

CORRELATION FINANCIAL INSTITUTIONS, CUSTOMERS AND EMPLOYEES PER LABOUR LAW

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Abstract

This study aims to determine the accountability of financial institutions to employees who have been negligent in providing services to customers and examines the triangular relationship between financial institutions, employees, and customers. This normative juridical research is combined with empirical data. The results indicate that if the negligence of an employee is per the standard operating procedures (SOP) set by the authorities in the financial institution, the financial institution must be responsible for the loss of the customer. This responsibility is based on Articles 1365, 1366, and 1367 of the Civil Code. If the employee's negligence is not according to the SOP, then the employee must be personally responsible. A single legal event may result in different ways of settling in the relationship of these three parties.

Keywords: Accountability, Negligence, Banking

Abstrak

Penelitian ini bertujuan mengetahui pertanggungjawaban lembaga keuangan terhadap karyawan yang telah lalai dalam memberikan pelayanan kepada nasabah serta hubungan segitiga antara lembaga keuangan, karyawan dan nasabah. Penelitian yuridis normatif ini digabungkan dengan beberapa data empiris. Hasilnya menunjukkan bahwa jika kelalaian seorang karyawan yang telah sesuai dengan prosedur standar operasional (PSO) yang ditetapkan oleh pihak berwenang di lembaga keuangan, maka lembaga keuangan harus bertanggungjawab atas kerugian nasabah. Pertanggungjawaban ini didasarkan pada Pasal 1365, 1366 dan 1367 KUH Perdata. Jika kelalaian dilakukan oleh karyawan dengan tidak sesuai dengan PSO, maka karyawan tersebut harus bertanggungjawab secara pribadi. Peristiwa hukum tunggal dapat mengakibatkan cara penyelesaian yang berbeda dalam hubungan ketiga pihak ini.

Kata kunci: Pertanggung Jawaban, Kelalaian, Perbankan

Introduction

When someone works for a company, they become an employee of the company. Some employees work based on contract basis, and there are employees who permanently for the company. Companies can be legal units or just business units. Financial institutions are companies that are classified as legal entities. An employee must carry out his primary duties due to his employment and has the right to receive compensation in wages. Employee relationship with employer is according to the Law of the Republic of Indonesia Number 13 of 2003 (Labor Law), Law of the Republic of Indonesia Number 11 of Year 2020 (Omnibus Law), company regulations approved by the worker department and the employee agreement signed by the company and employee.

In carrying out business activities, an employee may make mistakes with customers. This error can result in a violation of laws. Although this has occurred many times, each incident provides a different explanation because the conditions of the incidents are

different. Some variables that significantly influence worker misbehavior in the workplace are personal, organizational, and opportunity issues.¹ If an error or violation occurs, is this the company's responsibility that employs the employee or the employee's personal responsibility? This is still a debatable matter between business practitioner and legal advisors.

Several incidents have happened in the financial industry, health industry, and other industries. This violation had occurred in a financial institution, among others, when a customer claimed to have lost 22 billion IDR in a private bank.² Another case, a private company lost 110 billion IDR in a state-owned bank due to a cybercrime.³ A customer lost 72 million IDR in private bank branches in the city of Solo.⁴ An employee stole 46.1 billion IDR from a foreign bank.⁵ Four employees of a leasing company allegedly threatened and extorted customers in Meulaboh, Aceh.⁶

Many incidents of disputes between consumers and companies due to employee actions.

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- 1 Visvanathan, V.B., Kunapalan, H. (2020). Individual, Organization and Opportunity Factor an The Relation to Employee Misconduct in Workplace: A Review, *Asian People Journal*, 3(1), pp 43-49.
 - 2 Sidik, Syahrizal, (2020) Dana Nasabah Hilang Di Maybank Bos LPS Itu Kasus Fraud retrieved from <https://www.cnbcindonesia.com/market/20201110145127-17-200752/dana-nasabah-hilang-di-maybank-bos-lps-itu-kasus-fraud> dated. Accessed 12 November 2020.
 - 3 Septiadi, Anggar (2018) BTN Digugat Tiga Nasabah Korban Pembobolan Giro Hingga Rp. 820 Milliar retrieved from <https://nasional.kontan.co.id/news/btn-digugat-tiga-nasabah-korban-pembobolan-giro-hingga-rp-820-miliard>dated. Accessed 13 November 2020
 - 4 Wikanto, Adi (2020) Maybank Tidak Bisa Ganti Dana Nasabah Yang Hilang Rp. 72 juta di Solo Ini alasannya retrieved from <https://keuangan.kontan.co.id/news/maybank-tidak-bisa-ganti-dana-nasabah-yang-hilang-rp-72-juta-di-solo-ini-alasannya>. Accessed 19 November 2020
 - 5 Detik.com (2011) Malinda Bobol 37 Nasabah Citigold Citibank dalam 4 tahun retrieved from <https://news.detik.com/berita/d-1763389/malinda-bobol-37-nasabah-citigold-citibank-dalam-4-tahun>. Accessed 19 November 2020.
 - 6 Hasyim (2019) Polisi DPO kan 4 Petugas Leasing retrieved from <https://aceh.tribunnews.com/2019/01/05/polisi-dpo-kan-4-petugas-leasing> dated 19 November 2020.

Many cases have occurred, but scientific research is still limited. Research in the health industry shows that the lawful subjects liable for carelessness in health services at hospital are individuals or corporations. Regulations regarding legal subjects who are subject to responsibility are indicated by the relationship between medical personnel, hospitals, and patients, as regulated in several laws. The hospital is responsible for negligent acts of health laborers in the hospital, which is legally normative. This is the application of the provisions of the Civil Code, Hospitals, and Professional Standards. Based on the doctrinal jurisprudence, the hospital is responsible for the negligence of health workers with the principle of superior response, and the hospital is responsible for the value of care.⁷ Employee negligence will affect the company's reputation. Reputation has an effect on the company's long-term financial performance.

