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CIVIL LIABILITY OF BANKS FOR CUSTOMER LOSSES CAUSED BY UNLAWFUL ACTS COMMITTED BY BANK EMPLOYEES: A CASE STUDY OF SUPREME COURT DECISION NUMBER 2442 K/PDT/2017

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Abstract

This study examines the civil liability of banks in Indonesia for customer losses caused by unlawful acts committed by bank employees. Specifically, it analyzes the application of the vicarious liability principle under Article 1367 of the Civil Code and explores the legal framework governing such liability, including the Banking Law and relevant consumer protection laws. Through the case study of Supreme Court Decision Number 2442 K/Pdt/2017, the study investigates how the bank is held accountable for its employees' unlawful actions, focusing on the criteria for unlawful acts, the scope of employment, and the principle of prudence. The case establishes an important precedent regarding the proportional liability of banks in customer losses, highlighting the importance of rigorous internal controls and employee oversight. This study emphasizes the need for banks to apply the prudential principle, ensuring secure transactions and preventing fraudulent activities. The findings suggest that banks must enhance their compliance measures, such as implementing strict verification systems for large transactions, improving employee training, and fostering a culture of responsibility. Strengthening these practices will safeguard customer interests, reduce legal risks, and improve public trust in the banking sector, contributing to its long-term stability and growth.

Keywords: Civil Liability, Banks, Unlawful Act.

INTRODUCTION

Banking institutions are a vital cornerstone of the financial system, acting as intermediaries between those who save money and those who need financial capital. They contribute significantly to the economy by enabling the efficient allocation of resources, funding businesses, and ensuring the smooth functioning of the financial system. As crucial players in the economic and financial development of a country, banks must uphold the trust and confidence of the public. A key factor in maintaining this trust is the proper management and protection of customer funds. Banks must act responsibly and diligently, not only in managing financial transactions but also in safeguarding sensitive customer data.

In Indonesia, the relationship between a bank and its customers is regulated by various laws and regulations. These legal instruments are designed to protect both parties and ensure the stability of the banking system. Banks are required to operate within a framework of established norms and principles, ensuring that they maintain the confidentiality and safety of their customers' financial assets. However, like any other institution, banks are not immune to the risk of unlawful acts, particularly by their employees, which may result in substantial losses for customers. Such acts can range from fraud, embezzlement, and negligence to mismanagement of customer accounts or breach of trust.

The responsibility of a bank when its employees commit unlawful acts that harm customers is a significant aspect of banking law. This responsibility is largely governed by the principle of civil liability, particularly through the application of the doctrine of vicarious liability. Under this doctrine, an employer—such as a bank—is held liable for the actions of its employees that occur within the scope of their employment. This legal concept is based on the idea that the employer is in a better position to prevent such unlawful acts through proper training, supervision, and internal controls.

In the context of banking, vicarious liability ensures that customers are compensated for any losses incurred as a result of unlawful acts by bank employees. This legal principle reflects the notion that banks, as large institutions, have an obligation to ensure that their employees act in the best interests of their customers and that proper precautions are taken to prevent misconduct. If an employee commits an unlawful act, such as embezzling funds from customer accounts, the bank, as the employer, can be held responsible for the damages caused by this act.

The application of vicarious liability in banking is particularly important because banks often handle large sums of money, and their customers rely on them to safeguard their financial interests. An unlawful act by a bank employee can have serious repercussions not only for the individual customer but also for the bank's reputation and financial stability. As such, banks must adhere to stringent risk management practices, including ensuring the integrity of their employees, implementing effective oversight mechanisms, and following prudential banking practices.

Prudential banking is a fundamental principle that banks must follow to ensure that their operations remain sound and customer interests are protected. The principle of prudence dictates that banks must operate with a high level of caution and foresight, taking appropriate measures to identify and mitigate potential risks. This includes ensuring that employees are adequately trained, monitoring transactions for suspicious activities, and enforcing strict internal controls. The failure to adhere to these standards can expose the bank to significant legal and financial risks, including civil liability for unlawful acts committed by employees.

The importance of prudential banking and civil liability is underscored by the Indonesian legal framework, which includes several key laws and regulations that govern the banking sector. One of the most important of these is the Civil Code (Kitab Undang-Undang Hukum Perdata or KUH Perdata), which sets out the basic principles of civil liability, including those related to unlawful acts. According to Article 1365 of the Civil Code, any unlawful act that causes harm to another party obligates the person responsible to compensate for the damage. This provision serves as the foundation for holding individuals accountable for their wrongful actions, including employees of banking institutions.

In addition to Article 1365, Article 1367 of the Civil Code further extends civil liability to employers, stipulating that employers are responsible for the unlawful acts committed by their employees within the scope of their employment. This article establishes the basis for vicarious liability, making it clear that a bank can be held liable for the actions of its employees that harm customers. The principle of vicarious liability is central to ensuring that banks take full responsibility for the actions of their staff and that customers can seek redress for any harm caused by an employee's misconduct.

Moreover, the Banking Law (Law Number 10 of 1998) outlines the legal framework for banking operations in Indonesia, with an emphasis on maintaining the stability and safety of the financial system. This law requires banks to operate with a high level of integrity and transparency, ensuring that they protect the interests of their customers. The law also emphasizes the need for banks to implement sound risk management practices, including maintaining adequate internal controls, overseeing employee behavior, and ensuring that employees comply with legal and ethical standards.

