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Legal Analysis Of Violations Of The Prudential Banking Principle In Credit: A Perspective On Corruption And Money Laundering Crimes

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Abstract

This research examined the legal implications of credit defaults in Indonesia, specifically assessing whether cases of payment default or bad debt fell under civil or criminal liability. It also investigated whether fraudulent activities in the credit process constituted predicate offenses, such as corruption, potentially leading to money laundering charges. The research aimed to develop a policy framework for resolving legal disputes related to non-performing banking credit. Employing a normative juridical approach, the research utilized conceptual, statutory, case, and philosophical analyses, drawing upon legal references and case studies to substantiate its findings. The results indicated that the legal resolution of banking credit disputes fell into two primary categories. If bad credit resulted from a violation of the Prudential Principles (the 5C's), banks as creditors could initiate criminal proceedings by reporting the underlying offenses associated with credit disbursement. Conversely, if bad credit stemmed solely from contractual breaches without elements of illegality, banks could seek redress through civil litigation. Furthermore, instances of fraudulent conduct within the credit process could qualify as predicate offenses, thereby enabling criminal proceedings under the Corruption Criminal Act and the Money Laundering Crime Act..

A. Introduction

Banking law governs all aspects of banking operations, including institutional structure, business activities, and transaction processes. As key financial institutions, banks play a vital role in managing public funds, and their activities must be based on the trust established with

customers.[1] People deposit money in banks with the expectation that their funds will be safe, accessible, and yield returns. If this trust is broken, it can result in a bank run[2].

To maintain trust and security, banks must adhere to "Prudential Principles" in managing public funds[3]. These principles are designed to mitigate banking risks, particularly the risk of losing customer confidence. As part of this, banks must conduct thorough credit analyses before granting loans to ensure they do not become bad debts. The credit analysis follows the 5C's of Credit: conditions, collateral, character, capacity, and capital, aiming to prevent loans from turning into non-performing assets.

In some cases, bad credit arises from superficial or rhetorical credit analyses. In Indonesia, while the 5C's principles may be followed administratively, they are not always applied substantively. Although banking credit is primarily governed by civil law, it can lead to criminal litigation, particularly in cases involving predicate offenses and money laundering. Banks, as financial institutions, can facilitate money laundering through placement, layering, and integration.

1. Placement involves introducing illegally obtained funds (dirty money) into the financial system, often through bank deposits.
2. Layering refers to transferring criminal assets, once placed in the financial system, to other institutions to obscure their origin.
3. Integration is the final stage, where laundered funds, now appearing legitimate (clean money), are reintegrated into the economy and used as legally obtained assets.

A distinctive aspect of certain legal cases is the use of banking credit as a mechanism to acquire illicit assets (dirty money). In some instances of bad credit, the credit analysis process appears to adhere to the 5C's principles in an administrative sense, yet these principles are not substantively applied. This raises a pivotal legal question: should the resolution of bad credit be addressed through civil law, or does it necessitate criminal proceedings, particularly within the frameworks of predicate offenses and money laundering?

This issue constitutes the core of the author's research, which seeks to ensure legal certainty and equity in the enforcement of the law. Previous studies focused on analyzing the precautionary principle concerning bank guarantees under civil law. This article represents an extension of that research, incorporating an examination of banking credit from a criminal law perspective. The research specifically explores the phenomenon of money laundering in the context of banking credit, aiming to delineate the appropriate legal response and ensure the fair administration of justice.

This research adopts a normative legal research approach, focusing on the analysis of foundational legal materials through the examination of legal theories, concepts, principles, and applicable legislation. The research integrates various methodologies, including the statute approach, conceptual approach, case approach, and philosophical approach.[4] [5]

The sources of legal materials used in this research encompass both primary and secondary legal sources. Primary legal materials consist of legal principles and statutory regulations, while secondary legal materials include supplementary resources such as legal books, journals, and other relevant literature[6].

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[1] Renaldy Muhamad, "Kegiatan Usaha Bank Perkreditan Rakyat Ditinjau Dari Undang-Undang Nomor 10 Tahun 1998 Tentang Perbankan," *Lex Privatum* 8, no. 1 (2020): 71.

[2] Rihantoro Bayuaji, *Hukum Pidana Korupsi* (Yogyakarta: LaksBang Justitia, 2019).

[3] Muhamad, "Kegiatan Usaha Bank Perkreditan Rakyat Ditinjau Dari Undang-Undang Nomor 10 Tahun 1998 Tentang Perbankan."

[4] Irwansyah and Ahsan Yunus, *Penelitian Hukum : Pilihan Metode & Praktik Penulisan Artikel* (Sleman: Mirra Buana Media, 2021).

