

THE BANK LIABILITY FOR THE LOSS OF CUSTOMER FUNDS

(Supreme Court Decision No. 41 PK/Pdt/2014)

LEGAL CASE STUDY



By:

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INTERNATIONAL PROGRAM

FACULTY OF LAW

UNIVERSITAS ISLAM INDONESIA

YOGYAKARTA

2018

THE BANK LIABILITY FOR THE LOSS OF CUSTOMER FUNDS

(Supreme Court Decision No. 41 PK/Pdt/2014)

A BACHELOR DEGREE THESIS

**Presented as the Partial Fulfillment of Requirements
to Obtain the Bachelor Degree at the Faculty of Law
Universitas Islam Indonesia
Yogyakarta**



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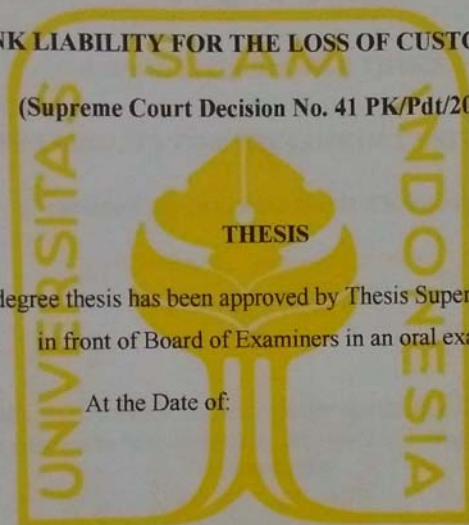
2018

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THESIS

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At the Date of:

Yogyakarta, November 14 2018

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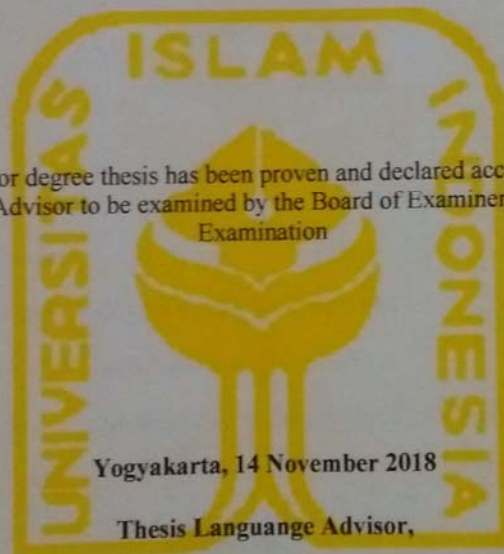
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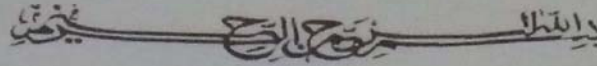


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(Supreme Court Decision No. 41 PK/Pdt/2014)

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Yogyakarta, 17 September 2018
yang membuat pernyataan

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MOTTO

“It always seems impossible until it’s done.”

-Nelson Mandela-

“My biggest motivation is deadlines.”

-Author-

*With gratitude to Allah S.W.T.,
the author dedicates this thesis to:
Ayah, Ibu, Dhea, all of my family
who always support me in every aspect of my life.*

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TABLE OF CONTENTS

COVER PAGE.....	i
COVER PAGE... ..	ii
PAGE OF APPROVAL	iii
PAGE OF APPROVAL	iv
PAGE OF APPROVAL	v
STATEMENT LETTER OF ORIGINALITY	vi
CURRICULUM VITAE	vii
MOTTO	viii
DEDICATION	ix
ACKNOWLEDGEMENTS	x
TABLE OF CONTENTS	xii
A. Context of Study	1
B. Parties Identity.....	14
C. Statement of Facts	15
D. Summary of Decision	21
E. Legal Issue	24
F. Legal Consideration	24
G. Legal Analysis	25
1. Contractual Relationship between Bank and Customer.....	25

2. Banking Principle and Banking Law.....	29
3. OJK (Otoritas Jasa Keuangan) Regulation No. 1/POJK.07/2013 on Consumer Protection Of Financial Services Sector.....	41
4. Bank Obligations to The Security of Customer Funds.....	49
5. Legal Relationship between Bank and Employee.....	54
H. CONCLUSION.....	58
REFERENCES	64

