

LEGAL CERTAINTY IN ECONOMIC CRIME LAW ENFORCEMENT: CRIMINAL, BUSINESS, AND CONSTITUTIONAL LAW PERSPECTIVES

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Abstract

Economic crime is a complex phenomenon that requires a comprehensive approach in its enforcement. This study analyzes legal certainty in the enforcement of economic crime laws through the perspectives of criminal law, business law, and constitutional law. The issue of legal certainty is a crucial issue considering the characteristics of economic crimes that are cross-sectoral and involve various legal instruments. The results of the study show that legal certainty in the enforcement of economic crime laws faces various challenges, including overlapping authority, regulatory inconsistencies, and evidentiary problems. The business law perspective shows the need for a balance between the protection of legitimate economic activity and the prevention of abuse. This study concludes that legal certainty in the enforcement of economic crime laws requires regulatory harmonization, institutional strengthening, and the development of legal doctrines that are responsive to contemporary economic dynamics.

Keywords: *Legal certainty, Economic crime, criminal law, business law, constitutional law*

A. INTRODUCTION

Economic crime has developed into one of the serious threats to national economic stability and public welfare. Technological developments and economic globalization have created an increasingly sophisticated and complex modus operandi of economic crimes, including corruption, money laundering, investment fraud, capital market manipulation, and banking crimes.¹ Data from the Corruption Eradication Commission shows that state losses due to corruption crimes reach trillions of rupiah every year, while other economic crimes such as fraud and money laundering continue to increase both in terms of quantity and losses caused. In the context of law enforcement of economic crimes, legal certainty is a fundamental principle that determines the effectiveness of the criminal justice system.² Legal certainty, as stated by Gustav Radbruch in his theory of the three fundamental values of law, is one of the essential pillars in addition to justice and utility. Legal certainty provides assurance that the law is predictable, consistent in its application, and provides protection against arbitrary actions. However, in the practice of economic crime law enforcement in Indonesia, the implementation of the principle of legal certainty faces various complex challenges stemming from the characteristics of economic crime itself.³

The complexity of economic crime law enforcement lies in its intersection with various fields of law. First, from the perspective of criminal law, economic crimes must meet the

¹ Laia, Pesman, and Hudi Yusuf. "Analysis of the Characteristics and Regulations of Economic Crimes in Indonesian Law and Settlement Efforts." *Journal of Legal and Public Policy Studies* | E-ISSN: 3031-8882 2.2 (2025): 793-798.

² Afrillo, Henry, and Hudi Yusuf. "Analysis of the role of criminal law in handling economic crimes through the evaluation of regulations and practices." *Journal of Legal and Public Policy Studies* | E-ISSN: 3031-8882 2.2 (2025): 799-804.

³ Aprelia, Feby, Ahmad Irzal Fardiansyah, and Fristia Berdian Tamza. "The Role of Law in Countering Economic Crime in Indonesia." *Journal of History Education and Social Research in the Humanities* 5.2 (2025): 72-79.

principle of legality as guaranteed in Article 1 paragraph (1) of the Criminal Code which states that no act can be punished except on the strength of the criminal rules in the existing laws before the act was committed. However, the dynamic nature of economic crimes often creates legal vacancies or grey areas that create uncertainty in the application of criminal law. Second, from the perspective of business law, the enforcement of economic crime laws must pay attention to the principles of freedom of business and certainty in business transactions which are the foundation of economic activities. Third, from a constitutional perspective, the enforcement of economic crime laws must not violate the constitutional rights of citizens as guaranteed in the 1945 Constitution, including the right to fair legal certainty, the presumption of innocence, and protection from arbitrary actions.⁴

