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Banking Policies Which Have Criminal Act Implication

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Abstract
This study analyzes the philosophy of banking policies which have criminal act implication. In this case, the decision made by Bank Indonesia has already in accordance with the authority and position attached to Bank Indonesia's official. The policy made by Bank Indonesia is appropriate or not the principle of prudent and good etiquette.Bank Indonesia's officials haveauthorities related to their position. If there is an element of not good etiquette, and less prudent in their authorities that leads to financialharm to the State then the policy can be categorized as banking criminal act.The research type is normative legal research. This study uses legislative, conceptual, case and comparative approaches.Banking policies which have criminal actimplications can be seen from the administrative, civil and criminal aspects in the tort committed by Bank Indonesia's official. If the Bank's Indonesia official do mistake in order to conduct the policy rules, it means that the criminal responsibility has to charged to the official.
Keywords: Policy, Bank IndonesiaOfficial, Mistake, Criminal responsibility, and Court Decision.

1. Introduction

1.1. Background and formulation

In banking laws, Bank Indonesia is given wider bank supervisory authorities. In wide term as stated in banking laws means that if the condition of certain bank able to endanger then banking system, the heads of Bank Indonesia able to establish liquidating team to give temporary capital or short term funding from Bank Indonesia in handling the banking crisis. In the implementation, the giving of temporary capital through FPJP and BLBI is found various deviations, either from the policy givers or the receiver.

On the other hand, although the banking laws have regulated the sanctions for the bank owner, management, and commissioners for the violation to the banking laws and regulation related to the bank management, but the sanction regulation about the disobedience toward the regulations based on prudential principles is not regulated firmly. Policy violations taken by the Bank Indonesia officials have potentials to be criminal acts in banking field.

Determining a policy made by Bank Indonesia officials not only at the actions that fulfill the criminal considerations regulated in law only, but also have to fulfill the element of mistake and responsibility ability.

Bank Indonesia suitable with its authorities give policies of Liquidity Assistance of Bank Indonesia to the banks in critical condition. Policies made by Bank Indonesia basically suitable with their attached authorities. The deviation of liquidity fund usage by bank in crisis condition not suitable with allocation and can be indicated by the element of against the law, either in administrative, civil or criminal laws.

Based on the background above, then the research focused to regulation, doctrine, concept and legal principles related to banking policies which fulfilled criminal act elements.

1.2. Problem formulation

Based on the explanation above then the legal issues in the research :
Mistake in criminal responsibility in the banking field.

1.3. Research goals

Analyzing and finding mistakes in the doer responsibility in banking field.

2. Research method

Refer to the problem formulation, the research used normative legal approach, normative legal research is done by using suitable method based the scientific characteristic of legal science. The research will help in giving recommendations toward banking policies which have potentials of criminal acts.

3. Discussion

3.1. Development of mistake elements in legal responsibility in banking field

In discussing the mistakes in criminal responsibility in banking fields can not separated from mistake elements/ responsibility ability also prevail the principle of *"Geen Straf Zonder Schuld"* (no punishment without guilt). This principle is not contained in Criminal Code/ other regulations, the development of (*No punishment without guilt or No liability without blameworthrness*) principle in criminal code not clearly explicitly in general regulation of Book I, development of strict liability crimewhich is formulated without mistake, means, strict

liabilitypresence is not exception from the validity of *maksim actus non facit, nisi mens sit rea*.[1]

Mistake is responsibility determinant because it should not included in the criminal act. And also with the space in Criminal Code gives possibility of vicarious liability, vicarious liabilityprinciples, actually is not original criminal law, but a concept adopted from other legal field.

Various criminal acts, especially that present in Criminal Code, the formulation not always along with the separation theory between criminal act with responsibility.

Punishment still needed with requirement, person who do criminal act should has guilt. With other words, the person should responsible for his or her action or if viewed from the action viewpoint, the action should be accounted to the person.

3.2. Banking mistakes in perspective of Public Administration Law

Essence of state based on law require each governmental acts should be accounted for. Governmental responsibility produce accountability, either administrative, civil, or criminal accountability. The administrative law concept attached to the function of monitoring and control of authorities.

