

# Restorative Justice in Law Enforcement of Banking Crimes : How it's Works?

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## Abstract

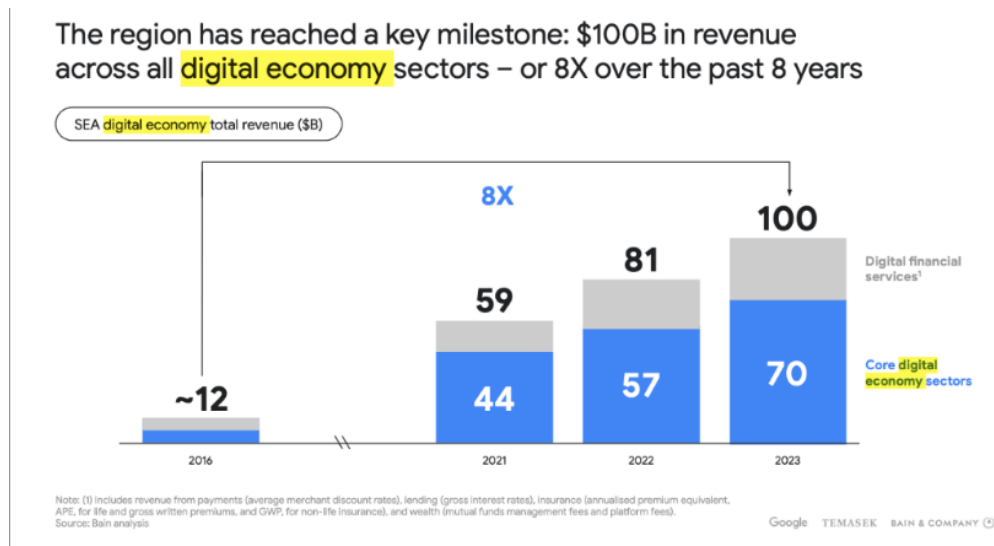
The escalating complexity of contemporary banking crimes is fundamentally catalyzed by the rapid evolution of digital technologies and the extensive globalization of financial transaction. The Financial Services Authority's Annual Report shows an increase in the number of resolved banking crimes in 2023, from 13 (thirteen) cases to 18 (eighteen) in 2024. The principle of restorative justice, which prioritizes restoring the condition of the injured party, has become a new concept in enforcing banking crime law, apart from the criminal sanctions that has been applied. It is of particular interest to undertake research regarding how the principle of restorative justice is applied in the current law enforcement of banking crimes. This research engages normative juridical approach with analytical descriptive specifications. The application of the restorative justice principle in enforcing banking crime law is through a non-prosecution mechanism which provides an opportunity for parties suspected of committing banking crimes at the investigation stage to apply for resolution of violations of laws and regulations in the banking sector to the Financial Services Authority. Once the Financial Services Authority investigator approves the application, the applicant is obliged to carry out the agreement (non-prosecution agreement) including paying compensation and then the case is stopped and not continued to the investigation stage. The establishment of transparent standards and objective benchmarks is imperative for the Financial Services Authority in adjudicating settlement petitions for violations to guarantee legal certainty.

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## Introduction

The growth of digital economic transactions continues to increase from year to year. Based on the e-Economy SEA 2023 Report published by Google, Temasek and Bain & Company, the digital economy transaction revenue in the Southeast Asia region including Indonesia, Malaysia, the Philippines, Singapore, Thailand and Vietnam reached \$100B or has increased by 8 (eight) times over the past eight years,<sup>1</sup> as shown in the chart below:

**Chart 1.** Increasing of Digital Economy Income in Southeast Asia



Source: e-Economy SEA 2023 Report

The continuous growth of the digital economy is increasingly supporting the growth of the economic sector in general,<sup>2</sup> but on the other hand it also has implications for the complex modes of criminal acts in the financial sector, both domestic and transnational.<sup>3</sup> The International Monetary Fund (IMF) published the Global Financial Stability Report, April 2024, Chapter 3 which shows the vulnerability of the financial sector to cyber risk, nearly one-fifth of cyber incidents reported in the last two decades impacted the financial sector with banks being the most frequent target, followed by insurance companies and asset managers as depicted in the chart below :<sup>4</sup>

<sup>1</sup> Google, Temasek, and Bain&Company, *E-Economy SEA 2023 Report: Reaching New Heights: Navigating the Path to Profitable Growth* (Google, Temasek, and Bain & Company, n.d.), [https://services.google.com/fh/files/misc/e\\_economy\\_sea\\_2023\\_report.pdf](https://services.google.com/fh/files/misc/e_economy_sea_2023_report.pdf).

<sup>2</sup> Anatoliy Pilishvili, "The Impact of a Digital Platform on the Financial Corporation in Modern Russia," *Espacios* 39, no. 26 (2018).

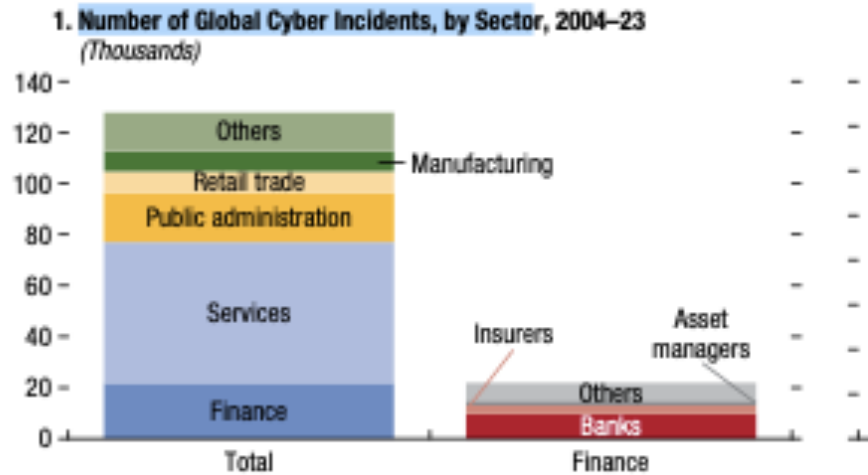
<sup>3</sup> Mengran Chai and Lin Wu, "Unveiling the Concealed Risks: The Influence of Digital Finance on Cyber Financial Crime in China," *Crime and Delinquency*, ahead of print, 2024, <https://doi.org/10.1177/00111287241287137>.

<sup>4</sup> International Monetary Fund Monetary and Capital Markets Department, "Global Financial Stability Report, April 2024: The Last Mile: Financial Vulnerabilities and Risks," in *Global Financial Stability Report, April 2024* (International Monetary Fund, 2024), <https://www.elibrary.imf.org/display/book/9798400257704/9798400257704.xml>.

Chart 2. Number of Global Cyber Incidents

**Figure 3.2. The Financial Sector Is Highly Exposed to Cyber Risk**

Financial institutions, especially banks, are vulnerable to cyber incidents ...



Source: *Global Financial Stability Report, April 2024, Chapter 3*

The vulnerability of banks to cyber risk also has an impact on the complexity modes of banking crime. Article 12 Paragraph (1) of Law No. 1 of 2023 concerning the Criminal Code (Law on the Criminal Code) stipulates that a Criminal Offense is an act which is subject to criminal sanctions and/or actions under statutory regulations. This provision is in line with the principle of legality, which is the main principle in criminal law which determines that an act is a criminal act if it is determined by or based on statutory regulations.<sup>5</sup>

Legislation does not provide a definition of banking crimes, however Article 1 Number (1) of the Financial Services Authority Regulation No. 16 of 2023 concerning the Investigation of Criminal Offenses in the Financial Services Sector (POJK concerning the Investigation of Criminal Offenses in the Financial Services Sector) stipulates that criminal offenses in the financial services sector are any criminal offenses as regulated in the Law concerning the financial services sector. Referring to this definition, Banking Crimes can be defined as any criminal acts as regulated in the Banking Law. Banking in Indonesia is regulated in Law No. 7 of 1992 concerning Banking as amended several times, most recently by Law No. 4 of 2023 concerning the Development and Strengthening of the Financial Sector (Banking Law).

