Legal Brief, Volume 12, No 2, (2023), pp. 251-260
ISSN 1979-522X (Print)| 2722-4643 (Online)
Published by IHSA Institute (Institut Hukum Sumberdaya Alam)
DOI: 10.35335/legal.

Application of the Ultimum Remedium Principle in the Formulation of Legislation and Law Enforcement related to Banking Crimes

Laras Adysti Nariswari[1], Febby Mutiara Nelson[2]
[1,2]Fakultas Hukum, Program Magister Ilmu Hukum, Universitas Indonesia

ARTICLE INFO

Article history:
Received Jun 9, 2023
Revised Jun 12, 2023
Accepted Jun 30, 2023

Keywords:
Banking crimes;
Law enforcement.

ABSTRACT

Banking crime is a special external criminal law or administrative penal law which in law enforcement should adhere to the principle of ultimum remedium. However, there is an article in the Banking Law which reflects that criminal sanctions can still be imposed even though OJK has given administrative sanctions to perpetrators of banking crimes. Thus it can be interpreted that the article is not in line with the formulation of the Banking Law as an administrative penal law, which in law enforcement should prioritize the principle of ultimum remedium. Implementation of this article results in the emergence of disparities and can potentially cause problems in the law enforcement system. This article discuss how to apply the ultimum remedium principle in the process of handling banking crimes with the existence of the article that is not in line, by looking at the principles of banking crime as an economic crime, using normative research methodology. To avoid potential differences in interpretation regarding the implementation of Article 52, paragraph (1) of the Banking Law, the wording of those article can be amended to explicitly state that the Banking Law adheres to the principle of ultimum remedium in accordance with its specific nature.

ABSTRAK

Tindak pidana perbankan merupakan hukum pidana khusus eksternal atau administrative penal law yang dalam penegakan hukumnya seharusnya menganut asas ultimum remedium. Namun terdapat salah satu pasal dalam UU Perbankan yang mencerminkan bahwa sanksi pidana tetap dapat dikenakan meskipun OJK telah memberikan sanksi administratif kepada pelaku tindak pidana perbankan. Dengan demikian dapat diartikan bahwa pasal tersebut tidak sejalan dengan rumusan UU Perbankan sebagai administrative penal law, yang dalam penegakan hukumnya seharusnya mengedepankan asas ultimum remedium. Implementasi terhadap pasal tersebut mengakibatkan munculnya disparitas dan dapat berpotensi menimbulkan masalah dalam sistem penegakan hukumnya. Artikel ini membahas mengenai bagaimana penerapan asas ultimum remedium dalam proses penanganan tindak pidana perbankan dengan adanya pasal yang tidak sejalan tersebut, dengan melihat kaidah tindak pidana perbankan sebagai tindak pidana ekonomi, dengan menggunakan metodologi penelitian normatif. Untuk menghindari potensi perbedaan interpretasi terhadap implementasi Pasal 52 ayat (1) UU Perbankan, maka pasal tersebut dapat diubah bunyinya sehingga dapat menegaskan bahwa UU Perbankan menganut asas ultimum remedium sesuai dengan sifat kekhususannya.

Corresponding Author:

Laras Adysti Nariswari,
Fakultas Hukum, Program Magister Ilmu Hukum,
Universitas Indonesia,
Jalan Salemba Raya Nomor 4, Jakarta 10430
Email: laras.adysti@ui.ac.id

I. INTRODUCTION

Legal principles are fundamental norms derived from positive law and considered by legal science to originate from more general rules (Mertokusumo, 2014, p. 5). Legal principles are not concrete legal regulations, but rather general basic ideas that are the background for concrete regulations within a legal system. They manifest as statutes and court decisions, which are positive law, and can be found by examining the general characteristics of concrete regulations (Mertokusumo, 2014, p. 7). Based on Emergency Law Number 7 of 1955 concerning Investigation, Prosecution, and Adjudication of Economic Crimes (Emergency Law on Economic Crimes), economic crime refers to violations of the provisions stipulated in the aforementioned law, namely *Ordonnantie Gecontroleerde Goederen* 1948, *Prijsbeheersing-ordonnantie* 1948, Law on Hoarding of Goods 1951, *Rijsterdonnantie* 1948, Emergency Law on Obligation of Rice Milling, and *Deviezen Ordonnantie* 1940. Economic crimes constitute a specific criminal law with a particular nature (economic nature) within the criminal law, and its substance is regulated under a separate set of laws, outside the codification of the Criminal Code (KUHP) (Pangaribuan, 2019, pp. 37-38). Economic crimes employ the principle of speciality in formulating their regulations. The principle of speciality, or *lex specialis derogate legi generali*, is a legal principle that can be interpreted as specific rules prevailing over general rules (Pangaribuan, 2019, pp. 23-24).

