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Relevance between Strict Liability Theory and Banking Crimes in the Transfer of Customer Funds: Negligence and Intent

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Abstract

This article discusses the relevance of the Strict Liability theory to banking crimes in the transfer of customer funds involving elements of negligence as well as intent committed by bank managers. Strict liability places responsibility on the perpetrator without the need to prove fault, but rather by establishing a causal relationship between the act and the harm. In the context of civil law, Articles 1365 and 1367 of the Indonesian Civil Code recognize a form of liability resembling this concept through the mechanism of vicarious liability, whereby the bank as employer may be held liable for the unlawful acts of its employees. However, in practice, proof of negligence is often still required, so its application does not fully reflect pure strict liability. The Indonesian positive legal framework, through Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector, Financial Services Authority (OJK) regulations on risk management, as well as corporate criminal law (Supreme Court Regulation No. 13 of 2016), provides a basis for regulating the bank's liability for customer losses, whether due to negligence or intent. Case studies of customer fund misuse at Maybank emphasize the importance of applying this principle to strengthen legal protection and improve banking governance, especially for customers harmed by the actions of bank managers. This research is normative in nature, employing a legislative approach and case analysis, aiming to assess the extent to which the strict liability theory can be explicitly adopted within the Indonesian banking legal framework to ensure optimal protection of customer funds.

1. Introduction

National development represents a manifestation of the continuous will to realize the welfare and prosperity of the Indonesian people in a fair, equitable, and sustainable manner, in line with Pancasila and the 1945 Constitution of the Republic of Indonesia.[1] In this context, Article 4 of Law No. 10 of 1998, in conjunction with Law No. 7 of 1992, stipulates that "Indonesian banking aims to support the implementation of national development to enhance equity, economic growth, and national stability towards improving the welfare of the wider community." As a key component of the national financial system, the banking sector holds a strategic role as a financial intermediary, a supporter of business activities, and a driver of economic growth. However, despite this vital position, the legal accountability of banks toward their customers often remains weak, creating a gap between the ideal function of banking in supporting national development and its actual implementation in protecting public trust.

[1] Muhamad Djumhana, *Hukum Perbankan Di Indonesia*, III (Bandung: PT. Citra Aditya Bakti, 2000).

In carrying out its functions and responsibilities to society, the banking sector must always move quickly to face increasingly heavy challenges in the development of national and international economies. Changes in global dynamics, market volatility, the development of financial technology, as well as the increasing integration of the world financial system[2] demand banks to maintain public trust through the application of prudential banking principles, effective risk management, and protection of public funds.[3]

Banks, as institutions that collect funds from the public in the form of deposits and redistribute them in the form of credit or other forms, have dual responsibilities.[4] First, an economic responsibility to optimize the intermediation function in order to support economic growth. Second, a legal responsibility to safeguard customer funds, ensure that every transaction complies with legal provisions, and prevent practices that may harm the parties involved. This legal responsibility includes the obligation to comply with Law No.10/1998 in conjunction with Law No.7/1992, Law No.21/2011, as well as various derivative regulations governing banking governance and consumer protection in the financial services sector.[5] However, technological advances and the complexity of banking services bring new legal risks. One of them is banking crimes that involve unauthorized transfers of customer funds, whether caused by negligence or intentional misconduct. This event not only causes financial losses but also undermines public trust in the banking system.[6]

One notable case that drew public attention in 2020 was the disappearance of customer funds at PT Bank Maybank Indonesia Tbk., involving e-sports athlete Winda "Earl" Lunardi and her mother, Floletta Lizzy Wiguna, who reportedly lost over IDR 20 billion. The total loss suffered by both amounted to approximately more than IDR 20 billion.[7] This case began when Winda was offered the opening of a time deposit account by Albert, who at that time served as the Head of Branch of Maybank Indonesia, Cipulir Branch Office. Albert promised an interest return of 10% per year, which was far higher than the usual deposit interest, thereby attracting the victim's interest.[8] Winda then opened two accounts: one in her own name, and

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[2] Lindryani Sjofjan et al., "Urgensi Penguatan Regulasi Perbankan Dalam Menjaga Stabilitas Sistem Keungan Nasional," *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory* 3, no. 3 (July 2025): 2152–58, https://doi.org/10.62976/ijijel.v3i3.1240.

[3] Maria Eleos T et al., "Navigasi Ketat Di Lautan Risiko: Menggali Dinamika Kepatuhan Prinsip Kehati-Hatian Perbankan Di Era Ekonomi Digital Indonesia," *Media Hukum Indonesia* 2, no. 4 (November 2024): 375–81, https://doi.org/10.5281/ZENODO.14199003.

[4] Muhammad Isa Alamsyahbana et al., *Bank Dan Lembaga Keuangan* (Tanjungpinang: CV. Azka Pustaka, 2022).

[5] Mar'atul Khumairok, "Regulasi Hukum Perbankan Dalam Menghadapi Tren Inovasi Fintech Dan Keberhasilan Industri Perbankan Di Era Society 5.0," *Jurnal Multidisiplin Indonesia* 2, no. 7 (July 2023): 1719–31, https://doi.org/10.58344/jmi.v2i7.335.

[6] Farah Qalbia and M. Reza Saputra, "Peran Etika Dalam Menjaga Integritas Dan Kepercayaan Publik Terhadap Industri Perbankan Di Indonesia," *CEMERLANG : Jurnal Manajemen Dan Ekonomi Bisnis* 3, no. 1 (2023): 277–86, https://doi.org/10.55606/cemerlang.v2i1.3298.

[7] Kadek Melda Luxiana, "Berkas Lengkap, Kasus Kacab Maybank Penilap Duit Winda Earl Segera Disidang," *Detiknews*, January 19, 2021, https://news.detik.com/berita/d-5339773/berkas-lengkap-kasus-kacab-maybank-penilap-duit-winda-earl-segera-disidang.

[8] Andita Rahma, "Ini Modus Kepala Cabang Maybank Di Kasus Bobolnya Tabungan Atlet E-Sport," *Tempo*, November 6, 2020, https://www.tempo.co/hukum/ini-modus-kepala-cabang-maybank-di-kasus-bobolnya-tabungan-atlet-e-sport--567106#goog_rewarded.

another in her mother's name. It was later revealed that the time deposit account offered by Albert was never actually created officially at Maybank Indonesia. Albert falsified all account opening documents and committed falsification of customer data. The funds deposited by the victims were not placed in official accounts, but instead diverted to the accounts of Albert's associates, to then be rotated in private investment activities. This scheme lasted for some time without the victims knowing, because the victims fully entrusted the management of the accounts to Albert. The victims only realized the irregularities after checking the balances and discovering that the account in her name had only about IDR 600,000 remaining, while the account in her mother's name had only about IDR 16 million remaining.[9]

Based on the report of the victims, registered under number LP/B/0239/V/2020/Bareskrim dated May 8, 2020, the Indonesian National Police Criminal Investigation Agency (Bareskrim Polri) designated Albert as a suspect. The investigation revealed that all transactions conducted did not comply with banking procedures and were carried out outside the knowledge and official approval of Maybank Indonesia. Not long after the public was still following the development of the case of missing customer funds in the name of Winda Lunardi, the banking sector was once again shaken by a similar report involving a Maybank Indonesia customer named Kent Lisandi. Similar to the case of Winda Lunardi, in the case of Kent Lisandi it also involved bank officials who contributed to the customer's losses.