The Banking Law provides criminal sanctions for various types of banking crimes, including banking crimes related to licensing, banking crimes related to bank secrecy, banking crimes related to bank supervision, banking crimes related to bank business activities, banking crimes related to affiliated parties and banking crimes related to

<sup>5</sup> Fatima Sajid and Hafiz Muhammad Yousaf Khan, "The Evolution, Effectiveness, and Limitations of Principle of Legality: An Analytical Study," *Pakistan Journal of Humanities and Social Sciences* 11, no. 2 (2023): 2398–404, <https://doi.org/10.52131/pjhss.2023.1102.0538>.

shareholders.<sup>6</sup> The banking crime is threatened with criminal sanctions in the form of imprisonment and fines.<sup>7</sup> The imposition of criminal sanctions is in line with the retributive justice approach that has tended to be adopted in Indonesian criminal law. From a retributive justice perspective, criminal prosecution of perpetrators of crimes is the only way to achieve justice for victims and society.<sup>8</sup> This approach is often seen as failing to achieve broader goals, such as restoring victims, reducing recidivism rates, and building safer communities.<sup>9</sup>

The enactment of Law No. 4 of 2023 concerning the Development and Strengthening of the Financial Sector (PPSK Law) and the POJK concerning the Investigation of Criminal Acts in the Financial Services Sector provides a new concept in enforcing criminal law in the financial services sector which previously only focused on retributive justice by imposing criminal sanctions. This provision gives authority to the Financial Services Authority to prioritize the restoration of the injured party's condition, which is known as the principle of restorative justice.

The definition of restorative justice in legislation can be found in Article 1 Number (6) of Law No. 11 of 2012 concerning Juvenile Justice, Article 1 Number (3) Police Regulation of the Republic of Indonesia No. 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice, Article 1 Number (1) of the Republic of Indonesia Prosecutor's Office Regulation No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice and Article 1 Number (1) Regulation of the Supreme Court of the Republic of Indonesia No. 1 of 2024 Concerning Guidelines for Trying Criminal Cases Based on Restorative Justice.

Based on these provisions, restorative justice is the resolution of criminal cases by involving the perpetrator, victim, the perpetrator/victim's family, and other related parties to jointly seek a just resolution by emphasizing restoration to the original situation, and not retaliation. The substance of the Restorative Justice principle as conveyed by Bagir Manan is to build joint participation between perpetrators, victims, and community groups to resolve an event or crime; placing perpetrators, victims, and the community as stakeholders who work together and directly seek solutions that are considered fair for all parties.<sup>10</sup>

Settlement of criminal cases between banks and customers using a restorative justice approach is in line with the character of the business world, which strives to resolve

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<sup>6</sup> Upik Mutiara et al., "Exceptions of Banking Secrets for the Interest of Taxes in Indonesia (a Comparison of the Post-Birth of Access Law to Financial Information)," *Legality: Jurnal Ilmiah Hukum* 28, no. 2 (2020): 196–210.

<sup>7</sup> Qiaoyun Zhang and Liqiang Duan, "Research of the Influence Factors and Pricing Differences of Fines on the Violation of the Law and Rule of Financial Regulation," *Modern Economic Science* 42, no. 6 (2020): 54–73.

<sup>8</sup> Jefferson Hakim and Azeem Marhendra Amedi, "Prosecutorial Application of Restorative Justice: Overview, Mechanism, and Commentary on Prosecution Cessation," *Jurnal Hukum Dan Peradilan* 12, no. 2 (2023): 319–46, <https://doi.org/10.25216/jhp.12.2.2023.319-346>.

<sup>9</sup> Suud Sarim Karimullah, "From Punishment to Healing: The Transformative Power of Restorative Justice," *SASI* 29, no. 4 (2023): 678–90, <https://doi.org/10.47268/sasi.v29i4.1688>.

<sup>10</sup> Sulbadana Sulbadana et al., "Does International Law Acknowledge Restorative Justice?," *Sriwijaya Law Review*, January 31, 2023, 121–34, <https://doi.org/10.28946/slrev.Vol7.Iss1.2130.pp121-134>.

problems effectively and efficiently. The development of Banking Law has implications for the main objective of problem resolution, namely restoring the condition of the injured party and also alternative (administrative) sanctions. Restorative justice in law enforcement of banking crimes is expected to restore the situation of the injured party.<sup>11</sup> However, there are several challenges that need to be considered in law enforcement of banking crimes. Settlement of cases using a restorative justice approach will bring together the parties, namely the reporter and the reported person. The basis for peace is, of course, an agreement on the value of compensation.

This condition could potentially become an arena for extortion carried out by the reporter against the reported person whose position could become a suspect if they do not comply with the demands of the reporter. The Reported Party is faced with an unequal position, while in principle, every agreement made by the parties must be based on the principles of proportionality and fairness. Therefore, this paper will discuss the problem of the implementation of restorative justice in the enforcement of banking crimes in Indonesia.

### Problem Statement

According to Christopher Marshall, the principle of restorative justice was created in the 1970s.<sup>12</sup> However, in reality the law enforcement of banking crimes in Indonesia was only implemented after the enactment of the PPSK Law and POJK concerning the Investigation of Criminal Acts in the Financial Services Sector in 2023. Previous research has found that the presence of restorative justice as a settlement concept that is oriented towards settlement, restoration of conditions and the interests of all parties is a concept that is greatly required in resolving banking crimes.<sup>13</sup>

The concept of restorative justice provides insight into alternative solutions to corporate banking crimes, such as the policy of postponing prosecution.<sup>14</sup> Other research has found that the concept of restorative justice is a recognition of Eastern legal philosophy which in resolving every conflict always tries to restore relationships, macro or societal stability and can even influence the stability of the universe.<sup>15</sup> These two studies generally address the urgency and efficacy of the restorative justice approach in resolving banking crimes. However, they do not specifically examine the implementation of law

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<sup>11</sup> Dian Ekawaty Ismail et al., "Collocation of Restorative Justice with Human Rights in Indonesia," *Legality : Jurnal Ilmiah Hukum* 32, no. 2 (2024): 394–417, <https://doi.org/10.22219/ljih.v32i2.35374>.

<sup>12</sup> Christian B. N. Gade, "Restorative Justice: History of the Term's International and Danish Use," in *Nordic Mediation Research*, ed. Anna Nylund et al. (Springer International Publishing, 2018), [https://doi.org/10.1007/978-3-319-73019-6\\_3](https://doi.org/10.1007/978-3-319-73019-6_3).

<sup>13</sup> Suleman Batubara et al., "Systematic Literature Review: The Urgency and Effectiveness of Implementing Restorative Justice in the Settlement of Banking Crimes," July 27, 2023, 210–18, [https://doi.org/10.2991/978-94-6463-214-9\\_23](https://doi.org/10.2991/978-94-6463-214-9_23).

<sup>14</sup> Hijriani Hijriani et al., "Restorative Justice Approach to The Settlement of Banking Crime Cases," *Substantive Justice International Journal of Law* 6, no. 1 (2023): 1–16, <https://doi.org/10.56087/substantivejustice.v6i1.206>.

<sup>15</sup> Nur Rochaeti et al., "A Restorative Justice System in Indonesia: A Close View from the Indigenous Peoples' Practices," *Sriwijaya Law Review*, January 27, 2023, 87–104, <https://doi.org/10.28946/slrev.Vol7.Iss1.1919.pp87-104>.

enforcement for banking crimes in Indonesia, particularly since the Financial Services Authority was granted the authority to apply a restorative justice approach.