A. Context of Study

Bank is a financial business unit that is responsible for collecting, channeling funds to the public and providing services related to finance. Related to those matters, the need for mutual trust between depositors, reservoirs, and recipients of funds is required, so that all parties in the banking business will be safe and mutually beneficial. The collection of funds is one of the main banking services of all bank activities as a financial institution. The services in the form of fund raising from the public may be in the form of demand deposits, time deposits, certificates of deposit, savings and other similar forms. ¹

People can deposit their own funds in the bank by choosing the type of deposit service to suit their demands. The minimum amount of deposit in the bank also varies, depends on the policy of each bank and the type of deposit service selected. The parties which come to the bank and deposit funds comes from various circles, ranging from individuals, companies, organizations, private business entities, state owned enterprises, as well as institutes of government.² Sources of funds from customers deposited as deposits in banks comes from various sources, which vary in number.

¹ Uswatun Hasanah, Hukum Perbankan, Setara Press, Malang, 2017, p.49.

² <http://www.wibowopajak.com/2014/05/pengertian-dan-jenis-nasabah-dalam.html>. Accessed on May 11th, 2017 13.45

Noteworthy, regardless the amount, the bank is responsible for the fund and the maintainance of customer's confidence.

The principles, functions and objectives are stated in Article 2, 3 and 4 of Act Number 7 of 1992 as amended by Act Number 10 of 1998 concerning Banking. Where in banking activities using the principle of economic democracy by using the prudential principle. In addition, the main function of banking is as collectors and distributors of public funds, whereas the purpose of the Indonesian banking is supporting the implementation of national development in order to improve equity, economic growth, and national stability towards the increase of the people.³ Prudential principle aims at making the bank run its business properly and correctly by complying with the provisions and legal norms prevailing in the banking world, in order for the bank always in a healthy condition so that the society will be more trusting it, which will create a healthy and efficient banking system and develop properly and beneficial to the development of national economy.⁴

Considering the bank is a trust institution of the community (fiduciary ufinancial institution), the bank has a vision and a mission idest very noble as an institution given the task to carry out the mandate of nation building for the achievement of improving people's living standards.⁵ The bank's relationship with the

³ H. Malayu S.P. Hasibuan, *Dasar-Dasar Perbankan*, Bumi Aksara, Jakarta, 2011, p. 3

⁴ Uswatun Hasanah, *Op.cit.*, p. 24

⁵ Nindyo Pramono, *Mengenal Lembaga Perbankan di Indonesia sebuah Pendekatan dari Perspektif Hukum Ekonomi*, delivered in *Penataran Hukum Perdata dan Ekonomi*, Fakultas Hukum Universitas Gadjah Mada, Yogyakarta, 23-30 Agustus 1999, p.1

customer is based on the principle of trust or *fiduciary relation*, that the bank should not only pay attention to its own interests solely, but also must pay attention to the interests of customers, both depositors and fund users. Fiduciary duty can arise because of contracts and also arise because of a relationship between two parties. A bank has a relationship with its customers, so if the bank harms its customers by conducting *unsafe and unsound practice*, the bank may be sued for violating its fiduciary duty.⁶

A bank's liabilities consist of its deposits and its borrowings. Most of a commercial bank's liabilities are the deposits made by its customers (depositors). These deposits are generally placed in either transaction accounts or savings accounts.

- a) Transaction accounts are accounts where the depositor can withdraw the deposits on demand using checks, debit cards, or similar payment instructions. Transaction accounts usually allow a large number of withdrawals with minimal time restrictions. For the convenience of immediate access to deposits, banks pay no, or low, interest to the depositors. Checking or debit accounts are examples of transaction accounts.