[5] Irwansyah, *Penelitian Hukum; Pilihan Metode Dan Praktik Penulisan Arikel* (Yogyakarta: Mirra Buana Media, 2020).

[6] Peter Mahmud Marzuki, *Penelitian Hukum Edisi Revisi Cet-11* (Jakarta: Kencana Prenada Media Group, 2019).

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To analyze the collected legal materials, the research employs a range of analytical methods aligned with the selected approaches. The results are then compared, reanalyzed, and restructured using descriptive statements to ensure a thorough and comprehensive understanding of the subject matter.

B. Discussion

1. General Characteristics of Contract

In the context of civil law, a contract is defined as a legal agreement between two or more parties, obligating them to either perform or refrain from performing certain actions. This contract possesses binding legal force, meaning that if one party fails to fulfill its obligations, the other party has the right to seek either performance or compensation, in accordance with applicable legal provisions.

Contracts can encompass a wide range of transactions, from simple exchanges, such as the purchase of goods, to more complex agreements like employment, service, or commercial contracts. A breach of contract typically results in legal remedies, such as compensation for damages or an order to enforce performance. The central purpose of a contract is to establish a predictable and enforceable framework within which individuals and entities can enter agreements and resolve disputes, ensuring that promises made in both business and personal dealings are upheld.

In Indonesia, the legal framework governing contracts is outlined in the Civil Code (*Burgerlijk Wetboek / BW*), particularly in Book III, which addresses engagements. The specific characteristics of a contract are closely tied to Article 1320 BW, which sets forth the conditions for the validity of a contract. According to Article 1320 BW, a contract is considered valid if it satisfies the following four requirements:

1. The existence of agreement between the parties who made it (*de toestemming van degenen die zich verbinden*);
2. The parties who made the contract should understand the law (*de bekwaamheid om eene verbintenis aan te gaan*);
3. The existence of specific object written in the treaty (*een bepald onderwerp*);
4. The existence of legal reason which did not violate the law *(een geoorloofde oorzaak*)[7].

The first condition for a valid contract is agreement. This concept implies that each party expresses its will to enter into a contract, or that the statement of one party aligns with the statement of the other[8]. In another sense, agreement occurs when both parties involved in the contract reach a compromise, agree, or align on the fundamental terms of the contract[9].

The second condition for a valid contract is the capacity to act legally. Generally, any adult with sound mental health is considered to have legal capacity[10]. Another interpretation of capacity is the ability to perform legal acts independently, thereby binding oneself without restriction[11].

The capability of doing legal act is assessed based on these standards:

1. Individual, measured by the standard of adulthood age (*meerderjarig*); and

[7] Sindy Damayanti, M. Nassir Agustiawan, and Dian Samudra, "ANALISIS YURIDIS PENYELESAIAN PERKARA WANPRESTASI OLEH PT. MANDIRI TUNAS FINANCE TERHADAP DEBITUR (Studi Putusan Perkara Nomor 52/Pdt.G.S/2023/PN Srg)" 9, no. 9 (2024): 143–54.

[8] Hanifah Nuraini et al., "Paradigma Interpretif Konsep Penyalahgunaan Keadaan (Misbruik Van Omstandigheden) Pada Perjanjian Kredit Perbankan," *Refleksi Hukum: Jurnal Ilmu Hukum* 4, no. 2 (2020): 259–80, https://doi.org/10.24246/jrh.2020.v4.i2.p259-280.

[9] Niru Anita Sinaga, "Implementasi Hak Dan Kewajiban Para Pihak Dalam Hukum Perjanjian," *Jurnal Ilmiah Hukum Dirgantara* 10, no. 1 (2019): 1–20.

[10] Hananto Prasetyo, "BERBASIS NILAI KEADILAN (Studi Kasus Pada Petinju Profesional Di Indonesia)," *Jurnal Pembaharuan Hukum* IV, no. 1 (2017): 65–81.

[11] Pangemanan Supit Wempie Frans, "Implementasi Pasal 1238 Kuh Perdata Terhadap Penentuan Debitor Yang Cidera Janji Dalam Perjanjian Kredit," *Lex Et Societatis* 7, no. 4 (2019): 119–26.

2. Legal Entity (*Rechtperson*), measured by the aspect of authority (*bevoegheid*) [12].

The third condition for a valid contract is that it must concern a specific object, meaning the rights and obligations of both parties must be clearly defined in the event of a dispute. The type of goods involved in the contract should be specified, ensuring that the goods are available and/or already in the possession of the debtor at the time the contract is formed. It is important to note that the requirement for the goods to be physically present or in the debtor's possession is not mandated by law.

