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Criminal Liability of Bank Officials in Fictitious Loan Cases: A Study of Court Decisions

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Abstract

Fictitious credit cases are a form of banking crime that often involves bank officials who have authority in the credit analysis, approval, and disbursement process. This research aims to analyse the form of criminal liability for bank officials in fictitious credit cases and to assess the basis for the judge's considerations in determining the guilt, role, and criminal sanctions against the perpetrators. The research method used is normative legal research with a case study approach through the analysis of several court decisions related to the criminal act of fictitious credit. The research findings indicate that bank officials can be held criminally liable based on proof of abuse of authority, gross negligence, or active involvement in the creation of credit documents and data that do not comply with internal bank regulations or legislation. The judge's considerations generally focus on the element of intent, position held, and the impact of the losses on the bank's and customers' finances. This research underscores the importance of strengthening internal oversight mechanisms, enhancing the integrity of bank officials, and updating banking regulations to prevent the recurrence of similar crimes.

Keywords: criminal liability, bank officials, fictitious credit, banking crimes, court decisions

A. Introduction

The Banking plays a strategic role in the national economy as an intermediary institution that collects and distributes funds to the public (Dalimunthe & Lubis, 2023). Therefore, banking activities require trust as the main pillar in carrying out their functions. However, this trust can be disrupted when bank officials abuse their authority, one example being the practice of granting fictitious loans. Fictitious credit is the act of applying for and disbursing credit facilities using inaccurate, fabricated, or non-existent debtor data or collateral, resulting in financial losses for the bank and other stakeholders (Noviansyah et al., 2025).Fictitious credit cases often involve bank officials who have authority in the credit analysis and approval process (Manullang, 2025). The position of bank officers is crucial

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because they are responsible for ensuring compliance with the prudential banking principle and adherence to the regulations of the Financial Services Authority (OJK), the Banking Law, and internal bank procedures. When bank officials intentionally or negligently violate these procedures, leading to the creation of fictitious loans, questions arise regarding the extent to which criminal liability can be attributed to them (Ardiansyah et al., 2021).

Normatively, banking crimes are regulated in Law Number 10 of 1998 concerning Banking, the Financial Services Authority Law, and general criminal provisions in the Criminal Code (KUHP) (Halim et al., 2022). However, applying criminal liability to bank officials is not always straightforward. In practice, there are differing assessments regarding whether the act constitutes an administrative error, professional negligence, or meets the elements of a criminal offence. This complexity is often evident in court rulings, where judges must assess the elements of intent, abuse of power, and the role of each official in the sequence of events leading to the fictitious loans. Studying court decisions is important for understanding judges' reasoning patterns in proving fictitious credit crimes, determining the form of the perpetrator's liability, and interpreting the boundary between administrative and criminal errors (Buell, 2006). Additionally, an empirical analysis of the decision can provide insights into the consistency of law enforcement, the effectiveness of the bank's internal oversight, and the urgency of reformulating banking criminal provisions to better protect the national financial system (Lasagni, 2019).

One of the cases related to fictitious credit that has been uncovered by the North Kalimantan Police's Special Criminal Investigation Directorate (Ditkrimsus) in the granting of credit facilities at Bank Kaltimtara. The North Kalimantan Police's Special Criminal Investigation Directorate (Ditkrimsus) found alleged structured deviations in the credit granting process, particularly through the use of Work Orders (SPK). As a result of these actions, the state's losses amounted to Rp208 billion. In an effort to recover the state's losses, investigators have secured a total of movable and immovable assets worth approximately Rp30 billion, as well as other evidence. Additionally, cash amounting to Rp3,893,818,321 was also secured. Based on this, this research needs to be conducted to comprehensively examine the criminal liability of bank officials in cases of fictitious credit through a court decision study approach, so that it can contribute to the development of banking law and crime prevention policies in the financial services sector.

