) Organize and develop interbank information systems. The information system can be implemented by Bank Indonesia itself and/or other parties with approval from Bank Indonesia
- 9) Imposing sanctions on banks by statutory provisions.

According to Marulak Pardede, to create efficient banking, Bank Indonesia needs to encourage the creation of facilities that can support the smooth running and provision of banking services to the public. These facilities are in the form of facilities to support bank operational activities, namely:<sup>6</sup>

- 1) Clearing institutions enable banks to easily, quickly, and safely serve their customers' payment transactions.
- 2) The interbank money market and the development of money market securities enable banks to obtain short-term loans easily, efficiently, and safely in the context of better liquidity management.
- 3) The facility discount window allows banks to obtain temporary funds for their liquidity needs in situations where the bank can no longer obtain them from the market.
- 4) Credit information systems allow banks to obtain and exchange information about the condition of their debtors.

In line with Law Number 23 of 1999 and Law Number 3 of 2004 above, Law Number 10 of 1998 provides the authority and obligation for Bank Indonesia to develop and supervise banks by taking measures, both preventive in the form of provisions, instructions, and advice, guidance and direction, as well as repressive in the form of inspections followed by corrective actions, so that ultimately Bank Indonesia can determine the direction of bank development and development, both individually and as a whole in accordance with with the provisions of Article 29 of Law Number 10 of 1998.

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<sup>5</sup> Hermansyah, *Hukum Perbankan Nasional* (Jakarta: Kencana Prenada Media Group, 2005), p. 173.

<sup>6</sup> *Ibid*, p. 179

By this, Bank Indonesia is granted entire power, duty, and inclination for carrying forth direction and oversight of banks by implementing preventative and repressive measures based on Bank Indonesia's primary regulations, which consist of:

- 1) Scope of coaching and supervision
- 2) Health-level assessment criteria
- 3) The principle of prudence in management
- 4) Guidelines for providing information to customers.

In this regard, the main points of various provisions that will be stipulated in Bank Indonesia Regulations include, among others<sup>7</sup>:

- 1) Licensing
- 2) Bank institutions, including management and ownership
- 3) Bank business activities in general
- 4) Bank business activities based on Sharia principles
- 5) Bank mergers, consolidations, and acquisitions
- 6) Interbank information system
- 7) Procedures for Bank Supervision
- 8) Bank reporting system to Bank Indonesia
- 9) Bank restructuring
- 10) Revocation of business permits, liquidation, and dissolution of the bank's legal form
- 11) Bank-supporting institutions of the banking system

Bank Indonesia's duty to supervise banks, according to Law Number 23 of 1999, is only temporary<sup>8</sup>. However, considering that the mandate to establish a financial services sector supervisory institution no later than 31 December 2002 has been exceeded, Law Number 3 of 2004 reaffirms that supervision of banks will be carried out by an independent financial services sector supervisory institution which will be established no later than - no later than 31 December 2010. The postponement of the deadline for establishing the institution is determined by taking into account the readiness of the human resources and infrastructure of the supervisory institution in accepting the transfer of bank supervision from Bank Indonesia<sup>9</sup>.

### 3. The Financial Services Authority Regulates and Supervises Banks

According to Rimawan Pradipto, monitoring of banking institutions (LK) in Indonesia occurs through several institutions: the Ministry of Cooperatives, Bapepam-LK, and Bank Indonesia. Bank Indonesia supervises bank financial institutions (LKB), which include ordinary banks, BPRs, and sharia banks. Non-bank financial institutions (LKNB) are supervised in two ways: non-cooperative LKNB are supervised by Bapepam-LK, while the Ministry of Cooperatives monitors cooperative LKNB.<sup>10</sup>

Furthermore, Rimawan stated that oversight was required due to the possibility of moral hazard (misappropriation/misuse) by financial players, which hurt the financial system.<sup>11</sup> According to economic theory, moral hazard is created by the asymmetry of knowledge, which is a state in which information is not distributed evenly among economic actors, resulting in moral hazard and adverse selection (mistakes in choosing).<sup>12</sup>

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<sup>7</sup> *Ibid*, p. 184

<sup>8</sup> "Interview with Edwin Suryadewangga, Public Relations Manager of Bank Indonesia, October 4 2018," n.d.

<sup>9</sup> *Ibid*.

<sup>10</sup> Rimawan Pradipto, "Optimalisasi OJK: Antara Institusi versus Sistem Pengawasan," 2011.

<sup>11</sup> *Ibid*.

<sup>12</sup> "Interview with Yudi Apriyasi, Head of the Financial Services Authority's Consumer Education and Protection Subdivision, September 25 2018," n.d.