Savings accounts typically limit the number of withdrawals a depositor can make over a specified period of time, and offer higher interest rates to depositors. Because access to funds in a savings account is limited and withdrawal in certain cases may be restricted by time, savings accounts are important to a bank's asset and liability

⁶ Hirsanudin, Hukum Perbankan Syariah di Indonesia Pembiayaan Bisnis dengan Prinsip Kemitraan, Genta press, Yogyakarta, 2008, p.102.

management function . Examples of savings accounts are time deposits, passbook savings, and certificates of deposits.⁷

In running the activity, to obtain banking income is always faced with the risk. Basically the risk is inherent in all bank activities. Risks that may occur can cause losses to the bank if not detected and not properly managed. At the operational risk are those malfunctions of the information system, reporting system, internal risk monitoring rules and procedures to take corrective action.⁸

Therefore, the bank must understand and recognize the risks that will arise in its business activities. Basically, the types of risks encountered can be divided into two major groups. Financial risk associated with direct losses in the form of loss of money due to the risk that occurred. On the other hand, non-financial risks relate to losses that cannot be clearly calculated the amount of money lost. The financial impact of non-financial risk is not immediately felt, although it will potentially cause financial losses.⁹

One of the risks that can cause financial or non financial loss is operational risk. Operational risks are related to a bank's overall business process and the potential

⁷ Richard Apostolik, Crishtopher and Peter Went, Foundations of Banking Risk; an Overview of Banking, Banking Risks, and Risk Based Regulation, John Wiley& Sons Inc, New Jersey, 2009, p. 30

⁸ Joel Bessis, Risk Management in Banking, TJ International Ltd, Cornwall UK, 2015, p.4.

⁹ Trisadini P. Usanti and Abd. Shomad, Hukum Perbankan, Kencana, Jakarta, 2017, p.23.

impact thereon of compliance with bank policies and procedures, internal systems and technology, information security, measures against mismanagement and fraud, and business continuity concerns. Another aspect of operational risk encompasses the bank's strategic planning, governance and organizational structure, management of staff careers and internal resources, product and knowledge development, and customer acquisition approach.¹⁰ The traditional definition of operational risk relies on the sources of risk or events that subject a bank to losses from its methods of operations. The traditional sources of risk are;

- a) people,
- b) processes,
- c) systems, and
- d) external events.

These very sources of risk are also the resources available to a bank when performing its business line functions and risk management activities.¹¹

Without the trust of the community of a bank certainly will not be able to run its business properly. So the banking sector must provide legal protection to the

¹⁰ Hennie van Greuning and Sonja Brajovic, *Analyzing Banking Risk: a Framework for Assessing Corporate Governance and Risk Management*, The World Bank, Washington, D.C, 2009, p.4

¹¹ *Ibid*, p. 293

interests of the community, especially the interests of customers from banks.¹²

Legal protection is regulated in Article 29 of Law Number 10 Year 1998 concerning banking supervision and supervision, which states that:

(1) Bank guidance and supervision shall be conducted by Bank Indonesia.

Banks are required to maintain bank soundness in accordance with the provisions of sufficiency capital, asset quality, quality management, liquidity, profitability, solvency, and other aspects related to the bank's business, and must perform activities effort in accordance with the principle of prudence.

(2) In granting credit or financing based on Sharia Principles and conducting other business activities, the bank is required to resort to methods that are not harming the bank and the interests of customers who entrust their funds to bank.

(3) For the interest of the customer, the bank shall provide information concerning the possibility of a risk of loss in connection with a customer's transactions done through the bank.

(4) For the benefit of customers, banks must provide information regarding the possibility of risk of loss in relation to customer transactions conducted through the bank.¹³

¹² Hermansyah, Hukum Perbankan Nasional Indonesia Edisi Kedua, Kencana, Jakarta, 2005, p.144.

¹³ See Article 29 Number (1)-(5) Law No. 10 year of 1998 regarding amendment to Law No. 7 of 1992 regarding Banking

Provision of information regarding the possibility of risk of customer loss is intended to make access to information about the business activities and condition of the bank more open, while ensuring transparency in the banking world.¹⁴

The Bank is also responsible for the confidentiality of customers' personal data, activities, along with transaction data carried out by customers at the bank. As explained in Article 1 number 28 of Law 10/1998:

“Bank secrecy is everything that relates to information about deposit customers and their deposits.”

Then, Article 40 paragraph (1) and (2) of Law 10/1998 states:

“Banks are required to keep information about the Deposit Customers and their deposits confidential, except in the case referred to in Article 41, Article 41A, Article 42, Article 43, Article 44, and Article 44A.”