The problem of legal certainty in the enforcement of economic crime laws is increasingly complex with the existence of regulatory pluralism that regulates economic crime in Indonesia. Various laws such as the Law on Corruption Crimes, the Law on the Prevention and Eradication of Money Laundering, the Capital Market Law, the Banking Law, and the Law on Information and Electronic Transactions have their own criminal provisions that sometimes overlap or even contradict. This condition creates legal uncertainty that can be used to avoid criminal liability or on the contrary cause excessive criminalization of business activities that are actually legitimate. In addition, the problem of legal certainty also arises in terms of law enforcement authority spread across various institutions such as the Police, Prosecutor's Office, KPK, OJK, and other supervisory institutions. This fragmentation of authority often leads to jurisdictional conflicts, differences in interpretation, and inconsistencies in handling cases. The disparity in court decisions in similar cases also adds to legal uncertainty, where cases with relatively similar facts can produce significantly

⁴ Supanto. Global economic crime and criminal law policy. Alumni Publishers, 2023. 3-5.

different verdicts both in terms of criminality and legal considerations.

This research is relevant and important for several reasons. First, to identify and analyze the problem of legal certainty in the enforcement of economic crime law from a comprehensive multi-disciplinary perspective. Second, to provide a conceptual framework that can be used as a basis for reforming the economic crime law enforcement system in Indonesia. Third, to produce policy recommendations that can increase legal certainty without sacrificing the necessary flexibility in dealing with the dynamics of contemporary economic crime. Thus, this research is expected to contribute both theoretically in the development of economic criminal law and practically in improving the economic crime law enforcement system in Indonesia.

B. RESULTS AND DISCUSSION

1. The Concept of Legal Certainty in the Enforcement of Economic Crime Law

Legal certainty is one of the fundamental legal goals in every modern legal system. Gustav Radbruch placed legal certainty as one of the three basic values of law along with justice and utility.⁵ Legal certainty essentially contains two meanings, namely certainty in the law itself and certainty due to law. Certainty in law means that every legal norm must be able to be formulated clearly, unambiguously, and consistent with each other. Meanwhile, certainty because of the law means that the law must be able to function as a guideline for the community in behaving and as a basis for law enforcement in carrying out their duties. In the context of economic crime law enforcement, legal certainty has a more complex dimension. Economic crime differs from conventional crime in that it

⁵ Mold, Hasaziduhu. "Law Enforcement in Indonesia According to Aspects of Legal Certainty, Justice and Utility." Dharmawangsa 13.1 (2019).

involves business transactions, financial instruments, and sophisticated economic mechanisms.⁶ Therefore, legal certainty in this context not only means clarity in the formulation of criminal offenses and threats, but also includes certainty in terms of the qualification of the act, the division of law enforcement authority, the procedure for handling cases, and the evidentiary mechanism.

Legal certainty in the enforcement of economic crime laws must meet several criteria. First, clarity or clarity of norms, where the formulation of economic crime crimes must be clear and understandable by business actors, legal practitioners, and law enforcers. Second, consistency or consistency of implementation, where similar matters must be handled with a consistent approach. Third, predictability, where economic actors can estimate the legal consequences of their actions. Fourth, stability or regulatory stability, where there are no regulatory changes that are too frequent so as to cause uncertainty. Fifth, enforceability or enforceability, where these legal norms can practically be implemented by law enforcement officials.

2. Criminal Law Perspective in Economic Crime Law Enforcement

From the perspective of criminal law, legal certainty in the enforcement of economic crime laws is closely related to the principle of legality as stipulated in Article 1 paragraph (1) of the Criminal Code. The principle of legality or *nullum delictum nulla poena sine praevia lege poenali* contains three fundamental principles, namely that no act can be punished except based on the provisions of a pre-existing law (*lex scripta*), criminal provisions must not be analogous (*lex stricta*), and criminal provisions do not apply retroactively (*lex certa*). In the context of economic crime, the application of the principle of

⁶ Munzil, Fontian, and Imas Rosidawati Wr. "The Comparative Crime of Substitute Money and Substitute Crime of Substitute Money in the Context of Protecting State Economic Rights and Legal Certainty." *JLIQI* 22.1 (2015): 25.