Another interpretation of this third condition is that the achievement or outcome, which forms the subject of the contract, must be clearly outlined. This ensures the characteristics and scope of the parties' obligations are clearly defined[13].

The specific goods or object could be referred to Article 1332, 1333 and 1334 BW.

1. Article 1332 BW: Only goods that can be traded can be the subject of the treaty.
2. Article 1333 BW: A treaty should have a subject in the form of goods, that at least, the type have been determined. The amount of goods is not fixed as long as the amount is determinable or can be counted.
3. Article 1334 BW: New goods available in the future can be the subject of a treaty.

However, it is not allowed to let an inheritance that has not been opened, or to ask for a contract on something regarding the inheritance, even though with the approvement of the person who will leave the inheritance, without reducing the provisions of Article 169, 176 and 178 [14].

The fourth valid condition for a contract is the "legal reason" or "a reason that is not against the law." This refers to the motivation or cause behind the formation of the contract. It is not a reference to constitutional purposes but rather the underlying reasons or intentions that compel an individual to enter into a contract [15]. According to Article 1320 BW, the concept of "reason" (*oorzaak*) should be understood in the context of Articles 1335 and 1337 BW. Although the Constitution does not explicitly define the term, it pertains to the final purpose of the contract, or what the parties aimed to achieve at the time of entering into the agreement[16].

Contracts can be either written or oral. However, written contracts are generally preferred for the sake of legal certainty. If one party fails to fulfill their obligations, the aggrieved party may demand performance of the contract or seek compensation in accordance with applicable legal provisions. In such instances, the law provides protection to ensure that the contract is properly enforced.

2. Banking Credit Agreement According To Prudential Banking Principle

The Prudential Banking Principle refers to a set of practices and guidelines aimed at ensuring the safety, soundness, and stability of banks and the financial system. These principles focus on managing risks, maintaining financial integrity, and protecting depositors and investors. The core idea is that banks should operate with caution and responsibility, particularly in relation to lending, investing, and managing financial positions. The Prudential Banking Principle is central to regulatory frameworks such as those outlined by the Basel Committee on Banking Supervision, which sets international standards to promote sound banking practices and mitigate systemic risks. These principles are designed to safeguard the financial system, ensuring its resilience in times of economic stress or crisis.

[12] Nuraini et al., "Paradigma Interpretif Konsep Penyalahgunaan Keadaan (Misbruik Van Omstandigheden) Pada Perjanjian Kredit Perbankan."
[13] Agus Hernoko Yudha, *Hukum Perjanjian* (Jakarta: Prenadamedia Group, 2019).
[14] Frans, "Implementasi Pasal 1238 Kuh Perdata Terhadap Penentuan Debitor Yang Cidera Janji Dalam Perjanjian Kredit."
[15] A Fauzan, "Legalitas Penerapan Digital Signature Dalam Suatu Perjanjian (Kontrak) Kredin Perbankan," *Das Sollen: Jurnal Kajian Kontemporer Hukum Dan Masyarakat*, 2023, 1–21, https://doi.org/10.11111/dassollen.xxxxxxx.
[16] Hernoko Yudha, *Hukum Perjanjian*.

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In the context of banking credit agreements, the determination of valid conditions mirrors the general principles of contract law. However, banking credit agreements involve specific criteria for determining their validity. These criteria are articulated in the Prudential Principles, which are reflected in the "5C's of Credit"—character, capacity, capital, collateral, and the condition of the economy [17].

The elements of character, capacity, capital, collateral, and condition of the economy are central to assessing the viability of a banking credit agreement. These elements are outlined as follows:

1. Character Assessment: This involves evaluating the prospective debtor's character to determine their honesty and willingness to repay the debt, thereby minimizing future risks for the bank. Information can be gathered through the bank's relationship with the debtor or through third-party sources familiar with the debtor's moral standing, personality, and behavior in daily life [18].
2. Capacity Assessment: This requires the bank to assess the debtor's expertise in their business field, as well as their managerial skills, to ensure that the business to be financed is properly managed. This ensures that the debtor can repay the debt within the agreed time frame. If the debtor's business skills are inadequate or if the business's performance is declining (unless due to lack of funds), a large-scale credit is deemed inappropriate. However, if the decline is due to insufficient capital, credit may be approved to address this issue[19].
3. Capital Assessment: The bank must thoroughly evaluate the financial position of the prospective debtor, considering both past and future financial capacity, to ensure that the debtor can support the project or business financially. In practice, banks typically do not finance the entire cost of a project; rather, the debtor must contribute a portion of the capital [20].
4. Collateral Assessment: This involves securing the repayment of the loan in case of default by the debtor. Debtors are generally required to provide collateral of high quality, easily liquidated, and at a minimum value equal to the loan amount. If the debtor fails to repay, additional collateral can be liquidated to cover the debt or offset the remaining balance [21].
5. Condition of Economy Assessment: The bank must assess both the domestic and international market conditions before and after the loan is disbursed to evaluate the potential future success of the debtor's project or business [22].