In 2024, Kent Lisandi reported the loss of funds amounting to IDR 30 billion, which he had initially entrusted to Maybank Indonesia through a transaction facilitated by the Head of Branch of Maybank Indonesia, Cilegon Branch Office, with the initials Aris Setiawan.[10] This case began when Aris Setiawan invited Kent Lisandi to be involved in a form of business cooperation that was claimed to be safe and profitable. In the process, Aris Setiawan introduced Kent Lisandi to a third party with the initials Rohmat Setiawan. Kent Lisandi was then asked to transfer funds to a Maybank Indonesia account under the name of Rohmat, with a guarantee in the form of a written statement printed on the official Maybank Indonesia letterhead, signed, and stamped by Aris Setiawan as a bank official. Such guarantee became the basis of Kent Lisandi's trust to transfer funds in large amounts. However, it was later revealed that the funds previously transferred were not used in accordance with the promised purpose. Most of the funds were in fact diverted to the account of Rohmat Setiawan's wife, which was also held at Maybank Indonesia. After the transaction was completed, Rohmat disappeared and could no longer be contacted. Tragically, on March 10, 2025, in the midst of the ongoing legal process and Kent Lisandi's attempts to obtain compensation from Maybank Indonesia, he passed away at the age of 35. The death of Kent Lisandi was alleged to be the

[9] Syahrizal Sidik, "Winda 'Earl' Soal Kasus Maybank: Kebenaran Akan Terungkap!," *CNBC Indonesia*, November 18, 2020, https://www.cnbcindonesia.com/market/20201118133128-17-202736/winda-earl-soal-kasus-maybank-kebenaran-akan-terungkap.
[10] Natasa Kumalasah Putri, "Relevansi Antara Teori Strict Liability Dan Kejahatan Perbankan Dalam Peralihan Dana Nasabah: Kelalaian Dan Kesengajaan," *Liputan6*, March 13, 2025, https://www.liputan6.com/regional/read/5959783/profil-kent-lisandi-korban-penipuan-rp-30-miliar-meninggal-dunia?page=2.

result of severe psychological pressure endured during the case, exacerbated by a heart attack he suffered.[11]

From the description of the two banking crime cases related to the misappropriation of customer funds, namely the case of Winda Lunardi and the case of Kent Lisandi, it can be observed that both involved the same banking entity, namely Maybank Indonesia, although they occurred in different branch offices. In both cases, the position of Branch Head, which should serve as the front line in maintaining customer trust, was instead abused to commit actions harmful to customers and detrimental to the integrity of the banking system. Both cases revealed that branch officials exploited their authority, raising serious questions about institutional liability under the prudential banking framework. These cases reveal a fundamental gap between normative banking obligations and their enforcement, particularly in attributing liability to the institution rather than to individual rogue employees. This gap challenges the adequacy of Indonesia's existing legal framework, which still prioritizes fault-based liability over institutional accountability.

Juridically, the process of criminal prosecution may proceed in order to impose punishment on individuals or perpetrators proven to have committed criminal acts. However, the legal liability of the bank as an institution cannot automatically be excluded simply by invoking the argument that such acts constituted personal conduct of the employees (rogue employee). This is in line with the principle contained in Law No.10/1998 in conjunction with Law No.7/1992, which obligates banks to guarantee the security of customer funds and to apply prudential banking principles. In relation to this matter, Law No.4/2023 specifically regulates the security of customer funds, consumer data confidentiality, and prudential principles in banking.

In POJK No.22/2023 and POJK No.76/POJK.07/2016 it is emphasized the protection of the rights and interests of Consumers and/or the Public by ensuring fair, transparent, and accountable services from Financial Services Business Actors (PUJK). POJK No.22/2023 contains seven principles of consumer protection, including the obligation of financial service providers to safeguard data security, provide clear information, conduct fair business practices, provide complaint and dispute resolution mechanisms, as well as being responsible for losses arising from negligence or errors of their party. Meanwhile, POJK No.76/2016 emphasizes the improvement of financial literacy and inclusion in order to strengthen public understanding of financial products and services, while at the same time expanding access to underserved groups. Both of these regulations also regulate supervisory mechanisms, reporting obligations by financial institutions, as well as administrative sanctions in the event of violations.

The application of the theory of strict liability becomes relevant in this context. This theory places responsibility on certain parties without regard to whether the person in carrying out his act had an element of fault or not, in this case the person concerned can be

[11] Laila Zakiya, *Apa Peran Rohmat Setiawan Dan Aris Setyawan Di Kasus Meninggalnya Kent Lisandi? Sang Pengusaha Diduga Kena Tipu Bank "M" Hingga Rp30 Miliar!*, (solobalapan.com), March 15, 2025, https://solobalapan.jawapos.com/berita-utama/2305767154/apa-peran-rohmat-setiawan-dan-aris-setyawan-di-kasus-meninggalnya-kent-lisandi-sang-pengusaha-diduga-kena-tipu-bank-m-hingga-rp30-miliar#google_vignette.

held legally liable, even though in carrying out his act he did not perform it intentionally and did not contain elements of negligence, lack of prudence, or impropriety.[12] In the sphere of civil law, this principle can be associated with the provisions of Article 1365 of the Indonesian Civil Code which regulates liability without fault. Meanwhile, in the sphere of criminal law, the application of strict liability has been accommodated in certain criminal acts which emphasize the consequence, even without proving subjective malicious intent, especially in the context of protecting strategic public interests such as the banking system, including its relation to corporate criminal liability.

Even in the case of Kent Lisandi, until this moment Maybank Indonesia has not issued any official statement regarding the losses suffered by the deceased, either in the form of material compensation or restitution for immaterial losses. This condition reinforces the urgency of academic inquiry regarding whether the principle of strict liability may be applied against Maybank Indonesia for customer losses in the case of fund misappropriation, whether reviewed from the perspective of civil law or criminal law. Concerning legal protection of customers, the essence of legal protection of banking customers is the protection of the customers' interests—in this case including the money, assets, and other property of customers held in the bank.[13] In this regard, customer trust becomes the main priority, and therefore it is proper that legal protection be provided for it.[14]

The research by Aulia et al. (2024) entitled "The Role of Bank Indonesia in Banking Fraud Cases" aims to analyze the role of Bank Indonesia in handling banking fraud cases.[15] The results of the study show that Bank Indonesia, as the central bank, seeks to mitigate fraud through the issuance of regulations, supervision of banks in Indonesia, as well as encouraging the application of prudential banking principles and Good Corporate Governance. Although it has a similarity in the object of case study, namely the case of Winda Lunardi at Maybank Indonesia, the study has not yet examined the application of the theory of strict liability in banking crimes. Whereas this theory is relevant to assess the liability of banks for customer losses, regardless of whether or not there is an element of fault on the part of the individual perpetrator within the bank.