The application of restorative justice faces various challenges in its implementation, especially related to the legal paradigm of society which greatly emphasis on punishment and detention as a form of justice.<sup>16</sup> The primary objective of this study is to examine the implementation of restorative justice in banking crime law enforcement, especially since the Financial Services Authority (OJK) was granted the mandate to prioritize this approach in administering criminal law within the Financial services sector.

## Methods

This research engages a normative legal approach method. The normative legal approach method is a method that emphasizes research on secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials.<sup>17</sup> Secondary data has a very broad scope, including laws and regulations, literature books, legal journals, newspapers, magazines, and official documents issued by the government.<sup>18</sup> The normative legal approach method focuses on research against library data which is secondary data.<sup>19</sup>

The primary legal materials of this research comprise the Law on the Financial Services Authority, specifically the Law on the Development and Strengthening of the Financial Sector, and the Financial Services Authority Regulation regarding the Investigation of Criminal Acts in the Financial Services Sector. Methodologically, this study adopts both a statutory and a comparative approach. The latter is employed within the framework of normative research to analyze similiar legal institutions across different jurisdictions. Specifically, this paper examines the application of restorative justice in banking law enforcement by juxtaposing the Indonesian regulatory framework with the United Kingdom's Crime and Courts Act 2013, which governs Defferred Prosecution Agreements (DPAs).

The research specification applied in this research is analytical descriptive. The analytical descriptive research specification is to make a systematic description of the facts including describing the applicable regulations.<sup>20</sup> Descriptive research aims to solve

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<sup>16</sup> Adwi Mulyana Hadi et al., "Restorative Justice Through Strengthening Community Legal Culture in Indonesia: Challenges and Opportunity," *Mulawarman Law Review*, July 31, 2023, 32-44, <https://doi.org/10.30872/mulrev.v8i1.1140>.

<sup>17</sup> Achmad Irwan Hamzani et al., "Legal Research Method: Theoretical and Implementative Review," *International Journal of Membrane Science and Technology* 10, no. 2 (2023): 3610-19, <https://doi.org/10.15379/ijmst.v10i2.3191>.

<sup>18</sup> Hari Sutra Disemadi, "Lenses of Legal Research: A Descriptive Essay on Legal Research Methodologies," *Journal of Judicial Review* 24, no. 2 (2022): 289-304.

<sup>19</sup> Theresia Anita Christiani, "Normative and Empirical Research Methods: Their Usefulness and Relevance in the Study of Law as an Object," *Procedia - Social and Behavioral Sciences*, 3rd Global Conference on Business and Social Sciences (GCBSS-2016) on "Contemporary Issues in Management and Social Sciences Research", Kuala Lumpur, Malaysia, vol. 219 (May 2016): 201-7, <https://doi.org/10.1016/j.sbspro.2016.05.006>.

<sup>20</sup> Pradeep MD, "Legal Research-Descriptive Analysis on Doctrinal Methodology," *International Journal of Management, Technology and Social Sciences (IJMTS)* 4, no. 2 (2019): 95-103.

current actual problems by collecting data or information to be compiled, explained and analyzed.<sup>21</sup> Hence, this research will describe various legal problems obtained through a positive legal inventory, discovery of legal principles and discovery of law in concreto regarding the application of restorative justice in enforcing banking crime law with the aim of obtaining a comprehensive and systematic picture through an analysis process using legal regulations, legal principles and legal understanding regarding restorative justice and banking crimes.

Data collection techniques were carried out through primary legal materials, secondary legal materials, and tertiary legal materials against provisions in national laws and regulations relating to restorative justice and banking crimes. Data analysis was carried out by applying qualitative normative methods to evaluate all research results, so that all data obtained from the research results are arranged systematically and described descriptively. Data analysis was carried out normatively because most of the data obtained in this research was based on statutory regulations as one of the sources of positive law, and data analysis is carried out qualitatively because the research data is analyzed based on norms to achieve clarity on the problems that will be analyzed using legal interpretation techniques related to the application of restorative justice in banking crimes.

## **Implementation of Restorative Justice in Law Enforcement of Banking Crimes**

### **1. The Type of Risks from Banking Activities**

Banks have a very strategic function in the national economic system. Banks are considered as institutions that are able to create liquidity.<sup>22</sup> Banks as intermediary institutions are able to connect parties experiencing a lack of funds to parties experiencing a surplus of funds. Banks collect funds from the public through savings products, including in the form of savings, deposits and current accounts, and distribute these funds to parties experiencing a lack of funds in the form of credit distribution. Banks must always apply the principle of prudence in every aspect of their business activities in order to carry out these strategic functions properly.

Implementation of the prudence principle is a very important aspect within bank supervision.<sup>23</sup> The principle of prudence is a principle that underlies all aspects of banking activities, in addition to that, banks must also carry out risk management as an effort to identify, measure, monitor and control risks that appears from all bank business activities. Risk is the potential loss due to the occurrence of a certain event. Several risk measures have been established and proposed to find the measure of systemic risk that

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<sup>21</sup> Wolniak, "The Concept of Descriptive Analytics," *Scientific Papers of Silesian University of Technology Organization and Management Series* 2023, no. 172 (2023), <https://doi.org/10.29119/1641-3466.2023.172.42>.

<sup>22</sup> Anjan Thakor and Edison G. Yu, "Funding Liquidity Creation by Banks," *Journal of Financial Stability* 73 (August 2024): 101295, <https://doi.org/10.1016/j.jfs.2024.101295>.

<sup>23</sup> Yota D. Deli et al., "Enforcement of Banking Regulation and the Cost of Borrowing," *Journal of Banking & Finance* 101 (April 2019): 147–60, <https://doi.org/10.1016/j.jbankfin.2019.01.016>.

can lead into financial crisis.<sup>24</sup> Implementation of the prudence principle with good and appropriate risk management can minimize risks that may arise, including those related to credit risk, market risk, liquidity risk, operational risk, compliance risk, legal risk, reputation risk and strategic risk.

The following are the types and definitions of various risks arising from banking activities based on POJK No. 18 of 2016 concerning the Implementation of Risk for Commercial Banks (POJK concerning Risk Management):

**Table 1.** *Types of Risks from Banking Activities*

<b>No.</b>	<b>Risk type</b>	<b>Definition</b>
1.	Credit risk	risk due to failure of other parties to fulfill obligations to the bank including credit risk due to debtor failure, credit concentration risk, counterparty credit risk and settlement risk.
2.	Market risk	risks arising from balance sheet positions and administrative accounts, including derivative transactions, due to overall changes in market conditions, including the risk of changes in <i>option</i> .
3.	Liquidity risk	risk resulting from the inability of the bank to meet maturing obligations from cash flow funding sources and/or from high-quality liquid assets that can be pledged, without disrupting the bank's activities and financial condition.
4.	Operational risk	risks resulting from inadequate and/or non-functioning internal processes, human error, system failure, and/or external events that affect bank operations.
5.	Compliance risk	risk due to banks not complying with and/or not implementing laws and regulations and provisions. legal risk is the risk due to lawsuits and/or weaknesses in legal aspects.
6.	Reputation risk	risk due to decreasing levels of stakeholder trust stemming from negative perceptions of the Bank.
7.	Strategic risk	risks resulting from inaccuracy in taking and/or implementing strategic decisions and failure to anticipate changes in the business environment.

Source: POJK on Risk Management

In addition to being faced with various types of risks, banks are also faced with the potential for banking crimes to occur which are correlated with types of risks as mentioned above, and can be carried out by both internal or outside bank management.

