


Bank's Responsibility for Mistakes Made by Outsourced Workers

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Abstract

Introduction: In terms of national development, especially in the field of employment, Indonesia prioritizes achieving the greatest possible welfare for the working community. Every citizen has the right to obtain decent work as regulated in Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia as the Constitutional Basis of the Republic of Indonesia, which states.

Purposes of the Research: The purpose of this study is to find out and analyze the banking party's responsibility for errors made by outsourcing workers. This study helps in seeing the procedures and Banking Responsibility for Errors Committed by Outsourced Workers.

Methods of the Research: The research method used in this writing is normative research methods. Thus, this research collects data using library research, namely in the form of scientific materials such as legislation, books, official documents, publications and research results.

Results Main Findings of the Research: Based on Article 29 of Financial Services Authority Regulations Number 1/POJK.07/2013 concerning consumer protection in the financial services sector, which states that financial service business actors or banks are obliged to be responsible for customer losses arising from errors and/or negligence of workers, both permanent workers and outsourced workers. financial service business actors and/or third parties working for the interests of financial service business actors. However, if the customer's loss arises from the customer's own error and/or negligence, the bank is not responsible for the loss.

Keywords: Bank; Responsibility; Outsourced Workers.

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INTRODUCTION

In terms of national development, particularly in the employment sector, Indonesia prioritizes achieving the welfare of the working community. Therefore, it is hoped that labor law, also known as labor or human resources, will be a highly influential aspect in economic development, as it can be said that labor is the cornerstone of a nation's economy, alongside natural resources and technology. This is even true in developing countries with high poverty rates.

Every citizen has the right to decent work, as stipulated in Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which serves as the basis for the Constitution of the Republic of Indonesia, which states, "Every citizen has the right to work and a decent living for humanity." Article 28D paragraph (2) states, "Everyone has the right to work and to receive equal and fair treatment in employment relations." Therefore, it can be concluded that the right to work is one of the human rights that must be respected in its implementation.

Although it is acknowledged that the outsourcing system regulations in Law Number 13 of 2003 concerning employment have not been able to address all the complex problems regarding the outsourcing system, at least this law can provide legal protection for workers/laborers, especially regarding work requirements, working conditions and social security and can be used as a reference in resolving problems in employment. The policy to use outsourced labor began when the global economic crisis hit the world, including Indonesia. Many companies experienced a decline in sales levels, while on the other hand the costs that must be incurred by companies to provide wages to workers were increasingly expensive. Therefore, finally the company Work carried out as recognized in the 1945 Constitution of the Republic of Indonesia is a constitutional right of citizens (the citizens' constitutional rights). Which in this case means, the state or government issues policies, both in the form of laws (legislative policy) and implementing regulations (bureaucracy policy).

The development of outsourcing in various sectors in Indonesia can be seen from the Decree of the Minister of Trade of the Republic of Indonesia Number 264/KP/1989 concerning the Management of Subcontracts in the Indonesian Bonded Zone. The emergence of outsourcing in the business world is due to the desire to share risks in the workplace. The rapid development of technology and the free market has led to the emergence of various other forms of employment relationships that are considered more flexible, aimed at maximizing company efficiency. These employment relationships are contract work agreements or fixed-term employment agreements (PKWT) and outsourcing. PKWT and contracts are recruited directly by the company using the labor services, while outsourcing is recruited through a labor service company.

Outsourcing is the transfer of part of a job from a company that provides the work to a company that provides labor services through a written contract. From an employment perspective, outsourcing is the use of labor to produce or perform a task assigned by the labor provider. Conventionally, outsourcing is a form of contract that occurs when a company enters into a commercial contract with another company to provide certain services for a specific period of time. The contract system (outsourcing), interpreted as the contracting of work and the provision of labor services, has also been explained in Indonesian Labor Law, namely in Article 64 of Law Number 13 of 2003 concerning Manpower, which has been interpreted by many people as providing dispensation to employers to use outsourced workers. This is because the article allows for the transfer of work to another company as long as it is not the main job. Although in essence, Law Number 13 of 2003 concerning Manpower does not include the term outsourcing.

According to Article 64 of the Employment Law, it states that "A company can hand over part of the work to another company through a written contract for work or provision of worker or labor services." Recruitment of outsourced employees is carried out by an outsourcing company. Later, outsourced employees work for the company through a contract system that is divided into two, namely a Fixed Term Work Agreement (PKWT) and an Indefinite Term Work Agreement (PKWTT). Although outsourced workers can enter and work in other companies, the work area of these outsourced employees is still regulated in accordance with Law No. 13 of 2003 concerning Employment. For example, employee work must be carried out separately from the main activities of the company where they are assigned as stated in Article 66 paragraph (1) of Law Number 13 of 2003 that: "Workers/laborers from a company providing worker/labor services may not be used by the employer to carry out main activities or activities directly related to the production

process, except for supporting service activities or activities that are not directly related to the production process." The work carried out by an Outsourcing worker is usually related to cleaning. Security. Food providers or caterers, couriers or drivers, call center officers, manufacturing workers and facility management.