The application of prudential banking principles is also embedded in the regulations issued by the Financial Services Authority (Otoritas Jasa Keuangan, OJK), which oversees the banking industry in Indonesia. The OJK's role is to ensure that banks comply with relevant regulations and adopt best practices in managing customer funds. The OJK also has the authority to impose sanctions on banks that fail to meet regulatory standards or engage in practices that could harm customers.

Customer protection is another important aspect of the Indonesian banking legal framework. The Consumer Protection Law (Law Number 8 of 1999) provides customers with certain rights, including the right to safety, the right to truthful information, and the right to choose freely. These rights are essential in the context of banking, where customers entrust their financial assets to institutions with the expectation that their money will be managed responsibly and securely. The law holds banks accountable for any harm caused by unlawful acts, including fraud, negligence, or failure to follow proper procedures. When a bank employee commits an unlawful act that causes harm to a customer, the bank is obligated to compensate the customer for their losses.

This study focuses on the civil liability of banks for customer losses resulting from unlawful acts committed by bank employees, specifically the application of vicarious liability. To explore this topic, the case of Supreme Court Decision Number 2442 K/Pdt/2017 serves as a key example. This decision offers valuable insights into how the legal principles of civil liability and vicarious liability are applied in practice, particularly in the context of banking. The case involves a bank employee's unlawful transfer of customer funds, and the Supreme Court's ruling highlights the bank's responsibility for its employee's actions, reinforcing the importance of maintaining strict internal controls and compliance with prudential banking practices.

By analyzing this case, the study aims to provide a deeper understanding of the legal principles governing bank-customer relationships and the responsibilities of banks when their employees commit unlawful acts. It also seeks to examine the broader implications of vicarious liability in the banking sector and how it can be applied to ensure that customers are adequately protected from losses caused by employee misconduct. Ultimately, the study aims to contribute to the development of more robust legal and regulatory frameworks for the banking industry, which will help improve the safety and security of the financial system and strengthen public trust in banks.

LITERATURE REVIEW

Vicarious Liability in Banking Law

The principle of vicarious liability plays a central role in determining the responsibility of banks for unlawful acts committed by their employees. Vicarious liability is the legal doctrine that holds an employer liable for the actions of its employees when those actions occur within the scope of their employment. This principle has been extensively studied in various sectors, including banking.

According to Suwandono (2019), vicarious liability in the context of banking law is a reflection of the legal responsibility banks bear for the actions of their employees in the course of carrying out their duties. This doctrine emphasizes that the bank, as the employer, is not only responsible for ensuring its employees adhere to lawful conduct but must also take active measures to prevent misconduct. As Suwandono (2019) argues, banks are in a unique position of power, given their control over vast financial systems, and thus must assume responsibility for their employees' actions, especially when such actions harm customers.

The concept of vicarious liability in the banking context is further elaborated by Rahma (2022), who notes that while the application of vicarious liability can result in greater protection for consumers, it also places an obligation on banks to implement stringent oversight measures. Rahma discusses the broad scope of vicarious liability as it relates to employees of a financial institution, stressing that banks are responsible not just for direct actions but for any conduct arising out of their employment, which may include negligence or failure to adhere to prescribed procedures.

Further, Dendawijaya (2009) outlines the specific requirements for applying vicarious liability in the banking industry. Dendawijaya stresses that vicarious liability requires a direct connection between the employee’s actions and the bank’s operations, meaning that the unlawful act must fall within the general scope of the employee's duties. For example, a bank employee committing fraud during working hours and using the bank’s resources for personal gain would typically fall under vicarious liability provisions. This approach ensures that the legal responsibility does not solely rest on the individual but is shared by the bank that facilitates or overlooks the improper behavior.

Prudential Banking Principles

Prudential banking, or the principle of prudence, is a core concept in banking law, intended to ensure that financial institutions maintain the stability and safety of the banking system. Prudence in banking involves the careful management of risks, adherence to legal standards, and the implementation of internal controls to safeguard customer interests. Hermanto (2018) highlights that prudential banking principles are intended to prevent fraud, embezzlement, and other unlawful acts by setting clear operational procedures, ensuring rigorous monitoring systems, and maintaining adequate checks and balances.

The application of prudence is vital in reducing the risk of customer losses, particularly when it comes to financial mismanagement or employee misconduct. According to Amrullah (2019), the failure to apply prudential banking principles can lead to significant vulnerabilities, making financial institutions susceptible to unlawful acts by employees. Amrullah emphasizes that banks must adhere to standards of care when handling customers' financial data and transactions, and this responsibility extends to ensuring that employees act in accordance with the bank's ethical and operational guidelines.

Furthermore, Harahap (2013) notes that prudential banking also involves the implementation of comprehensive risk management frameworks. Risk management includes ensuring that all transactions are authorized, that proper verification systems are in place, and that any irregularities are promptly investigated. By adhering to these standards, banks not only protect customers from losses but also reduce the possibility of legal liability arising from the wrongful actions of employees.

Legal Framework Governing Banking Liability

In Indonesia, the legal framework surrounding the liability of banks for unlawful acts committed by employees is defined by several key regulations. The Indonesian Civil Code (KUH Perdata), the Banking Law (Law Number 10 of 1998), and Consumer Protection Laws all outline the duties and responsibilities of banks to protect customers from losses arising from unlawful acts.

The Civil Code, particularly Articles 1365 and 1367, provides the foundation for civil liability in cases of unlawful acts. As Subekti and Tjitrosudibio (2004) explain, Article 1365 establishes that any act that causes harm to another party is actionable under civil law, while Article 1367 holds employers, including banks, responsible for the actions of their employees during the course of their employment. These provisions align with the general principles of vicarious liability and are critical in ensuring that financial institutions assume responsibility for unlawful acts committed by their staff.