Legal ratio with supervision toward the authorities usage because authorities usage not always run smoothly, because hampered with political interest, personal interest, certain group interest that need control mechanism. Supervision parameter such as: legislation, good government principle (AUPB), and human rights.

Authority implementation that enter in the policy regulation today often be examined materially as the public administrative law or criminal law. Authority that is attached given by the law to the officials should be accounted for. If there is authority abuse, it implicates the policy become criminal, if the authority abuse contain state loss from the policy, as given in Corruption Law.

Administrative law investigation, if the mistake or deviation done by public official in the form of abuse of power and unreasonableness, then there is maladministration. Related with the matter, according to Tatiek Sri Djatmiati,[2] stated:

> Maladministration become one of parameters for the presence or not the personal mistake or post mistake, but to determine the maladministration action in the governmental action become the post responsibility or personal responsibility can be charged with criminal sanction that is power abuse and corruption crime.

Maladministration relates with criminal act and is a personal mistake and become the personal responsibility of the public official who do that.

Based on the stipulation of article 1 paragraph 3 Law No 37 Year 2008, maladministration is behavior or action against the law, overstep the authorities, use authorities for other goals. One of them such as the ignorance of legal duties in implementing the public services done by the state implementer or government which produce material or immaterial loss for societies or individual.

Related with that, and problem of Liquidity Assistance of Bank Indonesia (BLBI) and continued with the issuance of Presidential Instruction No 8 Year 2002 which aimed at giving legal certainty to debtors who have fulfilled their obligations or legal action of the debtors who have not fulfilled their obligation based on obligation settlement of the shareholder and paid off letter.

Policy related with the BLBI, several Governors of Bank Indonesia have been punished because have done banking criminal act, and corruption. BLBI case can be stated that the foundation to value the law violation characteristics of the official actions as superordinate, that individual in doing their action is supported by their own interest, while the ruler work for public interest.

If the ruler participate in the societal traffic in his or her position which is equivalent with individual, can be responsible based on article 1365 BW, as the civil accountability that become the post accountability relate with the action which against the law of the ruler.

Situation above able to give explanation that the understanding of responsibility of accountability of the state relate with the public administration law that relate with the authorities usage owned by the ruler in running their task for public services.[3]

State responsibility or accountability relates with the governmental authorities use in the public service function. In implementing the function emerges loss/harm for societies.

The emerge of loss for the societies can be occurred because of flaws in the authorities usage or in relation with the apparatus behavior as person. The two things become parameter for the presence of responsibility or

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[1]Choirul Huda, From no punishment without guilt to No liability without blameworthrness, Kencana: Jakarta, 2006, p. 23.

[2]Tatiek Sri Djatmiati, Maladministration in the context of personal and post fault, personal and post responsibility. In book of administrative law and good governance, University of Trisakti: Jakarta, 2010, page. 85. Furthermore explained the consequences maladministration because of official maladministration such as absence of abuse powerarbitrariness, which occurred because the power abuse, including using the authorities for other goals such as enriching themselves, other person or group or corporation which give loss to the state finance and disregard of law.

[3]Tatiek Sri Djatmiati, Personal and Post Fault in Public Responsibility or Accountability, Workshop of Faculty of Law, Unair, 2008.

accountability for the state loss.[1]

Mistake size for responsibility or accountability for the existing losses come from two mistake measure:

1. *Faute personelle* (personal fault);
2. Faute de service (service fault).

Definition of personal fault (*faute personelle*), if there is personal fault as part of government. The fault is done not relate with the public service, but show the weakness of the person, because lack prudent or ignorance.[2]

Service fault (*faute de service*)occurred because mistake in the authority use, and only relate with the service. State accountability that relate with *faute lour de* (big and bad fault),as special requirement in discretion field.

Discretion authority in narrow definition is the policy freedom means if the legislation give certain authority to governmental organ, while the organ is free to (not) to use although the requirement for the use fulfilled legally.

While valuation discretion (discretion authority not in real meaning) is the right given by governmental organ to value individually and exclusively whether the requirements for the authority implementation fulfilled legally or not.

Bank Indonesia in handling the banking crisis take policy action to make banking condition recover in reaching goals to control systemic condition and save the national banking.