Companies use outsourced workers for many reasons, one of which is the ebb and flow of business. This means that when business is down, the outsourced worker user (user) can contact the outsourced worker provider (vendor) to withdraw their workers, claiming they no longer need them. This allows the vendor to then reassign them. It's perfectly acceptable if the worker is placed in another user company. However, what often happens is that the worker is withdrawn without being provided with a replacement job. The term vendor is certainly familiar to those who have been involved in the business world for a long time. However, it's also not uncommon for most people to still not understand the meaning of a vendor.

With the implementation of this Outsourcing system, it gives rise to three parties related to the work network, namely between the outsourcing company and workers, the outsourcing company and the parent company, and also the job provider company and its own workers. This will also give rise to different responsibilities for the employment system in essence, Technological progress is growing faster so that rivalry in the business and work world is increasingly selective, to fight this rivalry, working hard is not enough, but also must be done smart. The belief in globalization includes 3 things, namely the belief in personal luxury and profits derived from owners of unlimited wealth and income equality, belief in business and trade freedom as the best procedure that protects the welfare and wealth of all communities and individuals.¹

In carrying out its business, the bank always recruits additional workers to carry out tasks outside the main job, but what happened at Bank Rakyat Indonesia (BRI) recruited outsourcing workers but were not placed to work as additional workers but were employed in the main job, namely tellers based on a work agreement, so outsourcing employees must do their work well according to the agreement. In their work as tellers, the outsourcing employees made transactions with borrowing customers and the outsourcing workers carried out actions that were detrimental to the customers because the outsourcing employees made false bookkeeping records to BRI Bank Customers, causing customers to suffer losses and the actions carried out by these outsourcing workers violated the agreement made by the bank which resulted in customer losses so that the actions of these outsourcing workers were categorized as Unlawful Acts that have harmed other parties. Based on the description of the background, the author is interested in conducting research with the title Bank's Responsibility for Mistakes Made by Outsourcing Workers.

METHODS OF THE RESEARCH

This type of research is normative legal research, which in this research is called normative legal research or also called library legal research, namely: research which is carried out by examining library materials or secondary data alone.² Thus, in this research, we will immediately seek and find results/answers to the problems that have been systematically conceptualized above. The primary source of legal material in normative

¹ Romli Atmasasmita, *Globalisasi Kejahatan Bisnis*, (Jakarta: Prenada Media Grup, 2010), p. 26-30

² Seorjono Soekanto and Sri Mamuji, *Pengantar Penelitian Hukum*, (Jakarta: UI Press, 1986), p.13.

legal research (normative juridical) is bibliographic legal material. Within legal literature, data sources are referred to as legal materials. Legal materials are anything that can be used or is necessary for the purpose of analyzing applicable law. Therefore, the legal materials studied and analyzed in normative legal research consist of: primary legal materials, secondary legal materials, and tertiary legal materials.

RESULTS AND DISCUSSION

A. Position of Outsourced Workers in Banking Institutions

Outsourcing comes from the words "out," meaning "out," and "source," meaning "source." Outsourcing is the transfer of certain tasks from a company to a third party, with the aim of sharing risks and reducing the company's burden. The assignment of tasks is based on an operational cooperation agreement between the service provider (principal) and the outsourcing company.³ In the Employment Law Article 64 it is stated that the definition of outsourcing is a work agreement made between an employer and workers, where the company can hand over part of the work to another company through a work contract agreement made in writing.⁴ According to Article 1601 b of the Civil Code, outsourcing is equated with a work contract agreement. In this context, outsourcing is defined as an agreement in which the contractor binds himself to perform certain work for another party who contracts for a certain fee, and the other party who contracts binds himself to contract the work to the contractor for a certain fee.

A labor placement service company, hereinafter referred to as PJPT, provides labor to carry out another company's work, where this company is called an outsourcing company that provides labor. Companies that need labor in a short time can obtain it from cooperation with an outsourcing company where the cooperation is bound in a cooperation agreement. Law Number 13 of 2003 concerning Manpower does not explicitly state the definition of outsourcing. Activities that can be carried out by outsourced labor are activities regulated in the Manpower Law and within a certain period of time. Work that can be handed over to another company must at least meet the requirements, including such work being carried out separately from the main activity, being carried out with direct or indirect orders from the employer, being a supporting activity for the company as a whole and not directly hindering the production process.