The research by Eka et al. (2024) entitled "Legal Protection as an Effort to Increase Public Trust in Banking: Case Study of Banking Crimes in Indonesia" aims to explore public perceptions of customer legal protection and to identify mechanisms for resolving criminal acts related to the misappropriation of customer funds.[16] The findings show that legal protection includes compensation, indemnity, and restitution of losses based on the Consumer

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[12] Munir Fuady, *Perbuatan Melawan Hukum (Pendekatan Kontemporer)*, IV, I (Bandung: PT. Citra Aditya Bakti, 2013).
[13] C Zolecha, *Perlindungan Hukum Bagi Kreditur Atas Jaminan Kebendaan Yang Terindikasi Bukan Milik Debitur* (Bandung: PT. Citra Aditya Bakti, 2017).
[14] Hermansyah, *Hukum Perbankan Nasional Indonesia*, III (Jakarta: Prenada Media, 2020).
[15] Aulia Dwi Damayanti et al., "Peran Bank Indonesia Terhadap Kasus Fraud Dalam Perbankan," *Journal De Facto* 10, no. 2 (2024): 228–47, https://doi.org/10.36277/jurnaldefacto.v10i2.167.
[16] Eka Ari Endrawati, Diah Turis Kaemirawati, and Susetya Herawati, "Perlindungan Hukum Sebagai Upaya Meningkatkan Kepercayaan Masyarakat Terhadap Perbankan: Studi Kasus Kejahatan Perbankan Di Indonesia," *Binamulia Hukum* 13, no. 2 (December 2024): 589–602, https://doi.org/10.37893/jbh.v13i2.945.

Protection Act and related regulations, with an emphasis on the application of prudential principles by banks. This research has a similar focus, namely on banking crimes and legal protection for customers, but has not yet discussed the application of the theory of strict liability. Whereas this theory is important to assess the absolute responsibility of banks for customer losses, regardless of whether or not there is an element of fault on the part of the individual perpetrator. Similar research by Novi et al. (2022) entitled "The Fraud of Banking Review in Legal Perspective" emphasizes that fraud is an act of deception to obtain personal gain that can cause significant losses in the banking sector, including reputational risk that negatively impacts the image of banks.[17] This study found that prevention strategies require an effective internal control system as well as active involvement of management in mobilizing resources to suppress the occurrence of fraud cases. The similarity of this research lies in the discussion of banking law and the importance of the role of banks in the implementation of internal control. However, this study has not yet examined its relevance to the concept of strict liability.

Taken together, these previous studies demonstrate a growing concern for customer protection and fraud prevention in Indonesian banking, yet none have specifically analyzed the application of *strict liability* as a theoretical framework to assess banks' absolute accountability in cases of banking crimes. Thus, the purpose of this research is to examine the application of the principle of strict liability in banking crimes involving the misappropriation of customer funds. This is also in line with efforts to strengthen legal protection for customers and maintain the stability of the national banking system so that in the future there will be real accountability when cases of misappropriation of customer funds occur, as has happened in one of the major banks in Indonesia.

2. Methods

This legal research employs a normative research method which focuses on the study of doctrines, principles, norms, legal maxims, and relevant legal policies. The analytical technique applied is qualitative analysis utilizing legal materials consisting of: (1) primary legal materials, inter alia the Banking Law and the Regulations of the Financial Services Authority; (2) secondary legal materials, such as books and both national and international scholarly journals. The data used is entirely secondary data obtained through a literature study.

3. Results and Discussion

3.1. The Application of Strict Liability Theory in Banking Crimes Involving the Misappropriation of Customer Funds

Strict liability, also known as liability without fault,[18] is a form of absolute liability that plays animportant role in the development of modern law. This theory emerged to provide maximum protection to victims, particularly in activities with a high degree of risk

[17] Novi Angga Safitri et al., "The Fraud of Banking Review in Legal Perspective," *International Journal of Law Reconstruction* 6, no. 1 (April 2022): 41, https://doi.org/10.26532/ijlr.v6i1.20424.
[18] Kristian, "Penerapan Sistem Pertanggungjawaban Pidana Bagi Lembaga Perbankan Ditinjau Dari Sistem Pertanggungjawaban Pidana Korporasi," *Syiar Hukum Jurnal Ilmu Hukum* 17, no. 2 (2019).

(ultrahazardous or abnormally dangerous).[19] Within the framework of strict liability, perpetrators are obliged to bear losses even though preventive measures have been taken or even when there is no intent or fault. Thus, its main focus is not on the existence or absence of fault, but rather on the existence of a causal relationship between the risky activity and the resulting harm.[20]

Conflicts or disputes in a complex society may arise in various forms, for which law serves to regulate human behavior through different mechanisms. First, there are certain acts or behaviors considered unacceptable, so that the law prohibits them and categorizes them as criminal offenses, accompanied by threats of punishment.[21] Second, there are acts causing harm to other members of society, where civil law grants the aggrieved party the right to demand compensation or other legal remedies.[22] Acts causing harm to others due to fault are known as civil wrongs, which give rise to civil liability. The law governing such wrongs and civil liability is referred to as the law of tort.[23]

The principle of liability is generally based on the doctrine of fault liability as reflected in the provision of onrechtmatige daad in Article 1365 of the Indonesian Civil Code, which states: "Every unlawful act which causes harm to another obliges the person who by his fault has caused such harm to compensate for it." From the wording of this article, the elements of an unlawful act include:[24] (1) the existence of an act; (2) such act being unlawful; (3) the presence of fault; (4) the incurrence of harm; and (5) a causal connection between the act and the harm. These elements are cumulative, so failure to prove one of them may exempt the perpetrator from liability.[25] In this unlawful act there is no explicit distinction between intentional and negligent conduct.[26] In addition to the doctrine of fault liability, there is also the theory of strict liability, which is a form of civil liability without the need to prove fault. In strict liability, the fundamental difference lies in the third element, namely fault *(schuld)*, which is not required. This means that a person may be held liable even if all reasonable preventive measures have been taken.

In the banking context, banks are legal entities operating through their employees, including those responsible for managing debtor information systems. Pursuant to Article 1367 paragraph (1) of the Indonesian Civil Code, a person is not only liable for harm caused

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[19] Pasa Deda Siregar, "Konsep Dan Praktik Strict Liability Di Indonesia," *Hukumonline.Com*, August 26, 2024, https://www.hukumonline.com/klinik/a/konsep-dan-praktik-strict-liability-di-indonesia-lt4d089548aabe8/#_ftnref3.

