

# The Basic Understanding of Economic Crime

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## ABSTRACT

Economic crimes are part of criminal law but have specificity. In Indonesia, the promulgation of economic crimes is relatively new because it has only become known since the promulgation of Emergency Law No. 7 of 1955 concerning Economic Crimes. The umbrella regulations for economic criminal law in Indonesia are contained in Law No. 7 of 1955 and other regulations governing the economic sector outside of Law No. 7 of 1955. The consequence is that the meaning of economic crimes can be divided into narrow meanings/ Limited and broad meaning. The term economic crime which is known in Indonesia when viewed from the substance of Law No. 7 of 1955 seems closer to or can be included in the term economic crime in a narrow sense. This is due to the fact that the law contains substantially only provisions governing a small part of overall economic activity. The development of science and technology has also given rise to business actors, which were previously carried out individually, but have developed in the form of business groups that join together in the form of corporations, both legal and non-legal entities. Clarke uses the term business crime. This term includes criminal acts related to and occurring in trading, financial, banking and taxation activities. Clarke has expanded the notion of business crime, namely an activity that (always) has the connotation of legitimate business and is not identical with the activities of a criminal syndicate. Economic crime is one of the forms and dimensions of the development of crime which is currently the center of attention and concern for the international community. This is proven by the many resolutions of the United Nations concerning this problem, for example one of the reports of the VIIth United Nations Congress reported that crime as a social problem arises due to economic factors.

**Keywords:** Economic crimes, Criminal Law, Business Crime.

## 1. INTRODUCTION

Economic crimes are part of criminal law but have specificity. In Indonesia, the promulgation of economic crimes is relatively new because it has only become known since the promulgation of Emergency Law No. 7 of 1955 concerning Economic Crimes. (Hamzah, 2017) In its development, banking crimes have also become part of economic crimes in addition to crimes in the field of customs (smuggling), fraud in the field of customs (customs fraud), crimes in the field of sea transportation (maritime), crimes in the field of fisheries (illegal fishing) and so on. economic crime itself is a special criminal law that develops outside the codification (KUHP). Economic crime as a special criminal law system has been known since Emergency Law No. 7 of 1955 and it seems that it will continue to grow along with economic developments, especially international business and international banking. Internationally, to refer to economic crimes, tend to be related to or to banking crimes, so it is known as financial crimes or business crimes. In addition, today economic crimes are even included in transnational organized crimes (Sutherland, 2017a). At the same time, ways of settling economic crimes are also developing in line with the shift in society's view of crime and economic development. (Luhut M. P Pangaribuan, 2016)

Edy Setiadi said that Pompe made the notion of special criminal law by mentioning two criteria. What shows the special criminal law is a special person, meaning a special subject or actor and the second is a special act. Besides that, Pompe pointed to the standard of Article 103 of the Criminal Code which implicitly implies that if the provisions of a law outside the Criminal Code deviate a lot from the general provisions of general criminal law, it is a special criminal law. 4 Nolte shows that there are two kinds of exceptions to the application of Article 103 of the Criminal Code, namely (Iswari, 2022):

- a. Other laws determine firmly Article 103 of the Criminal Code
- b. Other laws provide tacit exceptions or parts of Article 103 of the Criminal Code.

If we use Pompe and Nolte's standard, it can be said that economic criminal law in Indonesia is a special criminal law. In order to find out which category economic crimes fall into, it is necessary to pay attention to the opinion of Paul Scholten who gives "generally applicable" and "especially applicable" standards. Criminal law that applies in general is called general criminal law, while special criminal law is non-criminal legislation with criminal sanctions, also called government criminal law (Sutherland, 2017b). Andi Hamza further narrows the understanding by giving the term special criminal legislation for all legislation outside the Criminal Code that contains criminal provisions, and general criminal legislation for provisions contained in the Criminal Code. With reference to the principle of *lex specialis derogat legi generali*, economic crimes can be categorized under special criminal law. Economic criminal law is part of criminal law which has its own style, namely economic style. Thus, economic criminal law should take place beside criminal law. Moch Anwar defines economic criminal law as a set of regulations in the economic sector that make provisions regarding obligations/obligations and/or prohibitions, which are punishable by punishment. (Iswari, 2022).

## 2. RESEARCH METHODS

The research method used in This writing is research on juridical law normative namely legal research conducted by examining library materials consists of primary legal materials, legal materials secondary, and tertiary legal materials.(Prof. Dr. Soerjono Soekanto, S.H., M.A., Sri Mamudji, S.H., 2015)

Research normative is carried out with a problem approach in the form of a statutory approach (statute approach), conceptual approach (conceptual approach) and case approach (case approach). Legal research methods focus more on library based, focusing on reading and analysis of the primary and secondary materials.(Ibrahim, 2005)

The statutory approach (statute approach) is done by reviewing all related laws and regulations with the legal issues being studied,(Marzuki, 2019) especially Law Number 7 of 1955.