In addition to the 5C's principles, banks are advised to apply the 5P Principles when granting credit [23]. These principles help ensure that the credit provided is used effectively and responsibly. The 5P Principles are as follows:

1. Parties: The bank must build trust with the debtor, ensuring a solid understanding of their integrity, background, and repayment ability to minimize risks.
2. Purpose: The bank should ensure that the credit is used for productive purposes aligned with the debtor's objectives and monitor its proper utilization.
3. Payment: Banks must assess whether the debtor has a stable income source sufficient to reliably repay the loan.

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[17] La Ode Abdul Razak, Oheo K. Haris, and Sabrina Hidayat, "Analisis Hukum Pertanggungjawaban Pidana Korporasi Dalam Tindak Pidana Pencucian Uang (Money Laundering)," *Halu Oleo Legal Research* 2, no. 2 (2020), https://doi.org/10.33772/holresch.v2i2.12466.

[18] Fauzan, "Legalitas Penerapan Digital Signature Dalam Suatu Perjanjian (Kontrak) Kredin Perbankan."

[19] Tarissa Seshita Hadi and R. Yuniardi Rusdianto, "Mekanisme Penilaian Pemberian Kredit Dalam Meminimalisir Risiko Kredit Pada Bank BJB KCP Mojokerto" 3, no. 1 (2024).

[20] Endah Lestari Ningrum et al., "Program Studi Diploma Tiga Akuntansi , Jurusan Keuangan & Perbankan ," 3 (n.d.).

[21] Algifanri Maulana, "Penerapan Logika Fuzzy Sugeno Untuk Keputusan Kelayakan Kredit Bank," *Jurnal Desain Dan Analisis Teknologi* 3, no. 1 (2024): 44–58, https://doi.org/10.58520/jddat.v3i1.45.

[22] Maulana.

[23] Sinaga, "Implementasi Hak Dan Kewajiban Para Pihak Dalam Hukum Perjanjian."

4. Profitability: The bank should evaluate if the debtor's business can generate enough profit to cover both the loan repayment and interest.
5. Protection: Credit protection through collateral or guarantees is essential, ensuring the bank has security in case of financial instability [24].

3. Law Enforcement in the Perspective of Civil Law on Banking Bad Credit

A banking credit agreement is a form of lending and borrowing contract, as outlined in Article 1754 of the Indonesian Civil Code (BW). This article defines a borrow-to-use contract, where one party provides goods to the other under the condition that the same type and quantity of goods will be returned. However, R. Subekti suggests that all forms of credit agreements can be considered a lend and borrow contract, as regulated from Articles 1754 to 1769 of the BW [25]. Sutan Remy Sjahdeini, however, differentiates a credit agreement from a traditional loan contract, asserting that a credit agreement is a consensual contract rather than a real contract, with several distinguishing characteristics:

1. Consensual Nature: Unlike a typical loan agreement, a credit agreement is a consensual contract, where the loan of money could be either real or consensual, depending on the jurisdiction. In Indonesia, credit agreements are viewed as consensual.
2. Specific Use of Credit: The credit granted by banks cannot be used freely by the debtor, unlike in a general loan agreement. It is often designated for specific purposes.
3. Usage Terms: Unlike general loan agreements, bank credit is not handed over to the debtor's absolute control. It must be used in a regulated manner, such as through a cheque or book-entry order, ensuring control over how the funds are used[26].

Sutan Remy Sjahdeini emphasized that a credit agreement is a contract between a bank (creditor) and a customer (debtor) for the provision of money or an equivalent claim, obligating the debtor to repay the debt over a specified period with interest, compensation, or profit sharing[27].

This distinction highlights several key differences between a credit agreement and a money lending and borrowing contract, including their conceptual understanding, the subject of creditors, regulation, purpose, and collateral. Consequently, a bank credit agreement is not the same as a traditional loan agreement under the *Burgerlijk Wetboek* (BW). Rather, it is a preliminary agreement (*voorovereenkomst*) leading to the actual consensual transfer of money, and it is considered an anonymous agreement (*onbeniem de overeenkomst*) [28].

However, the bank credit agreement arises from the mutual approval or agreement between the bank and the debtor, forming the legal basis of the relationship with specific characteristics that separate it from a general lending and borrowing contract.