This literature review presents a description of concepts, normative frameworks, previous research findings, and relevant research gaps for understanding the criminal liability of bank officials in fictitious credit cases. Concepts and Theoretical Framework; Concept of banking crimes: Economic and banking criminal law literature defines banking crimes as actions that violate banking norms and harm financial stability. Fictitious credit is classified as an economic crime often associated with fraud, embezzlement, or abuse of power; Criminal liability (dolus vs culpa): Classical theory (dolus or intent; culpa or negligence) and its application to bank officials serve as the basis for assessing the presence or absence of criminal elements. Fictitious credit can meet the elements of dolus (e.g., document forgery, debtor manipulation) or culpa lata (gross negligence in granting credit);

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Abuse of authority and official misconduct. Theories regarding abuse of power/abuse of office and fiduciary duty explain how the position of office adds to the legal responsibilities of bank officials. Risk management literature emphasises the existence of a duty of care and compliance as professional standards for banking officials.

Normative and Regulatory Basis; Banking Law and the Criminal Code: Frequently cited primary sources are the Banking Law (Law No. 10/1998 or any relevant replacement regulations) and the Criminal Code for general elements (fraud, forgery, embezzlement); OJK Regulations and Anti-Fraud POJK: Many studies emphasise the role of POJK/OJK Regulations in regulating governance, reporting obligations, and administrative sanctions related to non-performing loan practices. This regulation also often serves as a benchmark for professional standards and internal bank SOPs. Internal bank rules (SOPs, credit policies). Management literature indicates that the existence and implementation of credit SOPs serve as a benchmark in determining whether an official's actions constitute an administrative or criminal offence.

Study of Court Decisions and Judicial Practice; Patterns of judicial consideration. The study of decisions shows that judges assess the combination of factual elements (document forgery, customer manipulation, fund flow) and subjective elements (intent, active/organizational role) to determine criminal liability. Many decisions emphasise material evidence over direct involvement or coordination of actions between bank officials and other parties; The difference between administrative and criminal. Empirical legal literature identifies inconsistencies in rulings: some cases are treated as administrative negligence (disciplinary/administrative sanctions), while others are escalated to the criminal realm if intent or forgery is proven; Proof and burden of proof. The study of decisions also highlights the difficulty of proving the element of intent (mens rea) and the role of forensic audits, electronic evidence, and fund flow reconstruction as crucial pieces of evidence.

Research Gap is Consistency of decisions and standardisation of analysis: There is little systematic research that quantitatively collects and analyses fictitious credit decisions to test judges' consistency in interpreting the elements of criminal offences; The role of electronic and digital forensic evidence: More empirical research is needed on how electronic evidence (emails, logs, electronic transfers) is used and evaluated in court; Evaluate the effectiveness of the latest regulations: As OJK regulations and digital banking practices are updated, a study is needed to measure whether policy changes reduce the incidence of fictitious credit or simply shift the mode; The relationship between bank governance and individual accountability: There is a lack of research that combines the analysis of bank organisational structure, incentive mechanisms, and the application of criminal law to individuals.

B. Research Method

This research uses normative legal research, which focusses on positive legal norms, legal doctrines, legal principles, and court decisions related to the criminal act of fictitious

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credit. This research employs several approaches, namely: the Statute Approach to examine the provisions in the Banking Law, the Criminal Code, OJK regulations, POJK Anti-Fraud, and other regulations relevant to banking crimes; and the Case Approach, which involves an in-depth analysis of court decisions related to fictitious credit cases to observe the judges' reasoning patterns and the application of norms in practice. Then, a legal material analysis was conducted using descriptive-analytical analysis. The research object is court decisions that have become legally binding (inkracht) related to fictitious credit cases involving bank officials, with an in-depth analysis of the legal structure, facts, and ratio decidendi in those decisions.

C. Results and Discussion

1. The legal construction of the criminal act of fictitious credit in the perspective of banking regulations and criminal law in Indonesia

Fictitious credit is the practice of applying for, approving, and disbursing credit facilities using incorrect, fabricated, or untrue data, identities, or collateral documents (Ansari, 2021). From a banking perspective, fictitious credit is a form of banking fraud that violates the fundamental principles of banking, namely the principle of prudence, good corporate governance, and standard operating procedures (SOP) (Yunita & Ifrani, n.d.). Characteristics of fictitious credit that lead to criminal charges include: a) Forgery of identity or documents used in the credit application, b) Manipulation of collateral (overvalued or non-existent), c) Granting credit without feasibility analysis, d) Involvement of bank personnel (employees/officials) in facilitating disbursement (Zulfahmi et al., 2024). Because it involves the disbursement of bank funds, this action causes financial losses and damages public trust in banking institutions.