According to Muhamad Djumhana in his book *Banking Law in Indonesia*, the community will trust the bank with the guarantee of confidentiality for all public data in relation to the bank). Furthermore, they will entrust their money to banks or use bank services. Community trust is born if there is a guarantee from the bank

¹⁴ Elucidation of Article 29 paragraph (4) of Law 10/1998

that the bank's knowledge of deposits and the customer's financial condition will not be misused.¹⁵

From a legal point of view, the relationship between the customer and the bank consists of two forms: contractual relationship and non-contractual relationship. The most important and most prevalent relationship between a bank and a customer is a contractual relationship. The contract law under which the relationship of the bank and the borrower's customers is derived from the provisions of the Civil Code of contract (the third book). Because in principle the relationship between depositors and banks is the contractual relationship (creditor relationship with the debtor), it is not surprising that in practice, often the customer, especially the depositors does not get proper protection.¹⁶

The focus of the issue of customer protection is on the provisions of the legislation and the terms of the agreement that draw the relationship between the bank and its customers. Legal relationships that occur between the bank and the customer can be realized from a contract, either in the form of a deed under the hand or in the

¹⁵ Muhammad Djumhana. 2012. *Hukum Perbankan di Indonesia*. Bandung: PT Citra Aditya Bakti.

¹⁶ Munir Fuady, *Hukum Perbankan Modern Buku Kesatu*, Citra Aditya Bakti, Bandung, 1999, p.104.

form of authentic. In this context it is necessary to observe well to maintain a protection for the customer but not weaken the position of the bank.¹⁷

The issue of civil liability for negligence or errors occurring with the bank may be related to the bank's management. The bank's management is the party acting on behalf of the bank's legal entity under the terms of the company's articles of association. Thus the responsibility of the board of his actions into two forms of personal responsibility and corporate responsibility. The bank is liable for losses incurred by the board in accordance with the theory of the company: that which imposes liability to the company on a loss basis is the cost of business.¹⁸

Employees are key stakeholders in the governance process, acting simultaneously as value generators and controllers/monitors (and, in some instances, shareholders). They occupy a special position in the corporate structure because it is through their efforts that a corporation exists as a (hopefully) productive concern. Employees also have a unique perspective on internal corporate affairs through their daily business and control work; that allows them to act as internal monitors.¹⁹ In

¹⁷ Ronny Prasetya, *Pembobolan ATM, tinjauan hukum perlindungan nasabah korban kejahatan perbankan*, Prestasi Pustaka, Jakarta, 2012, p. 65.

¹⁸ Mahesa Jati Kusuma, *Hukum Perlindungan Nasabah Bank, upaya hukum melindungi nasabah bank terhadap tindak kejahatan ITE di bidang perbankan*, Nusa Media, Bandung, 2012, p.75.

¹⁹ Erik Banks, *Corporate Governance Financial Responsibility Control and Ethics*, Palgrave Macmillan, New York, 2004, p.115

another side, with the authority of employees in performing their duties, risks arise when employees misuse the authority and act in violation of company rules or even commit criminal acts that harm the company.

If it is seen cases of burglary bank customers, most of the cases that occur involving insiders or bank employees themselves, the intrusion of burglary funds because the bank is lack of applying the prudential principle in running the business activities and due to lack of internal control. Based on Article 1365 of Indonesian Civil Code;

“Every unlawful action, that bring damage to other person, obliges the person by whose fault causing such loss, to compensate such loss.”²⁰

And Article 1366 of Indonesian Civil Code;

“Everybody is responsible not only for the damage that caused by his deed, but also for damage that caused by his negligence or carelessness”.²¹ When that happens, the customer can sue the bank in private with the indictment of breach of contract and unlawful acts (*onrechtmatigedaad*).

When a case of abuse of authority, a criminal case, and a similar case occurs within the internal scope of the bank and is performed by an employee or bank official,

²⁰Rany Mangunsong, Situmeang, *Indonesian Civil Code “Burgerlijk Wetboek voor Indonesie”*, (translated book), Gramedia Pustaka Utama, Jakarta, 2004. p. 294

²¹ *Ibid*

the bank is liable for damages or losses incurred, as described in article 1367 of Indonesian Civil Code; “A person is not only responsible for the damage caused by his own deed, but also for damage caused by the deed of persons under his responsibility, or by property under his supervision. Employers and they, who appoint other persons to represent their affairs, are responsible to any damage caused by their employees or their assistances in doing the job for which those persons are employed.”²²

Bank customers also specifically get legal protection as consumers regulated in POJK No. 1 / POJK.07 / 2013 concerning Consumer Protection in the Financial Services Sector on July 26, 2013 and promulgated on August 6, 2013²³

Article 25:

“Financial Service Providers are required to maintain deposit security, funds, or Consumer assets that are under the Financial Services Business Actor's responsibility.”