[20] Brahmantiyo Rasyidi, "Asas Pertanggungjawaban Mutlak (Strict Liability) Dalam Penuntutan Tindak Pidana Lingkungan Oleh Korporasi" (Sekolah Tinggi Ilmu Hukum IBLAM., 2024), http://digilib.iblam.ac.id/id/eprint/1271/.

[21] S.B. Marsh and J. Soulsby, *Hukum Perjanjian : Business Law*, Cet. 3., trans. Abdulkadir Muhammad (Bandung: P.T. Alumni, 2006).

[22] S.B. Marsh and J. Soulsby.

[23] S.B. Marsh and J. Soulsby.

[24] Yudha Hadian Nur and Dwi Wahyuniarti Prabowo, "Penerapan Prinsip Tanggung Jawab Mutlak (Strict Liability) Dalam Rangka Perlindungan Konsumen," *Buletin Ilmiah Litbang Perdagangan* 5, no. 2 (2011): 177–95.

[25] Salim HS, *Pengantar Hukum Perdata Tertulis* (Jakarta: Sinar Grafika, 2008).

[26] Fuji Aotari Wahyu Anggreini, "Perbandingan Antara Unsur Kesengajaan Dengan Unsur Kelalaian Dalam Perbuatan Melawan Hukum Menurut Hukum Indonesia Dan Hukum Inggris" (Universitas Indonesia, 2015), https://lib.ui.ac.id/detail?id=20412786&lokasi=lokal.

by his own acts but also for harm caused by those under his responsibility as well as by objects under his supervision. This principle is known as vicarious liability. One form of vicarious liability is the doctrine of superior responsibility (Respondeat Superior or superior risk-bearing theory).[27]

Indonesia, as a civil law country, adheres to the principle of fault-based liability (liability based on fault). This means that legal responsibility generally arises only when fault—whether intentional or negligent—can be proven. Consequently, the full application of strict liability within this system requires an explicit statutory basis. In contrast, common law systems allow broader judicial interpretation and judge-made precedents to evolve the doctrine of absolute liability without relying solely on legislative enactments.

This difference creates a clear regulatory gap in Indonesia. Although the Civil Code (KUHPerdata) recognizes derivative liability through Article 1367, the Banking Law (Law No.7 of 1992 in conjunction with Law No. 10 of 1998) does not contain explicit provisions establishing absolute corporate liability for internal misconduct by employees. This absence leaves victims of banking crimes—such as embezzlement or fund misappropriation- without adequate legal recourse under statutory law.

Recognition of this vicarious liability shows that Indonesian civil law is familiar with a form of liability approaching strict liability, albeit in a limited scope. Article 1367 of the Civil Code explicitly stipulates that the employer (in this case the bank) may be held liable for unlawful acts committed by subordinates (employees) so long as the subordinates acted in the course of performing their duties. However, for employer liability to apply, several conditions must be fulfilled, among others: [28]

1. The existence of a relationship of subordination between the bank and the employee, confirming that the employee acted under the direction and supervision of the bank.
2. The unlawful act was carried out within the scope of work assigned by the bank to the employee.
3. The existence of authority from the superior or bank management to regulate or oversee the performance of such duties.
4. Increased risk of harm arising from the task given by the bank, thereby clarifying the causal link between the assignment and the harm.
5. Lack of prudence by the employer in supervising and appointing employees who committed the unlawful act.

Although Article 1367 of the Civil Code seemingly approaches the concept of strict liability, in practice, the element of negligence on the part of the employer or bank management often continues to be a judicial consideration in deciding cases. In other words, the application of vicarious liability in Indonesia does not fully reflect strict liability in its pure sense, in which liability arises automatically without the need to prove fault. This indicates that the Indonesian civil law system tends to be cautious in expanding the scope of absolute liability for corporations, including in the banking sector, which carries high operational risks.

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[27] Namira Albabana, "Pertanggungjawaban Hukum Bank Atas Kelalaian Pegawainya Terhadap Debitur Yang Terkena Bi Checking," *Esensi Hukum* 2, no. 1 (August 2020): 49–63, https://doi.org/10.35586/esensihukum.v2i1.24.

[28] Namira Albabana, "Pertanggungjawaban Hukum Bank Atas Kelalaian Pegawainya Terhadap Debitur Yang Terkena Bi Checking(Studi Putusan No.15/Pdt.G/2015/Pn WNO)," *Jurnal Esensi Hukum* 2, no. No 1 (2020): 49–63, https://doi.org/10.35586/esensihukum.v2i1.24.

This judicial tendency reveals a fundamental gap between normative banking obligations and their practical enforcement, particularly in attributing liability to financial institutions rather than to individual employees. The focus of adjudication remains largely on personal fault, while institutional accountability under a strict liability standard has not been fully realized. As a result, Indonesia's existing legal framework still prioritizes fault-based liability over organizational responsibility, leaving systemic misconduct insufficiently addressed.

Nevertheless, Article 1367 of the Civil Code can be viewed as a form of *quasi-strict liability*—a halfway point between fault-based and absolute liability. It provides a conceptual foundation for judicial reinterpretation toward a more protective approach, especially in light of financial consumer protection principles. The judiciary could evolve this interpretation to better align with the modern risk structure of the banking industry, where customers are inherently vulnerable to systemic and operational failures beyond their control.

The loss of customer funds in banking cannot be treated as ordinary civil damage. Banking constitutes an *ultrahazardous* activity because it involves the management of third-party funds, the operation of highly complex and opaque internal processes beyond consumer oversight, and reliance on multilayered electronic systems that are inherently vulnerable to insider misuse.[29] These structural features place customers in a position of systemic vulnerability, as they bear risks they neither create nor control.

Under risk-distribution theory, liability should rest with the party best able to control and internalize such risks. Banks possess superior supervisory capacity, derive direct economic benefit from fund management activities, and are institutionally equipped to absorb losses through insurance, capital reserves, and risk-management mechanisms. It is therefore normatively justified and economically efficient to impose liability on banks for losses arising from internal misconduct without requiring proof of fault, consistent with the rationale of strict liability that allocates risk to its creator rather than to its victims.[30]

Comparatively, other jurisdictions have advanced further in institutionalizing strict liability within the financial sector. In the United Kingdom, the Financial Services and Markets Act 2000 recognizes regulatory offences that do not require proof of intent.[31] In the United States, both the Federal Deposit Insurance Act and the Bank Secrecy Act impose corporate liability for internal violations without demanding proof of individual fault.[32] Meanwhile, in Singapore, the Banking Actstrictly obliges banks to ensure compliance in the management of

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[29] Jeffrey Agustono Ariska, Detania Sukarja, and Robert Robert, "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," *SIBATIK JOURNAL: Jurnal Ilmiah Bidang Sosial, Ekonomi, Budaya, Teknologi, Dan Pendidikan* 4, no. 6 (2025): 735–54.