<sup>24</sup> Carlo Bellavite Pellegrini et al., "The Role of Shadow Banking in Systemic Risk in the European Financial System," *Journal of Banking & Finance* 138 (May 2022): 106422, <https://doi.org/10.1016/j.jbankfin.2022.106422>.

Banks must take a proactive approach to identifying and mitigating the risks of banking crime.<sup>25</sup>

Risk mapping serves not merely as a compliance instrument, but as a primary diagnostic tool for elucidating the anatomy of banking crimes. It facilitates a paradigm shift from a reactive to proactive approach a cornerstone of good corporate governance which ultimately dictates whether a violation warrants formal criminal prosecution or may be resolved through a restorative justice framework. Each category of banking risk maintains a direct correlation with specific criminal patterns, as illustrated in the diagram below:

**Table 2.** *Types of Risks from Banking Activities and the Potential for Criminal Acts*

No.	Risk Type	Potential Banking Crimes
1.	Credit risk	Fictitious loans and the misuse of credit facilities
2.	Market risk	Market manipulation involving illegal securities transactions by bank officials for personal gain, as well as investment product fraud
3.	Liquidity risk	Falsification of financial statements or transaction records, and the illegal misappropriation of bank assets.
4.	Operational risk	Embezzlement of customer funds by rogue employees, unauthorized breaches of bank security system by hackers, and document forgery.
5.	Compliance risk	Bribery or the provision of unlawful gratuities to bank employees
6.	Reputation risk	violation of bank secrecy laws
7.	Strategic risk	Abuse of authority by rogue employees and bank officials

*Source: Author's Analysis*

## 2. The Type of Banking Crimes

In terms of terminology, Banking Crime is defined as any type of illegal act that is prohibited and subject to criminal penalties but is limited to the provisions regulated in the Banking Law only.<sup>26</sup> Meanwhile, criminal act in the banking sector is defined as all types of unlawful acts related to activities in running a banking business, in consequent, laws and regulations containing general and specific criminal provisions can be applied to such acts. Banking crimes involve acts related to banking and are subject to criminal penalties, both violations of the Banking Law and other laws and regulations.<sup>27</sup> The following are the types of banking crimes in the Banking Law:

<sup>25</sup> Benjamin Fraser Scott, "Red Teaming Financial Crime Risks in the Banking Sector," *Journal of Financial Crime* 28, no. 1 (2020): 98–111, <https://doi.org/10.1108/JFC-06-2020-0118>.

<sup>26</sup> Ridwan Arifin, "Law Enforcement in Banking Criminal Act Involving Insiders," *Jambe Law Journal* 1, no. 1 (2018): 55–90.

<sup>27</sup> Muhamad Amirulloh et al., "Legal Basis and Readiness of the Banking Sector in Implementing Privacy Reliability Certification," *Jurnal IUS Kajian Hukum dan Keadilan* 13, no. 3 (2025): 545–58, <https://doi.org/10.29303/ius.v13i3.1777>.

**Table 3. Banking Crime Types and potential of restorative justice**

No.	Provisions of Articles in the Banking Law	Criminal Sanctions	Potential of Restorative Justice
<b>Banking crimes related to licensing</b>			
1.	Article 46	imprisonment of at least 5 (five) years and a maximum of 15 (fifteen) years and a fine of at least Rp.50,000,000,000 (fifty billion rupiah) and a maximum of Rp.600,000,000,000 (six hundred billion rupiah).	Negligible to non-existent. Licensing violations generate profound systemic repercussions, rendering mere restitution or the restoration of status quo insufficient as a complete remedy
<b>Banking crimes related to bank secrecy</b>			
2.	Article 47 Paragraphs (1) and (2)	Article (1) a minimum of 2 (two) years and a maximum of 4 (four) years in prison and a fine of at least Rp.10,000,000,000 (ten billion rupiah) and a maximum of Rp.200,000,000,000 (two hundred billion rupiah). Article (2) a minimum of 2 (two) years and a maximum of 4 (four) years in prison and a fine of at least Rp.4,000,000,000 (four billion rupiah) and a maximum of Rp.8,000,000,000 (eight billion rupiah).	Low, as these offense pertain to bureaucratic compliance, which cannot be adequately rectified solely through financial compensation or restorative measures.
<b>Banking crimes related to the disclosure of bank secrets</b>			
3.	Article 47 A	imprisonment of at least 2 (two) years and at most 7 (seven) years and a fine of at least Rp. 4,000,000,000 (four billion rupiah) and at most Rp. 15,000,000,000 (fifteen billion rupiah).	High. The application of restorative justice is highly feasible, given that the aggrieved interests are predominantly private in nature.
<b>Banking crimes relate to bank supervision</b>			
4.	Article 48	imprisonment of at least 2 (two) years and a maximum of 10 (ten) years and a fine of at least RP. 5,000,000,000 (five billion rupiah) and a maximum of Rp. 100,000,000,000 (one hundred billion rupiah).	Non-existent. These offenses pertain to the integrity of the supervisory system, rendering the application of restorative justice highly impractical.
<b>Banking crimes are related to banking business activities</b>			
5.	Article 49 Paragraph (1), (2), (3), (4), (5)	Article (1) a minimum of 5 (five) years and a maximum of 15 (fifteen) years imprisonment and a fine of at least Rp.10,000,000,000 (ten billion rupiah) and a maximum of Rp.200,000,000,000 (two hundred billion rupiah). Article (2) a minimum of 3 (three) years and a maximum of 8 (eight) years imprisonment and a fine of at least	Moderate. Restorative justice may be implemented for this category of offense, provided the primary focus remains on the recovery of customer losses.

		Rp.5,000,000,000 (five billion rupiah) and a maximum of Rp.100,000,000,000 (one hundred billion rupiah)	
		Article (3) a minimum of 3 (three) years and a maximum of 8 (eight) years imprisonment and a fine of at least Rp. 5,000,000,000 (five billion rupiah) and a maximum of Rp. 100,000,000,000 (one hundred billion rupiah)	
		Article (4) a minimum of 3 (three) years and a maximum of 8 (eight) years imprisonment and a fine of at least Rp. 5,000,000,000 (five billion rupiah) and a maximum of Rp. 100,000,000,000 (one hundred billion rupiah).	
		Article (5) prison sentence of at least 3 (three) years and at most 8 (eight) years and a fine of at least Rp. 5,000,000,000 (five billion rupiah) and at most Rp. 100,000,000,000 (one hundred billion rupiah).	
<b>Banking crimes related to affiliated parties</b>			
6.	Article 50	imprisonment of at least 3 (three) years and a maximum of 8 (eight) years and a fine of at least Rp. 5,000,000,000 (five billion rupiah) and a maximum of Rp. 100,000,000,000 (one hundred billion rupiah).	Low. These offenses frequently involve an abuse of authority, where restorative justice is difficult to apply because such crimes typically undermine broader corporate governance within the bank.
<b>Banking crimes related to shareholders</b>			
7.	Article 50 A	imprisonment of at least 7 (seven) years and a maximum of 15 (fifteen) years and a fine of at least Rp. 10,000,000,000 (ten billion rupiah) and a maximum of Rp. 200,000,000,000 (two hundred billion rupiah).	Low. These offenses are classified as white-collar crimes, where the legal emphasis is typically placed on sanctions capable of providing a significant deterrent effect.
<b>Banking crimes committed by corporations or business entities in the form of legal entities or other entities</b>			
8.	Article 50 B, Article 50 C	criminal fines with provisions for: a. General Banks at least Rp.50,000,000,000 (fifty billion rupiah) and at most Rp.600,000,000,000 (six hundred billion rupiah); b. BPRs at least Rp.5,000,000,000 (five billion rupiah) and at most Rp.60,000,000,000 (sixty billion rupiah);	Moderate. within a corporate context, restorative justice is often manifested through substantial fines and the rectification of internal system, with an ultimate focus on the recovery of the national economy.