Additionally, the Banking Law places a strong emphasis on the principles of risk management, internal controls, and the protection of customer funds. The law mandates that banks implement systems to safeguard the interests of their customers and to prevent unlawful acts by employees. As Widiyono (2006) argues, this framework creates a duty of care for banks, requiring them to take proactive steps to ensure that their operations are secure and compliant with the law.

The Consumer Protection Law (Law Number 8 of 1999) further enhances these protections by guaranteeing that consumers have the right to safety and fair treatment when using banking services. According to Usmani (2020), the Consumer Protection Law provides an important mechanism for customers to claim damages when they suffer losses due to unlawful acts by banks or their employees. This law also reinforces the responsibility of banks to prevent fraudulent practices, such as falsification of records or embezzlement, and requires them to establish effective systems for resolving customer complaints.

Judicial Interpretations and Case Law

Judicial decisions in Indonesia, such as Supreme Court Decision Number 2442 K/Pdt/2017, have played a crucial role in shaping the application of vicarious liability in the banking sector. The case involved a bank employee who unlawfully transferred customer funds, resulting in significant financial losses for the affected customers. The court ruled that the bank was liable for the actions of the employee, underscoring the importance of internal controls, employee supervision, and adherence to prudential banking principles.

According to Sitompul (2002), this decision reflects the growing recognition in Indonesian jurisprudence that banks must take responsibility for ensuring the lawful conduct of their employees, especially when it comes to the handling of customer funds. The ruling affirmed the principle that banks must implement proactive measures to prevent fraud, theft, and other unlawful activities within their operations. Yudhistira et al. (2024) highlight that the decision was pivotal in expanding the scope of vicarious liability, demonstrating that banks cannot escape responsibility simply by arguing that the unlawful act was committed outside the scope of the employee's assigned duties.

Moreover, Usanti (2018) stresses that the application of the vicarious liability principle in banking law is not limited to simple negligence but also encompasses acts that violate the bank's duty of care toward customers. The decision in Case Number 2442 K/Pdt/2017 reinforces the notion that banks must implement rigorous checks and controls over their operations, particularly in preventing unauthorized access to customer accounts.

Challenges and the Way Forward

The literature also suggests that while the existing legal framework for bank liability provides substantial protection for consumers, there are still challenges in its effective implementation. Pramono (2001) argues that the application of vicarious liability in complex corporate structures, such as large banking groups with multiple subsidiaries, often leads to confusion regarding the scope of responsibility. This challenge becomes particularly evident when an employee of one entity within the group causes harm, and it is unclear to what extent the parent company or other affiliates should be held accountable.

Daniri (2005) adds that while Indonesia has a strong legal foundation in terms of consumer protection and liability for unlawful acts, the rapid development of digital banking presents new challenges. The rise of online banking and mobile transactions has introduced new risks, such as cybercrime and data breaches, which require updated legal frameworks to address effectively.

Future legal reforms may need to address these gaps by enhancing the clarity of liability in complex corporate structures and improving the regulation of new technologies in banking operations. Usman (2003) suggests that the increasing reliance on technology in banking requires more sophisticated regulatory tools, particularly in terms of cybersecurity and fraud prevention.

METHOD

This study uses a normative legal research method that examines law as a norm or rule in society, with a statute approach, conceptual approach, and case approach to examine laws and regulations, legal views and doctrines, and cases related to the legal issues discussed. The data used are secondary data that include primary legal materials (the 1945 Constitution, the Civil Code, the Banking Law, the Law on the Development and

Strengthening of the Financial Sector, and Supreme Court Decisions), secondary legal materials (books, documents, scientific papers and journals on Bank civil liability), and tertiary legal materials (legal dictionaries and related internet sources). Data collection was carried out through library research using literature books, catalogs, and internet media, then analyzed using grammatical and systematic interpretation methods to solve, explain, and describe problems regarding Bank civil liability if Bank Employees commit unlawful acts that result in losses for Customers.

RESULT AND DISCUSSION

CriIllegal Acts by Bank Employees That Can Be Categorized as Actions That Are Detrimental to Customers Based on Laws and Regulations in Indonesia

Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking contains specific articles that prohibit actions by bank employees that may harm customers and outlines the duties and responsibilities of banks in safeguarding customer interests. While Article 40 primarily focuses on the bank's obligation to maintain the confidentiality of customer financial information, the exceptions outlined in Articles 41, 42, 43, and 44 highlight situations in which disclosure is permitted or required, often in the interests of justice or law enforcement. This implicitly protects against misuse of customer information by employees for illegitimate purposes. The strong emphasis on bank secrecy and the criminalization of its violation in Article 47, which punishes the deliberate disclosure of confidential customer informationby bank employees without proper authorization, directly protecting customers' privacy and financial security. The increased penalties introduced by the changes in Law Number 10 of 1998 underscore the importance of protecting customer data.

A very important article in Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking concerning customer protection from dangerous actions by bank employees is Article 49 Paragraph (1) this article criminalizes the deliberate creation of false records, deletion, or alteration of bank records, as well as in business activity reports, transaction reports, or bank accounts. Such actions can be used to hide fraudulent activities, embezzle customer funds, or manipulate other financial information that is detrimental to customers. Paragraph (2) of Article 49 specifically prohibits bank employees from requesting or receiving any form of compensation, commission, or benefit for their personal gain or the benefit of their families in return for providing credit facilities, bank guarantees, or other financial accommodations to other parties. This provision aims to prevent corruption and unethical practices that can result in unfair or detrimental financial outcomes for customers.