A foreign bank employee was sentenced to 8 years in prison for stealing customer funds accounts.⁸ The foreign bank has reimbursed the lost customer funds.⁹ Does the reimbursement of a lost fund become a company's obligation

if the employee committed the crime? Or is this just a policy to maintain the bank's reputation? Not all banks will cover the obligations or mistakes of employees like this foreign bank. This compensation decision will be an example of dispute resolution between banks and customers in the future.

A national private bank has reimbursed a customer's saving that is lost due to illegal activity by one of its branch heads. The customer lost 22 billion IDR, and she will receive 1,6.8 billion IDR reimbursements from the bank.¹⁰ This reimbursement is approved after mediation by the relevant authorities.¹¹ The legal relationship between the customer and the bank is classified as an anonymous agreement because the relationship is not a loan agreement.¹² The agreement between the customer and the bank is an agreement for depositing funds with the bank having to pay compensation in the form of interest.

This is different from the decision of a state-owned bank on its customers. The state-owned bank was sued once by the private company for the loss of funds. The lawsuit had been filed through the Supreme Court

7 Basuni (2014) Tanggungjawab Rumah Sakit Jiwa Terhadap Pegawai Yang Melakukan Kesalahan Tindakan Dalam Perawatan Pasien Gangguan Jiwa. *Perspektif Hukum*, 14 (2), 110-123

8 BBC News Indonesia (2012) Malinda Dee divonis Delepan tahun Penjara retrieved from https://www.bbc.com/indonesia/berita_indonesia/2012/03/120307_vonismalinda. Accessed 19 November 2020.

9 More, Imanuel (2011). Citibank ganti 100% Dana Nasabah Yang Hilang retrieved from <https://tekno.kompas.com/read/2011/11/17/14143932/citibank.ganti.100.persen.dana.nasabah.yang.hilang>. Accessed 19 November 2020.

10 CNN Indonesia (2020) Maybank Baru Siap Ganti Tabungan Nasabah Hilang Rp. 16,8 Milliar retrieved from <https://www.cnnindonesia.com/ekonomi/20201124205420-78-574037/maybank-baru-siap-ganti-tabungan-nasabah-hilang-rp168-miliar>. Accessed 30 November 2020

11 Sidik, Syaharizal (2020) Ini Alasan Maybank Hanya Mengganti Uang Winda Rp. 16,8 Milliar retrieved from <https://www.cnbcindonesia.com/market/20201125082143-17-204390/ini-alasan-maybank-hanya-mengganti-uang-winda-rp-168-m>. Accessed 30 November 2020

12 Chalim, F. (2017). Hubungan Hukum Antara Bank dan Nasabah Penyimpan Dana Menurut Undang Undang Perbankan. *Lex Et Societatis*, V(9), 120–127

and rejected. The private company had filed a Judicial Review.¹³ The state-owned bank refused to reimburse lost of customer funds.

The impression triggered by this criminal act is disadvantageous to the bank. It will be damaging the bank's reputation. Considering the impact, implementing corporate accountability on banks must be carried out prudently and selectively. If it happens to extensive and systemic banks, the impact can have several consequences.¹⁴ Every incident in the banking industry has a systemic effect. If the reputation of a bank is tarnished, it will influence the reputation of the banking industry. Therefore, handling lost banks needs concern for management, regulators, customers, and all related parties. Losing trust in one bank can have the effect of losing confidence in all financial institutions.

Individual customer disputes can be pursued through legal settlements. Settlement of dispute customers and the bank is carried out through litigation and non-litigation channels.¹⁵ Non-litigation dispute resolution can be resolved through alternative dispute resolution channels through mediation or a particular agency formed. Otoritas Jasa Keuangan (OJK) or Financial Services

Authorities, as the financial authority, has established several dispute resolution bodies between financial institutions and customers. Insurance mediation agency specialized in resolving insurance disputes. Indonesia's financing and pawnshop mediation agency resolve explicitly dispute between customers and finance companies or pawnshops. In addition, there is a Consumer Dispute Settlement Agency that resolves disputes between consumers and businesses. Business actors are producers of goods or services purchased by consumers. However, disputes in the financial sector have had special agencies.

OJK Regulation (POJK) Number 19/POJK.03/2014 has allowed banks to use agents to offer banking products. The use of agents can cause new problems related to applying banking principles such as confidentiality and prudence. Regulations regarding agent responsibilities to consumers are not yet available.¹⁶

Apart from the banking industry, other financial industries also have the same problem. In the insurance industry, legal insurance relationships are classified under civil law. However, criminal sanctions can be imposed on violations of consumer protection laws,

13 Wareza, Monica (2020). SAN Finance Curhat BTN Belum Kembalikan Dana Rp. 110 M retrieved from <https://www.cnbcindonesia.com/market/20191104120829-17-112410/san-finance-curhat-btn-belum-kembalikan-dana-rp-110-m>. Accessed 20 November 2020.

14 Ramelan, Yudha. (2018) Penerapan Sanksi Pidana Korporasi Pada Bank Dan Implikasinya. *Jurnal Hukum dan Pembangunan*, 48 (4), pp 861-882

15 Yusriana, Y. (2021). Analisis Hukum Dalam Penyelesaian Sengketa Secara Mediasi Terhadap Konflik Antara Nasabah Dengan Pihak Bank. *Juripol (Jurnal Institusi Politeknik Ganesha Medan)*, 4(1), 217–226. DOI: <https://doi.org/10.33395/juripol.v4i1.11035>

16 Mubarak, R., Santoso, B., & Njatrijani, R. (2017). Pertanggungjawaban Agen Branchless Banking Terhadap Nasabah Branchless Banking (Hubungan Hukum Antara Agen-Prinsipal dan Konsumen). *Diponegoro Law Journal*, 6(2), 1–12.

including insurance companies.¹⁷ There is also no standard agreement for the investment agreement of a financial technology company. Investors need regulations that regulate the contents of the agreement between financial technology investor companies and customers.¹⁸ If this regulation does not exist, there will be potential of new disputes in the future. Electronic agreements specifically in the financial technology sector need to be reorganized in order to meet the requirements of an agreement and can be used as a legal basis in resolving disputes between financial institutions and customers.