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- c. Corporations or business entities, whether in the form of legal entities or not, or other entities other than those referred to in letter a and letter b, at least Rp. 50,000,000,000 (fifty billion rupiah) and at most Rp. 600,000,000,000 (six hundred billion rupiah).  
and may be subject to additional penalties in the form of:
- a. announcement of the judge's decision; and/or
  - b. freezing of part or all of the business activities of a corporation or business entity, whether in the form of a legal entity or not, or other entity, after receiving consideration from the Financial Services Authority.
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*Source: Summarized from the Banking Law and author's analysis*

The table above shown that every banking crime is punishable by imprisonment and a fine, the amount of which varies depending on the type of crime committed. For banking crimes committed by Corporations, the Banking Law determines the imposition of criminal penalties in the form of fines and additional penalties in the form of an announcement of a judge's decision and/or freezing of some or all of the corporation's business activities after receiving consideration from the Financial Services Authority. In addition to the aforementioned prison sentences and fines, it is possible that perpetrators of banking crimes will be subject to additional penalties in the form of compensation for losses as stipulated in Article 50D of the Banking Law.

The substance of the PPSK Law covers types of violations and criminal acts in the banking sector with the aim of providing protection for banking activities and parties involved. As stipulated in Articles 50B and 50C of the Banking Law, the criminal provisions in this law are not only limited to criminal acts committed by individuals but also by corporations. The regulation of corporate criminal acts is a new substance regulated in the PPSK Law, where this was not previously known in the Banking Laws of 1992 and 1998. Corporations act through a systematic management structure, based on this view and supported by several theories such as strict liability and vicarious liability, then corporations can be subject to criminal sanctions.<sup>28</sup> Corporate crime also shows a strong correlation with other types of crime, especially white-collar crime, economic crime and organized crime.<sup>29</sup>

The Indonesian government has enacted the Law on the Criminal Code in 2023 and it will come into effect 3 (three) years from the time it is enacted or 3 (three) years after January 2nd, 2023. This regulation regulates material criminal acts in Indonesia, replacing the

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<sup>28</sup> Rodliyah Rodliyah, "The Concept of Corporate Crime in the Indonesian Criminal Law System," *International Journal of Multicultural and Multireligious Understanding* 7, no. 1 (2020): 711-19.

<sup>29</sup> Kimberly L. Barrett et al., "The Status of White Collar and Corporate Crime in Undergraduate Criminology and Criminal Justice Curriculum," *Journal of Criminal Justice Education* 36, no. 2 (2025): 318-36, <https://doi.org/10.1080/10511253.2023.2290968>.

*Wetboek van Strafrecht* or what is commonly known as the Criminal Code as stipulated in Law No. 1 of 1946 concerning Criminal Law Regulations which has been amended for several times. There are fundamental differences between the Criminal Code and the Law on the Criminal Code, especially regarding the underlying philosophy. The *Wetboek van Strafrecht* is based on classical school of thought that developed in the 18th century which focused criminal law on criminal acts or actions, while the Law on the Criminal Code is based on neo-classical thought which maintains a balance between objective factors (actions/external) and subjective factors (people/spiritual/inner attitude).<sup>30</sup>

The material legal updates in this Law no longer differentiate between criminal acts in the form of crimes and violations, both is defined as criminal act. This is in line with the PPSK Law which ensnares the violator as economic crimes perpetrators. The developments that occurred in the criminal aspect have been responded by the presence of the concept of law enforcement which does not always imposing criminal sanctions. The PPSK Law mandates in prioritizing the restoration of the injured party's condition or known as the principle of restorative justice in enforcing criminal law within the financial services sector, including banking crimes.

### **3. Restorative Justice in Law Enforcement of Banking Crimes**

Restorative justice was previously regulated in Law No. 11 of 2012 concerning the Juvenile Justice System. According to these provisions, restorative justice is the resolution of criminal cases by involving the perpetrator, victim, the perpetrator's or victim's family, and other related parties to jointly seek a just resolution by emphasizing restoration to the original situation, and not retaliation.

The enactment of the PPSK Law provides a new color in the enforcement of criminal law in the financial services sector in Indonesia, including in the enforcement of banking criminal law. Based on Article 48B of Law No. 21 of 2011 concerning the Financial Services Authority as amended by the PPSK Law (OJK Law), the Financial Services Authority has the authority to determine whether to commence, not to commence, or to terminate investigations into criminal acts in the financial services sector, including banking crimes.

Before determining the start of the investigation, the Financial Services Authority conducted an investigation into alleged banking crimes. An investigation is a series of actions by investigators at the Financial Services Authority to search for and discover an event suspected of being a crime in the Financial Services Sector in order to determine whether to or not to commence an investigation.

Article 48B of the OJK Law, Article 37D of the Banking Law and Article 11 of the POJK concerning the Investigation of Criminal Acts in the Financial Services Sector stipulate that at the investigation stage, suspected of banking crimes may submit an application to the OJK for the resolution of violations of laws and regulations in the banking sector.

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<sup>30</sup> Lalu Saipudin et al., "The Concept of Corporate Criminal Liability in the Indonesian Criminal Law System," *Jurnal IUS Kajian Hukum Dan Keadilan* 13, no. 2 (2025): 475–99, <https://doi.org/10.29303/ius.v13i2.1817>.

Based on this article explanation, it is stated that in principle the handling of banking crimes is continued to the investigation stage.

However, by considering the impact of the follow-up to the investigation stage on the stability of the financial system, the financial services sector and/or consumer protection, the Financial Services Authority can undertake restorative resolution steps. So that the steps in restorative justice implementation based on the legislation are carried out at the investigation stage.

The application for settlement of the violation based on Article 11 paragraph (2) of the POJK concerning investigations in the financial services sector contains the value of the losses incurred and the basis for the calculation, the number of victims who suffered losses and other information related to the victims, the form of settlement of losses and the settlement period, a clause if the loss is not settled, The financial services authority has the authority to proceed to the investigation stage and undertake some efforts to improve business processes and governance.

In response to the request for settlement of the violation, the Financial Services Authority will assess the request for settlement of the violation and calculate the value of the loss due to the violation by considering whether a settlement is in place or not against the loss arising from the criminal act, transaction value and/or loss value due to violations, and the impact on the financial services sector, financial services institutions, customer interests, and/or the community, including by considering the scale and type of financial services institution.

The Financial Services Authority build an Analysis Team to assist Financial Services Authority Investigators in assessing requests for settlement of violations and calculating losses from such violations. The Analysis Team is a team formed to verify the application process for resolving violations by parties suspected of committing crimes in the Financial Services sector.

The Analysis Team includes a work unit that carry out the supervisory function of Financial Services Institutions, as well as risk management and quality control functions at the Financial Services Authority. Financial Services Authority investigators can invite other parties outside the Financial Services Authority to carry out an assessment of the request to resolve the violation, including the police, experts and consultants.

Settlement of losses incurred is followed by a statement from all parties involved (victims and perpetrators) not to object and to waive their right to sue before the law. The party submitting the request for settlement of the violation is obliged to implement the agreement, including paying compensation, if the request for settlement of the violation is approved by the Financial Services Authority.

The agreements include agreements that agreed upon by the Financial Services Authority with the party submitting the application, a statement letter from the party submitting the application for the settlement of the violation which is approved by the Financial Services Authority, or documents in other forms, including a deed of settlement of the violation. The agreement material, apart from compensation payments, includes

improvements to business processes and governance. In addition to being in the form of an agreement, compensation can also be in the form of funds originating from the return of profits obtained or losses avoided illegally in the enforcement of banking crime law.