In its development, special criminal law is divided into two categories, namely internal special criminal law and external special criminal law. Internal special criminal law refers to legislation that specifically governs punishment, while external special criminal law is not purely concerned with punishment (Hiariej E. O., Lex Specialis Dalam Hukum Pidana, 2018). External special criminal law is also known as administrative penal law, which is administrative law supplemented with criminal sanctions solely to demonstrate the existence of criminal sanctions within administrative law (Sulistiawati, Toule, & Sopacua, 2022, p. 515).

The difference between internal special criminal law and external special criminal law lies in their enforcement. They adhere to different principles. Internal special criminal law follows the principle of *primum remedium*, which means that criminal law is the primary means of law enforcement. On the other hand, external special criminal law follows the principle of *ultimum remedium*, which means that criminal law is the last resort in law enforcement when other means of law enforcement are no longer effective (Sofian, 2020).

Economic crimes are acts that cause harm to the economy (Abiyoga, A, & Arjun, 2021). Economic crimes are closely related to economic activities, including financial crimes. Due to their connection with money, economic crimes are generally committed through the banking system or involve criminal activities in the banking sector (Pangaribuan, 2019, p. 39). Crimes in the banking sector itself include banking crimes and offenses related to banking activities, which encompass other financial institutions (Djokdja, Adam, & Sopacua, 2022, p. 182). Therefore, economic crimes fall under external special criminal law or administrative penal law.

Banking crimes are one form of economic crimes, and the legislation governing banking crimes is Law Number 8 of 1992 concerning Banking, as amended by Law Number 10 of 1998 (Banking Law), which is based on the principle of specificity. From a legal perspective, the Banking Law, which regulates banking crimes, is also considered as a special external criminal law or administrative penal law.

Although it is an administrative penal law, Article 52 of the Banking Law states that prosecution can still be conducted as long as the criminal offense under the banking law has been fulfilled (formal offense). On the other hand, this article also reflects that the Financial Services Authority (OJK; formerly Bank Indonesia) can still exercise its authority to impose administrative sanctions even if criminal sanctions have already been imposed or are being enforced. Thus, it can be

interpreted that this article is not in line with the formulation of the Banking Law as an administrative penal law, which should ideally prioritze the principle of *ultimum remedium* in its legal enforcement.

From the explanation given, it can be assumed that the application of the *ultimum remedium* principle in formulating the Banking Law as an administrative penal law is not aligned with the existence of Article 52 paragraph (1) of the Banking Law. This has the potential to create issues in its legal enforcement system, particularly regarding the determination of the prioritized sanction (administrative sanction or criminal sanction). However, until now, there has been no juridical analysis of the application of the ultimum remedium principle in the law making process and law enforcement related to banking crimes.

II. RESEARCH METHODS

This article will discuss the matter by examining the principles of banking crimes as economic crimes. Firstly, it is necessary to discuss the characteristics of the banking industry, both as individual banks and as a banking system. Additionally, the article will delve into the theories regarding principles and principles in the formulation of regulations and law enforcement, specifically in banking crimes. It will also address the application of the *ultimum remedium* principle in handling banking crimes with the presence of Article 52 paragraph (1) of the Banking Law, which, without consistent legal understanding, could pose obstacles to financial system stability.

This research presents the researcher's viewpoint on legal issues within the Banking Law, particularly concerning law enforcement in banking crimes, by examining the creation of legal norms from the Banking Law, specifically Article 52 of the Banking Law. The sources used are laws and regulations, books, and related scientific journals. This research was conducted using an inductive framework method, namely abstracting and looking for principles from a fact or phenomenon to build a hypothesis. Therefore, the research methodology employed in this study is normative legal research.