Customer data should be a banking secret. However, customer confidentiality has been widely used, and special regulations are needed to protect customers related to bank secrecy.¹⁹ Unscrupulous persons have traded customer data. Customer data is used for unethical activities. Mass product offerings using technology. Online loan financial technology companies also carry out illegal use of customer data.

Employee performance is a critical component of productivity in organizations. Employees who perform well contribute to the overall quality of the customer relationship.²⁰ Employee involvement will be able to bring the company out of a difficult situation.²¹ Employees' perceptions, emotions and interpersonal skills have a long-term relationship with consumers.²² The success of building long-term relationships is highly dependent on employee performance in addition to the technology used.²³

This study aims to discuss the relationship between financial institutions and customers, customers and employees of financial institutions, and companies and financial institutions. A comprehensive discussion of this triangular relationship still does not exist. This research comprehensively discusses the relationship between these three parties. The research will contribute to the financial industry and society in fostering better relationships. This research also contributes to the legal basis of this triangular relationship.

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- 17 Setiawati, N. S. (2018). Perlindungan Hukum Terhadap Pemegang Polis Asuransi Dalam Menyelesaikan Sengketa Klaim Asuransi. *Spektrum Hukum*, 15(1), 150–168.
- 18 Sihabudin, S. (2019). Legal Protection for Investee Company in Venture Capital Agreement in Indonesia. *Brawijaya Law Journal*, 6(1), 94–103. DOI: <https://doi.org/10.21776/ub.blj.2019.006.01.07>
- 19 Jailani, A. (2019). Perlindungan Hukum Bagi Nasabah Terkait Rahasia Bank. *Dinamika Jurnal Ilmiah Ilmu Hukum*, 25(2).
- 20 Zardasht, P., Omed, S., & Taha, S. (2020). Importance of HRM Policies on Employee Job Satisfaction. *Black Sea Journal of Management and Marketing*, 1(1), 49–57. DOI: <https://doi.org/10.47299/bsjmm.v1i1.15>
- 21 Akhmetshin, E. M., Ilyina, I. A., Kulibanova, V. V., & Teor, T. R. (2019). “Employee Engagement” Management Facilitates the Recovery from Crisis Situations. *Proceedings of the 2019 IEEE Communication Strategies in Digital Society Seminar, ComSDS 2019*, 50–55. DOI: <https://doi.org/10.1109/COMSDS.2019.8709645>
- 22 Papen, M. C., Niemand, T., Siems, F. U., & Kraus, S. (2019). The effect of stress on customer perception of the frontline employee: an experimental study. *Review of Managerial Science*, 13(4), 725–747. DOI: <https://doi.org/10.1007/s11846-017-0258-8>
- 23 Soltani, Z., Zareie, B., Milani, F. S., & Navimipour, N. J. (2018). The impact of the customer relationship management on the organization performance. *Journal of High Technology Management Research*, 29(2), 237–246. DOI: <https://doi.org/10.1016/j.hitech.2018.10.001>

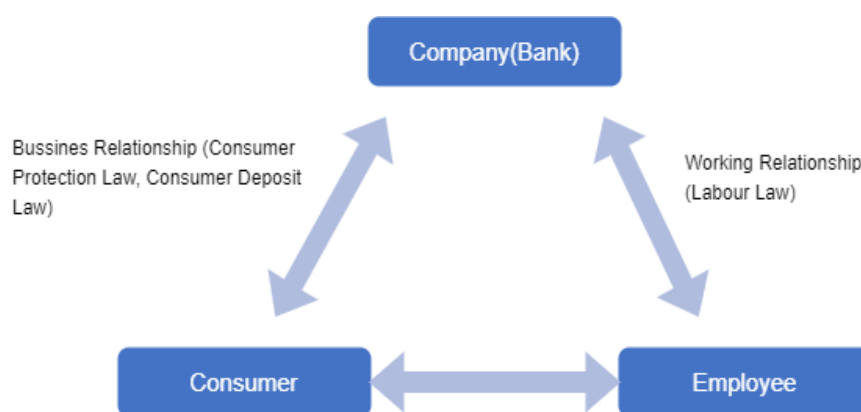
Based on the introduction above, this study uses a normative juridical method and discusses several cases in Indonesia. This study has the following research questions:

Should the company be held responsible for crimes committed by its employees?

How is the relationship between a bank and its customers; a bank and its employees and employees and customers?

This research applies a normative juridical technique with several empirical cases. The research study several transactions carried out in Indonesia related to the relationship between customers, employees, and financial institutions, especially banks. The purpose of examining the transactions is to determine the parties' stance in the events that occurred.

Figure 1. Research Framework



Source: research results, 2021

This study applies primary facts and secondary facts.²⁴ Primary facts are material or data obtained directly from the field as the primary source. Meanwhile, secondary data are library materials of primary, secondary, and tertiary legal materials.²⁵

The data analysis is carried out qualitatively, namely the analysis, which aims to analyze a state or phenomenon status with words or sentences, then separated according to the research objectives concludes. The conclusion is drawn inductively, namely,

rising everything in detail and conclusion with general information or facts.

This research framework is illustrated in Figure 1. The research framework depicts the relationship between the financial institution with employees; financial institution with customers and financial institution's employee with customers. Different laws govern the relationship between these three parties.

Discussion

The Company Is Responsible

24 Marzuki, M, *Penelitian Hukum: Edisi Revisi - Prof (Revisi)*. (Kencana Prenada Media Grup Jakarta, 2017), pp. 118-208.