Customers/households may also engage in moral hazard practices in the financial sector in addition to LKs. Moral hazard occurs as a result of the LK guidance method's fragility, which is triggered by several variables, including (a) the fragility of Indonesia's financial surveillance design framework, (b) no exchange of information flows (data sharing and data interfacing) between LK supervisory institutions; and (c) a high level of egocentrism among LK supervisory institutions.<sup>13</sup>

The root of moral hazard activities is a lack of coordination and information exchange (data sharing and data interface) amongst LK supervisory institutions. Currently, no system permits Bapepam-LK, Bank Indonesia, and the Ministry of Cooperatives to communicate information. As a result, finding moral hazard behaviors between marketplaces is challenging, if not impossible.<sup>14</sup>

Further to the previously defined concerns, Bank Indonesia Law Number 23 of 1999 requires setting up a finance services sector oversight company, encompassing financial services, insurance, retirement accounts, bonds, startup capital, and funding organizations, among various organizations that organize the oversight of government resources. The banking sector regulatory organization mentioned above is fundamentally standalone in performing its tasks and, consequently, is independent of the government. This organization is required to submit reports to the Financial Accounting Office and the House of Representatives.<sup>15</sup>

The Financial Services Agency is the regulatory body for the financial services industry. OJK was established to make sure all financial services operations within the banking and finance industry are executed in an orderly, fair, transparent, and accountable manner, that they are capable of creating a system of finance that grows sustainably and steadily, and that it is capable of protecting the interests of consumers and society.<sup>16</sup>

More than that, OJK was formed based on the principles of good governance, which include independence, accountability, responsibility, transparency, and fairness. In basic terms, OJK is a banking and finance authority with strong links with other officials, such as financial and economic agencies, which are ex-officio. Where the presence of ex-officio exists in connection with policy alignment, partnership, and integration in the finance, financial, and financial service sectors, this is required to guarantee the upkeep of national draws in the setting of global rivalry and international treaties, as well as the need for integration and information exchange in the context of maintaining and sustaining the stability of the banking system.<sup>17</sup>

Hamud M. Belfas stated that the OJK was established because supervision of the financial services industry with the current structure was considered inadequate. Apart from that, the background to the establishment of the OJK is also due to the increasing complexity of financial products, and the marketing of these products is carried out across industries such as capital market products (mutual funds) also offered by banks or insurance products also offered by banks (bancassurance).<sup>18</sup>

Finally, after going through the legislative process by the DPR and the Government since 2010, on November 22, 2011, Law Number 21 of 2011 concerning the Financial Services

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<sup>13</sup> *Ibid*

<sup>14</sup> *Ibid*.

<sup>15</sup> "Interview with Yudi Apriyasi, Head of the Financial Services Authority's Consumer Education and Protection Subdivision, September 25 2018," n.d.

<sup>16</sup> "Article 4 of Law Number 21 of 2011 concerning the Financial Services Authority" (n.d.).

<sup>17</sup> "Interview with Melton Purba, Financial Services Authority Consumer Education and Protection Staff, September 25 2018," n.d.

<sup>18</sup> *Ibid*.



Authority was approved and ratified. Juridically, according to the provisions of Article 1 Number 1 of Law Number 21 of 2011 Regarding the Financial Services Authority, it is formulated that "The Financial Services Authority, hereinafter abbreviated as OJK, is an independent institution and free from interference from other parties, which has the functions, duties, and authority of regulation, supervision, inspection and investigation as intended in this Law".<sup>19</sup>

According to Khabitul Umam, the OJK's independent nature, apart from the issue of limited dismissal from the President's intervention, is also reflected in:<sup>20</sup>

- 1) Collective institutional leadership, which is useful for internal processes in making decisions
- 2) The leadership is not controlled, or the majority comes from a particular political party, and
- 3) The institutional leaders' office terms cannot be held simultaneously but alternately.

Bank Indonesia has made various efforts to ensure that the transition of the two functions in question runs smoothly, including the formation of a Task Force for the Transfer of Bank Supervision Functions to the OJK in accordance with Bank Indonesia Governor Decree No. 14/6/ KEP.GBI/INTERN/2012 dated 10 February 2012.<sup>21</sup> The tasks of the Task Force according to the decision in question are:<sup>22</sup>

- 1) Support the smooth and effective transfer of the Bank Supervision function from Bank Indonesia to OJK.
- 2) Recommend Bank Supervision sector organizations to the OJK.
- 3) Conduct discussions with the Ministry of Finance and/or OJK regarding aspects of Organization, Human Resources, Legal, Bank Supervision, Development, Bank Regulation and Licensing, Data and Information Systems, as well as Logistics, Documents and Communications.
- 4) Prepare member personnel and provide input for the Bank Indonesia Transition Team formed by the OJK Board of Commissioners.