III. DISCUSSION RESULTS

1. Characteristics of Banks and Their Relation to Banking Crimes

The banking industry has unique characteristics as it relies on funds primarily sourced from the public who entrust their money to banks for safekeeping (Faridah, 2018). So that all activities must be based on the principle of propriety (Anugrah, Widyantara, & Arini, 2022, p. 295). Its role is crucial to the Indonesian economy, especially considering that the banking sector dominates the national financial system. The failure of a single bank can have a cascading effect leading to a national banking crisis and, ultimately, an economic crisis. Therefore, it is understandable to say that banks are vulnerable to systemic failure risks.

As mandated by Article 2 of the Banking Law, banks are required to adhere to the principle of prudence in carrying out their functions (Otoritas Jasa Keuangan, 2023). As institutions that conduct business based on trust, banks must be managed in a manner that reflects sound health and should be led by individuals with adequate competence and integrity. To ensure this, the banking industry's activities need to be supervised by the authorized institution, namely OJK.

The Law Number 21 of 2011 concerning the Financial Services Authority (OJK) (OJK Law) mandates the establishment of OJK with the aim of ensuring the orderly, fair, transparent, and accountable implementation of activities within the financial services sector. Its goal is to achieve a sustainable and stable financial system that can protect the interests of consumers and society. Based on Article 6 and Article 7 of the OJK Law, OJK is tasked with regulating and supervising

financial activities, including the banking sector. In carrying out these tasks, OJK has the authority to regulate, supervise, and examine various aspects of the banking sector, both at the individual bank level and as a unified system.

The increasingly complex nature of banking industry activities can lead to higher risk exposure for the banking sector, including the risk of banking crimes. Banking crimes involve actions that violate applicable laws and regulations, particularly the Banking Law, and the perpetrators can face criminal penalties according to those provisions. Banking crimes can pose a threat to both society and individuals (Rahmanda & Benuf, 2020), as well as to the banking industry, which plays a strategic role in economic development (Otoritas Jasa Keuangan, 2021, p. 2).

Banking crimes are classified as fraud. Meanwhile, fraud is also one of the important reasons why banks need to be supervised. It because fraud within the banking industry (worldwide) leading to substantial financial and non-financial losses for banks, customers, stakeholders, and the economy as a whole (Mangala & Soni, 2023). According to OJK Regulation Number 39/POJK.03/2019 concerning the Implementation of Anti-Fraud Strategies for Commercial Banks (OJK Regulation concerning Anti-Fraud Strategies), fraud is defined as:

"Tindakan penyimpangan atau pembiaran yang sengaja dilakukan untuk mengelabui, menipu, atau memanipulasi Bank, nasabah, atau pihak lain, yang terjadi di lingkungan Bank dan/atau menggunakan sarana Bank sehingga mengakibatkan Bank, nasabah, atau pihak lain menderita kerugian dan/atau pelaku Fraud memperoleh keuntungan keuangan baik secara langsung maupun tidak langsung."

("The deliberate acts of deviation or negligence carried out to deceive, defraud, or manipulate the Bank, customers, or other parties, occurring within the Bank's environment and/or utilizing the Bank's facilities, resulting in financial losses for the Bank, customers, or other parties, and the perpetrator of the fraud gains financial benefits, both directly and indirectly.")

The increasingly complex business activities of banks result in an increased exposure to risks for banks, and fraud can be a source of operational risk as stated in the general explanation of OJK Regulation concerning Anti-Fraud Strategies.

Furthermore, based on Regulation Number 55/POJK.03/2016 concerning the Implementation of Good Corporate Governance for Commercial Banks (OJK Regulation concerning GCG), banks are required to adhere to the principles of good corporate governance, including transparency, accountability, responsibility, independency, and fairness, considering the increasing risks and challenges faced by the banking industry. According to OJK Regulation concerning GCG, banks are obliged to prepare a governance implementation report, which includes information about the number of deviations that occurred in the bank and the efforts made by the bank to resolve them. All the existing regulations (laws) serve to prevent and address illegal actions by individuals in the implementation of various financial institution activities that may harm the general public (Kristian & Gunawan, 2018, p. 4).

2. Rules of Banking Crimes as Economic Crimes

Regarding economic development, making the Banking Law is one of the legislative regulations formulated to improve and strengthen the national economy, as mentioned in the general explanation of the Banking Law. The Banking Law is a policy in the field of economy, as stated in the considerations of the Banking Law point b. This makes banking crimes one form of legislation in the field of economic crimes (Pangaribuan, 2019, p. 65). Banking crimes are classified as economic crimes based on their consequences and impacts on society as stakeholders, which can directly disrupt market stability, erode public trust in the financial system, and hinder economic growth.