Supporting activities or activities not directly related to the production process are activities related to outside the core business of a company. Article 65 of the Manpower Law explicitly states that violations of work activities carried out by outsourced workers will result in a direct relationship between the employer and the outsourced workers. Companies that require workers in certain parts of their company organization sometimes require workers quickly and in large numbers with almost the same qualifications/competencies of human resources because they will perform similar work in their daily lives.

Banking, as a financial enterprise, requires a large workforce to carry out its activities in the areas of fundraising and providing credit, which are the Bank's core business in accordance with the Banking Law. One form of business entity that is currently widely available in Indonesia and plays a very important role in economic development is the bank.

³ Libertus Jehani, *Hak-Hak Karyawan Kontrak*, (Jakarta: Forum Sahabat, 2011), p. 124.

⁴ Richardus Eko Indrajit and Djokropranoto, *Proses Bisnis Outsourcing*, (Jakarta, Grasindo, 2003), p. 3.

Banks are economic institutions that have lived and developed along with the growth of an economy. Banks can be said to be the lifeblood of a country's economy. Companies strive to improve production cost efficiency (cost of production). One solution is to implement an outsourcing system.

In Law Number 13 of 2003 concerning Manpower, hereinafter referred to as the Manpower Law, outsourcing is divided into two parts, namely work contractors and providers of worker/labor services. The definition of outsourcing is not specifically regulated in the Manpower Law, but the definition of outsourcing is found in Articles 64, 65, 66 of the Manpower Law. Article 65 paragraph 2 regulates the conditions for work that can be carried out by outsourcing employees, one of which is carried out separately from the main activity. The definition of separate here can be interpreted that the work can be carried out outside the company providing the work itself, but the work is carried out separately from the main activities of the company providing the work.

In employment, the legal relationship between an outsourcing company and a company using outsourcing is bound by a cooperation agreement. Article 1 number 1 of Law Number 13 of 2003 concerning Manpower defines an employment agreement as an agreement between a worker/laborer and an employer or employer that contains the terms of employment, rights and obligations of both parties, namely the employer and the worker/laborer. The employment relationship itself arises after an employment agreement between the worker/laborer and the employer. Outsourced employees sign an employment agreement with the outsourcing company as the basis for the employment relationship. And in the agreement it is stated that the employee is placed and works in a bank that uses outsourcing services. Outsourcing in banking companies is positioned as a workforce. Later, outsourced employees work for the company through a contract system that is divided into two, namely a Fixed Term Employment Agreement (PKWT) and an Indefinite Term Employment Agreement (PKWTT). Although outsourced workers can join and work in other companies, the work area of these outsourced employees is still regulated in accordance with Law No. 13 of 2003 concerning Manpower.

Banks are intermediary institutions that collect excess public funds and channel them back to those in need. Therefore, banks operate based on the principle of public trust, necessitating caution in their banking activities. Public trust in the banking industry is key to the success and sustainability of a bank's business, where its sustainability is largely determined by its customers. Customer loyalty is largely determined by the trust they place in their chosen bank. Customers will choose a bank with excellent performance and soundness, a quality reflected in the integrity of its human resources, including owners, managers, and employees.⁵

Based on the Manpower Law Number 13 of 2003 Article 64, Article 65 and Article 66 as well as the Decree of the Minister of Manpower and Transmigration of the Republic of Indonesia Number.Kep.101/Men/VI/2004 of 2004 concerning Procedures for Licensing Companies Providing Worker/Labor Services, outsourcing is defined as the contracting of work and the provision of labor services. Meanwhile, the Financial Services Authority Regulation (POJK) Number 9/POJK.03/2016 concerning the Principle of Prudence for Commercial Banks that hand over part of the work implementation to other parties in Article 1 number 2 reads: "The handover of part of the work implementation to other parties,

⁵ Sudibyo, Darmadi, et.al, 2006, *Budaya Kerja Perbankan: Jalan Lurus Menuju Integritas*, (Jakarta: Pustaka LP3ES Indonesia, 2006), p. 103.

hereinafter referred to as outsourcing, is the handover of part of the work implementation to service provider companies through a work contracting agreement and/or through a labor service provision agreement."

The transfer of some of the supporting work carried out by the bank to outsourcing workers is because it allows the bank to concentrate more on carrying out its main work. In addition, basically the use of outsourcing workers is carried out in order to share business risks, including employment risks to other parties. Employment risks, in this case the transfer of some of the bank's work to outsourcing workers, are one part of operational risks whose risks can arise due to human error, system failure, and/or external events that affect bank operations. As regulated in Article 4 paragraph (3) POJK Number 9/POJK.03/2016 Concerning the Principle of Prudence for Commercial Banks that hand over part of the work to other parties, banks can only outsource supporting work in the bank's business activity flow and in the bank's business support activity flow. In the explanation of the POJK, what is meant by supporting work is work that does not have to be in the business activity flow or the bank's business support activity flow so that in the event that such work does not exist, the intended activity can still be carried out without significant disruption.