25 Johan, Suwinto, & Ariawan, Ariawan. (2021). Keterbukaan Informasi Uu Pasar Modal Menciptakan Asymmetric Information Dan Semi Strong Form. *Masalah-Masalah Hukum*, 50(1), 106–118. DOI: <https://doi.org/10.14710/mmh.50.1.2021.106-118>

for Negligence Committed by Its Employees

This research will focus on discussing the loss of customer funds in the financial industry, especially bank. The research will discuss the initial process of the incident. Legal events arise when a customer reports that they have lost funds. Customers are legitimate customers and customers who have a savings account at a bank. Legal events are all events or incidents that can lead to legal consequences between parties having a legal relationship.²⁶ Losing these funds will have legal consequences. The customer and the bank have a legal contract. The legal relationship is formed when the customer deposits some funds with the bank, and there is an arrangement between the two parties. The arrangement includes security of funds, interest given, the right of the customer to withdraw funds, and the bank's obligation to repay the fund as agreed.

The most significant risk to the customers is the loss of their deposited funds or the principal of deposit. The Deposit Insurance Corporation (LPS) has guaranteed the protection of these funds per Act of the Republic of Indonesia Number 24 of 2004. LPS protection only applies if the bank fails to reimburse the customer deposits due to certain conditions. LPS does not guarantee all types of consumer deposits. Nevertheless, only deposits meet conditions such as the maximum amount of deposit value, interest

rates, and types of deposits.

Losses of funds caused by employees' criminal action of the bank are not protected by LPS. Losing funds can also be caused by system errors or human error, namely the customers themselves. Loss of funds can be made by bank employees. This action is part of a criminal act if the employee's have conflict of interest.

However, the loss is caused by an employee, who already follows the bank's Standard Operating Procedure (SOP). The bank's management must determine the SOP for each process in carrying out operational activities. The SOP should begin from the early stage of the customer relationship process to customer service at the first time and the termination of the relationship with the customer.

If it is per the SOP, then there is inevitable no involvement of the employee's interests in this loss of funds. Losing these funds has resulted in losses to the customer, so the bank will be obligated to provide recompensation. The bank employs employees, so the employee's mistakes are the responsibility of the bank.

Loss of funds can occur due to system errors, where real funds are not lost. Loss of customer funds is only by recording the books. So that this incident is not a criminal act, but can be a civil act.

Banks are obligated to be responsible in the form of reimbursement to customers

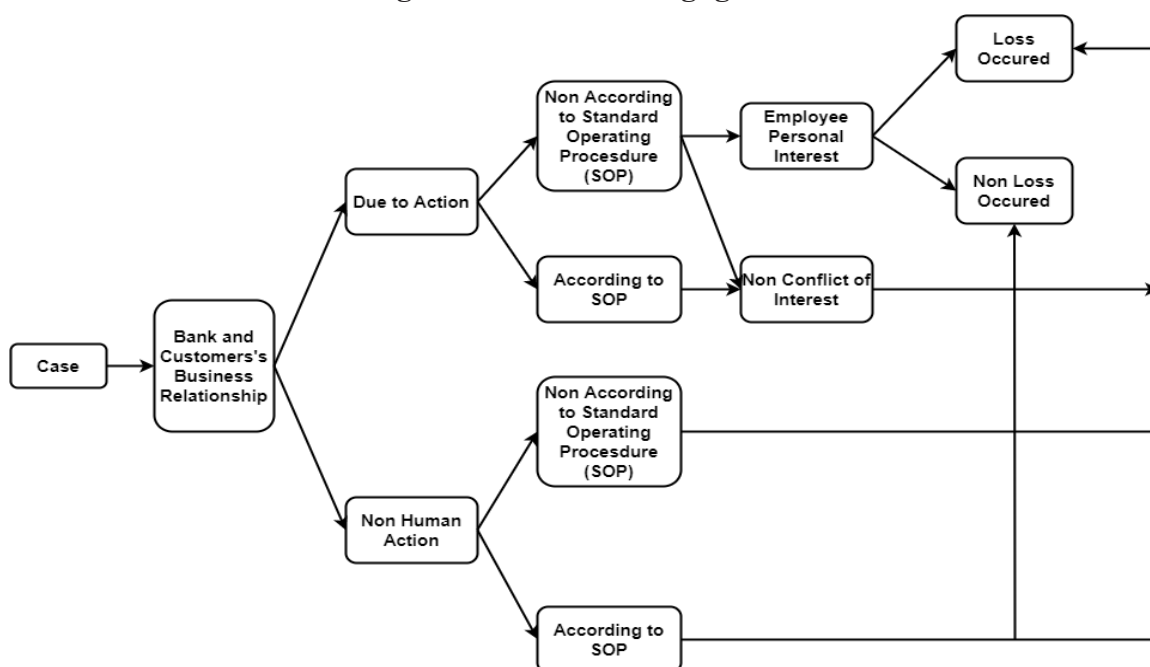
²⁶ Dirdjosisworo, Soedjono dalam Darma, Ida Agus Wirya (2020) Upaya Hukum Kasas Terhadap Putusan Bebas (Prijispraak). *Majalah Ilmiah Universitas Tabanan*, 17 (1), pp 104-122

according to Articles 1365, 1366, and 1367 of the Indonesian Civil Code.²⁷ The determination of this work process is based on the SOP. SOP can be defined as a document that describes daily operational activities to ensure that the work is carried out correctly, precisely, and consistently to produce products or services according to predetermined standards.²⁸ Employees have acted per the SOP and did not take personal gain or conflict of interest in this loss of funds, so banks should be responsible for losses suffered by customers. The company or bank has an internal audit team that ensures that the process is per the SOP. This team

ensures quality control of the goods and services produced. Any violation of the SOP will be part of the improvement process in the bank. Any violation will be noted.

Article 1365 of the Indonesian Civil Code states that every act that disobeys the regulation and carries impairment to other people obliges the person who triggered the harm due to his fault to recompensate for the loss. Article 1366 of the Indonesian Civil Code states that everyone is responsible for losses triggered by actions and losses triggered by negligence or carelessness.