Law of the Republic of Indonesia Number 23 Year 1999 about Bank IndonesiaArticle 33 the change of Law of the Republic of Indonesia Number 3 Year 2004 about the change for Law No 23 Year 1999 then Changed again become Law No.6 Year 2009(then called as Law of Bank Indonesia)stated:

> In case a condition of certain bank according to the valuation of Bank Indonesia endanger the concerned bank business, or endanger the banking system or occurs banking difficulty that endanger national economy, Bank Indonesia able to make action as regulated in Law about banking as applicable.

Condition like this, Bank Indonesia because of its authorities give policies to recover the banking condition.

After the application of Financial Service Authority with Law No.21 Year 2011 (UU OJK) the regulation and control of banking change from Bank Indonesia to Financial Service Authority.Banking Law ARTICLE 37 B paragraph (1) each bank required to guarantee the societal fund saved in the bank, paragraph (2) to guarantee the societal saving in bank as defined in paragraph (1) then be established the Underwriter Institution. The matters are the legal foundation of Law No 24 Year 2004 about Underwriters (then called as Law of LPS). The function of underwriter to guarantee the customers saving and active in maintain the stability of banking system suitable with their authorities in article 4 Law of LPS and has task suitable with article 5 :a. formulating and determining policies in effort to actively maintain the banking system. b. formulating and determining and implementing the Fail Bank settlement that is not systemic impact c. implementing the handling of Fail bank with systemic impact. In the policy administrative law of Bank Indonesia know principle as Ermessen, principle which give discretion for governmental apparatus especially in conducting administrative function.

The discretion can be done by governmental apparatus in case as follows:

a. No legislation which regulate the settlement *in ceoncreteo*toward certain problem, even the problem need soon settlement.
b. Legislation which become the foundation for the apparatus action give full discretion,
c. Governmental apparatus is given power to self regulate.

The application of Ermessen principle is a opportunity for the loss of individual because of apparatus action. Relate with the Bank Indonesia which do fail in the bail out of Bank Century, then the directors of Bank Indonesia related with the post responsibility and personal responsibility relate with maladministration in using authority or in public service. Post responsibility relate wit the legality of governmental action in the administrative law, the legality of the governmental action relate with the approach toward the governmental power.[3]

Post responsibility concept and personal responsibility in administrative law relate closely with control of authorities control, because the authorities use if producing *Ultra Vires*

There are 2 (two) categories underlie the judicial review toward discretion authorities, **first**, when the authority abuses its discretionary power, it is motivated by the emerging certain situation, such as societies do not public administration anymore, the public administration action is not proper, not implementing relevant consideration, various authorities implementation and not rational, **second,** when the authority fails to exercise its discretion, public administration does not implement its own authorities, or fettered to the policy determination only, or release authorities because its function to other authorities. Both category can not be separated each other, even overlap.

[1]*Ibid*, p. 3-4.
[2]*Ibid*.
[3]*Ibid*, p. 99.

3.3. Banking mistake in civil law perspective

Civil law scope is not limited at the civil relationship regulation (relationship between person / legal entity as customer) only.

Related with the matter, Bank Indonesia is legal entity suitable with article 4 paragraph (1) Law of Bank Indonesia Number 23 Year 1999.

Board of directors have authorities to do external legal actions for and on behalf of Company. External legal actions of directors can be classified into action that implement management work *(daden van beheren)*and actions that implement ownership work or actions that implement task (*daden van beschikking)*.[1]

There are 2 (two) external legal actions of directors as actions that implement ownership and mastery work *(daden van beschikking)*because stated firmly in Law of Limited Company and Model Standard of the Articles of Association of Limited Company as legal action that firstly get approval from RUPS or commissioners or directors. The both external legal action are (1) shift or make as collateral all or part of Limited Company wealth (2) borrow or give loan on behalf of limited company.

In their task implementation, directors also can take initiative to embody the the company interest by conducting activities which support and smooth their task as long as the initiative not against the article of association.

But, if in the future, it is known that all done activities by the directors producing loss to the third party, then in this case those who must responsible is the company no the directors. Conclusion that a partner in conducting legal relationships with third parties is expected get agreement from other partners. Either written or illicit approval.