Article 6 of the OJK Law states that OJK is responsible for executing administrative and monitoring tasks regarding:<sup>23</sup>

- 1) Banking-related financial services activities
- 2) Financial services activities in the capital markets sector
- 3) Insurance companies, pension schemes, financial institutions, and other financial entities provide financial services.

OJK has the authority to carry out regulatory and supervisory functions in financial services operations within the financial services industry:<sup>24</sup>

- 1) Regulation and supervision in role institutions, which includes:
  - a) The licensing process for establishing a bank, opening a bank office, the articles of association, the work plan, ownership, management, and staff members, acquisitions, reorganizations, and bank investments, and the suspension of the bank operating license.

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<sup>19</sup> " Article 1 Number 1 Law Number 21 of 2011 concerning the Financial Services Authority" (n.d.).

<sup>20</sup> Khatibul Umam, *Perbankan Syariah: Dasar-Dasar Dan Dinamika Perkembangannya Di Indonesia* (Jakarta: Raja Grafindo Persada, 2016), p. 282.

<sup>21</sup> " Interview with Melton Purba, Financial Services Authority Consumer Education and Protection Staff, September 25, 2018.," n.d.

<sup>22</sup> *Ibid*, p. 283.

<sup>23</sup> *Ibid*, p. 284.

<sup>24</sup> "Pasal 7 Undang-Undang Nomor 21 Tahun 2011 Tentang Otoritas Jasa Keuangan" (n.d.).

- b) Bank business activities, including sources of funds, provision of funds, hybridization products, and activities in the service sector.
- 2) Regulation and supervision regarding bank health, which includes:
  - a) Liquidity, profitability, solvency, asset quality, minimum capital adequacy ratio, maximum credit limit, loan-to-deposit ratio, and bank reserves.
  - b) Bank reports related to bank health and performance.
  - c) Debtor information system.
  - d) Credit testing.
  - e) Banking accounting standards.
- 3) Regulation and supervision regarding bank prudential aspects, which include:
  - a) Risk management.
  - b) Bank governance.
  - c) Principles regarding customers and anti-money laundering.
  - d) Prevention of terrorism financing and banking crimes.
- 4) Bank check

#### D. CONCLUSION

Banking is one of the pillars of economic development in Indonesia, which mainly collects and distributes public funds as regulated in Article 3 of Law No. 10 of 1998 concerning Banking. However, in recent years, cases regarding banking crimes have become increasingly common and have become news to the wider public, with various modes of criminal acts. With the rise in banking crime, quite a few potential and real victims are certainly affected. Special attention is needed in relation to banking crimes committed by bank insiders (crimes against the bank). "Insider" crimes are closely related to the domination of policy and administration by one or several people and weak supervision by internal and external supervisors (regulators). In addition, various applicable regulations often cause banks to take excessive risks, which causes a decrease in the level of internal supervision, so bank failures caused by fraud by insiders become higher.

The Century Bank case cost the state almost 6.7 trillion. The case of Bank Lippo published multiple financial reports containing different information between September 2002 and December 2002. Then there is the case of Bank Duta, which carried out various transaction manipulations, including foreign exchange trading and manipulation of financial reports. Apart from that, many cases of fraud occurred in 2010-2011. The total losses due to these cases reached more than IDR 100 billion. Such as providing credit with fake financial documents and fictitious collateral to Bank Internasional Indonesia (BII) with a loss of IDR 3.6 billion. Disbursement of deposits by bank management who had taken or had used cash belonging to the Danamon Bank Tower Sub-Branch Office (KCP) with a loss value of IDR 1.9 billion and US\$ 110. The head of operations of Panin Bank Metro Sunter Branch, Jakarta, with the initials MAW, embezzled customer funds by transferring them to the perpetrator's account without the owner's knowledge with a loss of IDR 2.5 billion. The last one was a banking crime committed by Inong Malinda alias Melinda Dee (47), former Senior Relationship Manager of Citibank Landmark Branch, South Jakarta.

The Financial Services Authority (OJK) recorded 108 cases of banking crime over almost two years. Fraud perpetrators are usually individuals who have the authority to make decisions related to handling banking operational activities. Fraud in banking often occurs in Rural Banks (BPR), 80 percent of which close due to fraud. Anti-fraud forum members can increase from the current number of 40 commercial banks. Through outreach and education,

this forum's activities can prevent banking criminal acts from occurring, which can have major implications for disrupting the stability of the national financial system.