In addition, research was also carried out with see how deep empirical practice implementation of legalization in the Ministry Law and Human Rights and Ministry of Foreign Affairs.

### 3. RESULTS AND DISCUSSION

The umbrella regulations for economic criminal law in Indonesia are contained in Law No. 7 of 1955 and other regulations governing the economic sector outside of Law No. 7 of 1955. The consequence is that the meaning of economic crimes can be divided into narrow meanings/ Limited and broad meaning. The definition of economic crime in a narrow sense is limited to acts that are prohibited and punishable by applicable regulations as referred to in a limitative manner in Article 1 of Law Number 7 of 1955 or in other words simply and from a narrow perspective is solely by linking it to the law on economic crimes, especially what is referred to in Article 1. Meanwhile, the meaning of economic crimes in a broad sense is a crime which, apart from being in a narrow sense, also includes criminal acts in economic regulations other than those contained in Law Number 7 of 1955. Academically or in the broad sense of economic crime, it can be interpreted as an act of someone who violates government regulations in the economic field. Meanwhile, B Mardjono Reksodiputro defines economic crime as any act that violates laws - laws in the field of economics and in the field of finance and has criminal sanctions. Actions described as criminal acts in the narrow sense of the determination depend on the direction of the government's political economy. (Iswari, 2022)

This means that it can change according to developments that occur nationally, regionally and internationally so it is only natural that regulations in the economic field often change and it is difficult to identify which regulations are still valid or which are no longer valid. This has resulted in the difficulty of determining which actions are economic crimes and which are not. (Iswari, 2022)

Economic crime, which can also be called a crime in the economic sector, is a specific crime in criminal law, the substance of which is regulated in a separate unit of law. In concrete contrast with the Criminal Code, this law is sectoral and its principles are outside the codification of the Criminal Code. According to Dr. Andi Hamzah, "economic criminal law is part of criminal law, which has its own features, namely economic features." (Hamzah, 2017)

Andi Hamzah said that historically the definition of Economic crime is as regulated by Law no. 7 Emergency of 1955 concerning Investigation, Prosecution and Trial of Economic Crimes. This Law on Economic Crimes is an adaptation of the Dutch *Wet op de Economische Delicten* of 1950. (Renggong, 2022) This Law specifically regulates how to effectively protect against violations of an act that is expressly stated in the Law, namely "provisions in or based on (i) "gecontroleerdegoederen", (ii) "prijshersing", (iii) "hoarding of goods", (iv)

“rijsterdonnantie”, (v) “rice milling obligation”, (vi) “dividend”. Those six areas were considered very important at that time in the economic sector where all of them are no longer valid. Thus, the material for economic or economic crimes is related to legal politics in the economic sector at a certain time. with Emergency Law No. 7 of 1955, the term economic crime began to enter into the treasury of Indonesian criminal law and justice which has developed until now.(Luhut M. P Pangaribuan, 2016)

Edi Setiadi argues that economic crime is broader than business crime, because the losses incurred are not only economic but also social and can even have a political impact. The term economic crime is different from the term economic crime. The term economic crime refers to crimes committed in economic activities or activities (in a broad sense). Meanwhile, the term economic criminality refers to conventional crimes that seek economic gain, such as theft, robbery, pickpocketing, counterfeiting, or fraud. (Iswari, 2022)

The term economic crime which is known in Indonesia when viewed from the substance of Law No. 7 of 1955 seems closer to or can be included in the term economic crime in a narrow sense. This is due to the fact that the law contains substantially only provisions governing a small part of overall economic activity. In the encyclopedia Crime and Justice, it is emphasized that there is no agreement on the term economic crime, and even further writing, there is no distinct body of literature on the theory and practice of economic crime. Economic crime is defined as a criminal activity with significant similarity to the economic activity of normal, non-criminal business (criminal activities that have certain similarities with economic activities in general, namely business activities that appear non-criminal). Meanwhile, the American Bar Association provides limitations regarding economic crime: any non-violent, illegal activity which is principally involved in deceit, misrepresentation, concealment, manipulation, breach of trust, subterfuge, or illegal circumvention (any illegal action without violence, especially regarding fraud, unauthorized representation, hoarding, manipulation, breach of contract, fraudulent activity, or illegal entrapment). (Iswari, 2022)