Although Law Number 10 of 1998 does not explicitly mention the term "fictitious credit," related behaviour is constructed as a banking crime through several norms, including: a) Violation of the Prudent Principle, as bank officials are required to conduct a proper credit analysis in accordance with Article 8 of the Banking Law. Deviation from this obligation can be grounds for error, especially if done intentionally or with gross negligence. b) Prohibition of data and report manipulation: Article 49 paragraph (1) letter a of the Banking Law prohibits any bank manager or employee from making false reports, falsifying records, or causing records not to be made. Fictitious credit transactions often meet the elements of this article because they involve manipulation of debtor data, collateral, or bank financial statements (Tohari & Pratama, 2025). Abuse of authority by bank officials, as prohibited by Article 49 paragraph (2) letter b, prevents bank officials from intentionally failing to take the necessary steps to ensure the bank's compliance with statutory provisions (J. J. DAMANIK, 2022). Fraud and embezzlement in banking activities, as defined by the Banking Law, also allow for the application of general criminal provisions (Criminal Code) if the act is, in substance, fraud, embezzlement, or forgery (Nurohim, 2025). If the bank's office confirms credit without verification or violates SOPs, then the elements of a criminal act may be met.

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Fictitious credit often meets the elements of a criminal act under the Criminal Code, including: a. Article 263 of the Criminal Code on Forgery of Documents if credit documents, debtor identities, collateral, or bank reports are forged, b. Article 378 of the Criminal Code on Fraud if credit is disbursed through trickery by bank officials or external parties in collusion, c. Articles 372 and 374 of the Criminal Code on Embezzlement are applied when bank officials unlawfully control bank funds through a fictitious credit scheme, d. Articles 55 and 56 of the Criminal Code on Participation (deelneming) are often used to prosecute bank officials along with external parties involved in the fictitious credit scheme (Ramadhan, 2025). The application of this article of the Criminal Code shows that the crime of fictitious credit is legally a combination of banking crimes and general crimes.

The legal framework is further strengthened through POJK and anti-fraud regulations, for example: a) POJK on the implementation of risk management regulates the obligation of banks to implement adequate internal control systems to prevent fraud. b) OJK Circular Letter on Anti-Fraud regulates fraud reporting, whistleblowing mechanisms, and follow-up on internal investigations (Lestari & Lestari, 2025). Violation of this provision can be an indicator of negligence and strengthen the element of criminal liability (Yanti et al., 2021). Bank officials hold a special position because they have the authority of their position, which is inherent with the obligation of prudence, they have a fiduciary duty to the bank and its customers, they represent the banking institution in the credit decision-making process, and they are responsible for the accuracy of the data and the creditworthiness of the approved loans.

In the context of fictitious credit, errors by bank officials can include: Dolus (intentional): being involved in falsifying or assisting in the disbursement of fictitious credit; Culpa lata (gross negligence): ignoring verification procedures, failing to conduct risk analysis, or allowing disbursement without checking. That's why banking law and criminal law provide ample room to prosecute bank officials proven to have abused their authority. In judicial practice, the distinction between administrative and criminal errors is often an issue. The legal construction can be explained as follows: a) Administrative violations of non-compliance with SOPs without malicious intent can be subject to internal or OJK sanctions. b) Ethical/Professionalism violations concern integrity and carelessness in carrying out duties. The criminal act involves elements of intent, forgery, abuse of authority, collusion, or actual loss (Zulfa, 2018). Fictitious credit typically rises to the criminal level when evidence indicates an element of intent (mens rea) and active actions that harm the bank.

2. Criminal liability of bank officials involved in the fictitious loan case

Criminal liability for bank officials in cases of fictitious credit is an important aspect of maintaining the integrity of the banking system and preventing abuse of authority. Bank officials are gatekeepers with strategic authority to assess creditworthiness, validate documents, and approve fund disbursement. When this authority is abused, causing losses to the bank, customers, or the state, bank officials

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can be held criminally liable in accordance with the provisions of the law (D. A. Y. U. C. DAMANIK, 2022). Bank officials, whether they serve as credit analysts, account officers, or decision-makers, are subjects of criminal law and can be held accountable for their unlawful actions. According to the Banking Law (Law No. 7 of 1992 as amended by Law No. 10 of 1998), bank officials who intentionally violate operational provisions, provide false data, or manipulate the credit process are included in the category of criminal acts (Purba et al., 2025).