[30] Iza Sadzili and Lastuti Abubakar, "Doktrin Kelalaian Kontribusi (Contributory Negligence) Terhadap Tanggung Jawab Bank Atas Kerugian Nasabah Akibat Kesalahan Atau Kelalaian Pegawai Bank," *Jurnal Ilmiah Penegakan Hukum* 12, no. 1 (2025): 1–11.

[31] Craig Hogg, Neil Swift, and Katie Jones, "Failure to Prevent Market Abuse: A Potential New Corporate Criminal Offence?," *Business Law Review* 41, no. Issue 4 (August 2020): 121–25, https://doi.org/10.54648/BULA2020107.

[32] Thomas Halloran, "The Role of Intent in the Rise of Individual Accountability in AML-BSA Enforcement Actions," *25 Fordham J. Corp. & Fin. L. 235*, 2020.

customers' funds, reflecting a de facto application of strict liability.[33] These comparative models highlight the gap in Indonesia's framework, where the absence of explicit statutory strict liability leaves victims dependent on fault-based adjudication. Additionally, it underscore the same normative gap in Indonesia where banks are legally bound to uphold prudential obligations but are rarely held institutionally accountable when internal misconduct occurs.

Concrete examples, such as the Citibank fraud case (2011)[34] involving internal fund embezzlement by a bank relationship manager and the Bank Century case[35], illustrate how judicial practice often emphasizes individual culpability rather than institutional accountability. In both cases, the banks' systemic failures in supervision were evident, yet the law did not impose direct corporate responsibility under a strict liability standard. These cases, therefore mirror the structural weakness noted earlier: a disjunction between regulatory norms designed to ensure prudential conduct and the absence of substantive enforcement mechanisms capable of translating those norms into institutional liability.

In the context of the banking industry, the application of strict liability should not be confined to criminal punishment of corporations but extended to victim compensation and risk redistribution mechanisms. The Financial Services Authority (OJK) and the Deposit Insurance Corporation (LPS) could operationalize this approach through enhanced supervisory oversight and mandatory restitution frameworks for victims.

Ultimately, the implementation of strict liability in banking-related crimes is a systemic necessity to achieve victim-oriented justice. The evolving financial landscape requires a paradigm shift in Indonesian banking law toward risk-based accountability, in which banks, as high-risk institutions, must bear the legal consequences of their employees' acts without requiring proof of fault. This approach resonates with the principles of prudential banking and corporate social responsibility (CSR), representing an embodiment of distributive justice within the financial sector.

A civil wrong is deemed to occur where a person commits an unlawful act in the course of performing his work. Generally, employer liability arises when such fault occurs during the employee's performance of assigned duties, even if carried out negligently, fraudulently, or in contravention of regulations. Employers may be held liable in several circumstances, including:[36]

1. The unlawful act was committed pursuant to the employer's authority, whether express or implied. Implied authority may arise where an employee acts in an emergency to protect the employer's property.
2. The civil wrong constitutes an unlawful manner of performing an authorized act. The fact that the employee acted dishonestly or negligently does not automatically sever the employment relationship. The employer cannot avoid liability merely by expressly

[33] Christian Hofmann, "Bank Regulation in Singapore," *Journal of Financial Regulation*, October 7, 2015, fjv004, https://doi.org/10.1093/jfr/fjv004.
[34] Ariya Mega Aradhea and Aryo Fadlian, "Analisis Kasus Pembobolan Dana Nasabah Citibank Dan Penerapan Strategi Anti Fraud Dari Otoritas Jasa Keuangan," *Jurnal Ilmiah WahanaPendidikan* 10, no. 21 (2024): 107–15, https://doi.org/10.5281/zenodo.14291748.
[35] Pujiyono and Sugeng Riyanta, "Corporate Criminal Liability in the Collapse of Bank Century in Indonesia," *Humanities and Social Sciences Letters* 8, no. 1 (n.d.): 1–11.
[36] S.B. Marsh and J. Soulsby, *Hukum Perjanjian : Business Law*.

prohibiting unlawful conduct; liability to a third party remains, even though the employee's act contravened instructions. However, where such prohibition limits the scope of the employee's authority, the employer may be effectively shielded.

3. The unlawful act bears a direct connection with the performance of work.
4. The fault was committed intentionally in the course of duties assigned. Even though the employee acted fraudulently or for personal gain, the employer may still be held liable if the act occurred while the employee was supervising or handling assets subsequently misappropriated in the course of performing his duties.

In criminal law, fault may be interpreted broadly or narrowly.[37] Fault in a broad sense includes intent, negligence, or carelessness and may give rise to liability. Fault in a narrow sense means negligence or carelessness. In criminal law, only guilty persons may be punished. A person is deemed guilty and thus punishable if he commits a criminal act intentionally or negligently, is capable of being held responsible, and no grounds of excuse exist.

One principal obstacle to the application of strict liability in Indonesia's civil law system lies in the issue of burden of proof. Under Article 1865 of the Civil Code, the burden of proof rests with the plaintiff.[38] In the context of unlawful acts, victims of banking crimes, for instance, often face difficulty proving elements of fault and causation. Referring to Indonesian banking law, which until now has not adopted the concept of strict liability[39], this condition hampers legal protection for victims, particularly in technical and complex sectors.

The theory of strict liability serves as an exception to the principle of fault (*mens rea* principle), because perpetrators may already be punished once they have committed the act as defined by statute regardless of their mental state at the time.[40] The application of strict liability does not focus on proving subjective fault, but on the fulfillment of the objective elements of the crime as regulated by legislation. The development of this concept expands the scope of criminal subjects and the principle of fault, thus allowing liability to be imposed on someone engaged in an activity with a high degree of risk (extra hazardous activity, ultrahazardous, or abnormally dangerous activity). In this context, the perpetrator remains liable for resulting harm even if he acted with utmost care and without intent. Normatively, this concept benefits victims because it facilitates the claim process, especially in the modern technological era where society often becomes victims, including in banking crimes frequently unaccompanied by compensation.

Recognition of this absolute liability is found not only in the civil sphere through Article 1367 of the Civil Code but is also gradually being adopted in criminal law through the concept of strict liability. Violations of specific obligations by corporations are known as companies

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[37] Olga A. Pangkerego and Berlian Manopo, "Karena Salahnya Menyebabkan Orang Luka Berat Sebagai Tindak Pidana Berdasarkan Pasal 360 Kuhp," *Lex Privatum* 9, no. 4 (2021), https://ejournal.unsrat.ac.id/v2/index.php/lexprivatum/article/viewFile/33363/31558.