Workers with an outsourcing system recruited by BRI Ambon by recruiting directly from the community to do additional work separate from the company's main work as stated in Article 66 paragraph (1) of Law Number 13 of 2003 that: "Workers/laborers from companies providing worker/labor services may not be used by employers to carry out main activities or activities directly related to the production process, except for supporting service activities or activities that are not directly related to the production process." The work carried out by an Outsourcing worker in the banking world should be related to cleaning guards, security, food providers or catering, couriers or drivers, call center officers, manufacturing workers and facility management, but what happens is that outsourcing employees are also placed in main work so that they carry out tasks that violate work regulations at the bank which result in losses for customers.

B. Position and Responsibilities of Outsourcing Workers at Bank Rakyat Indonesia

The position of outsourcing employees as workers recruited directly by BRI Ambon to carry out additional work in addition to their main work, of course, if they make mistakes that violate work regulations, this will result in losses for the bank and customers, so they must be responsible for their actions. Responsibility in the legal dictionary means an obligation for someone to carry out what is required of him.⁶ Hans Kelsen, in his book entitled "General Theory and State and the Basics of Normative Legal Science as an Empirical Descriptive Legal Science," asserts that a person is legally responsible for a certain act or that he bears legal responsibility, meaning that he is responsible for a sanction in the event of a contrary act. Legal responsibility stems from or arises from the use of facilities in the implementation of each person's ability to exercise rights or/and carry out their obligations. Every implementation of obligations and every use of rights, whether carried out inadequately or adequately, must basically still be accompanied by accountability.⁷

In line with Hans Kelsen's definition of collective responsibility that a person is responsible for violations committed by others, in civil law there is a theory of Vicarious Liability or substitute responsibility which originates from the provisions of Article 1367 of

⁶ Andi Hamzah, *Kamus Hukum*, (Jakarta: Ghalia Indonesia, 2005).

⁷ Purbacaraka, *Perihal Kaedah Hukum*, (Bandung: Citra Aditya, 2010), p. 37

the Civil Code which states, "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", "employers and those who appoint other people for their affairs are responsible for losses caused by their servants and/or subordinates in carrying out the work for which these people are used.

The concept of legal responsibility is related to the concept of legal obligation, that a person is legally responsible for certain actions or that he bears legal responsibility means that he is responsible for a sanction if his actions are contrary. Legal responsibility can be distinguished between individual responsibility and collective responsibility. Individual responsibility is the responsibility of a person for a violation that he himself committed, while collective responsibility is the responsibility of an individual for a violation committed by another person.⁸ The concept of legal responsibility is fundamentally related to, but not identical to, the concept of legal obligation. An individual is legally obligated to behave in a certain way if their behavior otherwise constitutes a condition for the imposition of coercive measures. However, these coercive measures do not have to be directed against the obligated individual, the "violation," but can be directed against other individuals related to the first individual in a manner established by the legal order. The individual subject to sanctions is said to be "responsible" or legally responsible for the violation.

Responsibility in the legal dictionary can be termed as liability and responsibility, the term liability refers to legal responsibility, namely responsibility due to errors made by legal subjects, while the term responsibility refers to political responsibility.⁹ The theory of responsibility places more emphasis on the meaning of responsibility that arises from the provisions of statutory regulations so that the theory of responsibility is interpreted in the sense of liability,¹⁰ as a concept related to the legal obligation of a person who is legally responsible for certain actions that he can be subject to sanctions if his actions violate the law. Outsourcing is a term that is already familiar in employment regulations in Indonesia. The meaning of outsourcing is often simplified as outsourcing. Referring to Law Number 13 of 2003 or the Employment Law.

Outsourcing may only be used for supporting services. Workers/laborers from the company providing worker/labor services may not be used by the employer to carry out main activities or activities directly related to the production process, except for supporting service activities or activities that are not directly related to the production process. Thus if the outsourcing employee makes a mistake to the service rental company then, for example In the case of BRI bank, outsourcing employees are not placed according to the rules which cannot be placed in certain positions in the bank such as tellers and other main workers so that they can imitate and print bank deposit certificates to avoid transactions directly related to the bank. To change the transactions that occur, outsourcing employees make transactions between customers and third parties directly, not transactions through banks or fake records, so that bank or outsourcing employees have committed fraud, this is certainly a big problem for the Bank because it becomes an uncomfortable place to invest.