In reference to the types of agreements, a bank credit agreement is a reciprocal agreement. This means that if either party (the bank or the debtor) fails to fulfill the terms of the agreement, the other party has the right to take legal action based on the nature of the performance required. However, the delivery of money in a bank credit agreement is a one-sided agreement. In this case, if the bank does not provide the loan money, the debtor cannot sue the bank for breach of promise. Likewise, if the debtor fails to take the loan money after being notified, the bank cannot sue the debtor[29] [30].

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[24] Sinaga.

[25] Muhamad, "Kegiatan Usaha Bank Perkreditan Rakyat Ditinjau Dari Undang-Undang Nomor 10 Tahun 1998 Tentang Perbankan."

[26] Fauzan, "Legalitas Penerapan Digital Signature Dalam Suatu Perjanjian (Kontrak) Kredin Perbankan."

[27] Sinaga, "Implementasi Hak Dan Kewajiban Para Pihak Dalam Hukum Perjanjian."

[28] Muhamad, "Kegiatan Usaha Bank Perkreditan Rakyat Ditinjau Dari Undang-Undang Nomor 10 Tahun 1998 Tentang Perbankan."

[29] Prasetyo, "BERBASIS NILAI KEADILAN (Studi Kasus Pada Petinju Profesional Di Indonesia)."

[30] Anton Jaksa Trisakti and Eko Soponyono, "Upaya Pencegahan Tindak Pidana Pencucian Uang Dalam Bentuk Uang Kripto (Bitcoin) Menggunakan Prinsip Kehati-Hatian Perbankan," *Agustus* 7, no. 1 (2021).

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Based on this explanation, if there is a breach of contract (default) in the execution of a credit agreement, the appropriate legal recourse would be through civil law. The bank, as the creditor, can bring a lawsuit to court, or it may file for an Application for Suspension of Debt Payment or initiate bankruptcy proceedings through the commercial court at the district court [31].

4. Law Enforcement in the Perspective of Criminal Law on Banking Bad Credit

In principle, the enforcement of criminal law in relation to the realization of an agreement is not feasible. Criminal law enforcement may only be applicable when issues arise surrounding the formation of the agreement. The legal foundation of a contract is based on agreement, where agreement refers to the meeting of minds or a mutual understanding between parties[32].

In agreement formulation, the concept of consensualism is applied legally, reflecting the mutual consent of the parties involved. However, in certain circumstances, a contract may not fully reflect the actual agreement[33]. This can occur due to a defect of will (*wilsgebreke*), which affects the formation of the contract. In Indonesian law (BW), the defect of will is categorized into three types:

1. Error (*dwaling*);
2. Deception (*bedrog*);
3. Coercion (*dwang*).

When a contract is concluded under fraudulent circumstances, as defined by the defect of will (*wilsgebreke*), and one party (typically the debtor) has intentionally deceived the other party, the legal relationship is tainted by fraud defined as a violation under Article 378 of the Indonesian Criminal Code.[34]

In the case of a credit agreement, if fraud is later discovered, the bank, as the creditor, can seek legal recourse under criminal law. Since the defect of will, in this case, is due to fraud, the bank may pursue criminal charges against the debtor. This ensures that the fraudulent nature of the contract is addressed, and the legal consequences of such deceit are enforced.

5. Violation of Prudential Principles in Banking Credit

Bank credit agreements are standardized contracts with clauses pre-established by the bank, though not bound to a specific form (*vorn vrij*) [35]. These standardized formats apply not only to the clauses but also to the overall formation of the credit agreement. While general contract formation principles like coercion (*dwang*), deception (*bedrog*), and mistake (*dwaling*) apply, specific prudential principles, such as the 5C's (Character, Capacity, Capital, Collateral, and Condition of economy), also play a role in ensuring the credit is granted responsibly.

Banks aim to avoid non-performing loans (NPLs) and take preventive measures to minimize risks. However, if the credit becomes substandard, doubtful, or turns into bad credit, banks will take repressive actions. The initial repressive action is rescuing the credit through adjustments, and if that fails, the bank will proceed with debt collection to recover the loans[36].

Debt collection efforts typically begin with a warning letter, followed by legal actions if necessary. These legal actions can involve civil law steps or, in some cases, criminal law steps, especially if bad credit results from fraudulent or criminal activity. In Indonesia, banking activities such as credit granting are a central part of banking operations, generating significant income primarily from interest on loans, which is higher than income from fee-based services.

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[31] Iriansyah, Irfansyah, and Rezmia Febrina, "Kewenangan Pusat Penelitian Dan Analisis Transaksi Keuangan (PPATK) Dalam Menerobos Rahasia Bank Berdasarkan Undang-Undang Nomor 8 Tahun 2010 Tentang Tindak Pidana Pencucian Uang," *Jurnal Hukum Respublica* 20, no. 2 (2021), https://doi.org/10.31849/respublica.v20i2.7226.

