

## PROTECTION AND LAW ENFORCEMENT OF VICTIMS OF ACCOUNTING AND BANKING CRIMES

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### ***Abstract***

*This paper will discuss main causes and precaution of banking and accounting crimes that can be minimized by public accountant. The Public Accountants have a very important role, especially in improving the quality and credibility of information relating to financial or financial statements of a particular entity.*

*In the Regulation No. 5 of 2011 it is quite clear that the profession of Public Accountants has a big role in supporting a healthy and efficient national economy and improving the transparency and quality of information in the field of finance, particularly for the interests of Banking and society.*

*Frequently the occurrence of banking and accounting scandals as political and business scandals that come with the disclosure of the bad behavior of the of public company executives. These crimes typically involve complex methods of misusing or misleading funds, exaggerating incomes, minimizing costs, exaggerating the corporate asset value or reducing the liabilities in the reporting, sometimes they also collaborate with officials in other companies or in their affiliates. If it refers to the notion of banking and accounting scandals mentioned above, banking and accounting crimes tend to be closer to the term of fraudulent statement (fraud regarding the presentation of financial statements) for the sake of interest.*

*Therefore, The emergence of Public Accountant services need to increase, specifically the quality of financial information which is used as one of the considerations in decision making in particular in giving credit to customers (debtors). Thus, Public Accountants need to continually improve the competence and professionalism in order to meet the needs of service users and carry public trust.*

**Keyword:** *public accounting, banking, crimes, financial information, scandals*

### **Preliminary**

Banking crime cases almost on average involve the insiders of the banks. In each banking crime case, ironically, the first focus of attention is the bank itself. So the banks become the targets of questions, while the bank customers who become the victims of the banking crime are always ignored. Many banking crimes occur due to the behavior of their own employees and the banks must pay the losses incurred

to customers for the crime conducted by the employees who in fact work there to earn a living, especially for his family.

Banking crimes unquestionably involve the banking internal personnel, since the regulation for banks is made very strictly in accordance with with the principle of caution

All investors who will place their funds will certainly consider and decide their investment policies, financial or

investment advisors in providing directions to the investors on the circumstances and prospects of a company, and the lenders in considering and deciding the granting or termination of the loan for the company.

A Public Accountant is a profession emerging from the public demand of independent communication mechanism between economic entity and stakeholders particularly the one related to the accountability of the concerned entity. Viewed from the above example, there should be an improvement of quality standard of the professionalism of a Public Accountant.[1]

The Regulation No. 5 of 2011 on Public Accountant regulates in general and define the role of a Public Accountant in a community consisting of duties, rights, obligations, responsibility, sanction etc. of a Public Accountant and a PUBLIC ACCOUNTING FIRM aiming to more socialize to the community on the importance of using the service of Public accountants in their practice in the community.

The above definition concludes that banking and accounting crimes are Systematically Structured and Massive. It is quite difficult for the crime to be committed by one person only or it is not well planned. Therefore, the definition of *financial statement fraud* is misstatement or deliberate negligence, either in terms of the amount or disclosure of a financial report intended to deceive the users of financial statements, especially investors and creditors. In this case, the management prepares the financial statement for its own benefit. Yet, by comparing the above definition of *financial statement*

*fraud*, in general the banking and accounting crimes themselves can be defined as a crime/fraud committed in the economic field and related to accounting. It means the *financial statement fraud* is one of the forms of banking and accounting crimes.

Based on the background, the formulation of the problems is as follows:

1. What are the main causes of frequent occurrence of Banking and Accounting crimes?
2. How can the banking and accounting crimes be prevented and minimized?

## Literature

### Theory of Law Enforcement

Joseph Goldstein points out the theory of law enforcement as follows: Total Enforcement is where the scope of criminal law enforcement is formulated by the substantive law of crimes. In other words, the total criminal law enforcement is impossible to be implemented because the law enforcers including the Police of Republic of Indonesia are strictly limited by the criminal procedural law such as the existing regulations on arrest, detention, search, foreclosure and preliminary investigation [1].

Book of Criminal Procedure Code explains that an arrest can be done to a suspect or defendant committing a crime or trying to commit a crime or assisting in a crime. This criminal act is sentenced with five years in prison or more [1]. The criminal act as referred to the Regulation No. 5 of 2011 is the Regulation on Public Accountant decided by DPR RI (House of Representative of Republic of Indonesia) on 5 April 2011 and

authorized by the President on 3 May 2011 with the sentence threat of 5 years in prison maximally and fine of Rp.300.000.000,- (three hundred million rupiahs) [1]. The Regulation regulates the profession, profession association, licensing, rights and obligations, responsibility, sactions, etc. It discusses about public accountant more completely than the previous Regulation No. 34 of 1954 on the use of an Accountant degree.