legality faces various challenges. First, the dynamic nature of economic activity and the development of financial technology is often faster than the development of regulations. This creates a legal vacuum or grey area where certain acts are morally and economically detrimental but have not been explicitly regulated in the law. Examples are various technology-based economic crime modes such as cryptocurrency fraud, digital application-based investment scams, or manipulation of trading algorithms that are not fully covered by existing regulations.⁷

Second, the formulation of economic crimes in various laws often uses terms that are normative and require further interpretation. For example, the phrases "abuse of authority", "against the law", or "harm the state's finances" in the Corruption Law require an interpretation that is not always consistent between law enforcement and judges. The unclarity of the formulation of this crime is contrary to the principle of *lex certa* in the principle of legality which requires clarity and firmness in the formulation of criminal norms. Third, there is a pluralism of economic crime regulation in various sectoral laws that create the potential for overlapping or even contradiction. A perpetrator can be charged with the Criminal Code, the Anti-Corruption Law, the Money Laundering Law, or other sectoral laws for the same act. Although the principle of *lex specialis derogat legi generalis* should be able to overcome this, in practice there is often confusion in determining which laws should be applied. In addition, in terms of criminality, there is a significant disparity in court rulings for similar economic crime cases. Judges have the freedom to impose sentences within the minimum and maximum ranges set by law, but the absence of clear sentencing guidelines leads to very varied sentences. This condition creates legal uncertainty and a perception of injustice,

⁷ Akhmaddhian, Suwari. "Environmental law enforcement and its impact on economic growth in Indonesia (2015 forest fire study)." *UNIIFICATION: Journal of Law* 3.1 (2016). 2-4

where perpetrators with similar acts can receive very different sanctions.⁸

To overcome these problems, several efforts are needed. First, the improvement of the formulation of the offense in the laws and regulations to make it clearer and measurable. Second, the development of technical guidelines and jurisprudence that can be a reference for law enforcers and judges in interpreting norms. Third, the harmonization of various laws regulating economic crimes to avoid overlap and contradiction. Fourth, the development of sentencing guidelines that can reduce disparity in verdicts.

3. Business Law Perspective in Economic Crime Law Enforcement

The perspective of business law provides a different dimension in looking at the legal certainty of economic crime enforcement. Business law basically aims to create a conducive business climate by providing certainty in business transactions, protecting the rights of business actors, and encouraging economic growth. In this context, the enforcement of economic crime laws must be able to balance the repressive functions of criminal law with the need for flexibility in business activities. One of the main problems is the over-criminalization of business activities that are actually civil or administrative disputes. This phenomenon occurs when ordinary business disputes, bad credit, or default are constructed as criminal acts of fraud or embezzlement. This creates serious legal uncertainty for business actors because they face criminal risks in carrying out normal business activities that contain inherent business risks.⁹

The Job Creation Act has tried to address this problem by including the principle that not all losses in business

⁸ Pyle, David J. *The economics of crime and law enforcement*. Springer, 1983. 4-9

⁹ Porwisz, Monika. "The Concept of Research on Economic Crime in the Context of the Research Task "Optimization of Evidence, Forensic and Operational Activities in Cases of Economic Crime from the Perspective of Law Enforcement Authorities"." *Internal Security* 12 (2020): 45-53.

transactions can qualify as criminal offenses. However, its implementation still faces challenges because there are no clear guidelines to distinguish between business disputes and criminal acts. As a result, business actors still face uncertainty whether their business actions can be criminalized or not. In terms of business regulations, various sectoral laws such as the Capital Market Law, the Banking Law, the Insurance Law, and others have their own criminal provisions. However, there is often uncertainty about the relationship between administrative sanctions, civil sanctions, and criminal sanctions. For example, violations of the provisions of Good Corporate Governance or reporting provisions in the Capital Market Law may be subject to administrative sanctions by the OJK, but under certain conditions they can also be qualified as criminal offenses. The absence of clear parameters regarding when a violation enters the criminal realm creates legal uncertainty that is counterproductive to the investment climate. Furthermore, in the context of international business law, legal certainty is also related to compliance with international regulations and global business practices. Indonesian business actors involved in international transactions must comply not only with Indonesian law but also with international regulations such as anti-money laundering regulations, anti-bribery laws, and so on. Uncertainty about which jurisdiction and application of law applies adds complexity and uncertainty.¹⁰