The definition of economic crimes is not explicitly formulated in the Emergency Law on Economic Crimes. Economic crimes are a specific criminal law with a particular nature (economic nature) within criminal law, regulated under a separate legislation, outside KUHP (Pangaribuan, 2019, pp. 37-38). The specific nature mentioned by Andi Hamzah includes: (a) flexible or easily changing regulations; (b) the expansion of criminal law subjects to legal entities; (c) differentiation between crimes and violations; and (d) the possibility of settlement outside of legal proceedings (Hamzah, 1983, pp. 25-42).

Economic crimes have the characteristic of administrative penal law within criminal law. Considering that economic crimes are offenses and violations that occur in the financial sector, persuasive methods are prioritized for the sake of achieving national economic stability (Hiariej E. O., Penanganan Dugaan Tindak Pidana Perbankan Melalui Langkah Tindakan Pengawasan, Pengenaan Sanksi Administratif, dan Sanksi Pidana, 2022). Economic crimes as administrative penal law refer to administrative law supplemented with criminal sanctions solely to demonstrate the existence of criminal penalties within administrative law. Therefore, law enforcement against economic crimes should ideally be carried out as *ultimum remedium*. *Ultimum remedium* should inherently be embedded in administrative penal law and does not need to be explicitly mentioned in the body of legislation (Hiariej E. O., Penanganan Dugaan Tindak Pidana Perbankan Melalui Langkah Tindakan Pengawasan, Pengenaan Sanksi Administratif, dan Sanksi Pidana, 2022).

The same applies to the enforcement of banking crimes. According to Eddy O.S. Hiariej, the Banking Law is an administrative penal law that adheres to the *ultimum remedium* principle (Hiariej E. O., Penanganan Dugaan Tindak Pidana Perbankan Melalui Langkah Tindakan Pengawasan, Pengenaan Sanksi Administratif, dan Sanksi Pidana, 2022). *Ultimum remedium* can be interpreted as resolving a case through other avenues (administrative or civil) before resorting to criminal sanctions (Januarsyah, 2017, pp. 260-261).

It is not in line with the principle mentioned above, the Banking Law through Article 52, paragraph (1), states that criminal sanctions can still be imposed even if administrative sanctions have been given by OJK to perpetrators of banking crimes. The implementation of Article 52, paragraph (1) of the Banking Law has resulted in a disparity between banking crimes as administrative penal law, which adheres to the *ultimum remedium* principle, as both criminal and administrative sanctions are interpreted to be enforceable concurrently, even if administrative sanctions have been deemed successful.

Meanwhile, the formulation of norms in other legislation and the enforcement of other economic crimes, such as capital market crimes, tax crimes, and environmental crimes, have indeed applied the *ultimum remedium* principle.

a. Capital market crimes

Generally, capital market crimes are related to violations of the principle of transparency. The principle of transparency is essential in providing information related to shares in capital market activities to ensure efficient functioning. The law enforcement process for capital market crimes based on the Capital Market Law can be carried out through three methods: administrative, civil, and criminal. Imposing criminal sanctions for capital market crimes is considered a last resort or the final option, as stated in the explanation of Article 101, paragraph (1) of the Capital Market Law, which states that "Tidak semua pelanggaran terhadap undang-undang ini dan atau peraturan pelaksanaannya di bidang pasar modal harus dilanjutkan ke tahap penyidikan karena hal tersebut justru dapat menghambat kegiatan penawaran dan atau perdagangan efek secara keseluruhan." ("Not all violations of this law and/or its implementing regulations in the capital market field should proceed to the investigation stage as it can hinder the overall offering and/or trading of securities.")

b. Tax crimes

Law enforcement for tax crimes also follows the *ultimum remedium* principle, as regulated in Law Number 7 of 2021 concerning Tax Regulation Harmonization (Tax Law). Criminal sanctions are considered the last resort in law enforcement. With the *ultimum remedium* principle in the Tax Law, taxpayers who fail to fulfill their tax obligations are granted leniency to avoid criminal sanctions (Tommy, 2021).

c. Environmental crimes

The *ultimum remedium* principle in environmental crimes can be found in the general explanation of Law Number 32 of 2009 concerning Environmental Protection and Management (Environmental Law), as follows:

"Enforcement of environmental criminal law continues to pay attention to the principle of ultimum remedium which requires the application of criminal law enforcement as a last resort after the application of administrative law enforcement is deemed unsuccessful. The application of the ultimum remedium principle only applies to certain formal criminal acts, namely punishment for violating wastewater quality standards, emissions and disturbances."