The legal system pointed out by Harokl J Berman is: all procedural rules are specific, consequently the characteristics can be distinguished from other social rules in general and the professional authority structure in order to control the social processes taking place in the community [2].

The law will play a good role well if all the three components, namely legal structure, legal substance, and legal culture interact each other and play its role according to its function so that the law will run effectively. In case the three components do not function well, there will be a problem in functioning the law as the renewal facility and community development itself [3].

Regarding the third substance mentioned above, it is closely related to the criminal procedure law. The existence of the criminal procedure law becomes important since it becomes a guide for law enforcers and a community to prevent the community from taking vigilante [4].

### **Theory of Criminal Accountability**

To be able to blame a criminal offense is not an easy thing, as well as the sanctions to be imposed. In criminal law the liability concept or criminal

liability is a central concept known for its doctrine of error. In Latin, the doctrine of error is known as *mens rea*. The doctrine of *mens rea* is based on *maxim actuc non fatit reum nisi mens sit rea*, meaning that a deed that does not cause someone to be guilty except that person's mind is evil-minded. Based on the principle, there are two requirements to be fulfilled in order to be able to convict someone, that is forbidden physical acts (*actus reus*) and evil/ disgraceful (*mens rea*), inner attitudes can be in the forms of deliberate and absenteeism [1].

Muladi provides characteristic benchmarks to be paid attention in making the policy of future criminal law, namely the future national criminal law to be established has to meet the sociological, political, and practical considerations as well as Indonesian ideology; second, the future national criminal law may not ignore the aspects related to human condition, nature, and Indonesian tradition; third, the future national criminal law has to be able to self-adapt the universal tendencies growing in the civilized community socialization; fourth, since the criminal justice system, criminal politics, and politics of law enforcement as part of social politics, the future national criminal law has to pay attention to preventive aspects; fifth, the future national criminal law has to be responsive at all times to science and technology development to improve its effective functions in the community.[1].

In the renewal of the criminal law through the legislation rules outside the Book of Criminal Code, which amounted to tens, may even have hundreds of laws, both constituting the law (in the

field) of criminal law and the law (criminal) in the field of administrative penal law.

Law enforcement is not an independent activity; it has a mutually close relationship with its community. Therefore, discussing this problem had better not ignore discussing the community structure behind it. The law enforcement of a community has tendency resulted from its community structure [1].

The community structure gives effect to either the provision of social facility enabling the law enforcement to be imposed or the provision of obstacles that causes it not to be able to be imposed optimally. In conclusion, the real main thing in the law enforcement lies in the factors that possibly influence it.

### **Theory of Professional Auditor Ethics**

#### **The Role of Ethics in Auditor Profession**

Professional ethics is necessary in an auditor's profession. The role of ethics in the auditor profession is as follows [1]: a) Audit needs great devotion to the community and high moral commitment, b) the community demands to obtain the services of public auditors with high quality standards, and demand that they be willing to sacrifice themselves. That is why the auditor profession establishes the technical and ethical standards that should be guided by the auditors in conducting the audit, c) ethical standards are required for an audit profession because the auditor has a position as a confidant and faces possible conflicts of interest, and d) the ethical code or ethical rules of an audit profession provide guidance for

professional auditors in defending against temptation and in making difficult decisions.

Ethics has become everybody's needs in doing their activity. It is a sequence of principles or moral value owned by everyone including the ethics when one conducts the profession. One of the professions having ethics is public accountant.

The principle of accountant ethics or code of conduct of accountants has eight statements. They are the ones that should be owned by an accountant. The statements are as follows [1]: 1) Professional Responsibility, to conduct a responsibility as a professional, every member has always use moral and professional considerations in all conducted activities. The member has to accept their obligations to act in such a way to serve the public interest, respect public trust, and demonstrate commitment towards professionalism; 2) Integrity, is a quality underlying public trust and it is a benchmark for the members to examine the decision that has been taken by them. To maintain and widen public confidence, a member has to conduct all professional responsibility with high integrity; 3) Objectivity, the principle of objectivity requires the members to be fair, neutral, intellectually honest, and free from the conflict of interest or under the influence of others. A member has to maintain the objectivity and free from the conflict of interest in conducting professional responsibility. A member in a public practice should maintain the independency criteria in fact and appearance during providing auditing service and other attestation, 4) Competency and Professional Carefulness, a profession member