To create legal certainty from a business perspective, several strategic steps are needed. First, the establishment of clear criteria to distinguish between acts that are criminal acts and those that are civil disputes or administrative violations. Second, the development of a strong compliance and corporate governance system as a mechanism to prevent corporate

¹⁰ Ehrlich, Isaac, and George D. Brower. "On the issue of causality in the economic model of crime and law enforcement: Some theoretical considerations and experimental evidence." *The American Economic Review* 77.2 (1987): 99-106.

economic crimes. Third, strengthening the function of sectoral supervisory institutions in handling administrative violations so that not all violations are directly resolved through criminal channels. Fourth, harmonization of domestic regulations with international standards to facilitate cross-border business transactions.

4. Constitutional Law Perspective in Economic Crime Law Enforcement

The constitutional law perspective places the enforcement of economic crime laws within the framework of the protection of citizens' constitutional rights. The 1945 Constitution guarantees various human rights relevant to the enforcement of criminal law, including the right to fair legal certainty (Article 28D paragraph 1), the right to be recognized as a person before the law (Article 28D paragraph 1), and the right not to be prosecuted on the basis of retroactive law (Article 28I paragraph 1). In the context of economic crime, the constitutional dimension is very important because its enforcement often involves coercive efforts that can limit constitutional rights such as personal freedom, property rights, and freedom of enterprise. Therefore, any law enforcement action must have a clear legal basis and be carried out in accordance with the procedures prescribed by law. One of the crucial constitutional issues is the principle of presumption of innocence as guaranteed in Article 8 paragraph (1) of Law No. 48 of 2009 concerning Judicial Power. In the practice of economic crime law enforcement, there are often violations of this principle through trial by the press, the announcement of the name of the suspect before the verdict has permanent legal force, or treatment that degrades the dignity of the suspect. This condition not only violates constitutional rights but also creates legal uncertainty because it can affect a fair judicial process.¹¹

¹¹ Scott, Olsson. "Prevention of economic crime as an important area of law enforcement authorities: state, trends, problems." *Current Problems of Law* 4 (2020): 61-67.

Other constitutional issues relate to the use of special instruments in the enforcement of economic crime laws such as the reversal of the burden of proof (*omkering van bewijslast*) in cases of corruption and money laundering. Although it has been regulated in law and declared constitutional by the Constitutional Court with certain conditions, its application in practice is still controversial. The reversal of the burden of proof can be seen as an exception to the principle of *actori incumbit probatio* (who postulates must prove) which is a fundamental principle in the law of proof. From a constitutional perspective, the enforcement of economic crime laws must also not violate the principle of proportionality. Law enforcement actions must be proportionate to the level of threat faced and must not be excessive. For example, the use of coercive means such as the detention of economic crime suspects must take into account the principle of subsidiarity where detention is the ultimate remedium after other efforts cannot be made. In practice, there are still many disproportionate detentions, especially in cases that do not actually meet the objective and subjective requirements of detention.

To ensure legal certainty from a constitutional perspective, several safeguards are needed. First, every criminal provision in the economic crime law must meet the constitutional test, both in terms of the formulation of norms and enforcement procedures. Second, strengthening the checks and balances mechanism in the criminal justice system to prevent abuse of authority. Third, the development of effective legal remedy mechanisms for victims of wrongdoing in law enforcement, including compensation and rehabilitation. Fourth, strengthening the independence of the judiciary to ensure a fair judicial process and not affected by external pressure. Legal certainty in the enforcement of economic crime laws is also greatly influenced by institutional factors. In Indonesia, the enforcement authority for economic crimes is spread across various institutions including the Police, the Prosecutor's Office, the KPK, PPATK, OJK, Bank Indonesia, and other sectoral

supervisory institutions. This fragmentation of authority creates various coordination problems which in turn cause legal uncertainty.