[32] Fauzan, "Legalitas Penerapan Digital Signature Dalam Suatu Perjanjian (Kontrak) Kredin Perbankan."

[33] Hernoko Yudha, *Hukum Perjanjian*.

[34] Bayuaji, *Hukum Pidana Korupsi*.

[35] Muhamad, "Kegiatan Usaha Bank Perkreditan Rakyat Ditinjau Dari Undang-Undang Nomor 10 Tahun 1998 Tentang Perbankan."

[36] Sinaga, "Implementasi Hak Dan Kewajiban Para Pihak Dalam Hukum Perjanjian."

Therefore, credit distribution must follow Prudential Principles, ensuring thorough analysis, accurate distribution, proper monitoring, legal agreements that meet legal requirements, secure collateral, and well-organized credit documentation.

According to the Banking Law (Statute Number 10 of 1998, amending Statute Number 7 of 1992), credit is defined as the provision of money or an equivalent claim based on a lending and borrowing agreement between the bank and another party, where the debtor is obligated to repay the debt along with interest over a specified period. [37]

Since credit granting constitutes the primary activity of banks and serves as their principal source of income, it is essential for banks to conduct a comprehensive assessment of debtors before extending loans. This evaluation is typically carried out using the 5C's framework, which includes character, capacity, capital, collateral, and economic conditions.

Failure to appropriately implement the 5C's principles, resulting in the issuance of bad credit agreements, necessitates an audit of the bank's compliance with prudential principles, particularly concerning the application of the 5C's. Such an audit aims to determine whether non-compliance with these principles contributed to the credit becoming non-performing and to inform subsequent legal enforcement measures, whether civil or criminal.

In cases where the credit-granting bank is a State-Owned Enterprise (*Badan Usaha Milik Negara, BUMN*) or a Regional-Owned Enterprise (*Badan Usaha Milik Daerah, BUMD*), the relevant criminal offense applicable to the debtor is "corruption," as regulated under Law No. 30 of 1999 on the Eradication of Corruption Crimes in conjunction with Law No. 20 of 2001, which amends Law No. 30 of 1999 ("UU PTPK"). However, if the lending institution is a privately-owned bank, the applicable legal provisions fall under general criminal law or banking-related offenses.

6. Predicate Crime in the Form of Corruption in Violations of the Prudential Principle in Banking Credit

In general, the formation of contracts is governed by fundamental principles that require agreements to be made voluntarily and independently. However, certain conditions may lead to restricted consent, thereby affecting the validity of the contract. Three primary factors that may compromise the independence of an agreement are compulsion (*dwang*), deception (*bedrog*), and error (*dwaling*) [3839].

1. Compulsion (*dwang*) refers to psychological or mental pressure exerted on a party, rather than physical coercion. For instance, if an individual is subjected to threats and consequently compelled to enter into a contract, the consent given is not considered voluntary, rendering the agreement potentially voidable.
2. Deception (*bedrog*) occurs when one party intentionally provides false or misleading information with the objective of deceiving the other party into entering the contract. This misrepresentation undermines the integrity of the contractual agreement and may serve as grounds for annulment.
3. Error (*dwaling*) arises when a party enters into a contract based on a fundamental misunderstanding regarding essential elements, such as the nature of the goods, the core contractual terms, or the identity of the contracting party. The error must be sufficiently material such that, had the party been fully informed, they would not have consented to the agreement.

[37] Ayup Ningsih, "Kajian Yuridis Efektifitas Penyelesaian Kredit Macet Melalui Lelang Hak Tanggungan," *Arena Hukum* 14, no. 3 (2021): 546–66, https://doi.org/10.21776/ub.arenahukum.2021.01403.7.

[38] Willy Putra and Haryati Widjaja, "Penerapan Prinsip Kehati-Hatian (Studi Kasus Di Bank BRI Cabang Semarang)," *Jurnal Ilmu Hukum* 3, no. 1 (2018): 81–96.

[39] Adi Hermansyah and Nora Mia Azmi, "Pertimbangan Hakim Dalam Putusannya Terhadap Perkara Tindak Pidana Pencucian Uang Hasil Kejahatan Narkotika," *Jurnal Hukum Dan Keadilan "MEDIASI"* 8, no. 1 (2021), https://doi.org/10.37598/jm.v8i1.919.