("The enforcement of environmental criminal law still takes into account the ultimum remedium principle, which requires the application of criminal law enforcement as a last resort after administrative law enforcement is deemed unsuccessful. The application of the ultimum remedium principle applies only to certain formal criminal offenses, namely the prosecution of violations related to wastewater quality standards, emissions, and disturbances.")

By using the *ultimum remedium* principle in the enforcement of legislation related to other economic crimes, such as capital market crimes, tax crimes, and environmental crimes, there is indeed a difference in the enforcement of banking crimes. Article 52, paragraph (1) of the Banking Law causes this difference and has the potential to create inconsistencies in its implementation between supervisory authorities and law enforcement agencies due to possible differences in interpretation.

3. *Ultimum Remedium* Principle in the Formulation and Enforcement of Laws Related To Banking Crimes

According to Bellefroid, the principle of law represents the consolidation of positive law in a society. Bellefroid further explains that legal principles are fundamental norms derived from positive law and are considered to originate from more general rules (Mertokusumo, 2014, p. 7). Therefore, legal principles cannot be separated from the societal context in which they arise. Paul Scholten does not provide a specific definition of legal principles but states that they are tendencies required by moral views on law and have a general nature. Similarly, van der Velden states that legal principles are specific decision types that can be used as benchmarks to assess situations or as guidelines for behavior. According to Velden, legal principles are based on one or more values that determine valuable situations and must be realized (Mertokusumo, 2014, p. 6).

A more detailed understanding of legal principles is presented by Sudikno Mertokusumo. Mertokusumo explicitly states that legal principles are not concrete legal rules but rather general basic ideas or backgrounds behind specific rules found within and behind every legal system embodied in legislation and judicial decisions as positive law. These principles can be identified by examining the general characteristics of those specific rules. Similarly, van Eikema Hommes emphasizes that legal principles should not be seen as specific legal norms but rather as general foundations or guidelines for applicable law (Mertokusumo, 2014, p. 7).

There are several characteristics of legal principles. Firstly, legal principles are based on the realities of society and values chosen as guidelines for collective living. Secondly, the characteristics of legal principles can be embodied in concrete legal regulations or can exist independently of them. The third characteristic of legal principles is that some are general in nature while others are

specific. "*Lex specialis derogat legi generali*" is a general legal principle that applies to all areas of law.

The characteristics of legal principles are as follows: Firstly, they are abstract. This is because legal principles generally serve as the background for concrete legal regulations or what is contained within them. The second characteristic of legal principles is their generality. This means that legal principles are not only applied to specific events. However, legal principles may have exceptions. Sometimes, there may be conflicts between different legal principles, but one principle does not negate the other. This is because legal principles do not have a hierarchical nature as the third characteristic.

The fourth characteristic of legal principles is their dynamism. This is due to the conflicts that may arise between different legal principles that cannot negate each other, making legal principles dynamic. The dynamic nature of legal principles also implies that they are not separate from the societal context in which they arise but can be adapted to the development of time. The fifth characteristic of legal principles is that they are merely assumptions or ideals. Nieuwenhuis states that legal principles add an ethical dimension to the law (Mertokusumo, 2014, p. 8). Legal principles are something idealistic that is strived for.

One of the fundamental postulates in legal science is "*lex specialis derogat legi generali*," which literally means that special law supersedes general law or *de speciale regel verdringt de algemene* (Enschede, 2002, p. 186). In the context of criminal law, various crimes and offenses stipulated in KUHP fall under general criminal law, while various crimes or offenses regulated in separate laws outside KUHP fall under special criminal law (Sudarto, 2006, pp. 59-60). As administrative provisions supplemented with criminal provisions, the Banking Law and Sharia Banking Law are specifically enacted to regulate banking-related criminal acts outside KUHP, making the criminal provisions in these laws special criminal law.