In addition to the Banking Law, bank officials can also be held accountable under: the Criminal Code, especially Articles 55 and 56 regarding participation, Article 263 regarding document forgery, and Article 372 or 374 regarding embezzlement. The Anti-Corruption Law, if it involves financial losses to the state through state-owned banks or SOEs (Yuntho et al., 2014). The Law on the Prevention and Eradication of Money Laundering, if fictitious credit is used as a money laundering scheme (Reza, 2020). In a number of court decisions, the involvement of bank officials in fictitious loans typically includes one or a combination of the following forms: a) Falsifying credit application documents, such as identity, collateral, or financial statements (Crawford & Weirich, 2011), b) Approving credit without proper verification (violating SOP) disregards the principle of prudence (prudential banking principle), which is an obligation in the credit disbursement process (Bank, 2009), c) Coordinating with external parties to gain personal profit from loan disbursement, d) Directing the mortgagor to use false or unsuitable collateral.

Based on case data compiled from various sources, it is explained that a large number of cases have occurred and ensnared bank officials in fictitious loan cases. The case data can be seen in the table below.

Table 1. Bank Officials In The Case Of Fictitious Credit

No	Fictitious Credit Case	Year	Amount of State Losses
1	Bank Mandiri Bandung Branch	2018	Rp. 1.83 Trillion
2	BPR Bank Samarinda	2019	Rp. 4,6 Billion
3	Bank Jatim Jakarta Branch	2020	Rp. 299,3 Billion
	State-owned banks in Lampung		Rp. 2,4 Billion
4	Bank BRI Bogor Branch and Other State-Owned Banks	2023 s/d 2024	Rp. 8.9 Billion

Source: Independently managed with various data sources from 2018 to 2025

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Based on the data in Table 1, it shows the high number of fictitious credit cases occurring in state-owned banks. The involvement of leaders and external parties was the method used to carry out fictitious loans (Oyiro, 2011). The state losses caused by fictitious credits are very large. The sanctions for fictitious credit are also relatively lenient, with prison sentences of up to 20 years.

The importance of strict supervision and firm sanctions that can be imposed on perpetrators to create a deterrent effect through changes in criminal penalties, such as imposing restorative criminal sanctions with higher compensation payments, and reformulating the system of supervision and criminal accountability for supervisors who are negligent in performing their duties and cause losses (Fisse, 1982). This involvement serves as the basis for the judge to assess the elements of intent, gross negligence, or abuse of power.

Elements of error by bank officials can include: Intentionality (dolus): when the official knowingly agrees to approve a fictitious loan, manipulates data, or accepts compensation from the loan applicant. Gross negligence (culpa lata): when officials fail to verify standards, allowing fictitious credits to occur. Assessment of mens rea is typically evident in the following evidence: a) underwriting not in accordance with SOP, b) credit approval without field surveys, c) disregard for risk analysis reports, d) special relationships between bank officials and fictitious debtors.

D. Conclusion and Recommendations

Fictitious credit criminal acts are a serious form of deviation in banking activities that contradicts the principle of prudence and legal provisions, including the Banking Law, OJK regulations, and general criminal provisions. This practice harms banks and damages public trust in the national banking system. Bank officials can be held criminally liable if proven to have abused their authority, approved credit without proper analysis, falsified documents, or intentionally disregarded internal bank procedures. Criminal liability arises not only from active actions, but also from gross negligence (culpa lata) that leads to the issuance of fictitious credit facilities.

The judge's considerations in the court decision show that the elements of intent, role of office, level of involvement, and the impact of losses on the bank's finances were the main factors in determining the bank official's guilt. The judge also considered compliance with or violation of internal SOPs, prudential principles, and the fiduciary duty inherent in bank officials. A study of court decisions highlights the need for consistency in enforcing banking criminal law, particularly in distinguishing between administrative actions and those that meet the elements of a crime. These decisions provide insight into the fact that addressing fictitious loans requires strengthening internal oversight systems, increasing the integrity of banking officials, and harmonising regulations to prevent legal loopholes.

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