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In the context of banking credit agreements, these fundamental principles apply similarly; however, additional considerations arise due to the unique nature of banking contracts. The validity of a banking credit agreement is contingent not only on the general principles of contract formation but also on the substantive fulfillment of the 5C's framework—character, capacity, capital, collateral, and condition of the economy (assessment of the debtor's business prospects).[40]

Failure to substantively fulfill these 5C's elements, particularly when the assessment does not accurately reflect the actual financial condition of the prospective debtor, may indicate the presence of criminal activity. In such cases, the following criminal offenses may be applicable:[41]

1. Fraud, as stipulated under Article 378 of the Indonesian Criminal Code, occurs when a party deliberately provides false information to deceive the bank into granting credit.
2. Embezzlement, as regulated under Article 372 of the Criminal Code, involves the misappropriation of credit funds by the debtor for purposes other than those agreed upon in the credit agreement.
3. False statements in documents, as outlined in Articles 263 and 266 of the Criminal Code, refer to the submission of falsified or inaccurate documents during the credit application process, with the intent to mislead the bank.

If examined within the framework of Indonesia's Corruption Law, these violations of prudential principles in banking credit agreements can be classified under the legal element of "against the law", as regulated in Article 2 in conjunction with Article 3 of Law No. 31 of 1999 on the Eradication of Corruption, as amended by Law No. 20 of 2001 (UU PTPK).

Article 2

Article 2 stipulates that any individual who unlawfully enriches themselves, another person, or a corporation in a manner that may harm state finances or the national economy is subject to severe penalties, including imprisonment ranging from four years to life and fines between IDR 200 million and IDR 1 billion. In certain circumstances, the death penalty may be imposed.

Article 3

This article further expands on corruption offenses by criminalizing the abuse of authority, opportunity, or means derived from one's official position, if such abuse results in harm to state finances or the national economy. The penalties range from one year to twenty years of imprisonment and fines from IDR 50 million to IDR 1 billion.

Violations of prudential banking principles, particularly those involving fraudulent practices such as deception, embezzlement, or falsification of documents in credit agreements, constitute predicate crimes (*delik asal*) that may trigger both civil and criminal liability. If the credit facility originates from a state-owned or regional-owned bank (BUMN/BUMD), the offense may be prosecuted as a corruption crime. Conversely, if the violation occurs in a privately owned bank, it may fall under general criminal law or banking-related offenses. These legal consequences underscore the critical importance of upholding prudential principles in banking operations to maintain financial integrity and prevent criminal misconduct.

7. Combating the Crime of Money Laundering in Other Countries

In response to criminal activities, developed countries have implemented money laundering laws as a deterrent measure against offenders. The enforcement of anti-money laundering (AML) regulations in developed nations, such as the United States and the United Kingdom, exemplifies their commitment to combating financial crimes.

In the United States, efforts to combat money laundering date back to the 1960s, notably with The Klein Conspiracy case. This case involved Klein conspiring with other parties to

[40] Fauzan, "Legalitas Penerapan Digital Signature Dalam Suatu Perjanjian (Kontrak) Kredin Perbankan."
[41] Razak, Haris, and Hidayat, "Analisis Hukum Pertanggungjawaban Pidana Korporasi Dalam Tindak Pidana Pencucian Uang (Money Laundering)."

commit fraud by manipulating the placement of funds in financial institutions (M. De Fea, Depriving International Narcotics Traffickers and Other Organized Criminals of Illegal Proceeds and Combating Money Laundering). The legal framework for addressing such financial crimes has since evolved, with comprehensive measures aimed at disrupting illicit financial flows. [42] [43]

Similarly, the United Kingdom and its constituent nations—England, Scotland, Northern Ireland, and Wales—have adopted a robust legal framework to counter money laundering. The UK follows The Principal Piece of Anti-Money Laundering (AML) Legislation, which includes the Proceeds of Crime Act 2002 (POCA) and the Money Laundering Regulations 2003. These regulations define money laundering through the following legal formulation[44]:

"Predicate Offense + Criminal Proceeds + Act in Relation to Criminal Proceeds[45]"

From the legal frameworks of both the United States and the United Kingdom, it is evident that the eradication of money laundering is intrinsically linked to predicate crimes.[46]

8. Money Laundering Crime in Banking Credit

Article 2 paragraph (1) of Statute Number 8 Year 2010 about Prevention and Eradication of Money Laundering Criminal Act stipulated as follows:

"The outcome of criminal act is the property that was gained from the criminal acts as follows:

1. Corruption;
2. Bribery;
3. Narcotic;
4. Psychotrophic;
5. Labor Smuggling;
6. Migrant Smuggling;
7. In Banking sector;
8. In Capital Market sector;
9. In Insurance sector;
10. Customs;
11. Export Duty;
12. Human Trafficking;
13. Illegal Arms Trafficking;
14. Terrorism;
15. Abduction;
16. Theft;
17. Embezzlement;
18. Deception;
19. Money Counterfeit;
20. Gambling;
21. Prostitution;
22. Taxation;
23. In Foresty Sector;

[42] Muhammad Idris and Benita L Togatorop, "Upaya Kerjasama Meksiko Dan Amerika Serikat Dalam Mengatasi Kartel Narkoba Di Meksiko Sebagai Transnational Organized Crime," *Global Political Studies Journal* 7, no. 2 (2023): 101–15, https://doi.org/10.34010/gpsjournal.v7i2.9591.