Figure 2. Process of Negligence



Source: research results, 2021

Before starting work in a particular requirements for starting work and the position, an employee must receive training process of implementing each work activity, regarding the work process, including the along with the required documents. Apart

27 Prasetio, Toni Rudy. Gani, Abdul. Siregar, Emiel Salim. (2020) Pengaturan Hukum Pertanggungjawaban Bank Atas Dana Nasabah. *Jurnal Pionir LPPM Universitas Asahan*, 6(1), pp 274-278

28 Tathagati dalam Ajusta, Gede A.A. dan Addin, Syahrial. (2018). Analisis Penerapan Standar Operasional Prosedur (SOP) Di Departemen HRD PT. Sumber Maniko Utama. *Jurnal Mitra Manajemen* 2(3), pp 181-189.

from training, an employee must also be supervised. The primary supervisor is the supervisor of the employees in the company. Every company, including banks, must have a supervisory or audit department supervising the implementation of work. If training and supervision have been carried out, the company has carried out its primary duties. In addition, banks are required to provide socialization regarding what employees and customers can and cannot do. It is shown in figure 2.

Thus, employee negligence will become the responsibility of the bank. Banks must prove the action is violation or negligence. For example, a customer provides an Automated Teller Machine (ATM) Personal Identification Number (PIN) and ATM card to a bank employee, even though the bank has reminded employees not to ask for a classified PIN from customers. Suppose employees use ATM cards and customer PINs to withdraw funds. So this is a violation. Employee actions will harm customer's asset.

Banks must also provide outreach to every customer regularly. This socialization includes sending letters or information to customers and not through employees. Banks can provide posters at branches, send short message services, publish posters on social media and send brochures to customers.

If an employee serves customers, it is not per the SOP. If there is a failure to follow the SOP in serving customers and prioritizing

employees' interests, this work process can result in losses or no losses to the customers. This negligence is caused on purpose or by accident.

An employee who acts negligently to enrich himself may be subject to the crime of money laundering. This negligence should be the responsibility of the employee. The employee must be able to account for his negligence. This has been imposed on Malinda Dee, who works for a foreign bank. Malinda Dee was sentenced for 15 years due to case in a bank.²⁹

However, the employee's negligence is the employer's responsibility, as long as employees are in the process of working because of lack of knowledge, not because of the intention to act for personal gain or conflict of personal interest. The employees are responsible to the company, and the company or bank is responsible to its' customers. This accountability can be viewed from civil law and criminal law. Banks are required to provide reimbursement for lost customer funds. In criminal law, banks may be subjected to corporate criminal sanctions. Corporate criminal sanctions are different from criminal sanctions on individuals. The company's criminal sanctions can take the form of fines, administrative sanctions to revocation of business licenses. The financial industry is an industry that has strict supervision. OJK oversees the financial industry. OJK can

29 Natalia, Maria (2011) Malinda Dee Terancam 15 Tahun Penjara retrieved from <https://nasional.kompas.com/read/2011/11/08/15442688/malinda.dee.terancam.15.tahun.penjara>. Accessed 30 November 2020

impose sanctions if there is a violation by a financial institution.

Incorporate crime, three crowds of legal subjects can be seized responsible for the crime, namely executive or management, corporations, and finally executive/management and/or corporations.³⁰ Legal aspects in applying criminal sanctions against a business that commits fraudulent and business activities according to Article 379a of the Criminal Code, that business is one of the critical business activities in supplementary economic development, which has the same goal, namely to get the maximum profit.³¹

Corporations as subjects of criminal law can be paralleled with person because they have rights and duties given by law as a legal entity, and business skills are paralleled with person abilities seen in it. Every statute outside the Criminal Code does not provide the requisite to expressly legalize it unless the law outside the Criminal Code desires to resolve its differences or diverge from it.³²

The responsibility of employees to the company will be subject to the Manpower Act, namely Act of the Republic of Indonesia Number 13 of 2009. Meanwhile, the company's responsibility to consumers is based on the industry's rules and principles or the agreement between the company and the consumer or customer.

Article 1367 of the Indonesian Civil Code states that an individual is accountable for costs caused by his actions and for losses caused by the actions of those who are dependent on him or for goods under his control. Employers who employ others to exemplify their affairs are accountable for the harm caused by their servants or subordinates in resounding the job assigned to them.

Customer losses may arise from 2 sides, namely customers as depositors and customers as debtors. The most significant potential loss is the customer as the depositor. This customer puts funds in banks. However, customers can also suffer losses as debtors. The debtor may lose the collateral in the bank. Some debtors have to bear the costs because the bank's employee is asking for a kickback.

Customer losses as debtors can come from the debtor's rights to the bank. The debtor can be harmed because the loan payment funds are not recorded by the bank but are taken by the employee. The debtor's collateral is not stored correctly, or employees use the debtor's collateral for personal gain. The employee can remove the collateral, or the collateral can be tampered with by the employee.

Relationship between Bank and Customer

Every company will need a consumer.

30 Dewi, S. (2020). Perumusan Pertanggungjawaban Tindak Pidana Korporasi Dalam Berbagai Undang-Undang. *Arena Hukum*, 13(01), pp 135–156. DOI: <https://doi.org/10.21776/ub.arenahukum.2020.01301.8>

31 Aridhayandi, M. R. (2017). Kajian tentang Penerapan Sanksi Pidana terhadap Pelaku yang Melakukan Perbuatan Curang dalam Bisnis Dihubungkan dengan Pasal 379a Kitab Undang-Undang Hukum Pidana. *Dialogia Iuridica: Jurnal Hukum Bisnis Dan Investasi*, 8(2), p 80. DOI: <https://doi.org/10.28932/di.v8i2.725>

32 Disemadi, H. S., & Jaya, N. S. P. (2019). Perkembangan Pengaturan Korporasi Sebagai Subjek Hukum Pidana Di Indonesia. *Jurnal Hukum Media Bhakti*, 3(2), pp 118–127. DOI: <https://doi.org/10.32501/jhmb.v3i2.80>

Consumers are the key to the success of a business. Consumers purchase the goods or services produced by the company. A bank is trusted by its customers to save or deposit funds. The bank business is a trusted business. The customer will not deposit funds in a bank with a questionable reputation.