The development of science and technology has also given rise to business actors, which were previously carried out individually, but have developed in the form of business groups that join together in the form of corporations, both legal and non-legal entities. These corporations’ control economic activity in society. Economic activities or activities in the economic field are carried out by economic actors both individually and in groups who are always pursuing profits, so that sometimes, they are often even carried out in illegal or unlawful ways which in turn give rise to types of crimes that have an economic dimension. which is called economic crime or can also be called "crime in the business sector" or "business crime". (Hartiwiningsih, 2019)

Clarke uses the term business crime. This term includes criminal acts related to and occurring in trading, financial, banking and taxation activities. Clarke has expanded the notion of business crime, namely an activity that (always) has the connotation of legitimate business and is not identical with the activities of a criminal syndicate. Thus Clarke clearly distinguishes activities including business crime on the one hand from activities carried out by criminal syndicates which are also engaged in trading activities. Clarke has revealed and mentioned two distinctive faces of a business crime, namely first, a legitimate condition to carry out exploitative activities, and second, a distinctive consequence is the nature of the contestability of its activities in the sense that activities deemed legal according to law are still debatable by the perpetrators. (Iswari, 2022)

According to Sutan Remy Sjahdeini, apart from the term "business crime", other terms have also appeared such as the term "economic crime" namely economic crime or crime against the economy ("crime against economy"), or the term "financial abuse" which has a very broad meaning. includes not only illegal activities that may harm the financial system, but also other activities aimed at evading tax payments ("tax evasion"), or the term "financial crime" which is a "subset" of "financial abuse" which in a narrow sense can be interpreted as any "non-violent crime" which generally results in financial loss that uses or through financial institutions including also in these crimes are illegal activities such as, "money laundering" and "tax evasion", or the term "Corporate Crime". (Iswari, 2022)

The general term for economic crime or business crime or corporate crime is "white collar crime", where this term is actually the opposite of the term "street crime". E.H. Sutherland with his work "White Collar Crime" breaks the old thesis which states that "crime to be a result of poverty or psychopathic and sociopathic conditions". Sutherland also illustrates that the crimes of individuals who are in positions of power as criminals and are not civil violations and are a significant issue of public concern. (Hartiwiningsih, 2019)

Economic crime is one of the forms and dimensions of the development of crime which is currently the center of attention and concern for the international community. This is proven by the many resolutions of the United Nations concerning this problem, for example one of the reports of the VIIth United Nations Congress reported that crime as a social problem arises due to economic factors. An important feature of economic crime is the process of possessing property and wealth by cunning or by deception and operates secretly (hidden) and is often carried out by individuals who have high social and economic status. (Iswari, 2022)

Talking about a concept of crime in the economic field only on the basis of the life of a country only results in something unsatisfactory, because economic problems are part of nations within the framework of economic globalization. Therefore, economic crimes have been discussed in the Guiding Principles for Crime Prevention and Criminal Justice in the Context of

Development and New Economic Order, which were adopted by the seventh Crime Congress, Milan, September 1985 and ratified by the General Assembly of the United Nations in its resolution no. 40/32. Muladi said that the definition and scope of economic crimes had been put forward by many scholars. If we use a technical approach, then economic crime will reveal itself more as a crime in the business environment, namely when special knowledge of business is required to assess cases that occur. In this case the limitations that can be put forward are any actions committed by persons and/or legal entities, without using violence, which are against the law, which in essence contain elements of fraud, giving a wrong image, embezzlement, manipulation, breach of trust, subterfuge or circumvention of regulations. (Iswari, 2022)

Furthermore, Muladi said that a social approach can be used if we intend to focus on the interests of the state and society in the sense that these actions violate the interests of the state and society in general, not only the interests of individual victims. Such an approach produces the term socio-economic crime. (Iswari, 2022)

Edy Setiadi said thus, economic crimes contain at least the following elements (Iswari, 2022):

1. The act is carried out within the framework of economic activity which is basically normal and lawful
2. The act violated or harmed the interests of the state or society in general, not only individual interests.
3. This action also includes actions in the business environment that harm other companies or other individuals

The following is the opinion of some experts regarding the meaning of the term "business crime", namely (Hartiwiningsih, 2019):

1. Braithwaite, 1982: "Business crime as the conduct of corporations, or individuals acting on behalf of the corporation, that is prescribed by law".
2. Clarke, Michael: "Business crime is a misconduct that takes place in a business environment or in the course of legitimate business".
3. Shrager & Short, 1978: "Corporate crime as the illegal acts of commission or commission of an individual or group of individuals in a legitimate formal organization in accordance with the operational goals of the organization".
4. Shapiro, 1976: "Corporate crime is committed by organization or by collectivities of discrete individuals".
5. Marshall B. Clinard and Peter C. Yeager: "A corporate crime is any act committed by corporations that is punished by the state, regardless of whether it is punished under administrative, civil, or criminal law." This means that corporate crime is any action

committed by a corporation that can be punished whether through administrative law, civil law, or criminal law.