Article 49 Paragraph (2) also punishes bank employees who fail to take the necessary steps to ensure the bank's compliance with the provisions of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking and other applicable laws and regulations. This indirectly protects customers by promoting a culture of compliance and preventing systemic problems that may arise from non-compliance with legal standards. The inclusion of bribery and manipulation of records in Article 49 highlights the legislative focus on preventing both direct fraud and systemic problems arising from unethical employee behavior.10 In addition to Article 49, Article 50 punishes affiliated parties, including bank employees, who intentionally fail to ensure the bank's compliance with Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking. This broadens the scope of accountability beyond the direct perpetrators involved in the harmful behavior. In addition, Article 50A, although primarily targeting shareholders, also covers situations where shareholders instruct bank employees to engage in unlawful activities, underscoring the potential for pressure from higher levels.in banking organizations to engage in behavior that could harm customers.

The Consumer Protection Law (Law No. 8 of 1999) provides an additional layer of legal protection for bank customers in Indonesia. Banking services are expressly included in the definition of “services” as outlined in this law, and as a result, individuals and entities using these services are recognized as “consumers”. The fundamental objective of the Consumer Protection Law is to establish a balanced framework that protects the interests of consumers while recognizing the role of business actors in the financial sector. This legal framework ensures that the general principles of fair trade and consumer rights apply to the provision of financial services by banks.

The Consumer Protection Act provides several fundamental rights to consumers that are particularly relevant in the context of banking services and potential abuses by bank employees. The right to security and safety implies that bank customers have the right to expect that the banking services they use will not expose them to undue risk. This requires banks to take reasonable and adequate steps to protect their funds and personal information from unauthorized access, misuse or fraudulent activity by their employees.

Consumers have the right to true, clear and honest information. This obligation lies with banks to provide accurate, comprehensive and unambiguous information about their various financial products and services, including the associated risks, terms and conditions. This is particularly important in the banking sector, where financial products can be complex and difficult for the average consumer to fully understand. Bank employees, acting as representatives of the bank, have a direct responsibility to provide clear and honest explanations, and failure to do so, especially if it causes harm to the customer, can be construed as a violation of this fundamental right. Consumers also have the right to choose, which means they should be able to choose banking products and services freely, without any coercion, pressure or undue influence exerted by bank employees.

Analysis of the Indonesian legal framework reveals a comprehensive system aimed at protecting bank customers from losses caused by unlawful acts committed by bank employees. This system is based on Law Number 10 of 1998 on Amendments to Law Number 7 of 1992 on Banking, which establishes specific obligations for banks and criminalizes certain acts by their employees, the Consumer Protection Law, which provides a spectrumbroad rights for consumers and impose obligations on business actors including banks, and the Indonesian Civil Code, which provides basic principles of liability for unlawful acts.

The typology of unlawful acts identified includes fraud, embezzlement, misuse of personal data, misleading information, negligence, and abuse of authority. These categories cover a range of violations that can cause significant financial and personal harm to bank customers. Legal responsibility for such acts can be imposed on both the individual employee who committed the unlawful act and the bank itself.

The WriterWhat is the Principle of Vicarious Liability in the Context of Legal Relations Between Banks and Their Employees Regarding Customer Losses?

The doctrine of vicarious liability has deep historical roots in the development of the common law legal system, before being adopted and developed in various legal systems in the world, including the Indonesian civil law system. Historically, this doctrine began to develop rapidly during the industrial revolution in England, when employment relations became increasingly standardized and business organizational structures became more complex. During that time, courts in England began to formulate and apply the principle of "respondeat superior" (let the master answer), which became the basis for the development of the modern doctrine of vicarious liability.

The essence of the doctrine of vicarious liability is the transfer of legal responsibility from the direct perpetrator (employee) to another party who has a certain legal relationship with the perpetrator (employer). In the context of employment relations, this doctrine was born and developed based on several interrelated theoretical and practical bases. First, there is an economic legal basis that emphasizes the efficiency of risk and cost allocation. According to this approach, employers are in a better position to internalize and distribute costs arising from losses caused by their employees, either through insurance, product or service price adjustments, or other risk mitigation measures. Second, there is a basis of control and control that is the core of employment relations. Vicarious liability arises in the context of employment relations that are characterized by the authority of the employer to direct, supervise, and control how employees carry out their work. This authority gives rise to an obligation to be responsible for actions taken by employees within the scope of their duties. This principle of control is one of the main criteria in determining when vicarious liability can be applied. Third, there is a basis of public protection that emphasizes the need to provide protection and certainty of compensation for the injured party. In many situations, an employee as an individual may not have sufficient financial resources to compensate for the harm caused by his or her actions. In such situations, the doctrine of vicarious liability ensures that the injured party can still obtain adequate compensation from the employer, which is generally in a stronger financial position.

Vicarious liability is explicitly regulated in Article 1367 of the Civil Code, which states that a person is not only responsible for losses caused by his own actions, but also for losses caused by the actions of people who are his responsibility or caused by goods under his supervision. The third paragraph of the article specifically states that "employers and those who appoint other people to represent their affairs are responsible for the losses incurred by their servants or subordinates in carrying out the work for which these people are used".

These provisions are the main legal basis for the application of vicarious liability in the context of employment relations in Indonesia, including in the banking industry. However, it should be noted that the application of this doctrine is not absolute, but rather subject to several requirements and limitations that have developed through jurisprudential practice and legal interpretation.