Banks' recording of customer funds has become problematic due to fraud committed by outsourced workers. Therefore, banks can indirectly hold vendors, as providers, accountable for errors made by outsourced employees, and can also hold these outsourced

⁸ Titik Triwulan dan Shinta, *Perlindungan Hukum Bagi Pasien*, (Jakarta: Prestasi Pustaka, 2010), p. 48

⁹ HR. Ridwan, 2006, *Hukum Administrasi Negara*, (Jakarta: Raja Grafindo Persada), p. 337

¹⁰ Busyra Azheri, *Corporate Social Responsibility dari Voluntary menjadi Mandatary*, (Jakarta: Raja Grafindo Perss, 2011), p. 54

employees criminally liable for fraud and embezzlement. Bank employees who leak customer personal data to unauthorized third parties without the customer's written consent are violating bank confidentiality.

In legal science, the concept of legal obligation is known which is related to legal responsibility, namely that a person is said to be legally responsible for a certain act, namely that he can be subject to sanctions in cases of contrary actions. According to the concept of responsibility, the actions of bank employees who make false entries in their customers' personal accounts are a form of violation of bank performance provisions which should be required to be recorded by the bank of their customers' transactions, for which these actions can be accounted for by him. Personal responsibility through criminal channels can be imposed on the bank employee for the violation of false records carried out by the bank in accordance with the provisions of Article 49 paragraph (1) of the Banking Law, namely, Members of the Board of Commissioners, Directors, bank employees or other Affiliated Parties who intentionally make or cause: a) False entries in bookkeeping, reports, or business activity documents, transaction reports, or bank accounts; b) Omitting or omitting to include or causing a record to be omitted in bookkeeping, reports, or business activity documents, transaction reports, or bank accounts; c) Altering, obscuring, concealing, deleting, or eliminating any record in bookkeeping, reports, documents, or business activity reports, transaction reports, or bank accounts, or intentionally altering, obscuring, concealing, deleting, or destroying such bookkeeping records, shall be punishable by imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a fine of a minimum of Rp10,000,000,000.00 (ten billion rupiah) and a maximum of Rp200,000,000,000.00 (two hundred billion rupiah).

Data on the recording of customer funds and their deposits is contained in a form that serves as an agreement between the customer and the bank. The deposit agreement is the basis of the contractual relationship in which the rights and obligations of both parties are stipulated. The crime of falsifying banking transaction records by bank employees is an unlawful act of deviation committed by bank business actors by making or causing false records to occur in their books or in their reporting processes, whether in documents or business activity reports, transaction reports or bank accounts. In fact, banking activities in carrying out their daily activities are inseparable from acts of deviation, whether intentional or unintentional. Intentional acts of deviation with various *modus operandi* are criminal acts. The occurrence of criminal acts in the banking sector, such as falsifying banking transaction records, is influenced by various factors. The factors causing bank employees to commit these crimes are usually influenced by two factors: the first is internal factors, namely factors originating from within an individual, and the second is external factors, namely factors originating from outside an individual, such as factors in the surrounding social environment.

The legal relationship between the bank and the customer is manifested in a deposit agreement where the implementation of the agreement must be based on good faith. The principle of good faith in the agreement can function to add provisions to an agreement if there are rights and obligations that arise between the parties that are not expressly stated in the agreement. This means that even though the bank's obligation to record finances and maintain customer data is not explicitly stated, on the basis of good faith, the implementation of the agreement remains attached to the bank. In addition, the obligation to keep customer personal data confidential is a provision required by the Banking Law as

a bank secret that must be maintained by the bank and the implementation of the confidentiality principle contained in the provisions of Article 40 paragraph (1) of Law Number 10 of 1998 concerning Banking, that banks are obliged to keep confidential information regarding Depositing Customers and their deposits except in cases as referred to in Article 41, Article 41A, Article 42, Article 43, Article 44, and Article 44A.

Therefore, if a customer's rights are misused, especially regarding false records made against customers, there must be legal responsibility to the customer carried out by bank employees, not only can it be charged to the bank employees personally. The bank is also responsible for the occurrence of violations of false records of customer data which are classified as violations of bank regulations. Considering the legal relationship between the bank and the customer which contains the rights and obligations of the bank in it, placing the bank and customer as parties who each have rights and obligations as well as compliance with bank secrecy required by the Banking Law for banks as banking institutions.¹¹

Banks as one of the financial services business actors and payment system service providers, as regulated in the Financial Services Authority Regulation Number: 1 / POJK.07 / 2013 concerning Consumer Protection in the Financial Services Sector and Bank Indonesia Regulation Number: 16 / 1 / PBI / 2014 concerning Consumer Protection in Payment System Services emphasizes that banks must implement consumer protection for financial records, confidentiality and security of consumer personal data. Article 29 of the Financial Services Authority Regulation Number: 1 / POJK.07 / 2013 concerning Consumer Protection in the Financial Services Sector stipulates that, Financial Services Business Actors in this case are banks, are required to be responsible for Consumer losses arising from errors and / or negligence, managers, employees of Financial Services Business Actors and / or third parties working for the interests of Financial Services Business Actors.