The Financial Services Authority will stop the investigation if the agreement has been fully fulfilled by the party submitting the application. The compensation paid is the right of the injured party and is not the income of the Financial Services Authority. The compensation can be paid in cash and/or assets that can be valued in money with the consent of the injured party.

Article 15 Paragraph (1) of the POJK concerning the Investigation of Criminal Acts in the Financial Services Sector stipulates that Parties suspected of committing Criminal Acts in the Financial Services Sector are required to fulfill the settlement of the violation no later than 1 (one) year since the agreement was signed based on the complexity of the settlement of the violation. In addition to compensation, the Financial Services Authority also has the authority to determine administrative sanctions against parties suspected of committing banking crimes.

These administrative sanctions include written warnings, cancellation of products and/or services and/or business activities in part or in whole, freezing of products and/or services and/or business activities in part or in whole, dismissal of management, administrative fines, revocation of business licenses, and/or other administrative sanctions determined by the Financial Services Authority. All these settlement steps are adjusted to the characteristics of the business and business activities in the banking sector so that the settlement can be carried out optimally.

The party suspected of committing a crime in the Financial Services Sector attaches the settlement of the violation to the Financial Services Authority Investigator accompanied by documents proving the settlement of the violation and the Financial Services Authority investigator verifies the truth of the documents proving the settlement of the violation. If the agreement to resolve the violation has been fulfilled in full, the Financial Services Authority Investigator stops the Investigation and if the agreement is not fulfilled in part or in full, the Financial Services Authority continues to the Investigation stage.

The Financial Services Authority also has the authority to reject the request for settlement of the violation. The provisions of Article 12 Paragraph (1) of the POJK concerning Criminal Investigators in the Financial Services Sector stipulate that the Financial Services Authority shall submit approval or rejection of the request for settlement of the violation to the submitting party no later than 30 (thirty) working days since the documents are received in full by the Financial Services Authority Investigator. If the request is not approved or the party submitting the request for settlement of the violation does not fulfill some or all of the agreement, then the Financial Services Authority has the authority to proceed to the investigation stage.

Investigation is a series of actions by the Financial Services Authority investigator to seek and collect evidence that with that evidence sheds light on Criminal Acts in the Financial Services sector and to find the suspect. Investigations of criminal acts in the financial

services sector including in the banking sector can only be carried out by investigators of the Financial Services Authority.

Investigators of the Financial Services Authority consist of investigators of the Republic of Indonesia National Police, certain civil servants, and certain employees who are given special authority as investigators as referred to in the Criminal Procedure Code to conduct investigations of criminal acts in the financial services sector. Financial Services Authority investigators in carrying out this authority coordinate with the Republic of Indonesia National Police.

Financial Services Authority investigators are determined in the decision of the Financial Services Authority Board of Commissioners. Investigators who come from certain civil servant officials are appointed by the Minister of Law and Human Rights and certain employees who are given special authority as investigators come from permanent employees of the Financial Services Authority and civil servants employed in the Financial Services Authority who are determined after meeting the qualifications by the Indonesian National Police. The following are the authorities and responsibilities of Financial Services Authority Investigators, namely:

*Table 4. Authority and Responsibility of Financial Services Authority Investigators*

<b>Authority and Responsibility of Financial Services Authority Investigators</b>	
receive reports, notifications or complaints from someone about a criminal act in the financial services sector;	conducting searches at any specific location suspected of containing evidence of bookkeeping, records and other documents and confiscating items that can be used as evidence in criminal cases in the financial services sector;
conducting research into the truth of reports or information regarding criminal acts in the financial services sector;	block accounts at banks or other financial institutions of any person suspected of committing or being involved in criminal acts in the financial services sector;
conduct research on any person suspected of committing or being involved in criminal acts in the financial services sector;	request data, documents or other evidence, either printed or electronic, from telecommunications service providers or data and/or document storage service providers;
summon, examine, and request information and evidence from any person suspected of committing, or as a witness in, a crime in the financial services sector;	request information from Financial Services Institutions regarding the financial condition of parties suspected of committing or being involved in violations of the provisions of laws and regulations in the financial services sector;
requesting the authorized agencies to carry out prevention against Indonesian citizens and/or foreigners as well as deterrence against foreigners suspected	request expert assistance in carrying out criminal investigation duties in the financial services sector;

of committing crimes in the financial services sector;	
conducting examinations of bookkeeping, records and other documents relating to criminal acts in the financial services sector;	conducting investigations into money laundering crimes with predicate crimes in the form of criminal acts in the financial services sector;
request assistance from the Republic of Indonesia National Police or other related agencies to carry out arrests, detentions, searches and confiscations in criminal cases in the financial services sector that are being handled;	request assistance from other law enforcement officers;
	submit the results of the investigation to the prosecutor for prosecution in accordance with the provisions of laws and regulations.

*Source: Article 49 Paragraph (7) of the OJK Law*

The determination of whether or not an Investigation is carried out by the Financial Services Authority Investigator is based on information reports or reports of criminal incidents regarding alleged banking crimes. Based on the provisions of Article 8 of the POJK concerning Criminal Investigations in the Financial Services Sector, any party may submit a report, notification, or complaint regarding alleged Banking Crimes to the Financial Services Authority.

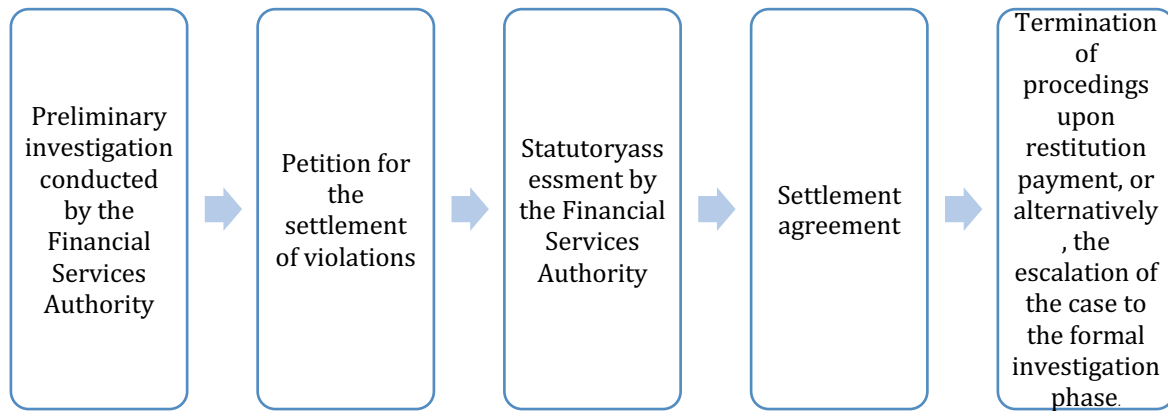
The report, notification, or complaint is submitted in writing via letter, electronic mail, and/or facsimile. It can also be done directly to the Financial Services Authority work unit, which carries out the investigation function at the head office or at the regional office. The report must at least include the name of the reporter, the reporter's identity, the reporting party, a description of the incident and/or action suspected of being a banking crime and supporting documents, including credit agreements, proof of transactions, proof of conversations, and evidence of recordings.

The Financial Services Authority investigator has the authority to determine whether or not to conduct an investigation into the alleged Banking Crime. Based on the provisions of Article 11 of the POJK concerning Investigation of Criminal Acts in the Financial Services Sector, if the Financial Services Authority Investigator determines to conduct an investigation, then at this stage the party suspected of committing a Banking Crime can submit an application to the Financial Services Authority for the settlement of the violation. If the application is approved, the party submitting the application is required to implement the agreement including paying compensation.