First, there is overlapping jurisdiction between various law enforcement agencies. For example, in the case of corruption crimes involving the financial sector, it can be handled by the KPK, the Prosecutor's Office, or the Police depending on various factors. The absence of a clear mechanism to determine which institution should handle a case creates counterproductive competition between institutions and opens up opportunities for forum shopping. Second, inconsistencies in the handling of cases between one institution and another. Each law enforcement agency has different standard operating procedures, organizational culture, and priorities. This causes similar cases to be handled with different approaches depending on which institution handles them. This condition creates uncertainty for the public about how the law will be enforced. Third, coordination problems between law enforcement agencies and sectoral supervisory agencies. Institutions such as OJK, BI, or Bapepam-LK have supervisory authority and can conduct administrative examinations, but they are often not well coordinated with the criminal investigation process. As a result, there can be a situation where the supervisory agency has imposed administrative sanctions while law enforcement also conducts criminal proceedings for the same act, or on the contrary, the administrative process is hampered due to criminal proceedings.

Fourth, the limited capacity and expertise of law enforcement officials in handling economic crimes that are technical and complex. Economic crimes often involve complex financial transactions, derivative instruments, layered corporate structures, or off-shore schemes that require specialized expertise to uncover. Not all investigators or prosecutors have the capacity to understand this complexity, which in turn affects the quality of investigations and prosecutions. To overcome this institutional problem, systemic reform is needed. First, a clear clarification and delineation of

authority between various law enforcement agencies to avoid overlap. Second, the development of effective coordination mechanisms through the establishment of task forces or joint task forces for complex cases. Third, standardize procedures and approaches in handling economic crimes through the development of uniform Standard Operating Procedures. Fourth, increasing the capacity of human resources through special training on economic crime, forensic accounting, and cyber forensics.

Legal certainty in the enforcement of economic crime laws is also closely related to the evidentiary aspect. Economic crimes have special characteristics in terms of proof because they involve financial documents, electronic transactions, and complex money trails. Criminal proof law in Indonesia, which is still guided by the Criminal Procedure Code, faces challenges in accommodating the needs of proving modern economic crimes. One of the fundamental problems is related to evidence that is legal according to the law. Article 184 of the Criminal Code limits valid evidence to only witness statements, expert testimony, letters, instructions, and statements of the defendant. In the digital era, many economic crimes leave digital footprints such as emails, electronic messages, online transaction data, or blockchain records. Although the ITE Law has recognized electronic documents as legal evidence, in practice there is still debate about the authentication and evidentiary power of electronic documents. Another problem is related to proving the element of *mens rea* or malicious intent in economic crimes. In contrast to conventional crimes where malicious intent is relatively easier to prove, in economic crimes often the perpetrators hide behind business transactions that appear legitimate. Proving that the perpetrator knows or should know that his act is against the law requires circumstantial evidence that is systematically compiled to form clues as referred to in Article 188 of the Criminal Code.¹²

¹² Huijbers, Theo. *Philosophy of Law in the Trajectory of History*. Yogyakarta: Kanisius, 1995. 6-9

In the context of corporate crime, the problem of proof becomes even more complex. Indonesian criminal law recognizes corporate criminal liability, but proving who should be held accountable in complex corporate structures is often difficult. The doctrine of vicarious liability and identification theory applied in judicial practice have not fully provided legal certainty regarding when corporations can be convicted and when corporate administrators are personally responsible. Furthermore, in cases involving state financial losses, proving the amount of losses is often a matter of debate. Differences in calculation methods between auditors, financial experts, and law enforcement can result in significantly different loss figures. This creates legal uncertainty because the amount of state losses is one of the elements of crime and affects the qualification of criminal acts and criminalization. To increase legal certainty in the aspect of proof, several steps are needed. First, the development of technical guidelines for proving economic crimes that can be a reference for investigators, public prosecutors, and judges. Second, strengthening capacity in the field of forensic accounting and digital forensics to support the proof process. Third, the harmonization of various regulations regarding evidence, especially related to electronic evidence. Fourth, the development of consistent jurisprudence regarding evidentiary standards in economic crimes.¹³