Based on the above provisions, banks as financial service providers can be held accountable for errors made by outsourced bank employees that harm consumers or bank customers. This is also related to the principle of vicarious liability. Corporations, in this case, banks, are responsible for the actions of their employees or other responsible parties. Consumers are those who place their funds and/or utilize services available at financial service institutions, including customers in banking. Based on laws and regulations in the financial services sector, the bank's relationship with the bank. The employee's error is attributed to and borne by the bank. Falsification of customer financial data is a form of employee error as a violation of the bank agreement. For this error, the bank is also responsible for customer losses. The existence of violations of customer data recording also shows that banking operations carried out by bank employees have not implemented the principle of security towards customers in consumer protection that is mandatory for banks as financial service providers.

A bank's obligation is to maintain trust and provide a sense of security for customer transactions, which is a key function of the bank. Violations of customer financial records by bank employees indicate that the bank is not properly fulfilling its obligations to customers, considering that bank employees are affiliated parties and representatives of the bank, who have a relationship with the bank. Facts in banking practice demonstrate that banks cannot automatically be held responsible for violations involving false recording of

¹¹ Ridwan Khairandy, *Hukum Kontrak Indonesia Dalam Perspektif Perbandingan*, (Yogyakarta: FH UII Press, 2014), p. 64

customer financial information by their employees. Such violations are the personal responsibility of the bank employee concerned and have no connection to the bank unless there is evidence to suggest that the bank instructed the employee to falsely record customer financial data by an unauthorized party. The bank may be held liable if the injured customer then files a lawsuit against the bank through civil channels. Theoretically and normatively, based on the contractual and non-contractual relationship between the bank and the customer and the bank's responsibility according to the principle of vicarious liability Article 29 of the Financial Services Authority Regulation Number: 1 / POJK.07 / 2013 concerning Consumer Protection in the Financial Services Sector, the bank is also responsible for any breach of customer data confidentiality.

This contrasts with banking practices, where banks are not simply held responsible for errors made by their employees, for which the employee is personally responsible. A bank's civil liability for errors or negligence by its employees can be interpreted as the responsibility of its management or the bank's corporate responsibility. Considering the case in question, there were no instructions given to the employee by the bank's management beyond its authority and responsibility, the qualification of its liability can be categorized as the bank's corporate responsibility. The bank is responsible for losses caused by its employees' errors in accordance with Article 1365 of the Civil Code.

C. Banking Responsibility for Mistakes Made by Outsourced Workers

Responsibility is mandatory, to bear, obliged to bear the burden, obliged to fulfill all the consequences arising from actions, willing to serve, and willing to sacrifice for the benefit of other parties.¹² According to the Big Indonesian Dictionary, responsibility is a state that guarantees everything (if something happens, you can be sued, blamed, prosecuted, etc.). Meanwhile, being responsible means having the obligation to bear, to assume responsibility.¹³ Bank liability for customer losses is divided into 2 (two) types, namely civil liability and criminal liability. Civil liability is regulated based on Article 29 of POJK number 1 / POJK.07 / 2013 concerning consumer protection in the financial services sector, which states that financial service business actors or banks are obliged to be responsible for customer losses arising from errors and / or negligence of workers, both permanent workers and outsourced workers. Financial service business actors and / or third parties who work for the interests of financial service business actors. However, if the customer's loss arises from the customer's own error and / or negligence, the bank is not responsible for the loss.

Indonesian banking in carrying out its functions is based on the principle of prudence. In order to carry out these functions, banks need public trust to use bank services, but recently many cases of bank fraud have occurred precisely because of the actions of bank employees themselves, one of which is making false records of customers. The results of this study conclude that the bank's liability in this case from a civil law perspective is based on unlawful acts either due to negligence or because the bank is responsible for the actions of its employees.

From a banking law perspective, banks have an obligation to implement the principles of prudence and good corporate governance in running their businesses. Therefore, banks are required to be responsible for losses arising from the actions of outsourced workers at the bank for losses caused by the actions of their workers, in their relationship as employers and

¹² Muhammad Djumhana, *Rahasia Bank (Ketentuan dan Penerapannya di Indonesia)*, (Bandung: Citra Aditya Bakti), p. 111.

¹³ Depdiknas, *Kamus Besar Bahasa Indonesia*, (Jakarta: Balai Pustaka, 2005), p. 739.

their workers seen from the perspective of civil law and banking law applicable in Indonesia and the application of laws related to bank responsibility for losses caused by the actions of their workers, banks are responsible for losses caused by their own actions, but also for losses caused by the actions of their dependents or caused by goods under their supervision.