Banking customers are categorized into two groups, namely depositors and debtors. Depositors are customers who put funds in the bank. Debtors are customers borrowing funds from banks. This study focuses on banking depositors or customers who put funds in the bank.

Deposit of customer funds is regulated in the Act of the Republic of Indonesia Number 10 of 1998 on the Amendments to the Law of the Republic of Indonesia Number 7 of 1992³³ and the Act of the Republic of Indonesia Number 7 of 1992 on Banking.³⁴ The banking supervisory authority is regulated in the Act of the Republic of Indonesia Number 23 of 1999 concerning the Central Bank³⁵ and the Act of the Republic of Indonesia Number 21 of 2011 on the Financial Services Authority.³⁶ Protection of customer funds is regulated in the Law of the Republic of Indonesia Number 24 of 2004 on the Deposit Insurance Corporation. Customer funds will be replaced by the Deposit Insurance Corporation (LPS)

by meeting specific criteria, including the interest rate given, the depositor not having bad credit, and the maximum amount of funds placed in the bank.

The relationship between banks and customers is a relationship of trust. Customer fund is a sensitive matter. Consumer data is not only funds, but also the entirety of personal data including wealth. Customer data is regulated in Bank Indonesia Regulation Number 2/19/PBI/2000 on the Requirements and Procedures for Issuing Written Orders or Permits to Disclose Bank Secrets.³⁷

Apart from the prevailing laws and regulations, the customer relationship with the bank is also an agreement. This agreement includes the interest earned, withdrawal requirements, time to withdraw funds, how to withdraw funds, cancel, close savings accounts, fees charged, and others. This agreement is subject to the principle of freedom of contract in Article 1338 of the Indonesian Civil Code. This must not violate the valid terms of the agreement in Articles 1320-1337 of the Indonesia Civil Code.³⁸

The interests of customers in the standard clause mentioned above are also regulated in the act of the Republic of Indonesia Number 8 of 1999 on Consumer Protection. Banks are required to have good intentions in carrying out

33 Law No 10 Year 1998 regarding Perubahan atas Undang Undang No 7 Year 1992 regarding Perbankan

34 Law No 7 Year 1992 regarding Perbankan

35 Law No 23 Year 1999 regarding Bank Sentral

36 Law No 21 Year 2011 regarding Otoritas Jasa Keuangan.

37 Peraturan Bank Indonesia No 2/18/PBI/2000 regarding Persyaratan dan Tata Cara Pemberian Perintah atau Izin Tertulis Membuka Rahasia Bank

38 Kitab Undang Undang Hukum Perdata

their business undertakings, deliver accurate, transparent, and honest info regarding the circumstances and assurances of the services they provide, treat or serve consumers honestly and adequately and are not prejudiced, and assurance that banking business activities are based on applicable banking standards.³⁹ The Caveat Venditor Principle is a principle that emphasizes consumer awareness to protect themselves, turning into the awareness of business actors to protect consumers. This principle requires every business actor to be careful before marketing their products.⁴⁰

The agreement made does not represent good faith in the implementation of the agreement. This can be seen from several articles, all of which are not detailed. Not this detail gives rise to new knowledge to interpret more. This is bad faith if the agreement contains provisions that are unreasonable and inequitable.⁴¹

Relationship between Bank and Employee

A business may operate if there are company entities that operate it. One of the company's entities is the directors. The directors run the company's operations. In running an operational business, directors need support staff. These support staffs are employees who work for employees. A bank

is in the arrangement of a limited liability company. Therefore, the bank is subject to the applicable labor regulations.

Employees are the workforce. Labor is any individual proficient in doing a job to generate goods and/or services both to meet their own needs and for the community per the definition of Article 1 of Labour Law.⁴² A worker or laborer is anyone who works and receives wages or other forms of remuneration.

The relationship between the company or bank and workers is in the form of a work agreement. A work contract is an agreement between a worker/laborer and an entrepreneur or an employer that establishes the parties' conditions of employment, rights, and obligations. This working relationship is established on a work agreement with elements of work, remunerations, and guidelines. Based on article 9 and article 11 of Labour Law, the company organizes training for workers. The financial services industry is an industry that is closely monitored by OJK, including mandatory training. Training, such as risk management certification, is mandatory for every leader. The directors, commissioners, and shareholders are also required to go through a fit and proper test procedure. Therefore, training in the financial services industry, especially in banking, is not difficult. Banks are also required to reserve several

39 Law No 8 Year 1999 regarding Perlindungan Konsumen

40 Sanjaya, U. (2019). Good Faith On Contract Performance. *Arena Hukum*, 12(3), pp 500–523. DOI: <https://doi.org/10.21776/ub.arenahukum.2019.01203.6>

41 Yuanitasari, D. (2017). Re-evaluasi Penerapan Doktrin Caveat Venditor Dalam Tanggungjawab Pelaku Usaha Terhadap Konsumen. *Arena Hukum*, 10(3), pp 424–440. DOI: <http://doi.org/10.21776/ub.arenahukum.2017.01003.5>

42 Law No 13 Year 2009 regarding Ketenagakerjaan

funds from profits for training activities.

Work agreements are made for a particular time or for an unspecified time. Specific time includes a period or the accomplishment of a definite job. In addition, some jobs use outsourced labor. Many regulations have been issued to protect workers. However, protection for workers has not been appropriately implemented.⁴³

The company employs a workforce to serve customers. Apart from laws and regulations, the company also establishes company regulations. This company regulation must obtain approval from the labor authority per Article 108 and 111 of the Indonesian Labour Act and Minister of Labor Regulation of the Republic of Indonesia Number 28 of 2014.