This bring consequences, that if in the legal relationship with third party contain violation toward criminal law, then the other partners are considered as knowing and approving. The partner which make legal relationship with third party called as material doer *(pleger)*. While for other partners called as participating in doing *(medepleger)*. It is also prevail toward criminal responsibility as stated above, if one partner do something against the law norm of criminal law, then the other partner considered as know and approve, then they responsible.

3.4. Banking mistake in criminal law perspective

Mistake can not be avoid by criminal law which develop in the context of oru culture, mistake is contempt aimed by societies which implement ethical standard prevail in certain time to human being that do deviant actions that actually can be avoided. [2]

Mistakes consist of several elements: do criminal action; above certain age and able to responsible, intentionally or ignorance and no reason to forgive. There are two theories about intentionality: intention theory (willens) and knowledge theory (wettens). Someone who do action intentionally must fulfill willens formulation or must wish for action and fulfill wettens element and must know the consequences from his action if connected to the intention theory then it can be said, definition of intention is intention to do action or intention to produce consequences from the action.

Principles in responsibility of criminal law "no punishment if no mistake: (*geen straf zonder schuld*, *actus non facit reusnisi, mens sit rea, asas culpabilitas*).

There are two possibilities related to this principles:

a. Someone will not be punished if not do criminal action and
b. Someone who do criminal action not necessarily being punished

Discussion of criminal responsibility in banking field in the criminal law in Indonesia can not be separated with the approach or legal subject of criminal law.

It contains definition that talking about criminal action subject including two things, who do the criminal action related with "*Dader*" Article 55 of Criminal Code. Criteria to determine those called as criminal action doer:

a. Those who do the criminal action;
b. Those who order to do;
c. Those who participate, and
d. Proponents.

And the second is article 56 of criminal code as assisting in doing.

a. Those who intentionally give assistance during the crime is done;
b. Those who intentionally give opportunity, means, or explanation to do crime. About who that able to responsible criminally.

[1] Rudy Prasetya, *Kedudukan Mandiri Perseroan Terbatas Disertai dengan Ulasan Menurut Undang-Undang Nomor 1 Tahun 1995,* cet.II, Citra Aditya Bakti: Bandung, 1996, p. 210-214.

[2] Jan Remmelink, *Criminal law* (coments to most important articles from criminal law of Dutch and its equivalence in Criminal code of Indonesia), Gramedia Utama: Jakarta, 2003, p. 142

Article 46 paragraph (1) Banking Law contains stipulation as follow:

> Whoever collecting fund from societies in the form of saving without business license from Bank Indonesia officials as intended in article 16, is threatened with jail punishment at least 5 (five) years and at most 15 (fifteen) years and penalty at least Rp 10.000.000.000,- (ten billion rupiahs) and at most Rp 200.000.000.000,- (two hundreds billion rupiahs).

Article 46 paragraph (2) Banking Law gives stipulation that:

> In case activities as intended in paragraph (1) done by legal entity in the form of limited company, association, foundation or cooperative, then the prosecution for the legal entities is done either to those who give orders for the activities or who acts as leader in the activities or to both of them.

It can be concluded that Article 46 paragraph (1) and paragraph (2) of Banking Law contain stipulation that can be accounted for in the banking field is individuals and corporation.

Those who responsible for crime in banking, can be seen from the mistake or ignorance element in the actions against the law. In this case, the policy made by the officials of Bank Indonesia,activity of doer subject, object, and policy goals there is inauspicious intention either related directly with banking that influence the banking crimes. It can be seen from policy done by the legal subject is officials of Bank Indonesia,the object is finance which influence to the state loss, and the goals relate with banking to recover banking, should not prosecuted with corruption crime.