Issues regarding civil liability for negligence or errors occurring at a bank can be linked to the bank's management. In this case, the bank's management represents the bank's legal entity under the company's articles of association. Therefore, the management's responsibility for their actions is divided into personal liability and corporate liability.¹⁴ From a legal perspective, the concept of legal responsibility (liability) generally refers to legal responsibility in the realm of public law and legal responsibility in the realm of private law. Public legal responsibility includes, for example, state administrative responsibility and criminal legal responsibility, while private legal responsibility can include liability based on breach of contract and liability based on unlawful acts, or in Dutch, *onrechtmatigedaad*. On the other hand, civil legal responsibility based on unlawful acts is based on a legal relationship in the form of rights and obligations derived from law. According to Article 1365 of the Civil Code, any unlawful act that results in harm to another person requires the person whose fault caused the harm to compensate for the loss. This article stipulates that four main elements must be met, namely: 1) There was an act; 2) There was an element of error; 3) There was a loss suffered; 4) There was a causal relationship between the error and the loss.

Based on the elements of the unlawful act above, it can be said that the actions committed by outsourcing employees against BRI bank customers are unlawful. Meanwhile, from the perspective of the agreement made by BRI Bank with outsourcing workers regarding the work to be done, including the main work in banking, the outsourcing employee is categorized as someone who broke his promise or breach of contract with the bank. In the event of a breach of contract or breach of contract committed by the outsourcing worker, the party committing the breach of contract must compensate for all losses caused by his breach of contract to the bank. The responsibilities of the outsourcing worker itself can vary depending on the provisions of the agreement or conditions and applicable laws, therefore the breach of contract or breach of contract has the right to be resolved through the courts so that the outsourcing employee can compensate for the losses caused by the actions committed.

Legal responsibilities in the employment relationship between outsourced workers and the bank can be divided into: a). Liability with an element of fault (intentional and negligent). As stated in Article 1365 of the Civil Code, namely: "Every unlawful act, which causes harm to another person, requires the person whose fault causes the loss, to compensate for the loss." Fault (Liability based on fault) This principle is a principle that is quite common in civil law, especially Articles 1365, 1366, and 1367 of the Civil Code. In general, this principle of responsibility is acceptable because it is fair for the person who made the mistake to compensate for the loss to the victim. In other words, it is unfair if an innocent person has to compensate for the loss suffered by another person. The matter that needs to be explained in this principle is the definition of the subject of the wrongdoer which in legal doctrine is known as the principle of vicarious liability and corporate liability. Vicarious liability means that the employer is responsible for the loss to another party

¹⁴ Muhammad Djumhana, *Hukum Perbankan di Indonesia*, (Bandung: Citra Aditya Bakti, 2012, p. 46.

caused by a person or employee under his supervision; b). Responsibility with an element of error, especially negligence, as stated in Article 1366 of the Civil Code, namely: "everyone is responsible not only for losses caused by their actions, but also for losses caused by negligence or lack of care; c). Absolute liability (without fault) The principle of absolute liability is often equated with the principle of absolute responsibility. Some say that absolute liability is a principle that establishes fault as no determining factor. Conversely, absolute liability is responsibility without fault and without exception. The principle of absolute liability is a type of Civil Liability.

Unlawful acts in Indonesia are always normatively subject to the provisions of Article 1365 of the Civil Code. The formulation of the norms in this article is unique, unlike the provisions of other articles. The formulation of the norms in Article 1365 of the Civil Code is more of a normative structure than a complete legal provision. Therefore, the substance of the provisions of Article 1365 of the Civil Code always requires materialization outside the Civil Code. The various types of liability are as follows:¹⁵ a) Responsibility and Individuals: In essence, only each individual can be responsible. Only they bear the consequences of their actions. Therefore, the terms personal responsibility or self-responsibility are actually "redundant." A society that does not recognize that each individual has his or her own value that is entitled to be followed is incapable of respecting the dignity of that individual and is incapable of recognizing the essence of freedom. Friedrich August von Hayek said, "All forms of so-called collective responsibility refer to individual responsibility. The term shared responsibility is generally used only to cover up responsibility itself." In political responsibility, a clear problem arises for any delegation of authority (responsibility). Those who are said to be responsible do not bear the full consequences of their decisions. Their greatest risk is revocation of election or early retirement. The rest must be borne by the taxpayer. This is why liberals emphasize subsidiarity, on decisions being made as much as possible among the people who, in fact, must bear the consequences of those decisions; b) Responsibility and freedom: Freedom and responsibility are inseparable. Only those who make decisions and act freely and without pressure from any party can be held accountable for their actions. Liberalism demands a form of communal life that allows people to make their own decisions about their lives. Therefore, for a liberal society, it is fundamental that every individual assume responsibility. This is the opposite of the socialist concept, which delegates responsibility to society or the state to a limited extent. Freedom means responsibility; that's why most people fear it.