Special criminal law, or "*bijzonder strafrecht*" in Dutch, deviates from the general provisions of criminal law both in material and formal aspects. This means that these provisions deviate from the general provisions found in KUHP as well as the general provisions found in the Code of Criminal Procedure (KUHAP) (Hiariej E. O., 2021). When a specific offense is applied together with provisions in KUHP, it is the specific offense provision that should be applied based on the postulate of "*lex specialis derogat legi generali*." This is in line with Article 63 paragraph (2) of KUHP, which states that "*Jika suatu perbuatan masuk dalam suatu aturan pidana yang umum, diatur pula dalam aturan pidana yang khusus, maka yang khusus itulah yang diterapkan.*" ("If an act falls within both a general criminal law provision and a specific criminal law provision, the specific provision shall be applied.")

Therefore, the requirements for "*lex specialis*" as special criminal law are as follows: First, it must be a standalone law with material provisions that deviate from KUHP. Second, it must be a standalone law with formal provisions that deviate from KUHAP. Third, it must be a standalone law with both material and formal provisions that deviate from KUHP and KUHAP. These three requirements are alternative in nature. Furthermore, special criminal law can be divided into two categories: special criminal law that is enacted as a criminal law and special criminal law that is not enacted as a criminal law. The former is also referred to as internal special criminal law, while the latter is known as external special criminal law. The number of internal special criminal laws is much smaller compared to external special criminal laws (Hiariej E. O., Penanganan Dugaan Tindak Pidana Perbankan Melalui Langkah Tindakan Pengawasan, Pengenaan Sanksi Administratif, dan Sanksi Pidana, 2022).

There are differences in nature and character between internal special criminal law and external special criminal law (Hiariej E. O., 2021). Internal special criminal law serves as the *primum*

remedium, meaning that criminal law is the main instrument for law enforcement. Additionally, the character of internal special criminal law formulates criminal sanctions cumulatively, combining imprisonment and fines. Criminal sanctions are not substitutive in nature. This is different from external special criminal law, which follows the principle of "*ultimum remedium*," where criminal law is the last resort for law enforcement when other means of law enforcement are no longer effective. Essentially, external special criminal law is administrative law supplemented with criminal sanctions. Therefore, administrative sanctions serve as a substitution for criminal sanctions, following the principle of "*una via*" (Hiariej E. O., Penanganan Dugaan Tindak Pidana Perbankan Melalui Langkah Tindakan Pengawasan, Pengenaan Sanksi Administratif, dan Sanksi Pidana, 2022). This means that if a case has been resolved administratively, the opportunity to settle the case through other legal means is closed.

If analyzed with that theory, the Banking Law can be considered as external special criminal law or administrative penal law, which means it emphasizes administrative sanctions in its enforcement. In practical terms, when a bank discovers allegations of banking criminal acts committed by internal parties, the bank is required to report it to OJK based on OJK Regulation on Internal Supervisory Units.

A case of banking criminal acts can then be followed by imposing sanctions, where the Banking Law mentions that the options for sanctions include administrative sanctions and criminal sanctions. Following the *ultimum remedium* principle, ideally, once a banking criminal case is resolved administratively, there should be no further opportunity for its resolution through other legal means because administrative sanctions are prioritized and effective. However, Article 52 paragraph (1) of the Banking Law reflects that criminal sanctions can still be imposed even if the OJK has already imposed administrative sanctions. This means that both sanctions can be applied simultaneously or in parallel. This differs from the specific nature of banking criminal acts as administrative penal law, which adheres to the *ultimum remedium* principle.

Through Article 52 paragraph (1) of the Banking Law, it can be interpreted that criminal prosecution can still be carried out as long as the elements of the banking criminal offense are fulfilled (related to formal offense) (Ramiyanto, 2016). As we know, formal offenses are actions that are prohibited by law that is considered fulfilled once the act is done without requiring that there be a consequence of the act (Sari, 2019). As a formal offense, acts that constitute a criminal offense as stipulated in Article 47, Article 47A, Article 48, Article 49, and Article 50A of the Banking Law are still considered unlawful, unless these acts have lost their unlawful nature (fulfilling the grounds for exemption from punishment). Therefore, perpetrators of banking crimes need to be held criminally accountable because criminal responsibility is the essence of the wrongdoing or criminal acts committed (Prasetyo, 2018). Criminal responsibility also serves as a function of social control to prevent criminal activities within society (Ribut Baidi, 2023, p. 7). Indeed, through the process of punishment, individuals are compelled to refrain from engaging in wrongful or criminal behaviour (Santoso, 2020). It serves as a deterrent to prevent perople from committing crimes or violating criminal laws.