Responsibility that suitable with inherent authorities at the officials of Bank Indonesia,should be analyzed that the legal actions done, in making policies done by officials of Bank Indonesia have overstepped the mandated authorities by the Law. Measure the presence of mistake in legal actions, in policy issued by officials of Bank Indonesia, should be seen from the size of good government principles. Such as action that is not fulfilled by the officials, that is good will in making policy. If there is state loss because of the policy, and there is inauspicious intention and no prudential principles from the policy, then it can be charged legal action in banking. Prudential principle in banking should be regulated in a regulation so suitable as intended by *The Basel Core Principles*[1].So *The Basel Core Principles*including 25 (twenty five) Principles, including: 1 effective bankin control, 2 permitted activities, 3 licensing authority should has criteria, 4 and principle 5 about share transfer, 6 up to principle 15 important role of regulation and control, 16 direct and indirect control, principle 17 bank control should has regular contract with bank management and comprehensive understanding about bank operational. Principle 18 bank control should has apparatus to do data and report analysis. Principle 19, bank control should has independence. Principle 20 ability to do control toward bank business in consolidated term. Principle 21 all banks should have complete and accurate recording. Principle 22 control should has sufficient measurement tool and able to make improvement and do action for regulation and international control cooperation. Principle 23 implement the consolidation control practice. Principle 24 do cooperation among control, and principle 25 implement same standard between local bank with foreign banks.

Based on principle in *The Basel Core Principle* then the role of Bank Indonesia is very important recall that Bank Indonesia will do its obligation before the bank is established up to its operations.

3.4. Corporate responsibility in banking crime

3.4.1. Corporate development as criminal law subject

In criminal law, corporation is accepted and recognized as legal subject that can do crime and responsible criminally. The criminal law development in Indonesia, there are three system of corporate responsibility as the criminal subject, such as:[2]

1. The corporate management as the makers, then the management that should be made responsible.
2. Corporate as the maker, then the management should be made responsible, and
3. Corporate as the makers and those who responsible.

Criminal responsibility concept, can be found articles in Criminal code:

a. Participation in an association aimed at doing crimes or in an association prohibited according to general regulation, punished with jail punishment for six years.
b. Participation in association aimed at conducting violations in law with punishment at most nine months or with penalty at most four thousands five hundred rupiahs, and
c. Toward founders or management of association, the law can be weighted for one third.

Definition of participation in the article above is translation from case *"deelneming"*as intended in article 55 and 56 of criminal code, so it includes *"daderschap"*as intended in article 55 of criminal code and *"medeplichtigheid"*as intended in article 56 of criminal code.

Fiction of legal entity *(rechtspersoon)*which is influenced by Von Savignythought known as fiction

[1]Zulfi Diane Zaini, *Independence Bank Indonesia dan Penyelesaian Bank Bermasalah*, CV. Keni Media, Bandung, 2012, p. 66.
[2]Hatrik, Hamzah., *Asas Pertanggungjawab Korporasi Dalam Hukum Pidana Indonesia (Strict Liability dan Vicarious Liability)*, Raja Grafindo Persada, 1995. p. 30.

theoryis not recognized in criminal law.[1]

Article 398 of criminal code formulated: management or commissioner of limited company, Indonesian company with shares or cooperative that has been stated in bankrupt condition or ordered to do settlement by judge, punished with jail punishment at leas one year and four month;

a. If he has intention to suspend bankrupt or settlement based on the judge decision from the limited company, company, or the associations,
b. If he has intention to suspend bankrupt or settlement based on the judge decision from the limited company, company or association has cooperated or gave approval to accept loan with known hard requirements that bankrupt or settlement based on judge decision;
c. If because of his mistake so the obligations as determined in paragraph 1 article 6 of Criminal Code or determined in paragraph 1 article 17 of Company With Shares Ordinance can not be fulfilled so the books or letters which according to the article should be made notes or writing which according to the articles should be stored, not be shown soon in well condition.

Stipulation of article 398 of Criminal Code that regulates about corporate management / commissioners which conduct crime toward corporation in bankrupt condition. The stipulation above suitable with the criminal code that follow this system, as given in article 59 of criminal code as follow:

> In case there is criminal violation toward management, members of management, and commissioners, then the management, and member of management, or commissioners that is not participate in doing violation, not punished.

Crime done by corporation is done by certain person as the management of corporation. The nature of his action is "onpersoonlijk". Person who head the corporation responsible criminally, whether he know or not about the action. According to Roeslan Saleh only limited at violation only not crime.

Recognition of corporation responsibility as criminal subject should be formulated in Criminal Code of Indonesia in the future. Suitable with goal and function of criminal code as social defense in order to reach main goal of societal welfare.