6. Andenaes, Johannes, 1983: provides an understanding of "Economic Crime" as: "any non-violent, illegal activity which principally involves deceit, misrepresentation, concealment, manipulation, breach of trust, subterfuge or illegal circumvention".

Nyoman Serikat Putra Jaya also suggests the characteristics of economic crimes, which contain three elements, namely (Hartiwiningsih, 2019):

1. Economic offenses are committed in the course of an economic activity, which in itself is, or at least pretends to be, a normal and legal business activity. This excludes from the economic concept which is illegal in itself, such as illegal gambling, trading in narcotics or organized prostitution.
2. Economics offenses are offenses which violet the interest of the state or society in general, not only individual victims. Economic crimes are business crimes, but not all business crimes are economic crimes in this sense. Ordinary cases of fraud or embezzlements are excluded.
3. Economics crime including also offenses committed in business life against other business firms or against private individuals, or at least some types of such offenses.

In economic crimes, the aspects of the legal field are visible, namely aspects of civil law, aspects of administrative law and aspects of criminal law. To determine whether there is an aspect of criminal law, it must be seen using parameters that contain nuances of criminal law, such as: fraud ("deceit"), manipulation ("manipulation"), misrepresentation ("concealment of facts"), violation belief ("breach of facts"), subterfuge, or illegal circumvention.

Edmund W. Kitch in his article entitled "Economic Crime" which was published in the "Encyclopedia of Crime and Justice", Editor Sanford H. Kadish (pp. 670-678) stated that: "Economic crime...as crime undertaken for economic motives" meaning economic crime as a crime committed with economic motives or goals. He also defines "economic crime...as criminal activity with significant similarities to the economic activity of normal, non-criminal business". Economic crime as criminal activity with significant similarities to normal, non-criminal business economic activity

There are two types of "economic crime", namely (Iswari, 2022):

1. Consist of crime committed by businessman as an adjunct to their regular business activities.

Crimes committed by business people in addition to their regular business activities.

The ruler has the responsibility for giving him the opportunity to commit



embezzlement, violate regulations related to his business activities, or evade tax payments. This type of economic crime is called "White Collar Crime".

2. The provision of illegal goods and services of the provision of goods and services in an illegal manner.

Provision of goods and services illegally or provision of goods and services by illegal means. The provision of illegal goods and services is in harmony with the demands of normal business-like economic activity, but all of these are included in crimes. This model of crime is called "organized crime".

#### **4. CONCLUSIONS**

Definition and understanding of economic crimes there is no uniformity. On the one hand, there are those who say that economic criminal law is part of economic criminal law which includes economic crime, business crime, white-collar crime, and socio-economic crime, and on the other hand, there are those who define it as any act of violation of state policy in the field of economic law set forth in economic law regulations which contain criminal provisions against violators. This kind of definition clearly deviates from the Criminal Code which only recognizes the difference between crimes and violations based on quantitative/deductive measurements. Meanwhile, in the law on economic crimes, there is a sharp difference between economic crimes in the form of crimes and economic crimes in the form of violations.

This can be seen in Article 2 of Law Number 7 of 1955

1. An economic crime in Article 1 sub 1 c is a crime or a violation, but according to the provisions of the relevant law, the act is a crime or a violation. Other economic crimes referred to in Article 1 sub e are crimes if the act is committed intentionally, if the act is not carried out intentionally the act is a violation.
2. The economic crime referred to in Article 1 sub 2 e is a crime
3. The economic crime referred to in Article 1 sub 3 c is a crime, if the act contains an intentional element. The act is a violation of one another if the law determines otherwise.

From these Articles, it can be concluded that the legislative policies adopted in classifying economic crimes as crimes or violations use the following criteria:

First of all, it is submitted to the law in question, meaning that a type of economic crime is a crime or a violation is left entirely to the law. intentionally then it is a crime, whereas if it is not done intentionally then the economic crime is a violation.

The enactment of specific criminal law provisions from the general ones is caused by deviations regarding both the act and the perpetrator (material criminal law) or the procedure for



settling cases (formal criminal law). With this deviation, special criminal law is a criminal law or legislation that is outside the general criminal law (KUHP). special punishment or not.

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