always complies with the ethical standards and profession techniques encouraged continually developing competency and service quality, and performing professional responsibility to the highest level of ability of the concerned member, 5) Confidentiality, a professional accountant must respect the confidentiality of the obtained information as a result of professional and business relationships and may not disclose any information to third parties without proper and specific permission, unless there is a legal obligation or there is a professional right to disclose it. The obligation of confidentiality continues even after the relationship between the member and the client or the service provider ends; 6) Professional Behavior, a professional accountant must be subject to relevant laws and legislation and should avoid actions that may discredit the profession, 7) Technical Standard, as a professional every member in performing their duties must comply with relevant technical and professional standards. In accordance with its expertise and with caution, members have an obligation to carry out the assignment from the service recipient as long as the assignment is in line with the principle of integrity and objectivity.

### **Definition of Fraud**

The term of Fraud or frequently known as deception which becomes quite an issue in Indonesia. The definition of fraud itself is a deliberate action of deceiving causing another party to lose and providing benefits for the impostor or impostor's group. Fraud is a representation of fake material fact which is intentional or careless so it is believed and acted upon

by the victim and the damage of the victim. In its original language fraud includes various actions against the law [1].

Amrizal defines that "Fraud is criminal deception intended to financially benefit the impostor [1]. According to the Association of Certified Fraud Examiners (ACFE), fraud is actions against the law conducted deliberately for certain purposes (manipulation or providing wrong reports to other parties) committed by the personnel in the organization or those from outside the organization for the purpose of getting personal or group benefits which directly or indirectly cause disadvantages to other parties [1].

In summary, the term fraud includes everything a human being can think. It is committed by someone in order to get benefits from other people by giving wrong suggestions or using coercion of truth. It is committed in an unexpected way, full of tricks or hidden, and every unreasonable way causing other people to be deceived or suffer losses.

### **Discussion**

#### **Banking and Accounting Crimes and Legal Sanction against the Two Crimes**

Basically, accounting crime stems from misleading financial reporting to its users, including unauthorized or illegal activity in the process of identifying and measuring financial transactions. Some forms of accounting crime, among others, are<sup>7</sup>:

##### **a. Illegal Earnings Management**

Earning Management occurs when a manager uses an assessment in financial reporting and transaction arrangement to change a financial report to mislead the

stakeholder about the company economic performance.

#### **b. Incorrect Opinion of External Auditor**

External auditors are given authorization to conduct financial audits of public companies. An auditor is deemed to have committed a crime if s/he violates the Public Accountant Audit Standards (PAAP).

#### **c. Banking Crime**

The Regulation No.7 of 1992 as amended by the Regulation No. 10 of 1998 on Banking (hereinafter referred to as the Banking Law) stipulates thirteen kinds of criminal offenses arranged from Article 46 to Article 50A. The thirteen criminal offenses can be categorized into 4 kinds, namely:

1. Criminal Act related to Licensing
2. Criminal Act related to bank confidentiality
3. Criminal Act related to supervision and development.
4. Criminal Act related to bank business

The accounting crime in banking is among others committed by withdrawing a client's fund unbeknown to the client, manipulating client's data, faking the client's account number, and faking the client's signature by impostors. This crime belongs to the category of embezzlement.

#### **a. Accounting Crime of Stock Market**

Accounting crimes in a stock market include violations of misleading information.

Another accounting crime in a stock market is market manipulation. It is a crime mode using technique and mechanism of the market as a means of creating price formation.

#### **b. Related-Party Transactions**

This violation includes a transaction of an unusual amount with a related party involving (1) fictitious sale to a related party, (2) loan to or from a related party where the interest rate is lower than that in the market, (3) another transaction with a related party in which the price is lower than that of normal transaction, and (4) inadequate disclosure of transactions with related parties.

#### **Classification of Banking and Accounting Crimes in Criminology**

An accounting bank crime or accounting scandal involves business elites and professionals. A popular case example is the Enron case where the company's share price plummeted because of Enron's founders, former CEOs, other Enron executives and Public Accounting Firm Arthur Anderson who conspired to manipulate Enron's financial statements. An accounting crime in banking and capital market also involves professionals.