The application of vicarious liability in the context of the relationship between a bank and its employees does not occur automatically, but is subject to several terms and conditions that need to be met. A clear understanding of these terms is crucial in evaluating when a bank can be held liable for the actions of its employees that harm customers.

The first and most fundamental requirement is the existence of a legitimate employment relationship between the bank and the employee who committed the detrimental act. This employment relationship must fulfill three essential elements as stipulated in Law Number 13 of 2003 concerning Employment, namely the existence of work performed, wages, and orders. In the context of banking, this relationship is manifested in the organizational structure of the bank and the employment contract between the bank and its employees. This relationship creates the bank's authority to direct and supervise the actions of its employees, which in turn becomes the basis for the bank's responsibility for these actions.

The second condition is that the detrimental action committed by a bank employee must occur within the scope of his/her duties or work (scope of employment). This principle limits the bank's liability only to the employee's actions that have a relationship or connection with the functions or tasks entrusted to him/her. However, the interpretation of "scope of employment" has undergone development and expansion in legal practice. Courts tend to adopt a broader approach, where an employee's actions can be considered within the scope of his/her employment if the action has a sufficient relationship with the assignment given by the employer, or if the action can be reasonably estimated as a consequence of the work performed.

Courts in Indonesia often evaluate factors such as whether the bank employee's actions were taken during working hours, whether the actions involved the use of bank facilities or systems, whether the actions were related to normal interactions between employees and customers, and whether the actions were related to the duties or authority granted to the employee. If these factors show a sufficient connection between the employee's actions and his or her job, the bank can be held liable for the losses incurred.

The third requirement relates to the nature of the employee's actions, which must constitute an unlawful act as defined in Article 1365 of the Civil Code. Unlawful acts in this context include not only acts that violate written legal provisions, but also acts that are contrary to propriety, prudence, or morality in society. In the banking industry, the standard of prudence and propriety is often higher than in other industries, given the sensitive nature of banking services and the high level of trust placed in them by customers. In addition, there must be a real loss experienced by the customer as a direct result of the unlawful act. This loss can be in the form of material losses (for example, loss of funds or financial assets) or immaterial losses (for example, psychological disorders due to data privacy violations).

Finally, there must be a causal relationship between the unlawful act committed by the bank employee and the loss experienced by the customer. This causal relationship can be analyzed using theories of causality as discussed in the previous chapter.

The relationship between the doctrine of vicarious liability and the theory of causality is a fundamental aspect in the legal analysis of bank liability for the actions of its employees that harm customers. These two concepts, although different in focus and application, complement and interact to create a comprehensive framework for evaluating legal liability in cases of banking customer losses.

The theory of causality, as discussed in depth in the previous chapter, focuses on the analysis of the cause-and-effect relationship between actions and the consequences that arise. In the banking context, this theory is used to evaluate whether the actions of bank employees have a causal relationship with the losses experienced by customers. As explained, the Conditio Sine Qua Non Theory offers a relatively direct approach, namely by evaluating whether the customer's loss would still occur if the bank employee's actions were hypothetically removed from the series of events. If the answer is negative, then the employee's actions can be considered the cause of the loss. Meanwhile, the doctrine of vicarious liability is not directly related to the analysis of the cause-and-effect relationship between actions and losses. Instead, this doctrine focuses on the legal relationship between the direct perpetrator (employee) and the party that will bear vicarious liability (bank).

Vicarious liability becomes relevant after a causal relationship between the employee's actions and the customer's loss has been established through the application of the theory of causality. However, despite their different focuses, these two concepts are interrelated and interact in banking law practice. First, the application of the doctrine of vicarious liability requires proof of a causal relationship between the bank employee's actions and the customer's loss as a prerequisite. If the causality analysis shows that the employee's actions were not the cause of the loss, then the doctrine of vicarious liability becomes irrelevant, because there is no primary responsibility of the employee that can be transferred to the bank.

Second, the application of causality theory in the context of vicarious liability is often influenced by the policy considerations underlying the doctrine of vicarious liability itself. For example, courts may be inclined to adopt a broader interpretation of causality in cases involving losses to bank customers, given the need to provide adequate protection for customers and encourage banks to implement more stringent internal controls.

Third, in some cases, the application of the doctrine of vicarious liability can broaden the scope of the causality analysis. For example, in cases where a customer’s loss is caused by the actions of multiple bank employees working together, or by a complex interaction between employee actions and the bank’s policies or systems, the doctrine of vicarious liability may allow the customer to recover damages from the bank without having to identify and prove the specific causal contribution of each employee involved.

Fourth, both the causal theory and the doctrine of vicarious liability consider the concept of predictability or reasonableness in their analysis. In the causal theory, especially the adequate theory, the emphasis is on whether an outcome can be reasonably expected as a consequence of a particular action. Similarly, in the doctrine of vicarious liability, one of the key considerations is whether the employee's detrimental action constitutes a foreseeable risk that should have been anticipated by the bank in its operational activities.

In banking law practice in Indonesia, the interaction between the theory of causality and the doctrine of vicarious liability is reflected in various court decisions related to cases of customer losses due to the actions of bank employees. Courts often apply a two-stage approach, starting with an analysis of the causal relationship between the employee's actions and the customer's losses, followed by an evaluation of whether the conditions for the application of vicarious liability have been met. To understand more concretely how the doctrine of vicarious liability is applied in banking law practice in Indonesia, several real cases can be analyzed that have become important precedents. Two cases that deserve special attention are the Melinda Dee case at Citibank and the case of the embezzlement of customer funds at Maybank Indonesia.