Scope of criminal responsibility principle, Sudarto affirmed that beside the responsibility ability, mistake *(schuld)* and against the law*(wederechtelijk)*as requirement for punishment, is endangering to society by the doer. Criminal responsibility concept, in term punishing the doer, there several requirements that should be fulfilled a) there is crime done by the doer; b) there is mistake element in the form of intentionality or ignorance; d). the doer able to responsible and e) no reason to forgive [2]

According to criminal system of Dutch East Indies, corporate can not be punished with penalty, because person who punished penalty able to choose jail beside the paying penalty. According to Jonkres, although corporation can not responsible in criminal law, but in reality corporation often do crime. Because of that, in criminal law field emerged theories about corporate responsibility, that is identification theory, imputation theory, strict liability theory, vicarious liability theory.

1. Identification theory

Identification theory basically recognizes that action of corporation members, so far relate with corporation is considered as the corporation actions.[3] Action and *mens rea* at the individuals then be connected with corporation. If individual is given authority to act on behalf of corporation and during running the corporation, *mens rea* of the individuals are the *mens rea*of corporation.[4]

Director is identical with corporation, so it can be said that the director action is corporation action, as long as the action still in the scope of his work and in corridor of corporation goals .[5]At other side, director and manager who represent the spiritual attitude of corporate that direct the corporate will and control what to do. The spiritual attitude of directors and manager is the spiritual attitude of corporation.

2. Imputations theory

Imputation theory actually use v*icarious liability* or *the doctrine of respondeat superior* foundations, stated that the master either in individual or corporation responsible for the action of subordinate in the scope of work. *respondeat superior* doctrine determine that a master is liable in certain cases for the wrongful acts of his servant, and a principal for those of his agent.Substitute criminal responsibility also based on employment principle that stated employer is the main person in charge for the action of employees, so, servant's acts is the master's act in law.

Responsibility in term of vicariousonly occurred in offences that can be done vicariously while based on

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[1]Fiction theory consideres legal personality is unity of human being is a fantasy. Personality actually at human being, states, cooperatives, institutions, can not be subject of rights and individual, but treated as if the institution is human being. *Ibid*.
[2]*Ibid*. p. 12.
[3]Barda Nawawi Arief, *Sari Kuliah Perbandingan Hukum Pidana*, PT. Raja Grafindo Persada; Jakarta, 2002, p. 154.
[4]Hanafi, *"Perkembangan Konsep Pertanggungjawaban Pidana dan Relevansinya bagi Usaha Pembaharuan Hukum Pidana Nasional"*, *Thesis Program Pascasarjana*: Jakarta, 1997, p. 35
[5]*Ibid*. p. 36.

employment principleonly occurred at offences that are summary offencesthat relates with the trading field.

3. Strict Liability theory

Strict Liability is liability without fault. It means the doer can be punished, if he has do action as formulated in law without looking at how his spirit attitude. Liability without fault, the party who violates regulation in Dutch known as *de leer van het materiele feit*.

Criminal legal theory known as normative mistake theory. In essence, the theory stated that mistake is present if the behavior is not suitable with norms determined. Mistake is considered as legal norm that determine the doer can be blemished because doing crime.[1]

Refer to the characteristics and requirements for the strict liabilityproducing problem what is strict liabilitysuitable if implemented in corporate crime because strict liabilityonly applied special for light crime and statutory offences and the action including in *mala prohibita* not *mala in se.*Corruption crime itself is serious crime.

Reason for using strict liabilitybased on res ipsa loquitur principle, principl which viewed that the presence of criminal liability not based on the presence of mistake or not at the doer, but based on the danger of the action, that is loss and massive victims.[2]

4. Vicarious Liability theory

Beside strict liability concept, also known vicarious liability, which in *Black's* Law Dictionary, vicarious liabilitydefined as indirect legal responsibility.According to Roeslan Salehexplained the definition of vicarious liability, as follows:[3]

> Generally someone responsible for his own actions. But, there is thing called vicarious liability....person who responsible for other person's action. But, Law that determine who that is considered as the doer who responsible.