Article 29:

“Financial Service Providers must be responsible for the loss of the Customer arising from errors and / or negligence, management, employees of the Financial Services Business Actors and / or third parties working for the interests of Financial Services Business Actors.”

Reviewing from the Indonesian Civil Code, banking law, banking principles, contract law, consumer protection law as explained above, in case of loss of customer

²²*Ibid*

²³ See Peraturan Otoritas Jasa Keuangan POJK No. 1 / POJK.07 / 2013 concerning Consumer Protection in the Financial Services Sector

funds or embezzlement of funds by bank employees that occur within the scope of the bank itself is a form of bank negligence , funds deposited in the bank are the bank's responsibility and the bank should be responsible for the customer's funds entrusted to it. The bank may argue that it has done a good internal supervision and apply Prudential principles in carrying out every transaction, but otherwise burglary and losses of customer funds is not possible if the bank conducts supervision in running its internal system in accordance with the banking principle of careful precaution.

One of the problems that occurred regarding the banking dispute based on Supreme Court Decision No. 599 K / PDT / 2012 between PT. Bank Mandiri (Defendant) with Aceh Utara District Government (Plaintiff). And then again proceed legally on the Level of Judicial Review and has been decided by the Supreme Court in decision No. 41 PK / Pdt / 2014. Problems concerning this matter are the actions of the banks that withhold the bank holding the disbursement of deposits owned by the customer.

The Plaintiff has long been a loyal customer of Bank Mandiri Lhokseumawe branch. As a loyal customer of the Defendant, the Government of North Aceh Regency has made Defendant the source of funds for the Plaintiff. The Plaintiff then placed a sum of funds to the Defendant in the Jelambar branch of West Jakarta for Rp.220.000.000.000, - (two hundred and twenty billion rupiah) with the interest rate as

stated in the certificate of deposit and the placement of deposit agreement between the Plaintiff and the Defendant.²⁴

About 3 months later, the Plaintiff has tried to disburse and subsequently transferred all funds in the deposit to the Defendant amounting to Rp.220,000,000,000 (two hundred and twenty billion rupiah) to the Plaintiff's account at the Lhokseumawe branch. However, this is not possible because the total amount of Rp.220.000.000.000, - (two hundred twenty billion rupiah) has been transferred first by the Defendant's officers without the Plaintiff's knowledge / permission by withdrawing the deposit and transferring it to other accounts unlawfully.

In a Supreme Court ruling Number 599 K / Pdt / 2012 dated July 21, 2012 stating that the defendant's actions are illegal (*onrechtmatigedaad*) and punish the defendant to refund the principal and pay the interest the plaintiff should receive, and cancel the previous decision of the Jakarta High Court No. 158 / PDT / 2011 which reinforces the decision of South Jakarta District Court. 204 / Pdt.G / 2010 / PN.Jkt Sel.²⁵

However, the Supreme Court's decision of cassation was re-canceled in a Judicial Review Decision. 41 PK / Pdt / 2014 which stated to grant the Judicial Review

²⁴Supreme Court Decision No. 599 K / Pdt / 2012, p.2.

²⁵*Ibid.* p.6

of PT. Bank Mandiri so as not to get punished for the previous lawsuit. In this case, the bank be released from the responsibility of returning the lost customer funds when the funds should have been the responsibility of the bank.²⁶

B. Parties Identity

1. Applicant of Judicial Review

The applicant of Judicial Review in this case (formerly Pleated Cessation/ Defendant of Appeal / Defendant) is PT. BANK MANDIRI (PERSERO), TBK. A conventional commercial banks, including one of the state-owned enterprise bank, domiciled in Plaza Mandiri, Jalan Gatot Subroto Kav.36-38 Jakarta Selatan-12190. In this matter authorizes Sentot Panca Wardhana, SH, and friends, Advocates, at Law Firm Sentot, SH, & Associates office, located at Jalan Galur Sari Timur Number 81 Utan Kayu Selatan, Matraman, East Jakarta, based on Letter of Attorney on 1 August 2013.