[38] Ade Risha Riswanti, Nyoman A. Martana, and I Nyoman Satyayudha Dananjaya, "Tanggung Jawab Mutlak (Strict Liability) Dalam Penegakan Hukum Perdata Lingkungan Di Indonesia," *Kertha Wicara : Journal Ilmu Hukum* 1, no. 3 (2013), https://ojs.unud.ac.id/index.php/kerthawicara/article/view/6100.

[39] Liani Sari, "Prinsip Strict Liability Terhadap Kerugian Yang Dialami Nasabah Akibat Kealpaan Perbankan," *Jurnal Penelitian Pendidikan Indonesia* 8, no. 4 (2022): 1213–20, https://doi.org/10.29210/020222286.

[40] Saskia Eryarifa, "Asas Strict Liability Dalam Pertanggungjawaban Tindak Pidana Korporasi Pada Tindak Pidana Lingkungan Hidup," *Jurnal MAHUPAS: Mahasiswa Hukum Unpas* 1, no. 2 (June 2022): 103–22.

offences, situational offences, or strict liability[41], for example where statutes criminalize operating a business without a license, violating conditions of a license, or operating an uninsured vehicle on public roads. However, in practice under Indonesian criminal law, application of this concept remains rare, including in the banking sector. Fault is still more often attributed to individuals negligent in bank operations rather than to corporations as legal entities. Yet, the doctrine of corporate criminal liability allows legal entities, including banks, to be held criminally liable for negligence causing customer loss.

In line with Sutan Remy Sjahdeini's view, the system of corporate criminal liability ideally establishes that "both the management and the corporation are perpetrators of crimes and both must bear criminal responsibility."[42] This notion is based on the reality that corporations are formed, operated, and controlled by humans, and thus functionally capable of committing fault or negligence as legal subjects similar to natural persons. The application of strict liability in the sphere of banking crimes would ease victims' access to compensation without requiring proof of fault. Therefore, victims would not need complex procedures to prove whether the bank or specific employees acted intentionally or negligently.

Crimes committed by bank directors or employees are almost always dominated by layered approval processes from superiors, whether such approval is given negligently or intentionally. Such approval processes are required by lower-ranking employees due to supervisory systems established by each bank. This is reflected in the existence of each bank's Standard Operating Procedures (SOP). If criminal liability is imposed solely upon management, this becomes unfair to victims, since the acts of management are in essence conducted for and on behalf of the corporation.[43] This means that the benefit or impact of such conduct is actually enjoyed by the corporation, not merely by the individuals as managers or bank employees.

3.2. Banking Crimes of Customer Fund Misappropriation Based on the Strict Liability Theory as a Form of Liability

The cases of Winda Earl and Kent Lisandi have emerged as a real depiction of the weakness of legal protection for customer funds in the banking sector. Both lost billions of rupiah deposited in Maybank Indonesia due to the alleged illegal misappropriation of funds by former Branch Heads. The criminal law process indeed proceeded against the individual perpetrators, yet MaybankIndonesia as a legal entity took a defensive position by disclaiming responsibility, as if the crimewas purely the act of a rogue employee. This creates a serious problem, because the fulfillment of the customer's rights to compensation shifts to the realm of civil law, while the criminal processagainst individual perpetrators does not automatically restore the victims' losses.

These cases demonstrate that the weakness of customer legal protection in Indonesia is not merely procedural but structural reflecting a gap between the prudential principle as an ethical guideline and as a binding legal norm. The prudential principle, although normatively

[41] Tri Setiady and Taufik Hidayat, "STRICT LIABILITY KORPORASI TERHADAP KEJAHATAN BISNIS," *Yustitia* 10, no. 1 (April 2024): 1–15, https://doi.org/10.31943/yustitia.v10i1.237.
[42] Sutan Remy Sjahdeini, *Pertanggungjawaban Pidana Korporasi* (Jakarta: Grafiti Pers, 2006).
[43] H. Dwidja Priyatno and Kristian, *Sistem Pertanggungjawaban Pidana Korporasi* (Jakarta: Prenadamedia Group, 2020).

imperative under Article 2 and Article 29(2) of Law No.10 of 1998, is still treated as a matter of managerial discretion rather than as a peremptory (jus cogens-like) legal duty within the national banking system. When a bank fails to apply this principle and subsequently denies liability, such conduct must be construed as an institutional omission, a form of structural negligence that gives rise to corporate culpability. Therefore, there is an urgent need to reinterpret the prudential principle as an imperative legal norm, the violation of which directly triggers strict corporate liability.

The occurrence of both cases involving Maybank Indonesia requires special attention becausepursuant to Article 2 and Article 29 paragraph 2 of Law No.10/1998 in conjunction with Law No.7/1992, it is emphasized that banks in carrying out their functions and business activities mustapply the prudential principle to protect public funds entrusted to them. The prudential principle contained in these articles represents a preventive legal obligation, intended to avoid losses through careful risk management and supervision. In contrast, the strict liability principle serves as a reparative legal obligation, aimed at restoring the position of customers who suffer losses regardless of proof of fault. Accordingly, the failure of a bank to uphold the prudential principle should not be treated merely as an administrative lapse but as a legal ground for imposing absolute (strict) liability. Thus, prudential banking duties operate in a dual dimension—*ex ante* as a preventive standard and ex post as a source of institutional accountability. Their violation should be equated with an omission tantamount to legal negligence, forming the doctrinal basis for corporate culpability under economic criminal law.

In the context of limited liability companies, there is the concept of corporate responsibility[44], namely that all actions, whether legally beneficial or detrimental, are borne by the company itself as a legal subject. The company's directors do not act for themselves personally, but as the organs of the company representing and carrying out the will of the legal entity. Therefore, responsibility for their actions in principle is attached to the company, not to the individual managers. Furthermore, in the corporate law system, the position of managers is professional and not automatically linked to share ownership. This means that a manager may carry out managerial duties without being a shareholder, so that the focus of responsibility remains in the interests and continuity of the company as a legal entity separate from its organs. However, the doctrine of corporate personality must not serve as a shield to evade institutional liability. When corporate structures are used to conceal or excuse wrongful acts, the principle of piercing the corporate veilbecomes relevant, allowing courts to look beyond the formal separation between the corporation and its officers. As Celia Wells (2018) notes in Corporations and Criminal Responsibility, corporate liability reflects recognition that organizational fault can be as grave as individual fault.[45]

This position aligns with Sutan Remy Sjahdeini's doctrinal view that corporate criminal liability should attach to both the management and the corporation, since both functionally

[44] Rudy Prasetya, *Kedudukan Mandiri Perseroan Terbatas* (Bandung: PT. Citra Aditya Bhakti, 1995).
[45] Celia Wells, *Corporations and Criminal Responsibility*, 2nd ed, Oxford Monographs on Criminal Law and Justice (Oxford: Oxford University Press, 2001), https://doi.org/10.1093/acprof:oso/9780198267935.001.0001.

participate in the actus reus of banking offences.[46] Muladi[47] and Barda Nawawi Arief[48] also argue that the concept of corporate mens rea can be satisfied through the aggregation theory, whereby the collective knowledge and intent of various corporate actors are imputed to the legal entity. Within this framework, strict liability functions as a form of functional substitution for mens rea replacing subjective guilt with objective institutional responsibility arising from ultrahazardous business activities such as banking. The Supreme Court Regulation (PERMA) No. 13 of 2016 and the "benefit test" doctrine reinforce this approach: once the corporation derives benefit, directly or indirectly, from an employee's unlawful act, criminal liability automatically attaches to the corporation even without proof of individual intent.