To summarize, considering the impostor the banking and accounting crimes belong to the white collar crime. It is a crime committed by honorable people having a high social status in regard to their occupation.

In relation to the positive law prevailing in Indonesia, the Book of Criminal Code (*KUHP*) and related Laws state several articles concerning accounting crime as follows<sup>7</sup>:

a. Related to illegal earning management, it may be subject to Article 390 of *KUHP*, that is "Anyone with the intent to profit oneself or others unlawfully, by broadcasting false rumors causing the price of merchandise, funds or securities to be dropped or ascended shall be

punishable by imprisonment of a maximum of two years and eight months”.

b. Regarding the auditor’s misleading opinion, it may be subject to Article 416 of *KUHP*, i.e., “an official or another person given a job to do continuously or for the time being, deliberately faking books of lists specifically for administration auditing, is threatened imprisonment of a maximum of four years.”

c. With regard to banking crimes which belong to a category of embezzlement, the impostor is subject to the Article 372 of the Criminal Code: “Whoever intentionally and unlawfully possessing something wholly or partly that belongs to another person, but it is in his/her power not because of the crime is threatened due to committing embezzlement with a maximum imprisonment of four years or a maximum fine of nine hundred rupiah.”

d. Banking crimes of counterfeiting customer accounts are subject to Article 49 paragraph (1) letter c of Regulation of Banking No. 10 of 1998: “changing, obscuring, hiding, deleting, or losing a recording in bookkeeping or in a report, or in a document or a business activity report, transaction report or an account of a bank, or intentionally changing, obscuring, losing, hiding, or destroying the bookkeeping recording is punished with imprisonment at least 5 (five) years and maximum 15 (fifteen) years and fined at least Rp10.000.000.000,00 (ten billion rupiahs) and the most Rp200.000.000.000,00 (two hundred billion rupiahs)”.

e. Regarding an accounting crime of stock market on market manipulation, the impostor is subject to

the Article 91 of Regulation No. 8 of 1995 on Stock Market, that is “Any party must not take action either directly or indirectly for the purpose of creating a false or misleading image about business activity, market condition, or security price in Stock Exchange”.

### **Causes of Banking and Accounting Crimes**

To find out the causes of banking and accounting crimes, a fraud triangle concept can be used. This concept is triggered by Donald R. Cressey to explain the three causing factors occurring in each fraud situation causes. They are motive, rationalization, and opportunity [5].

The motive describes a need for a fund or a person's reason for causing him/her to commit a crime. This element is sometimes referred to as pressure, which is usually in a form of incentive to earn additional income to be used for various purposes.

### **Forms of Legal Sanction against Banking and Accounting Crimes**

In the event of a violation committed by a Banking Officer and a Public Accountant in his/her services, either on the discovery of any evidence of any mild violation to severe one, based on the PMK no. 17/PMK.01/2008 shall only be liable to administrative sanctions in the forms of sanctions of warning, void permit, and revoked permit as set forth in the Article 62, Article 63, Article 64 and Article 65 [1]. Meanwhile, according to the Regulation No. 5 of 2011 on Public Accountant, it is regulated in Articles 55 and 56 [1] as follows.

#### **Article 55**

Public Accountant who:

- a. manipulates, assists to manipulate, and/or falsifies the data related to the service provided as stated in the Article 30 paragraph (1) letter j; or
- b. deliberately commits manipulation, falsifies, and/or deletes the data or notes on the working paper or does not prepare the working paper related to the provided service as stated in the Article 3 (1) so that it cannot be used as it is in regard to the examination by authorized officials, is sentenced at the most 5 (five) years and penalty of fine Rp.300.000.000,00 (three hundred million rupiahs).

#### **Article 56**

The accosiated parties committing the deeds stated in the Article 55 is sentenced at the most 5 (five) years and penalty of fine Rp300.000.000,00 (three hundred million rupiahs).

#### **Article 57**

(1) Anyone who gives false statements or provides false or falsified documents to obtain or renew the Public Accountant's permit referred to Article 6 paragraph (1), Article 7 paragraph (2), or Article 8 paragraph (2), and/or to obtain KAP business permit or permit of establishing KAP branch as stated in Article 18 paragraph (2) or Article 20 paragraph (2) is sentenced at the most 5 (five) years in prison and fined at the most Rp300.000.000,00 (three hundred million rupiahs).

(2) Anyone who is not a Public Accountant but performs a profession of Public Accountant and acts as if s/he were a Public Accountant as regulated in this Regulation is sentenced at the most 6 (six) years in prison and fined at the most Rp500.000.000,00 (five hundred million rupiahs).