This agreement, as explained previously, is in the form of an agreement agreed upon by the Financial Services Authority with the party submitting the application for the settlement of the violation, a statement letter from the party submitting the application for the settlement of the violation or a document in another form, for example a deed of settlement of the violation. The following is a chart of the mechanism for implementing

restorative justice in enforcing banking crimes based on Financial Services Authority Law:

**Chart 1.** Restorative Justice Mechanism in Banking Crimes



Source : Summarized from the Financial Services Authority Law

This mechanism is carried out as an implementation of the principle of restorative justice in enforcing banking crime law by prioritizing the restoration of the injured party's condition first. This is in line with the Non-Prosecution mechanism and Non-prosecution Agreement which are practices in common law countries. A Non-Prosecution Agreement is a formal agreement made between a company responsible for a crime and a public prosecutor at an early stage of an investigation, as opposed to a Deferred Prosecution Agreement which is made at a later stage of the process.

The implementation of a Deferred Prosecution Agreement in England and Wales can only be negotiated with a legal entity, does not require an indictment or admission of guilt and is a mechanism that is not based on a guilty verdict.<sup>31</sup> A Non-Prosecution Agreement is an out-of-court settlement (private agreement) made before a case is filed against a company, is made before the trial has begun, and does not need to be approved by the court.<sup>32</sup>

The primary legal framework for the utilization of Deferred Prosecution Agreements in England and Wales is established under Schedule 17 of the Crime and Courts Act 2013. Deferred Prosecution Agreements serve as the instrument most closely aligned with the principles of restorative justice regarding corporate banking offenses.<sup>33</sup> Under this mechanism, criminal prosecution against a bank is suspended, provided that the institution fulfills specific conditions, such as the payment of substantial fines, the provisions of restitution to victims, and the rectification of internal systems. The objective of this approach is to mitigate systemic risks arising from bank insolvency following a

<sup>31</sup> Nicholas Lord, "Prosecution Deferred, Prosecution Exempt: On the Interests of (In)Justice in the Non-Trial Resolution of Transnational Corporate Bribery," *The British Journal of Criminology* 63, no. 4 (2023): 848–66, <https://doi.org/10.1093/bjc/azac059>.

<sup>32</sup> Andrea Puccio, "The Possibility to Enter into a Non-Prosecution Agreement in Case of Internal Investigation and Self-Reporting," 2022, <https://www.ibanet.org/the-possibility-to-enter-into-a-non-prosecution-agreement-Italy>.

<sup>33</sup> Adi Hardiyanto Wicaksono, "Deferred Prosecution Agreement as an Alternative in Addressing Tax Crimes of the Corporate Taxpayers in Indonesia," *De Jure: Jurnal Hukum Dan Syar'iah* 14, no. 2 (2022): 262–75, <https://doi.org/10.18860/j-fsh.v14i2.18721>.

criminal conviction, while simultaneously ensuring the restoration of victims' rights and the comparative application of restorative justice in banking crimes between Indonesia and United Kingdom:

**Table 5.** *Comparative Analysis of the Application of Restorative Justice in Banking Crimes within Indonesia and the United Kingdom*

No	Comparative Criteria	Indonesia	United Kingdom
1.	Primary Legal Framework	Financial Services Authority Law	Crime and Courts Act 2013 (Schedule 17)
2.	Primary Mechanisms	Settlement of violations through consensus-based agreements (Non-Prosecution Agreements) during the preliminary investigation phase, involving the provision of restitution.	Deffered Prosecution Agreement (DPAs) contingent upon the payment of fines, provision of restitution, and the rectification of internal systems.
3.	Competent Authorities	Financial Services Authority, Indonesian national Police (Financial Services Investigators).	Serious Fraud Office (SFO), Financial Conduct Authority (FCA), and the Judiciary (for the judicial approval of DPAs)
4.	Restorative Focus	Recovery of material losses for customers and reconciliation between the perpetrator and the victims	Restoration of victims rights, systemic transparency, and the prevention of wide-scale bank insolvencies.
5.	Legal subjects	Applicable to both individuals and corporations	primarily applicable to corporations via DPAs

*Source: Author's Analysis*

The use of non-prosecution mechanisms is often carried out in cases involving corporate liability, most of which are resolved through negotiated settlements.<sup>34</sup> Referring to the authority of the Financial Services Authority Investigator in Article 5 of the POJK concerning Criminal Investigators in the Financial Services Sector, this authority does not only refer to banking crimes committed by individuals but also includes crimes committed by corporations.

A Non-Prosecution Agreement is a legally binding arrangement between a government agency such as the Department of Justice and a company or individual facing a criminal or civil investigation, based on which the government will not file further charges as long as the company or individual agrees to the charges, which usually requires the company/individual to pay a fine or cooperate with the government.<sup>35</sup>

This is in accordance with the provisions of Article 17 of the POJK concerning the Investigation of Criminal Acts in the Financial Services Sector which gives authority to Financial Services Authority Investigators to stop the investigation process if the agreement has been fully implemented or to continue to the investigation level if the agreement has not been or has not been implemented in its entirety.

#### **4. Law Enforcement of Banking Crimes After Constitutional Court Decision Number 59/PUU-XXI/2023**

Constitutional Court Decision Number 59/PUU-XXI/2023 provides legal changes in the investigation of Banking Crime, which was previously only the authority of investigators from the Financial Services Authority based on Article 8 Number (21) of Law No. 4 of 2023 concerning Development and Strengthening of the Financial Sector, becoming the authority of other investigators, other than investigators from the Financial Services Authority. The Constitutional Court Decision Number 59/PUU-XXI/2023 states as follows:

"Stating the provisions of the norms of Article 8 Number (21) of Law No. 4 of 2023 concerning the Development and Strengthening of the Financial Sector (State Gazette of the Republic of Indonesia of 2023 No. 4, Supplement to State Gazette of the Republic of Indonesia Number 6845) along the phrase "can only be carried out by Financial Services Authority investigators" in Article 49 paragraph (5) of Law No. 21 of 2011 concerning the Financial Services Authority (State Gazette of the Republic of Indonesia of 2011 Number 111, Supplement to the State Gazette of the Republic of Indonesia Number 5253), is contrary to the 1945 Constitution of the Republic of Indonesia and is not has conditionally binding legal force as long as it

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<sup>34</sup> Felix Lüth, "Corporate Non-Prosecution Agreements as Transnational Human Problems: Transnational Law and the Study of Domestic Criminal Justice Reforms in a Globalised World," *Transnational Legal Theory* 12, no. 2 (2021): 315–33, <https://doi.org/10.1080/20414005.2021.1967691>.

<sup>35</sup> Nestor Eduardo Araruna Santiago et al., "Variations in the Application of Criminal Non-Prosecution Agreements in Maracanaú/CE: A Case Study in the Dosimetry of the Pecuniary Benefits Penalty," *Revista Brasileira de Direito Processual Penal* 10, no. 3 (2024), <https://doi.org/10.22197/rbdpp.v10i3.969>; Alfons Zakaria, "Criminal Law Enforcement of Indonesian Commerce Act Number 7 the Year 2014 for Corporation Perpetrators: Why It Will Be Difficult," *Brawijaya Law Journal* 6, no. 2 (2019): 129–40, <https://doi.org/10.21776/ub.blj.2019.006.02.01>.

is not interpreted as "can be carried out by Financial Services Authority investigators". So the norm of Article 8 Number (21) of Law No. 4 of 2023 concerning Development and Strengthening of the Financial Sector which contains changes to Article 49 paragraph (5) of Law No. 21 of 2011 concerning the Financial Services Authority in full reads: "Investigation of criminal acts in the sector financial services can be carried out by Financial Services Authority investigators."