The Melinda Dee case is one of the most famous banking fraud cases in Indonesia. Melinda Dee, whose real name is Inong Malinda Dee, was a relationship manager at Citibank who was arrested in 2011 on suspicion of embezzling billions of rupiah worth of customer funds. As a relationship manager for priority customers, Melinda had access to information and accounts of customers with large savings. She took advantage of this position and trust to divert customer funds without authorization to accounts related to her. From a vicarious liability perspective, this case meets the requirements for the application of the doctrine. First, there was a clear employment relationship between Melinda Dee and Citibank. Second, the act of embezzlement was carried out within the scope of her work as a relationship manager, by taking advantage of the access and authority given to her in that capacity. Third, the act was clearly an unlawful act that resulted in material losses for customers.

From a causality perspective, the Conditio Sine Qua Non analysis shows that without Melinda’s position as a relationship manager at Citibank, she would not have had access to the customer’s account and would not have been able to commit the embezzlement. Thus, the employment relationship between Melinda and Citibank constituted the Conditio Sine Qua Non for the customer’s harm, which strengthens the argument for vicarious liability. In the settlement of this case, Citibank eventually compensated the injured customer, even though the bank initially argued that Melinda’s actions were beyond her authority and were her own initiative. The court rejected this argument, emphasizing that Citibank had given Melinda access to the customer’s systems and information, and should have implemented stricter control mechanisms to prevent misuse. This decision reflects the application of the vicarious liability principle, whereby a bank is held liable for the actions of its employees that harm customers, even though the bank as an entity did not intend to cause the harm.

The second relevant case is the Maybank Indonesia (formerly known as Bank Internasional Indonesia or BII) customer fund breach that occurred in 2011. In this case, a number of bank employees worked together with external parties to breach customer funds through manipulation of the bank's electronic system. This case involved not just one employee, but an internal and external network that operated systematically. From a vicarious liability perspective, this case shows additional complexity because it involved several employees and external parties. However, the basic principles still apply: the bank employees involved had an employment relationship with the bank, their actions were related to their work at the bank, and the actions were unlawful acts that resulted in losses for customers.

From a causal perspective, the analysis in this case is more complex because it involves several actors and stages. However, by applying the theory of Conditio Sine Qua Non, it can be argued that the involvement of bank employees is a necessary condition for the breach of funds to occur. Without an "insider" who has access to the bank's systems and information, the breach would not have been possible in the same way. In the settlement of this case, Maybank Indonesia was finally responsible for returning the compromised customer funds, although the settlement process took time and involved a complex investigation. The bank argued that it had implemented a standard security system for the industry, but the court emphasized that the bank's responsibility is not only limited to providing a security system, but also includes supervision of employees and internal risk management.

These two cases highlight several important aspects of the application of the doctrine of vicarious liability in Indonesian banking practice. First, a bank can be held liable for the actions of its employees even if such actions are not authorized or even explicitly prohibited by the bank's policies. Second, the fact that an employee acts for personal gain, rather than for the benefit of the bank, does not necessarily eliminate the bank's vicarious liability. Third, courts tend to adopt a broad interpretation of the "scope of employment" in the banking context, taking into account the access and authority granted to employees in carrying out their duties.

The application of the doctrine of vicarious liability in the banking industry has significant practical implications for banks, customers, and banking sector regulation as a whole. These implications reflect the complex balance between customer protection, risk mitigation, and bank operational efficiency.

From the bank's perspective, the doctrine of vicarious liability creates a strong incentive to implement more stringent and comprehensive internal control mechanisms. Banks are encouraged to implement more selective hiring processes, conduct more in-depth background checks, and provide more intensive ethics and compliance training to their employees. In addition, banks are also motivated to develop monitoring and early detection systems for suspicious activities, and to implement the principle of segregation of duties and check-and-balance mechanisms in their daily operations.

Other implications include the potential for increased bank operating costs due to higher insurance premiums, the need for additional resources for compliance and internal audit functions, and the potential for litigation and compensation payments in the event of customer losses. These costs may ultimately be passed on to customers in the form of higher service fees or less competitive interest rates. However, these additional costs can be viewed as an investment in building reputation and trust, which are intangible but very valuable assets for banks.

From the customer's perspective, the doctrine of vicarious liability provides greater protection and legal certainty. Customers do not have to face the complexity and expense associated with seeking direct liability from bank employees who may not have sufficient financial resources to provide compensation. Instead, customers can file claims directly with the bank, which generally has much greater financial capacity to provide compensation.

This protection can in turn increase public confidence in the banking system as a whole, which is a critical prerequisite for financial sector stability and growth. Without confidence that their funds are safe and that banks will be held accountable in the event of misuse by employees, people may be reluctant to use formal banking services, which in turn could hinder financial inclusion and economic development.

From a regulatory perspective, the doctrine of vicarious liability encourages the development of a more comprehensive and risk-oriented supervisory framework. Regulators such as the Financial Services Authority (OJK) are encouraged to set higher standards for corporate governance, risk management, and consumer protection in the banking sector. This includes stricter requirements for incident reporting, security breach response protocols, and effective dispute resolution mechanisms. In addition, regulators are encouraged to develop a more nuanced approach to evaluating a bank's liability, considering not only whether a loss occurred, but also whether the bank implemented reasonable and proportionate controls consistent with industry standards. This approach reflects a balance between the need to ensure compensation for harmed customers and the importance of avoiding a disproportionate burden of liability on banks.