(3) Regarding the act of crime stated in paragraph (1) or paragraph (2) which is conducted by a corporation, the corporation is fined at least Rp 1.000.000.000,00 (one billion rupiahs) and at the most Rp.3.000.000.000,00 (three billion rupiahs).

(4) In case the corporation cannot pay the fine as stated in paragraph (3), the responsible party is sentenced at least 2 (two) years in prison and at the most 6 (six) years in prison.

Based on the above discussion, it is obvious that a professional attitude of a Public Accountant emerges not because of a series of threats of administrative punishment, civil law and even a criminal law that can punish him/her due to the violation of law, but because of the demand of public accountant profession that needs a healthy and transparent process. This way, in presenting the existence of a company through its financial report, a community greatly needs a public accountant that has really good ability, professional and independent in securing a maximal level of accuracy of truth of his/her result of statement of opinion of Financial Report.

### **How to Prevent and Minimize the Banking and Accounting Crimes Detecting a Crime by Forensic Accounting**

Forensic accounting has in fact has an effective role in law enforcement in Indonesia. Yet, its role has not yet maximal. Right now, PPATK is developing forensic accounting that has been growing in Indonesia since the economic crisis of 1997. Forensic accounting includes fraud investigation and investigating bookkeeping or notes related to a dispute. forensic accounting



tends more focus on a certain allegation or case, unlike an auditor who gives an opinion of financial report.

Forensic accountants actually have an effective role in investigating crime. Through audit investigation, corruption cases, financial crimes and other white-collar crimes can be disclosed.

Auditing techniques commonly employed in public audits such as physical examination, confirmation, document review, analytical review, requested written or oral explanations to the audited, recalculation, and observation principally can be used for investigative audit. Only in the investigative audit, the audit techniques are executed exploratively, looking for a domain to be worked out, or for deepening.

### **Forensic Accounting**

Profession of forensic accountant is very needed by the law enforcers if there is a suspicious transaction in order to find out where the transaction is from and where it is intended to. Forensic accountants apply specific skills in the fields of accounting, auditing, finance, quantitative method, several legal fields, research and skills in investigating in order to collect, analyze, and evaluate evidence to interpret and communicate the findings.

A forensic accountant investigating known or suspected fraud cases should be able to develop the case theory and incorporate it into a scientific method. This approach includes identifying problems (hypotheses), gathering evidence and data, analyzing data to test the

hypotheses, and drawing conclusions in conducting an investigation.

In the public sector (government), the practice of forensic accountant is similar to the one illustrated above that the phases of all series of forensic accounting are divided among various institutions. There is an institution investigating government finance, some others are part of internal government, some institutions of trial courts, some others supporting activities fighting the crimes in general, corruptions in particular by *PPATK* and *KPK*. There are also non-government organizations functioning as a pressure group.

To sum up, the forensic accountant is much needed in disclosing accounting crimes that cause many legal violations committed by both private and public parties in financial data manipulation in the form of criminal act of corruption resulting in lots of state losses and miserableness to people.

### **Conclusions and Suggestion**

#### **Conclusion**

1. Banking and accounting crimes are offences or deception committed in economic field and they are related to each other. The banking and accounting crimes are committed by top management of an organization by manipulating the transaction and/or financial report. These crimes can be categorized as white collar crimes or intellectual crimes, i.e. the ones committed by highly educated people. High demand of life style and never feeling enough become one of the triggers of the crimes which tend to increase from year to year.

Banking and accounting crimes are not seen significantly and the victims often do not realize them. When they occur and are detected, the impact is quite great where the company/organization and state go bankrupt and the state economy even the world will get shocked. The crimes are committed since they assume the ability of the investigators is not amazing enough to disclose the crimes.

2. Creating a good internal control is one of the steps to carry out to minimize banking crimes and for Public Accountant, work professionally and have a high moral responsibility at least parallel with professional responsibility

### Suggestions

1. Process of protection and law enforcement against perpetrators of banking and accounting crimes is not maximal yet considering that the impacts are incredibly great and even they can destabilize the economy of the country and crisis of public confidence toward Banking and Accounting. Therefore, the law enforcers have to be more alert to the Banking and Accounting crimes.
2. The role of Forensic Accounting needs to be improved as it is a formulation that can reveal and prove Banking and Accounting crimes in Indonesia.

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