However, it should be emphasized that the provision of criminal sanctions as stipulated in Article 52 paragraph (1) of the Banking Law applies when there is strong evidence of a banking criminal offense, in other words, when an investigation has been conducted. In the absence of an investigation, the competent institution (in this case, OJK) can still impose administrative action or supervisory action first, which can take the form of counseling letters, action plans, or written orders that instruct the suspected perpetrator to make efforts for resolution before the case is pursued through an investigation that may result in criminal sanctions.

Furthermore, although Article 52 paragraph (1) of the Banking Law appears to negate the *ultimum remedium* principle in the Banking Law as an administrative penal law, when we examine the characteristics of the banking industry, both banks as individual entities and the banking industry as a unified system, the banking sector needs to be supervised by OJK to achieve a sustainable and stable financial system. Considering that the banking sector is a driving force behind the Indonesian economy (Supartoyo, 2018, p. 25) and is often considered the heart of a country's economy (Simatupang, 2019, p. 136), measures other than criminal prosecution are necessary to save individual banks and protect the banking system as a whole. This is especially important when banking criminal acts have caused serious problems that result in a decrease in public trust in banks.

Therefore, in theory, considering the specific characteristics of economic crimes and, in this case, banking criminal acts as administrative penal law, it is only appropriate that banking criminal acts are enforced by prioritizing administrative sanctions over criminal sanctions. Although a principle does not necessarily have to be explicitly stated in the body of legislation, the provisions of the law should reflect the norms on which the legislation is based. Therefore, the enforcement of the law against banking criminal acts can be reaffirmed as *ultimum remedium* by amending the wording of Article 52 paragraph (1) of the Banking Law.

IV. CONCLUSIONS

Based on this research, it can be concluded that banking crimes are considered administrative penal law, which in its enforcement should adhere to the principle of *ultimum remedium*, as other legislation in the field of economic crimes clearly emphasizes that criminal sanctions should be the last resort in the legal process. Although Article 52, paragraph (1) of the Banking Law appears to contradict the principle of *ultimum remedium* as an administrative penal law, considering the characteristics of the banking industry, steps used to save banks individually and save banking as a system need to be prioritized. Therefore, it is appropriate for banking crimes to be enforced by emphasizing administrative sanctions rather than criminal sanctions. To avoid inconsistency in legislation in the field of economic crimes and potential differences in interpretation regarding the implementation of Article 52, paragraph (1) of the Banking Law between supervisory authorities and law enforcement agencies, the wording of Article 52, paragraph (1) of the Banking Law can be amended to explicitly state that the Banking Law adheres to the principle of *ultimum remedium* in accordance with its specific nature.

References

Abiyoga, D., A, I. T., & Arjun, D. (2021, May). Studi Pemetaan Hukum Tindak Pidana Ekonomi Di Indonesia. *Court Review: Jurnal Penelitian Hukum, 1*(1), 1-12.

Anugrah, I. K., Widyantara, I. M., & Arini, D. G. (2022, May). Perlindungan Hukum terhadap Nasabah Bank atas Tindak Pidana Pencatatan Palsu dalam Dokumen Perbankan. *Jurnal Preferensi Hukum, 3*(2), 294-299.

Djokdja, G. R., Adam, S., & Sopacua, M. G. (2022, April). Pertanggungjawaban Pidana Pelaku Pembobolan Kartu Kredit Dalam Tindak Pidana Di Bidang Perbankan. *Tatohi Jurnal Ilmu Hukum, 2*(2), 178-192.

Enschede, C. J. (2002). *Beginselen Van Strafrecht.* Deventer: Kluwer.

Faridah. (2018). Jenis-Jenis Tindak Pidana Perbankan dan Perbandingan Undang-Undang Perbankan. *Jurnal Hukum Positum, 3*(2), 106-125.

Hamzah, A. (1983). *Hukum Pidana Ekonomi.* Jakarta: Erlangga.

Hiariej, E. O. (2018, June 12). Lex Specialis Dalam Hukum Pidana. *Kompas*, p. 7.

Hiariej, E. O. (2021, March). Asas Lex Specialis Systematis dan Hukum Pidana Pajak. *Jurnal Penelitian Hukum De Jure, 21*(1), 1-11.