Based on the analysis of various problems of legal certainty in the enforcement of economic crime laws from the perspective of criminal, business, and constitutional law, comprehensive harmonization and reform efforts are needed. Regulatory harmonization is an urgent need given the many laws that regulate economic crimes with different and sometimes contradictory approaches. First, from the aspect of legal substance, it is necessary to codify or at least unify

¹³ Arief, Barda Nawawi. *Potpourri Criminal Law Policy: Developments in the Drafting of the New Criminal Code Concept*. Jakarta: Kencana, 2014. 3-4

criminal provisions in various laws that regulate economic crimes. The new draft of the Criminal Code has actually tried to accommodate various types of economic crimes in one codification, but it still needs to pay attention to the specificity of certain sectors that require detailed regulation in special laws. What is important is that there is a clear and consistent hierarchy between the general provisions in the Criminal Code and the specific provisions in sectoral laws. Second, it is necessary to standardize terminology and legal concepts used in various laws and regulations. Terms such as "against the law", "abuse of authority", "detrimental to the state's finances/economy", "unreasonable profits" and so on need to be defined clearly and consistently. This can be done through the establishment of an umbrella act or through the development of legal doctrines that are mutually agreed upon by academics, practitioners, and law enforcement.¹⁴

Third, there needs to be clarification on the relationship between administrative sanctions, civil sanctions, and criminal sanctions in violation of economic provisions. The principle of *ultimum remedium* or subsidiarity of criminal law needs to be applied consistently, where criminal sanctions are only applied if administrative and civil sanctions are not effective enough. For this reason, it is necessary to develop clear criteria regarding when a violation is sufficiently resolved administratively and when it must be resolved criminally. Fourth, institutional reform needs to be carried out to overcome the fragmentation of authority and improve coordination between institutions. Some of the models that can be considered include the creation of a special body that handles economic crimes such as the Serious Fraud Office in the UK, or strengthening coordination through a permanent task force mechanism involving various stakeholders. What is important is that there is a single entry point or a clear mechanism to

¹⁴ Muladi and Barda Nawawi Arief. *Criminal Theories and Policies*. Bandung: Alumni, 2010. 11-15

determine which institution is authorized to handle a certain case. Fifth, the development of an integrated legal information system needs to be carried out to increase access to laws and regulations and court decisions. A complete and easily accessible database will help justice seekers, legal practitioners, academics, and law enforcement to comprehensively understand the legal landscape of economic crimes. Transparency of court decisions is also important to build consistent jurisprudence.¹⁵

C. CONCLUSION

Based on the analysis that has been carried out, several important conclusions can be drawn regarding legal certainty in the enforcement of economic crime laws from the perspective of criminal, business, and constitutional law. The implementation of the principle of legality faces significant challenges due to the dynamics of economic crime, normative criminal formulations, and regulatory pluralism that creates uncertainty in the qualification and application of the law. Institutional problems such as fragmentation of authority, overlapping jurisdictions, and weak coordination between law enforcement agencies also affect legal certainty, so comprehensive reforms are needed that include codification of economic criminal provisions, harmonization of legal substances, development of technical guidelines for proof, strengthening institutional coordination, increasing human resource capacity, and stakeholder participation in the formation of regulations to achieve greater goals, namely Upholding justice, protecting the economic interests of the community and the state, and creating a healthy and sustainable business climate.

¹⁵ Reksodiputro, Mardjono. *Economic Development Progress and Crime*. Jakarta: Center for Justice and Legal Service, 1994. 2-3

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