[43] Michael A DeFeo, "Depriving International Narcotics Traffickers and Other Organized Criminals of Illegal Proceeds and Combatting Money Laundering," *Denv. J. Int'l L. & Pol'y* 18 (2022): 405.

[44] Nevey Varida Ariani, "BENEFICIAL OWNER: MENGENALI PEMILIK MANFAAT DALAM TINDAK PIDANA KORPORASI," *Jurnal Penelitian Hukum* 19, no. 3 (2020): 339–48.

[45] Linda S Spedding, *Due Diligence Handbook: Corporate Governance, Risk Management and Business Planning* (Elsevier, 2009).

[46] Mohammad Irfaul Darojat et al., "Pencucian Uang Lintas Negara Dengan Menggunakan Cryptocurrency: Perspektif Bentuk Kerjasama Penanganan Antar Negara," *Jurnal Anti Korupsi* 12, no. 2 (2023): 60, https://doi.org/10.19184/jak.v12i2.38823.

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24. In the Environmental sector;
25. In the Maritime and Fisheries Sector;
26. Other criminal acts that punishable by 4 (four) or more years of imprisonment [47].

In accordance with Article 2, paragraph (1) of the Money Laundering Law, an individual can only be charged with money laundering if the act is preceded by a predicate offense explicitly listed in the law. Hurd defines money laundering as the process of disguising or concealing the proceeds of a crime, making them appear as legally obtained assets by obscuring their illicit origins.

The provisions of Article 2, paragraph (1) align with Hurd's definition, reinforcing that money laundering is not an independent offense but rather a derivative crime that originates from an underlying criminal act, referred to as a predicate crime. These predicate crimes, as outlined in the Money Laundering Law, form the basis for prosecuting money laundering offenses.[48]

Consequently, if a customer engages in criminal activities such as fraud (Article 378 of the Indonesian Criminal Code), embezzlement (Article 372 of the Criminal Code), or falsification of documents (Articles 263 and 266 of the Criminal Code) in the process of obtaining credit, the individual may also be subject to money laundering charges. The illicit proceeds from these criminal acts constitute the subject of money laundering if efforts are undertaken to conceal or legitimize the origins of the funds.

C. Conclusion

The legal resolution of banking credit issues can be categorized into two approaches. First, when bad credit arises due to a violation of the Prudential Principles (the 5C's), banks as creditors may pursue criminal law procedures by investigating and reporting the underlying criminal acts that contributed to the improper credit disbursement. Such offenses may include corruption, as regulated under Articles 2 and 3 of the Indonesian Corruption Law, document falsification under Article 263 in conjunction with Article 266 of the Indonesian Criminal Code, or fraud as stipulated in Article 378 of the Criminal Code.

However, if the occurrence of bad credit is solely attributable to issues related to contract execution without any illegal elements, banks may seek legal remedies through civil law procedures. In instances where a criminal act is identified as the cause of credit disbursement, that act should be classified as a predicate crime. Consequently, banks may initiate criminal law proceedings under the provisions of the Money Laundering Law to address any illegal proceeds derived from the criminal activity. This can be done by reporting the case to the Corruption Eradication Commission, the Office of the Attorney General of the Republic of Indonesia, or the Indonesian National Police.

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[47] Jo Eddy Susanto, Juanda Juanda, and Noviriska Noviriska, "Analisis Yuridis Penegakan Hukum Pidana Dalam Upaya Pemberantasan Dan Pencegahan Tindak Pidana Pencucian Uang Yang Berasal Dari Hasil Tindak Pidana Penggelapan Dan Penipuan Ditinjau Dari UU TPPU," *Action Research Literate* 8, no. 4 (2024): 868–76, https://doi.org/10.46799/arl.v8i4.282.

[48] Edward Fernando Siregar, Helvis Helvis, and Markoni Markoni, "Analisa Yuridis Eksekusi Sita Jaminan Terhadap Tindak Pidana Pencucian Uang (TPPU) First Travel," *Jurnal Syntax Transformation* 2, no. 11 (November 2021): 1560–73, https://doi.org/10.46799/jst.v2i11.454.

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