Based on Constitutional Court Decision Number 59/PUU-XXI/2023, it can be understood that investigations into Banking Crime can also be carried out by investigators from the Republic of Indonesia Police as before Law No. 4 of 2023 concerning Development and Strengthening of the Financial Sector. In the practice of investigating banking crimes by the police, there are cases where the bank is either the reporter or the reported party.

Before the existence of Law No. 4 of 2023 concerning the Development and Strengthening of the Financial Sector, the legal subjects that could be held responsible for Banking Crime were only the organs at the bank, but after the existence of Law No. 4 of 2023 concerning the Development and Strengthening of the Financial Sector, the subject legally liable is every person, shareholder or equivalent, member of the board of commissioners or equivalent, member of the board of directors or equivalent, or employee of the bank, and affiliated parties. As a consequence, banks and LPS can act as reporters and everyone, including customers, can be reported. Law enforcement in the financial services sector emphasizes restoring the situation of the injured party, namely through mechanisms for resolving criminal acts at the investigation stage, the principle of *una via*, and orders for the return of illegal profits.<sup>36</sup>

The concept of Restorative Justice is part of the Precision Police Program, which aims to improve law enforcement performance through process activities that fulfil the community's sense of justice. A similar restorative orientation can be observed in non-litigation dispute resolution within banking law, which emphasizes relationship recovery and equitable settlements, thereby reflecting the underlying principles of restorative justice in contemporary criminal justice discourse.<sup>37</sup> Accordingly, the implementation of restorative justice in law enforcement reflects the application of progressive law, which emphasizes substantive justice and flexible case resolution beyond formalistic legal procedures.<sup>38</sup> Efforts to approach restorative justice in banking crime have been carried out in a number of banking cases, including:

**Table 6.** *Banking Crime Cases*

No.	Position case	Mediation efforts	Result
1	The reported party is a retired President Director at	Mediation efforts were carried out in which the	Mediation was successful when

<sup>36</sup> Riyanto Agus et al., "Reforming Indonesia's OJK to Comply with International Standards: Lessons from Australia," *Brawijaya Law Journal* 10, no. 2 (2023): 260–81, <https://doi.org/10.21776/ub.blj.2023.010.02.07>.

<sup>37</sup> Umami Maskanah et al., "Application of the Principle of Justice in Non-Adjudicative Settlement of Banking Disputes from the Perspective of Islamic Law," *Jurisdictie: Jurnal Hukum Dan Syariah* 15, no. 1 (2024): 207–44, <https://doi.org/10.18860/j.v15i1.25411>.

<sup>38</sup> I Made Widyana, "Penanganan Polri Terhadap Tindak Pidana Perbankan Berdasarkan Restorative Justice," *Jurnal Impresi Indonesia* 1, no. 12 (2022): 1282–88, <https://doi.org/10.58344/jii.v1i12.1314>.

<p>Bank X and a customer who was reported by Bank X. The retired President Director is suspected of collaborating with customers so that they can disburse credit that is actually not worthy of approval. As a result, Bank X suffered losses and reported alleged criminal acts of bank compliance.</p>	<p>bank asked the retired President Director of the Bank and the customer to be accountable.</p>	<p>the retired President Director at Bank X and the customer compensated the bank's losses jointly and severally. The investigation was closed because there had been a resolution using a restorative justice approach.</p>
<p>2 The reported party submitted a request for credit compensation to Bank X worth Rp. 400,000,000 (four hundred million rupiah) to finance the purchase of a plot of land and a building in the form of a boarding house using the SHM guarantee and was disbursed on Friday, January 4 2019. After that, on January 18 2019, a Cover Note of the Certificate was prepared. which was signed by a Notary stating that the Deed of Binding Mortgage Rights between Bank X and the reported party had indeed been signed. Next, the certificate is directed to the notary for the process of changing the name and binding it with mortgage rights. Furthermore, without the Bank's knowledge, the reported party had transferred or resold the plot of land without the Bank's permission and knowledge, and the process of changing the name was carried out by the same notary.</p>	<p>Attempts at mediation were made, but the reported party did not provide compensation as offered in mediation.</p>	<p>Mediation failed and continued with trial under charges under Article 372 and Article 378 of the Criminal Code considering that this incident occurred before Law Number 4 of 2023 concerning Development and Strengthening of the Financial Sector.</p>

3	<p>The suspect, as the President Director and also a shareholder of Bank X, manipulated the records into the Bank's system to make it appear as if the use of the Bank's money was correct. The amount of IDR 4,800,000,000 (four billion eight hundred million rupiahs) was used to pay the instalments for the purchase of a plot of land measuring 200 m<sup>2</sup> (two hundred square meters) along with the building above it, which is the Bank's office building. Even though, in reality, the purchase of land and buildings never took place, and the money was used for personal and other interests.</p>	<p>Mediation was carried out, but only some of the obligations were complied with by the respondent.</p>	<p>The case continues in court with charges based on Article 37E Paragraph (1) letter a in conjunction with Article 49 Paragraph (1) letter a Law of the Republic of Indonesia No. 4 of 2023 concerning Development and Strengthening of the Financial Sector in conjunction with Law of the Republic of Indonesia No. 10 of 1998 concerning amendments to Law of the Republic of Indonesia No. 7 of 1992 concerning banking in conjunction with Article 64 paragraph (1) of the Criminal Code or Article 37E paragraph (4) in conjunction with Article 50 a of Law of the Republic of Indonesia No. 4 of 2023 concerning Development and Strengthening of the Financial Sector in conjunction with Law of the Republic of Indonesia No. 10</p>
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			of 1998 concerning amendments to Law of the Republic of Indonesia No. 7 of 1992 concerning banking in conjunction with Article 64 paragraph (1) of the Criminal Code.
4	Bank X was reported by a number of customers on suspicion of false registration and criminal acts of bank disobedience. The bank is suspected of having issued a bank statement whose contents did not match the printout of the account book, account debits were made more than they should have been, and credit repayment amounts had changed.	Mediation is carried out involving bank supervisors from the Financial Services Authority.	The bank corrected the records, recalculated and compensated the customer for losses, so the investigation into this case was stopped.

Source: Summarized from various sources

The law enforcement process begins with the investigation stage. Investigation is the basis of the subsequent legal process, so investigations are very crucial for uncovering crimes and upholding justice.<sup>39</sup> Judging from the cases of banking crimes reported to the police, efforts to resolve them using restorative justice are always carried out by the parties. However, there are indeed two conditions, some of which can be resolved using the restorative justice approach and some of which cannot, so the investigation is still carried out and then tried in court.

### Conclusion

The application of the restorative justice principle in enforcing banking crime law is through a non-prosecution mechanism that provides an opportunity for parties suspected of committing banking crimes at the investigation stage to submit an application for settlement of violations of laws and regulations in the banking sector to the Financial Services Authority. If the Financial Services Authority investigator approves

<sup>39</sup> Shibu Puthalath et al., "Effective Police Investigation Under BNSS 2023: Existing Legal Framework and Challenges," in *Rethinking the Police for a Better Future : Navigating Policing Challenges with Accountability and Trust*, ed. Baidya Nath Mukherjee et al. (Springer Science+Business Media, 2025), [https://doi.org/10.1007/978-3-031-83173-7\\_4](https://doi.org/10.1007/978-3-031-83173-7_4).

the application, then the party submitting the application for settlement of the violation is required to implement the agreement (non-prosecution agreement) including paying compensation and then the case is stopped and not continued to the investigation stage. Settlement of cases using a restorative justice approach can also be carried out in the police investigation process. It is hoped that with the application of this restorative justice principle, law enforcement of criminal acts in the financial services sector, especially in the banking sector, can accommodate the sense of justice of the community which is able to support the realization of a financial system that grows sustainably and stably.

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