Companies are required to provide socialization to employees on company regulations. The company or bank can impose sanctions on employees if there is a violation of company regulations. The sanctions given by the company are based on the type of violation that occurred. Sanctions are in the form of verbal warnings, warning letters I, warning letters II, warning letters III, and termination of employment.

Company relations with employees are based on work agreements, company regulations, directors' decisions, labor laws, and job copyright laws.⁴⁴ Termination of

employment does not remove the obligations and rights of the employee. The company also remains obliged to fulfill its obligations to these employees. This compensation for termination of employment must also be completed per existing rules and laws, including per the work agreement and applicable company regulations.⁴⁵

If the employee violation is severe, the company can impose severe sanctions. Serious violations include criminal acts by depleting customer funds. Apart from the sanctions imposed by the company, these employees may also be subject to sanctions based on the prevailing regulations and rules.

A bank has several types of employees based on their status. The Bank has permanent employees, contract employees, outsourced employees and probationary employees. Permanent employees are employees who have become bank employees and have full rights as employees. These permanent employees have a direct relationship with the bank.

Outsourced employees are employees who do not have a direct relationship with the bank. This employee has a cooperation status with an outsourcing company. This outsourcing company cooperates with the bank. Contract employees are employees who are not permanent. These employees are still contractual or in accordance with

43 Mambu, Joupy, G. Z. (2019). Eksistensi tenaga kerja indonesia dalam dimensi hukum hak asasi manusia. *Jurnal Civic Educatioan: Media Kajian Pancasila Dan Kewarganegaraan*, 3(2), 37–47.

44 Johan, S. (2021). Knowing Company Secrests Through Employee Posts on Social Media. *Diponegoro Law Review*, 06(02), 203–216.

45 Sohaji, (2019) Analisis Yuridis Pemutusan Hubungan Kerja Akibat Kesalahan Berat Pekerja. *Administrative Law & Governance Journal*, 2 (1), pp 60-79.

the work agreement. This employee does not have full rights as an employee. The company can terminate the employee without the need to provide compensation at the end of the employment agreement.

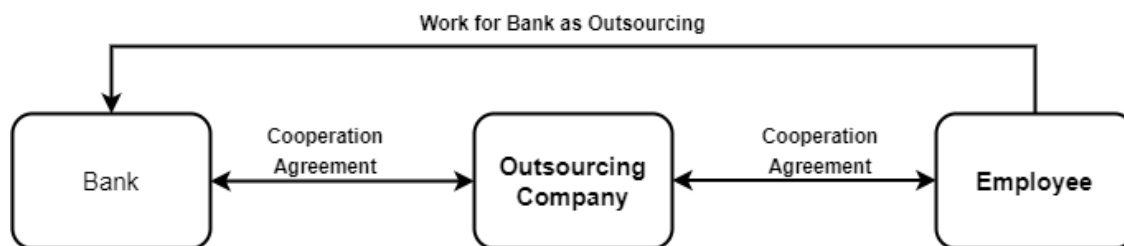
Employees who deal directly with consumers are employees on the front task force. Many of these employees have non-permanent status. These employees can consist of contract employees, outsourced employees or probationary employees. The bank's challenge is to train contract employees, probationary employees and outsourced employees. Banks have a dilemma between their own employees and outsourced employees.

Outsourced employees will make it

easier for banks to manage human resources. Outsourced companies will be able to replace underperforming outsourced employees with others. However, these outsourced employees have short tenures. Outsourced employees tend to look for jobs that can provide opportunities to work as permanent employees. Outsourced employees have a very high turnover. The scheme is drawn in figure 3.

Several important functions are occupied by outsourced employees such as bank security officers. The bank security officer is the first bank employee who deals with consumers, when consumers come. If this security unit does not serve well, then consumers will judge the service is not good.

Figure 3 Outsourcing Scheme



Source: research results, 2021

From the other side, the relationship between the bank and employees will be adjusted to the applicable legal regulations. If the employee is a customer and commits a criminal act by falsifying funds in the bank for personal gain, then the relationship or regulations regarding employees do not apply. The employment agreement only binds the relationship between the bank and the employee. This does not include other

relationships outside of work.

The Relationship between Bank's Employees and Customers

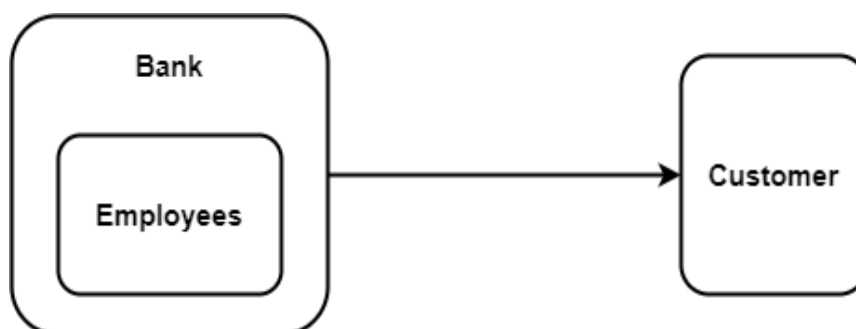
The relationship between employees and customers is based on the relationship between customers and the company. Employees represent the bank in establishing relationships with customers. An employee has no relationship with the customer without his position as a bank representative.

The relationship between employees and customers cannot be separated from the existence of the bank who hire the employee. It is shown in figure 3. Customers buy products or services that the bank sells through employees. Customers make deposits at financial institutions because of the bank's reputation.

However, the bank cannot be run without employees. Employees build bank reputation. The bank consists of employees. Customers buy products or services produced by bank

thru their employees. Thus, the relationship between employees and customers exists because of the existence of the bank. Employees represent the bank in establishing relationships with customers. The customer has no legal ties to the employee. Suppose the customer suffers a financial loss. Customers cannot sue civilly against employees. The customer can sue the employee criminally if the employee harms the customer. The potential for criminal losses is not as considerable as the potential losses due to civil actions.