Article 239 of Law No.4/2023 emphasizes that financial sector actors are obliged to protect the confidentiality and security of consumer data, as well as to apply basic processing principles in accordance with the Personal Data Protection Act. Article 240 of Law No.4/2023 affirms that when consumer data is exchanged with other parties, the processing must still comply with the provisions of personal data protection and OJK regulations. In summary, Article 285 of Law No.4/2023 emphasizes that if there is a violation of consumer protection provisions, administrative as well as criminal sanctions may be imposed—although the details of the types of sanctions are left to be further regulated by OJK or Bank Indonesia. Although Law No.4/2023 does not specifically mention the prudential principle, based on POJK No.17/2023 as an implementation of Law No.4/2023, banks are expressly required to apply principles of good governance, which include risk management, compliance functions, internal audit, anti-fraud strategies, and regulations concerning the provision of funds to related parties or large exposures with a prudential principle and portfolio diversification approach. This framework supports the view that the prudential principle must evolve from an ethical norm into an imperative legal duty, forming the normative bridge between civil and criminal accountability. In this sense, strict liability serves as the legal hinge connecting the preventive ethos of prudential supervision with the reparative function of customer protection.

Civilly, the legal relationship between customer and bank arises from deposit agreements or other financial products which create a contractual obligation for the bank to safeguard funds (Article 1313 in conjunction with Article 1338 of the Civil Code). In addition, as banking activities develop, in certain transactions the legal relationship between bank and customer also develops in other forms, namely: a fiduciary relation, a confidential relationship, and a prudential banking relationship.[49] In other words, the bank must carefully and diligently safeguard customer funds and the bank does not possess absolute freedom to use such money. This practice is essential to safeguard the existence of the bank itself. If there is an unlawful fund transfer, the bank may be held liable under Article 1365 of the Civil Code concerning unlawful acts. According to Moegni Djojodirdjo[50], the responsibility of the bank as employer

[46] Sutan Remy Sjahdeini, *Pertanggungjawaban pidana korporasi* (Jakarta: Grafiti Pers, 2006).
[47] Muladi and Dwidja Priyatno, *Pertanggungjawaban Korporasi Dalam Hukum Pidana* (Bandung: Sekolah Tinggi Hukum, 1991).
[48] Barda Nawawi Arief, *Kapita Selekta Hukum Pidana* (Bandung: PT. Citra Aditya Bakti, 2003).
[49] Munir Fuady, *Hukum Bisnis Dalam Teori Dan Praktek* (Bandung: PT. Citra Aditya Bakti, 1999).
[50] Moegni Djojodirdjo, *Perbuatan Melawan Hukum : Tanggung Gugat (Aansprakelijkheid) Untuk Kerugian, Yang Disebabkan Karena Perbuatan Melawan Hukum*, Cet. 1 (Jakarta: Pradnya Paramita, 1982).

under Article 1367 paragraph (3) of the Civil Code may arise from: the existence of an employment agreement between employer and subordinate, or, in the absence of a formal working relationship, the existence of a delegated task whereby the employer directly supervises such work. This position is consistent with the provision in Article 1601a of the Civil Code which states that, "An employment agreement is an agreement whereby one party, the worker, binds himself to perform work under the orders of the other party, the employer, for a certain period of time, in return for wages."[51] Thus, the employment relationship based on an employment contract forms the basis of the employer-subordinate relationship. However, in the context of high-risk enterprises such as banking, civil and criminal liability must not operate in isolation. Misappropriation of customer funds constitutes both a civil wrong and a criminal offence, and strict liability acts as a doctrinal bridge between compensation (civil) and deterrence (criminal). This integrated approach ensures cross-regime accountability and reflects the dual purpose of modern economic criminal law to protect victims while deterring systemic misconduct.

This protection is reinforced in Article 19 of Law No.8/1999 which requires business actors to provide compensation for consumer losses, including users of banking services.[52] The liability of the bank towards customers can be linked to the issue of legal protection from banks, because the form of the bank's liability cannot be separated from binding legislation. The form of legal protection for customers is embodied in Law No.8/1999.[53] With the implementation of this Law, the legal relationship between banks and customers has entailed consequences for banking services.[54] Therefore, banking service providers are obliged to act in good faith in the conduct of their business; to provide information clearly, honestly, and accurately regarding the condition and guarantees of services provided; to treat and serve their customers fairly, properly, and without discrimination; to ensure their business activities are based on applicable banking standards; and so on. These obligations embody the moral and legal dimensions of good faith performance and Corporate Social Responsibility (CSR), which together justify the imposition of strict liability when banks fail to uphold public trust. This means that if there is an unauthorized fund transfer, the bank cannot simply excuse it as the

[51] This position is consistent with the provisions of Indonesian positive law, particularly Article 1 point 15 in conjunction with Article 50 of Law No. 13 of 2003 concerning Manpower, as amended by Law No. 6 of 2023 on the Enactment of Government Regulation in Lieu of Law (Perppu) on Job Creation. The statute affirms that an employment relationship arises from an employment agreement between the worker/employee and the employer. Such an agreement constitutes the legal basis for the establishment of a subordinative legal relationship between the employer and the employee, which in turn forms the foundation for the employer's vicarious liability for acts committed by subordinates, as provided under Article 1367 of the Indonesian Civil Code.

[52] Selamat Widodo, "Tanggung Jawab Perdata Bank Terhadap Tindakan Fraud Karyawan Yang Merugikan Nasabah," *Kosmik Hukum* 14, no. 2 (2016), https://doi.org/10.30595/kosmikhukum.v14i2.742.

[53] Giovita Nathaza Prasedia Lambouw, Adonia Ivone Laturette, and Barzah Latupono, "Kerugian Nasabah Akibat Kesalahan Pejabat Perbankan," *TATOHI: Jurnal Ilmu Hukum* 4, no. 1 (March 2024): 25, https://doi.org/10.47268/tatohi.v4i1.2118.

[54] Gede Ngurah Ganesha Giri Putra, "Perlindungan Hukum Terhadap Kerugian Nasabah Akibat Error System (Studi Kasus Pada Bank Mandiri)," *Jurnal Analisis Hukum* 3, no. 2 (September 2020): 180–89.

fault of a third party. The bank has legal responsibility towards the customer in their capacity as consumer.