The conclusion can be drawn that the legal relationship between banks, bank employees, and customers in the perspective of vicarious liability is a fundamental aspect in the modern banking system. The doctrine of vicarious liability, which was born in the context of employment relations and developed through jurisprudential practice, has become an important mechanism in protecting customer interests and maintaining the stability of the banking system. Through this doctrine, banks can be held accountable for the actions of their employees that harm customers, even though the bank as an entity does not directly carry out such actions.

The application of the doctrine of vicarious liability is closely related to the theory of causality, especially the Theory of Conditio Sine Qua Non. These two concepts, although different in focus and application, complement each other in creating a comprehensive framework for evaluating legal responsibility in cases of banking customer losses. The causal analysis establishes a cause-and-effect relationship between the employee's actions and the customer's loss, while the doctrine of vicarious liability allows for the transfer of responsibility from the employee to the bank as an institution.

Cases such as Melinda Dee at Citibank and the Maybank Indonesia customer fund breach highlight how the doctrine is applied in practice, with courts tending to adopt an approach that protects customer interests and encourages banks to implement tighter controls. This approach reflects the balance sought between customer protection and a proportionate burden of responsibility on banks.

Legal Analysis of Bank Civil Liability in Case Decision Number: 2442 K/Pdt/2017 Regarding Unlawful Acts Committed by Bank Employees Which Cause Losses

The decision of the judge in Decision Number 2442 K/Pdt/2017 by the Supreme Court of the Republic of Indonesia is a significant and comprehensive case study to analyze the application of legal concepts and theories that have been discussed in previous chapters, especially related to the theory of causality in the relationship between bank employees' actions and customer losses and the doctrine of vicarious liability in the context of the legal relationship between banks, bank employees, and customers. This decision not only confirms the bank's responsibility to protect customer funds, but also underlines the importance of compliance with applicable banking procedures and the principle of prudence in daily banking operations. Through an in-depth legal analysis of this decision, a more comprehensive understanding can be obtained of how theoretical principles are implemented in banking law practices in Indonesia, as well as how this decision may affect banking practices in the future.

In essence, the case in Decision Number 2442 K/Pdt/2017 centers on the loss of customer funds stored in the Bank BNI Syariah Bandung Branch account due to transfers made by Anggi Ahmadi (Defendant II), a BNI Life employee, without using a power of attorney and original ID cards from twenty customers (Plaintiffs). The Plaintiffs argued that PT Bank Negara Indonesia (Persero) Tbk Supratman Branch Office (Defendant I) had intentionally and unlawfully allowed the actions of Defendant II who had transferred customer funds from their accounts at Bank BNI Syariah Bandung Branch to other accounts through the Supratman Branch Office facility. The total savings of the Plaintiffs that were lost reached Rp. 715,095,000.00 (seven hundred fifteen million ninety five thousand rupiah), consisting of transfers via tellers amounting to Rp. 372,306,000.00 (three hundred seventy two million three hundred six thousand rupiah) and transfers via ATM amounting to Rp. 342,789,000.00 (three hundred forty two million seven hundred eighty nine thousand rupiah).

When analyzed from the perspective of the theory of causality, especially the Theory of Conditio Sine Qua Non, this case provides a concrete illustration of how the theory is applied in judicial practice. As explained previously, the Theory of Conditio Sine Qua Non emphasizes that an action is considered the cause of an effect if without the action, the effect would not have occurred. By applying the hypothetical elimination method as taught by the Theory of Conditio Sine Qua Non, it can be analyzed that if the act of transferring the books by Defendant II were hypothetically removed from the series of events, then the Plaintiffs' losses would not have occurred. Likewise, if the actions of Defendant I in processing the transfers without conducting adequate verification were removed, the losses would also not have occurred. Thus, both the actions of Defendant II and the negligence of Defendant I in applying the principle of prudence can be considered as the Conditio Sine Qua Non of the Plaintiffs' losses.

Although the Supreme Court in its consideration did not explicitly refer to the Conditio Sine Qua Non Theory, its approach in evaluating the causal relationship between the defendants' actions and the plaintiffs' losses was in line with the principles of the theory.

The Supreme Court emphasized that "Defendant I and Defendant II have been proven to have violated the law, namely by means oftransferring the Plaintiff's money to another person's account without authorization by withdrawing and transferring it via ATM by Defendant II without going through Defendant I's Teller." This consideration implicitly acknowledges the causal relationship between the actions of the two defendants and the losses suffered by the plaintiffs, which is the core of the causality analysis based on the Conditio Sine Qua Non Theory.

This case also shows the complexity of applying the Conditio Sine Qua Non Theory in the context of modern banking. One of the limitations of this theory is its difficulty in dealing with cases involving multiple causal factors that work simultaneously or sequentially. In the Melinda Dee case discussed earlier, for example, the act of embezzlement of customer funds also involved various factors such as access to the bank system, the absence of adequate internal controls, and customer trust in the bank employees concerned. Likewise, in the case of Decision Number 2442 K/Pdt/2017, customer losses occurred due to a combination of various factors, including the actions of Defendant II in transferring funds without valid authorization, Defendant I's negligence in verifying transactions, and a complex organizational structure that allowed Defendant II, as a BNI Life employee, to process transactions at BNI facilities.