2. Pleated of Judicial Review

The pleated of Judicial review in this case (formerly Applicant of Cessation/ Plaintiff of Appeal/ Plaintiff) is PEMERINTAH KABUPATEN ACEH UTARA, domiciled in Jalan, T. Hamzah Treasurer, Lhokseumawe, Nangro Aceh Darusalam (NAD), in this matter

²⁶ Supreme Court Decision Number 41 PK/Pdt/2014, p.25.

authorizes Dr. Munir Fuady, S.H., M.H., LL.M., and friends, Advocates, having their address at 12th Tower of Tower Suite, Jalan H.R. Rasuna Said Block X-7 Kav. 5 Jakarta Selatan - 12940, based on Letter of Attorney dated October 11, 2013.

3. The Court Adjudicated The Case

The supreme Court (Mahkamah Agung Republik Indonesia), as a judicial institution authorized to hear cases at the Judicial Review level.

4. Panel of Judges

a. The panel of Judges consists of:

a) Dr. H. Abdurrahman, S.H., M.H. (Chairman of the Panel)

b) Dr. Habiburahman, M.Hum. (Member of the Panel)

c) H. Mahdi Soroinda Nasution, S.H., M.Hum (Member of the Panel)

b. Registrar / clerk: Edi Saputra Pelawi, S.H., M.H.

5. Date of Decision

Supreme Court Decision Number 41 PK/Pdt/2014 was decided on Wednesday, May 7th, 2014.

C. Statement of Fact / Case Position

First of all, it is necessary to study the chronology of how this case happened in the first place. Whereas the Plaintiff has long been a loyal customer of the Defendant in Lhokseumawe branch. As a loyal customer of the Defendant, the Plaintiff has made Defendant as a depositary of the Plaintiff's Plaintiff having deposited his funds in one of the Defendant's branches, in Jelambar branch ,West Jakarta amounting to Rp.220.000.000.000, - (two hundred and twenty billion rupiah) with the interest rate as stated in the certificate of deposit and the placement of the deposit agreement between the Plaintiff and the Defendant. That Rp.220.000.000.000, - (two hundred twenty billion rupiah) is placed in the form of deposit with interest of 10.5% divided into 7 (seven) certificates of deposit, each worth Rp.50.000.000.000, - (fifty billion rupiah), Rp.30,000,000,000, - (thirty billion rupiah), Rp.35,000,000,000, - (thirty five billion rupiah), Rp.20,000,000,000, - (twenty billion rupiahs) , Rp. 40.000.000.000, - (forty billion rupiah), Rp.25.000.000.000, - (twenty five billion rupiah) and Rp.20.000.000.000, - (twenty billion rupiah), within 3 months with automatic roll system over.²⁷

That on 5 May 2009, the Plaintiff has tried to disburse and subsequently to transfer all funds in the deposit to the Defendant amounting to Rp.220.000.000.000, - (two hundred twenty billion rupiah) to the Plaintiff's account at the Lhokseumawe

²⁷Supreme Court Decision No. 599 K / Pdt / 2012, *Loc. cit.*

branch by Account Number: 10.5000 .422.5771 The Government of Aceh Utara District, but apparently this can not be done because the total amount of Rp.220.000.000.000, - (two hundred twenty billion rupiah) has been transferred first by the Defendants' officers without the knowledge / permission of the Plaintiff by disbursing such deposits and unlawfully transferring them to other accounts. The funds of North Aceh Regency are disbursed to PT Agro Sinjatara account of Rp 20.000.000,- . In order to trick the plaintiff, the defendant's employee has made a fake deposit certificate. Without the knowledge / permission of the plaintiff, the defendant has transferred Rp 200.000.000,- billion to the other party's account on May 5, 2009. The same day the plaintiff asked for his transfer of funds to the Lhoksumawe branch account and therefore could not be executed.²⁸