From the perspective of criminal law, Article 46 paragraph (2) of Law No.10/1998 in conjunction with Law No.7/1992 stipulates that banks may be held liable when their management or employees commit violations resulting in losses. The concept of corporate criminal liability has been accommodated in various regulations, including Law No.8/2010, which allows for the imposition of sanctions on corporations. Furthermore, Supreme Court Regulation (PERMA) No.13/2016 provides technical guidance for judges in examining criminal cases involving corporations, including banks, by recognizing that acts or omissions of managers or employees which benefit the corporation may be the basis for the imposition of criminal liability against the legal entity. Nevertheless, the practical application of corporate criminal liability remains weak due to the legal paradigm that is still anthropocentric—focusing on individual fault rather than organizational responsibility. Although PERMA No.13/2016 constitutes progress, its requirement that the act must provide "benefit to the corporation" creates a narrow evidentiary barrier in the banking context, where the benefit may be indirect or systemic. This undermines the core principle of risk allocation in strict liability. Thus, the notion of "benefit" should be reinterpreted more broadly as potential institutional gain, not merely measurable profit.

This certainly considers that banking crimes may threaten any bank customer. The dimension of banking crimes may take the form of crimes by individuals against banks, crimes by one bank against another, or crimes by banks against individuals, such that banks may become both victims and perpetrators. Meanwhile, the scope of banking crimes may occur across the full sphere of banking activities or those closely related to banking operations. The scope of perpetrators and banking crimes can be committed by individuals as well as legal entities (corporations).[55] Given that banking constitutes an ultra-hazardous sector managing public funds within a systemically significant framework, strict liability should operate as a *lex specialis*, bridging civil, criminal, and administrative regimes to ensure comprehensive institutional accountability.

From an economic law perspective,[56] strict liability in banking is grounded in the principle of risk internalization. Banking constitutes an ultra-hazardous enterprise because it systematically generates operational and systemic risks through the management of third-party funds and complex internal systems beyond consumer control. Under risk internalization theory, the entity that creates and controls such risks must bear their costs rather than externalizing them to customers. Moreover, risk–benefit analysis dictates that the party deriving the greatest economic benefit from a high-risk activity must also bear the greatest share of its risks. Banks profit from fund management and possess superior capacity to prevent and absorb losses through supervision, capital reserves, and insurance mechanisms.

[55] Yohana Yohana and Alpi Sahari, "Pertanggungjawaban Pidana Korporasi Perbankan," *Jurnal Mercatoria* 10, no. 1 (August 2017): 32, https://doi.org/10.31289/mercatoria.v10i1.619.
[56] Assaf Jacob and Roy Shapira, "An Information-Production Theory of Liability Rules," *The University of Chicago Law Review* 89 (2022): 1113.

Accordingly, imposing strict liability is morally justified,[57] economically efficient, and normatively necessary to ensure that banking risks are borne by institutions, not by vulnerable customers.

From the perspective of financial sector regulation, OJK through POJK No.2/2023 emphasizes that financial service business actors are obliged to ensure the security and confidentiality of customer data and funds, and are responsible for any losses caused by their negligence or fault. As an improvement over previous POJK regulations, this regulation now incorporates seven consumer protection principles: sufficient education; transparency and openness of information; fair treatment and responsible business conduct; protection of assets, privacy, and data; effective complaint handling and dispute resolution; enforcement of compliance; and fair competition. Although POJK No.18/POJK.03/2016 remains in force, non-compliance with internal controls, transaction monitoring, and employee supervision—key components to prevent operational risks such as fraud—may be the basis for determining corporate negligence.

Within this framework, the application of the strict liability theory becomes relevant. In civil law, strict liability allows for the imposition of liability on banks without having to prove fault, as long as there is proof of loss and a causal connection between such loss and the banking activity carried out. Considering that every person must comply with established legal norms, nonetheless in legal relations it is possible that one party does not fulfill its obligations to another party, thereby causing harm to the latter's rights.[58] In the criminal sphere, this approach is consistent with the doctrine of corporate criminal liability which allows the imposition of criminal sanctions on banks without directly proving the mental element *(mens rea)* of their management, so long as the crime occurs within the scope of banking business activities and provides benefit to the bank. The deep pocket argument also resonates with the principle of *equality of arms* and *access to justice*, ensuring a fair balance between the weaker customer and the economically powerful bank. This approach aligns with the general principle of protection of the weaker party found in the UNIDROIT Principles and Contracts for the International Sale of Goods (CISG) Convention.

The application of strict liability in the banking context has two main benefits. First, to provide maximum protection for customers as the economically weaker party in the contractual relationship. Second, to encourage banks to strengthen internal supervision mechanisms, risk management, and legal compliance to prevent potential fraud by internal actors. Thus, the liability gap often exploited by banks to avoid compensation obligations can be minimized, and the principle of the deep pocket theory, which positions banks as the party most capable of bearing losses, can be effectively upheld.[59]

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[57] Martin Nell and Andreas Richter, "The Design of Liability Rules for Highly Risky Activities—Is Strict Liability Superior When Risk Allocation Matters?," *International Review of Law and Economics* 23, no. 1 (March 2003): 31–47, https://doi.org/10.1016/S0144-8188(03)00012-7.
[58] Septian Fujiansyah, "Strict Liability Atas Perbuatan Melawan Hukum Ditinjau Dari Filsafat Hukum," *Jurnal Hukum Kaidah: Media Komunikasi Dan Informasi Hukum Dan Masyarakat* 22, no. 3 (2023): 403–20.
[59] Salim HS, *Pengantar Hukum Perdata Tertulis*.

4. Conclusions

The application of strict liability theory in banking crimes, particularly in cases of customer fund misappropriation, demonstrates that Indonesia's existing framework for customer legal protection remains inadequate. Normatively, Articles 1365 and 1367 of the Indonesian Civil Code provide a foundation for liability without direct proof of fault through the concept of vicarious liability; however, in practice, the element of negligence on the part of the bank as employer is still often required. The recent legal framework, comprising Law No. 4 of 2023, POJK No. 22 of 2023, and various prudential banking regulations, has reinforced banks' obligations to safeguard customer funds and manage operational risks. Nonetheless, the statutory scheme has yet to institutionalize strict liability as a distinct basis for corporate responsibility. The adoption of strict liability is therefore not merely a matter of policy preference but a normative necessity arising from the prudential principle (prudent person rule) and the constitutional guarantee of legal certainty and justice as enshrined in Article 28D paragraph (1) of the 1945 Constitution. Incorporating this doctrine into Indonesian banking law would not only close the existing gap in customer protection but also ensure that banksentrusted with fiduciary and systemic functions—bear objective institutional responsibility proportionate to their risk exposure. Such a reform would enhance public confidence, uphold substantive justice, and concretize the State's constitutional obligation to guarantee the security of property rights and legal certainty for all citizens.

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