Vicarious liabilityactually is not original criminal legal concept, but a concept adopted from other legal field. Beside that, law expert considered vicarious liabilityas criminal responsibility problem, viewing vicarious liability as exceptional concept. Crime done by subordinates essentially become the responsibility of superordinate. Criminal responsibility in general only occurred if the doer has mistake, with vicarious liability get exception. If considered well, in vicarious liability, there is certain mistake among persons who do crimes and persons who made responsible for the actions. Those who made responsible because as superordinate of the doers. The other case, the criminal responsibility occurred because the doers act for him.

Corporation development as criminal law subject begun from Criminal Code up to legislation that regulate the legal subject only recognize that that legal subject is *natuurlijke person* as regulated in Article 59 of criminal code.

If connected with the corporation development stage placed first stage, responsibility is not known, because of that article 59 of Criminal Code, determining that only management that responsible not corporate in this case because the strong influence of "*societies delinquere non protest*" principle, that is legal entities can not do crime or "*universitas deliquere non protest*" principle, means that corporation can not be punished.

Corporate responsibility systematics can not be equalized with the natural person responsibility. But, because of reality in societies showed that loss and dangers caused by corporation is massive, either physical losses, economic or social cost, also emerge thinking to make responsible the corporation in criminal action.

Responsibility ability is one element in criminal responsibility. It is impossible for someone or legal subject to be made responsible criminally if he unable to responsible [4].

Corporation presence is not formed without goals and in reaching the goals always be embodied through natural person. Because of that, responsibility ability of persons who do on behalf of corporation is transferred become the responsibility of corporation as the criminal action subject.

3.4.2. Corporate criminal responsibility as the criminal doer in banking field

Limited company responsibility problem as the criminal doer is difficult investigation, recall to the corporation is legal entity. And also based on Law of Bank Indonesia article 4 paragraph (3) Bank Indonesia is legal entity, in criminal law, no punishment without fault, fault is mens rea naturally present natural person. Even the mens rea element is difficult from corporation that is considerd as doing criminal action, recall the corporation only can do action through corporate management. Related with the policies done by bank officials in making healthy banking, the judge decision consideration always be decided with corruption criminal action, should be viewed the subject activities of the Bank Indonesia officials, objecs and goals related with the policy (recapitalization) of banking that has potentials to produce criminal action, so not all violation of policies done by officials of Bank Indonesia is qualified as corruption criminal action.

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[1]*Ibid*. p. 83.

[2]Dwija Priyanto, *Kebijakan Legislatif tentang Sistem Pertanggungjawaban Korporasi di Indonesia*: Bandung, 2004, p. 116.

[3] Hamzah, Hatrik,., *Asas Pertanggungjawab Korporasi Dalam Hukum Pidana Indonesia (Strict Liability dan Vicarious Liability)*, Raja Grafindo Persada, 1995.. *Loc.Cit*.

[4] Saleh, Roeslan., *Sifat Melawan Hukum Dari Perbuatan Pidana*, Aksara Baru, Jakarta, 1983..p. 23.

Conventional bank in running their business to maximize acquisition from societies try to offer high interest, while to attract debtor interest to take credit, they offer low interest rate.

4. Closing

4.1. Conclusion

Conclusion from discussion above as follows; if power abuse contain personal mistake, it means the BI officials action violate the policy regulation that implicates banking criminal action. Bank Indonesia officials can not be made responsible because has taken policies suitable with function and authorities as regulated in Bank Indonesia Law as long as done with good intention and prudential principles. At other side, the doctrine of criminal responsibility development, corporate can be sanctioned. But if the Bank Indonesia officials who run the recapitalization of banking do personal mistake then the official personally can be made responsible criminally.

4.2. Suggestions

From the conclusion above, it is suggested:

1. It should be formulated policy standard based on good will and prudential principle clearly as the guidance for Bank Indonesia officials in exercising policy regulation.
2. It should made clear the policy regulation elements that are qualified as criminal action in banking.

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Hanafi, *"Perkembangan Konsep Pertanggungjawaban Pidana dan Relevansinya bagi Usaha Pembaharuan Hukum Pidana Nasional"*, *Thesis Program Pascasarjana*: Jakarta, 1997.

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