Hiariej, E. O. (2022, October 18). Penanganan Dugaan Tindak Pidana Perbankan Melalui Langkah Tindakan Pengawasan, Pengenaan Sanksi Administratif, dan Sanksi Pidana. *Focus Group Discussion Otoritas Jasa Keuangan*. Jakarta.

Januarsyah, M. P. (2017, December). Penerapan Prinsip Ultimum Remedium Dalam Tindak Pidana Korupsi. *Jurnal Yudisial, 10*(3), 257-276.

Kristian, & Gunawan, Y. (2018). *Tindak Pidana Perbankan dalam Proses Peradilan Di Indonesia.* Jakarta: Prenadamedia Grup.

Mangala, D., & Soni, L. (2023). A Systematic Literature Review on Frauds in Banking Sector. *Journal of Financial Crime, 30*(1), 285-301.

Mertokusumo, S. (2014). *Penemuan Hukum: Suatu Pengantar.* Yogyakarta: Cahaya Atma Pustaka.

Otoritas Jasa Keuangan. (2021). *Pahami & Hindari: Buku Memahami dan Menghindari Tindak Pidana Perbankan (Sesuai Undang-Undang Perbankan).* Jakarta: Otoritas Jasa Keuangan.

Otoritas Jasa Keuangan. (2023). *Ikhtisar Perbankan.* Retrieved from Otoritas Jasa Keuangan: https://www.ojk.go.id/id/kanal/perbankan/ikhtisar-perbankan/Pages/Lembaga-Perbankan.aspx

Pangaribuan, L. M. (2019). *Tindak Pidana Ekonomi dan Anti Korupsi: Pengantar, Ketentuan, dan Pertanyaan-Pertanyaan.* Jakarta: Papas Sinar Sinanti.

Prasetyo. (2018). *Hukum Pidana (Revisi).* Jakarta: Raja Grafindo Persada.

Rahmanda, B., & Benuf, K. (2020, October). Hambatan dan Upaya Pemberantasan Tindak Pidana Perbankan Di Indonesia. *Law, Development and Justice Review, 3*(2), 169-178.

Ramiyanto. (2016, December). Conditional Imprisonment Sentencing in Banking Criminal Case. *Jurnal Yudisial, 9*(3), 317-338.

Ribut Baidi, D. S. (2023, January). Pertanggungjawaban Tindak Pidana Perbankan Perspektif Hukum Pidana dan Undang-Undang Perbankan. *Journal Justiciabellen, 3*(1), 1-13.

Santoso. (2020). *Hukum Pidana: Suatu Pengantar.* Jakarta: Raja Grafindo Persada.

Sari, I. (2019, September). Unsur-Unsur Delik Materiel dan Delik Formil dalam Hukum Pidana Lingkungan. *Jurnal Ilmiah Hukum Dirgantara, 10*(1), 64-80.

Simatupang, H. B. (2019, December). Peranan Perbankan dalam Meningkatkan Perekonomian Indonesia. *Jurnal Riset Akuntansi Multiparadigma (JRAM), 6*(2), 136-146.

Sofian, A. (2020, December). *Rubric of Faculty Members*. Retrieved from Business Law Bina Nusantara: https://business-law.binus.ac.id/2020/12/23/ultimum-remedium-dalam-tindak-pidana-ketenagakerjaan/

Sudarto. (2006). *Kapita Selekta Hukum Pidana.* Bandung: Alumni.

Sulistiawati, S., Toule, E. R., & Sopacua, M. G. (2022, July). Pertanggungjawaban Perbankan Sebagai Korporasi Atas Penggelapan Dana Nasabah yang Dilakukan oleh Pegawai Bank. *Tatohi Jurnal Ilmu Hukum, 2*(5), 509-522.

Supartoyo, Y. H. (2018). Pengaruh Sektor Keuangan Bank Perkreditan Rakyat terhadap Perekonomian Regional Wilayah Sulawesi. *Kajian Ekonomi & Keuangan, 2*(1), 16-38.

Tommy. (2021). *Asas Ultimum Remedium Tidak Mengurangi Penerimaan Pajak*. Retrieved from Pajakku: https://www.pajakku.com/read/6188fb634c0e791c3760bdcf/Asas-Ultimum-Remedium-Tidak-Mengurangi-Penerimaan-Pajak-