The Supreme Court in its decision applied a more nuanced approach in allocating responsibility, by distinguishing between funds transferred through a bank teller (where Defendant I and Defendant II were jointly and severally liable) and funds transferred through an ATM (where only Defendant II was found liable). This distinction reflects considerations about the level of involvement and control of the bank in different transactions, which is an extension of the pure application of the Conditio Sine Qua Non Theory. In the context of the Conditio Sine Qua Non Theory, this distinction can be understood by considering that for transactions through a teller, the bank's action in processing the transaction without adequate verification constitutes a Conditio Sine Qua Non of the loss, while for transactions through an ATM, the bank's action may not be considered a Conditio Sine Qua Non because the bank does not have direct control over the transaction.

This case also provides valuable insight into the application of the doctrine of vicarious liability. In its consideration, the Supreme Court asserted that "Defendant II is an employee of Defendant I as the employer of Defendant II, Defendant I is also responsible for the unlawful acts committed by Defendant II." This statement is in line with the doctrine of vicarious liability based on Article 1367 of the Civil Code which stipulates that an employer is responsible for losses caused by unlawful acts committed by his employees within the scope of work entrusted to him. However, what is interesting in this case is the complexity of the employment relationship, because Defendant II is not a direct employee of BNI, but rather an employee of BNI Life. This is reflected in the argument of Defendant I who filed an exception of error in persona and a lawsuit lacking parties, by stating that Defendant II based on Agency Agreement Number 5238.PKAJ.BLAGY.11 dated March 1, 2011 is an employee of PT. BNI Life Insurance (BNI Life), not an employee of BNI. Nevertheless, the Supreme Court still affirmed BNI's responsibility for the actions of

Defendant II, which shows a broader approach in interpreting employment relationships in the context of vicarious liability.

The Supreme Court's approach in this case reflects the evolution in the application of the doctrine of vicarious liability, which is not only limited to formal employment relationships, but also includes broader relationships involving representatives or agents. This is in line with the discussion on the requirements for the application of vicarious liability in the relationship between banks and bank employees, where it was discussed that the courts tend to adopt a broader approach to the "scope of employment" and employment relationships. In the case of the Maybank Indonesia customer fund breach discussed earlier, for example, Maybank Indonesia was also found responsible for returning the compromised customer funds even though it involved internal and external networks that operated systematically.

The Supreme Court's decision in this case also provides important insights into the application of the prudential principle in banking operations. As the prudential principle is one of the fundamental principles underlying the legal relationship between banks and customers, which requires banks to act prudently in protecting customer funds and preventing losses. In its consideration, the Supreme Court rejected Defendant I's argument that the transfer had been carried out in accordance with the procedure because it was accompanied by a signed transfer slip, ID card, and savings book. The Supreme Court emphasized that banks have a responsibility to verify the authenticity of transactions, especially when they involve the transfer of large amounts of funds.

The Supreme Court's approach in this case is in line with the application of the principle of prudence as stipulated in Article 29 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, which requires banks to conduct business activities in accordance with the principle of prudence. This principle aims to ensure that banks are always healthy and maintain public trust. In the case of Melinda Dee at Citibank discussed earlier, the failure to apply the principle of prudence and adequate internal control was also a key factor that allowed the embezzlement of customer funds. Likewise, in the case of the breach of customer funds at Maybank Indonesia, the court emphasized that the bank's responsibility is not only limited to providing a security system, but also includes supervision of employees and internal risk management.

The Supreme Court's decision in this case also provides important insights into the balance between operational efficiency and security in banking practices. On the one hand, banks need to make it easier for customers to make transactions in order to remain competitive and provide good service. On the other hand, banks also need to implement adequate security procedures to protect customer funds. In this case, Defendant I argued that the transfer had been carried out in accordance with the provisions of Law Number 3 of 2011 concerning Fund Transfers, specifically Articles 8 and 9, because it was accompanied by a completed and signed transfer slip and an ID card. However, the Supreme Court continued to emphasize the bank's obligation to verify the authenticity and validity of the transaction, indicating that formal compliance with the provisions of the law may not be enough if not accompanied by the application of substantial prudential principles.

This balance between operational efficiency and security becomes even more important in the context of digital banking, as discussed in the section on challenges and future developments. As more banking transactions are conducted digitally, banks face challenges in verifying the identity and intentions of customers. The Supreme Court's decision in this case underscores the importance of banks continuing to implement adequate verification procedures, even in a changing context.

This case also highlights the importance of consumer protection in the banking industry. The Supreme Court in its ruling emphasized the responsibility of banks to protect customer funds and ensure that transactions are carried out in accordance with the customer's true wishes. This approach is in line with the principle of consumer protection as stipulated in Law Number 8 of 1999 concerning Consumer Protection, which emphasizes the right of consumers to obtain security and protection in using goods and services. In the context of banking, this principle implies that banks have an obligation to take adequate steps to prevent misuse of customer funds.

CONCLUSION

This study concludes that the criteria for unlawful acts by bank employees refer to Article 1365 of the Civil Code which includes unlawful acts, errors, losses, and causal relationships, as well as the Banking Law and POJK which require banks to act with the principle of prudence; while the application of the vicarious liability principle is based on Article 1367 of the Civil Code with three main requirements: a legitimate employment relationship, actions within the scope of duties, and the existence of unlawful acts that harm customers; and an analysis of Decision Number 2442 K/Pdt/2017 underlines the doctrine of vicarious liability and the principle of prudence, where the Supreme Court affirms the bank's responsibility for the actions of its employees despite the complexity of the organizational structure, and distinguishes proportional liability between transactions via tellers and ATMs, so it is recommended that banks develop a comprehensive compliance framework by strengthening the early detection system and identity verification, clarifying the limitations of vicarious liability through employment agreements, and implementing a multi-layered verification system for large-value transactions.

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