According to Tuannakota, fraud is any illicit conduct marked by deceit, hiding, or breach of trust. This action is not based on the use of threats of violence or physical force. Individuals and groups commit fraud to get money, riches, or services; to prevent payment or loss of services; or to secure personal commercial profits. Put forward by Donald Cressey in 1953 which explains why someone commits fraud or is known as the fraud triangle theory. Initially, Donald Cressey conducted research by interviewing people who had committed fraud or were fraudsters. He conducted interviews with 200 people who were charged with fraud in prison. This research showed that people who commit fraud are influenced by 3 things: Pressure, Opportunity, and Rationalization. Theories regarding the causes of fraud continue to develop. The Association of Certified Fraud Examiners (ACFE) describes occupational fraud as a fraud tree. Fraud tree is a systematic description that shows the parts of fraud. Fraud consists of three main branches: corruption, asset misappropriation (deviation of assets), and fraudulent statements (manipulation of reports). Regulations regarding fraud have actually been regulated in several regulations, such as:

1. Article 362 concerning theft, Article 368 concerning Extortion and Threats, Article 372 concerning Embezzlement, Article 378 concerning Fraudulent Acts, Article 396 concerning Harming Debtors in Bankruptcy, Article 406 concerning Destroying or Damaging Property
2. Articles 209, 210, 387, 388, 415, 419, 420, 423, 425 and 435 which are specifically regulated in the Corruption Eradication Law (Law Number 31 of 1999 in conjunction with Law Number 20 of 1999 2001).
3. Articles 46, 47, 47A, 48 paragraph (1), articles 49, 50 and 50A of Law Number 51 of 1998 concerning Banking. As well as several regulations issued by Bank Indonesia and the Financial Services Authority.

The 2008 Report to the Nation on Occupational Fraud and Abuse is a study conducted by the ACFE regarding fraud in America. This report provides many clues to detect fraud. Some lessons from this report, regarding fraud detection, namely:

1. The average duration of fraud before it is detected is more than one year; namely between 17 to 30 months;
2. Nearly half (46.25% in 2008) were discovered because someone "leaked" (tip). Meanwhile, 25.4% (in 2006) and 20% (in 2008) of all frauds were discovered by accident, so not by fraud examiners, internal auditors or external auditors.
3. Even if the fraud was committed by the employer or owner, more than half (51.7%) was discovered because of a tip. Leaks (tips) mainly (57.7%) come from employees. However, unfortunately, in Indonesia there has been no national scale research regarding fraud disclosure.

Regulation and supervision are also mandated by concerns in Banks Law Number 23 of 1999, which includes the establishment of a financial services sector supervisory institution that includes insurance, financial services, pension funds, securities, entrepreneurship, and financing companies, as well as other bodies that organize management of public funds. The financial services sector regulatory institution is fundamentally independent in carrying out its duties, and its position is independent of the government. Juridically, according to the provisions of Article 1 Number 1 of Law Number 21 of 2011 concerning the Financial Services Authority, it is formulated that "The Financial Services Authority, hereinafter abbreviated as OJK, is an independent institution and free from interference from other parties, which has the

functions, duties, and authority to regulate, supervise, examine and investigate as intended in this Law".

While the Financial Services Authority now has the supervisory function that was originally the task and authority of Bank Indonesia, Article 37 paragraph (2) of the OJK Law states that the OJK and Bank Indonesia may collaborate and interact in mutual oversight of monetary services operations in the finance industry. Thus, the existence of an institutional relationship between Bank Indonesia and the Financial Services Authority is expected to be able to coordinate in terms of reducing the number of frauds that occur in Indonesia. After explaining the matters related to this research, several suggestions come to the mind of the researcher, namely:

1. It seems necessary to have special regulations, in this case, the law regarding fraud that occurs in the banking sector, to be used as a basis for enforcing criminal and administrative criminal laws.
2. To prevent fraud, internal supervision is important for every financial institution, especially banking.
3. There is a need for an ideal legal protection umbrella for whistleblowing because whistleblowers are willing to provide information on fraudulent practices, especially in the banking sector.
4. Implement the know-your-employee principle in banking practices effectively and efficiently to create banking risk management oriented towards customer service.

Fraud as part of crime, especially in the banking sector, is so widespread that efforts to reduce this number have not shown significant changes. So, by making the four suggestions above effective in preventing and overcoming fraud, especially in the banking sector, researchers hope to help suppress and even eradicate fraud in Indonesia.

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