The Civil Code divides the issue of liability for unlawful acts into 2 (two) groups, namely:¹⁶ a) Direct liability: This is regulated in Article 1365 of the Civil Code. With the broad interpretation of Article 1365 of the Civil Code since 1919 (*Arest Lindenbaun vs. Cohen*), many cases that previously could not be prosecuted or subject to sanctions or punishment can now be held liable for damages; b) Indirect liability: According to Article 1367 of the Civil Code, a legal subject is not only responsible for their own unlawful acts, but also for the acts of others they depend on and for property under their control. Responsibility for the consequences of unlawful acts under civil law lies not only with the perpetrator but can also be transferred to another party, depending on who committed the act.

¹⁵ Widiyono, *Wewenang Dan Tanggung Jawab* (Bogor; Ghalia Indonesia, 2004), p. 27.

¹⁶ *Ibid.*

The concept of legal responsibility is closely related to the concept of rights and obligations. The concept of rights is a concept that emphasizes the concept of rights paired with the concept of obligations.¹⁷ The general opinion is that a person's rights are always correlated with obligations towards other people.¹⁸ A concept related to the concept of legal obligation is the concept of legal responsibility (accountability). That a person is legally responsible for certain actions or that he bears legal responsibility, meaning he is responsible for a sanction if his actions violate applicable regulations.¹⁹ According to Hans Kelsen in his theory of legal responsibility, it states that a person is legally responsible for a certain act or that he bears legal responsibility, the subject means that he is responsible for a sanction in the event of an act that is contrary to law. According to Hans Kelsen in his theory of legal responsibility, it states that a person is legally responsible for a certain act or that he bears legal responsibility, the subject means that he is responsible for a sanction in the event of an act that is contrary to law.²⁰ In certain situations, a person may be held liable for a civil wrong committed by another person, even though the unlawful act was not their fault. This is known as liability for wrongs committed by others. Theories of liability based on unlawful acts committed by others can be divided into three categories: 1) Supervisor's responsibility; 2) Substitute responsibility that is not from the superiors of the dependents; 3) Replacement responsibility for goods under his care.

Based on the Civil Code Article, it explains that several parties must accept responsibility for unlawful acts committed by other parties as follows: 1) Parents or guardians are responsible for the actions of children under their care or guardianship; 2) Employers are responsible for the actions of their employees, and teachers are responsible for their students; 3) Supervisors are responsible for the actions of workers under them; 4) Animal owners are responsible for the actions of their pets; 5) Building owners are responsible for the collapse of buildings due to negligence in maintenance or defects in construction or layout.

CONCLUSION

Outsourcing workers work for companies through a contract system that is divided into two, namely Fixed Term Employment Agreements (PKWT) and Indefinite Term Employment Agreements (PKWTT). "Workers/laborers from companies providing worker/labor services may not be used by employers to carry out main activities or activities directly related to the production process, except for supporting service activities or activities that are not directly related to the production process. "The work carried out by an Outsourcing worker in the banking world should be related to cleaning guards, security, food providers or catering, couriers or drivers, call center officers, manufacturing workers and facility management so that the position of Outsourcing workers at BRI Bank should only be employed as additional additional workers. The concept of legal responsibility is related to the concept of legal obligation, that a person is legally responsible for certain actions or that he bears legal responsibility means that he is responsible for a sanction if his actions are contrary, Legal responsibility can be distinguished into individual responsibility and collective responsibility. Individual responsibility is a person's responsibility for a violation he has committed himself, while collective responsibility is the responsibility of an

¹⁷ Satjipto Rahardjo, *Ilmu Hukum*, (Bandung: Citra Aditya Bakti, 2000), p. 55

¹⁸ *Ibid*, p. 57

¹⁹ Hans Kelsen, *Teori Umum tentang Hukum dan Negara*, (Bandung: Raja Grafindo Persada 2006), p. 95

²⁰ *Ibid*, p. 81.

individual for a violation committed by another person Bank responsibility for customer losses is divided into 2 (two) types, namely civil responsibility and criminal responsibility. Civil responsibility is regulated based on Article 29 of POJK number 1 / POJK.07 / 2013 concerning consumer protection in the financial services sector, which states that financial service business actors or banks are obliged to be responsible for customer losses arising from errors and / or negligence of workers, both permanent workers and outsourcing workers. financial service business actors and / or third parties working for the interests of financial service business actors. But if the customer's loss arises from the customer's own error and / or negligence, the bank is not responsible for the loss.

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