Figure 4 Relationship Bank-Employees and Customer



Source: research results, 2021

Underlying Regulations

The triangular relationship between companies in financial institutions or bank, employees, and customers is based on related regulations or agreements between the parties. This relationship has rights and obligations that must be obeyed. The parties to the agreement are obliged to fulfill their obligations. Obligations or achievements can be classified into not doing something, doing what was promised but not per what was promised, doing what was promised but late. or doing something that the agreement does

not do.

The bank should provide work equipment to employees and pay compensation to employees. Employees should perform the tasks assigned by the bank. Employees should comply with existing bank regulations, including what they may and cannot do.

Employees representing the bank provide services to customers. Service to customers is the obligation of bank employees. Employees are required to follow standard SOPs in providing services to customers. The customer has the right to the funds deposited in the

bank. The customer is entitled to interest on the funds he has deposited.

Banks should ensure that customer funds are appropriately stored. Banks should maintain customer funds. The customer can sue the bank if the deposited funds cannot be received back after the deposit period. Thus, the bank should return customer funds. The customer has the right to the funds he has deposited.

The relationship between the bank and employees is based on a work agreement between the parties. In addition, this relationship is also based on the Labour Act

and the Job Creation Act. Relationships have the potential for violations by the bank or by employees. Banks can violate laws, regulations, and agreements if the bank does not provide employee rights, which are the bank's obligations. Banks must pay salaries to employees, compensation to employees, including allowances. Employees can violate this relationship if they do not comply with the SOP, commit theft or fraud against customer funds or bank assets. This is explained in table 1.

Table 1 Underlying Law and Dispute Potential Between Parties

Relationship	Company / Bank with Employee	Employee with Customer	Company / Bank with Company
Dispute Potential	SOP violation Theft, Fraud	SOP violation Theft, Fraud	SOP violation Theft, Fraud
Underlying Law	Labour Laws Company regulations The employment agreement between employee and company.	No specific regulations are governing.	Civil Code Banking Act Consumer Protection Act Law on Financial Services Authority Agreement between Bank and Customer

Source: research results, 2021

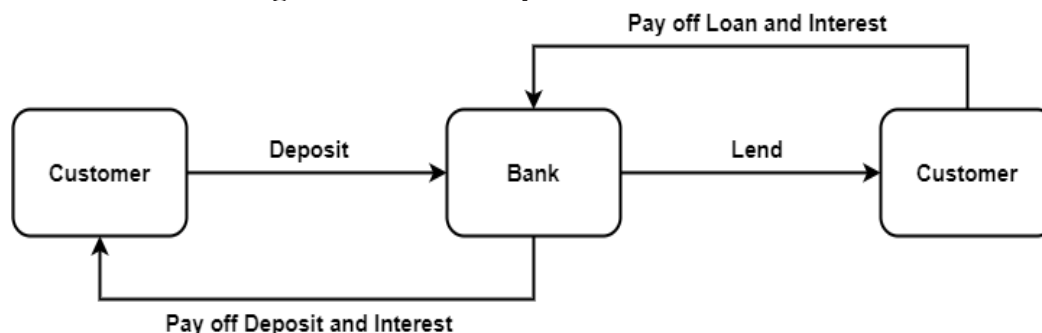
These violations have the same effect on the relationship between employees and customers. Employees represent the bank in dealing with customers. Customers receive bank services from bank employees so that the potential for disputes between bank employees and customers will partly be the same between companies and customers.

However, the legal basis in dispute resolution is different between the parties

even though the event of violating the law or agreement is the same. Disputes between banks and employees based on work agreements, labor laws, and company regulations. Dispute resolution between employees and customers does not have a direct legal relationship. The customer has a legal relationship with the bank. Customers deposit their funds in the bank, not on personal employees account. So that, personal employees and bank customers

do not have a legal relationship. Employees have no obligations to customers.

Figure 5 Relationship Bank and Customer



Source: research results, 2021

The bank and the customer have a legal relationship. Before the bank starts the relationship with the customer. Banks must conduct due diligence on customers. This is in accordance with the Know Your Customer principle. The customer entrusts his funds to the bank, and the bank provides deposit compensation in the form of a relationship. This fund-custodial relationship is unique. After all, the recipient of the deposit pays interest because the recipient of the deposit can use the funds for activities that generate profits. This relationship is unique. This relationship is depicted in Figure 4.

Conclusion and Recommendation

The triangle relationship between company, employee, and customer is unique. The company should provide training for employees in serving customers. If employees, who have received training, commit negligence without personal interest in their negligence, the company must be responsible. If an employee deliberately neglects to make this enrichment or has the intention of

personal interest, then the employee will be liable for his actions. Companies will still be held accountable based on the Civil Code. At this time the development of technology has covered the financial industry. Banks must be responsible for all use of technology in relationships with customers, including the use of Artificial Intelligence, Virtual Reality, Augmented Reality and others.

This reflects the company's relationship with customers. The relationship between the company and employee is based on the Act of the Republic of Indonesia Number 13 of 2009 on Labour. The exact cause can cause disputes between the parties. Settlement of disputes between the parties uses a different legal basis. This illustrates the uniqueness of this triangular relationship. Disputes between financial institutions and customers can involve employees as parties involved in civil or criminal disputes. The research provides input the financial institutions, financial authorities and other stakeholders on how to settle the dispute between customer and financial institutions. Financial institutions

must be responsible to customers, if there is negligence on the part of their employees. Regulators can set regulations according to the results of this study.

Further research on the relationship between customers and companies and employees can be developed for other industries such as the health industry, the pharmaceutical industry, and the food industry.

This research can provide input to regulators in mediating conflict between companies and consumers and companies and employees. Other research can be developed regarding the difference in the status of permanent employees with contract employees in making losses to financial institutions.

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