The transfer of funds to another party's account without the authorized consent / owner is clearly unlawful act (*onrechtmatigedaad*) and violates the prudent banking principles in which the Defendant is required to protect the customer's funds entrusted to him which should always be upheld by the Defendant as a bank. by virtue of the provisions of article 1367 of the Civil Code (Civil Code) which among others reads as follows: Article 1367 “A person shall not only be liable for damages caused by his own deed, but also for damage caused by the deed of the persons under his responsibility,

²⁸*Ibid*, p.2

or caused by the property under his supervision.²⁹ The employers and those who appoint others to represent their affairs shall be liable for damages issued by servants or their subordinates in the conduct of the work for which they are employed; “ Therefore, according to the law of the Defendant as the employer of the employees of Bank Mandiri branch of Jakarta Jelambar has the responsibility to bear the losses arising from the actions of its employees.³⁰

Whereas to the lawsuit, the South Jakarta District Court has taken the decision, namely the decision No. 204 / Pdt.G / 2010 / PN.Jkt Cell dated September 30, 2010 stating that the Plaintiff's claim is declared unacceptable. Furthermore, that in the appeal level of the Plaintiff's request the District Court decision has been declared corroborated by the Jakarta High Court with decision of No.158 / PDT / 2011 / PT.DKI dated 23 August 2011.

Because the plaintiff was dissatisfied with the decision of the district court and the appeal decision at the Jakarta High Court, the plaintiffs filed an appeal to the Supreme Court. The Supreme Court granted the appellant from the plaintiff and stated the reason for the plaintiff's appeal is justified. based on articles 2, 3 c and 4 of Law No.10 of 1998 which constitute amendment to Act No.7 of 1992 concerning banking,

²⁹Rany Mangunsong and Situmeang,. Indonesian Civil Code Burgerlijk Wetboek voor Indonesie, Jakarta,2004, p.294

³⁰*Op.cit*, p.3

in essence, the customer shall be protected when he / she keeps his funds in the form of demand deposit or deposit and the bank is obliged to maintain the stability or health of the bank; That in order to protect the customer's funds and maintain the stability / health of the bank, the bank must apply the principles of prudence; That the occurrence of bank burglary due to fraud or embezzlement is the risk borne by the bank and the loss can not be charged to the customer, the bank must return the customer's money without having to wait for the criminal process.³¹

Based on decision Number 599 K/Pdt/2012 the Supreme Court decided to grant the appeal and cancel the decision of Jakarta High Court Number 158 / PDT / 2011 / PT.DKI dated August 23, 2011 which reinforced the decision of South Jakarta District Court. 204 / Pdt.G / 2010 / PN.Jkt Sel September 30, 2010. And decided to punish the Defendant to return the principal fund of the Plaintiffs Rp.220.000.000.000, - (two hundred and twenty billion rupiah) in cash and instantly; along with the interest that the plaintiff should have received.

In 2014, PT. BANK MANDIRI (PERSERO), TBK as the applicant of Judicial Review in this case (formerly Pleated Cessation/ Defendant of Appeal / Defendant) filed a Judicial Review against PEMERINTAH KABUPATEN ACEH UTARA as the pleated of Judicial review in this case (formerly Applicant of Cessation/

³¹Supreme Court Decision No. 599 K / Pdt / 2012, Op. cit, p. 11.

Plaintiff of Appeal/ Plaintiff) is arguing that the investigation and punishment of corruption cases and money laundering crimes was committed other than in order to criminalize the defendant, also in the framework of returning all the money belonging to the Regency Government. North Aceh from the hands of the Detainees, and the court has granted additional rulings in the form of appropriation and payment of replacement money to refund the funds belonging to the Pemerintah Kabupaten Aceh Utara (Respondent for Judicial Review / Plaintiff).³²

The prosecution service as the executor has also taken the plunder and executed or received the surrender of surrogate money from the defendant to be returned to Pemerintah Kabupaten Aceh Utara (Respondent of Judicial Review / Plaintiff), so the loss of the plaintiff has been restored again. Based on Supreme Court Decision Number 41 PK/Pdt/2014 decide to grant the request for Judicial review from PT. BANK MANDIRI (PERSERO), TBK. and canceled the Supreme Court Decision Number 599 K / Pdt / 2012 dated July 31, 2012. So the defendant is free from all previous sentences.³³

Judge's consideration of the reason for the judicial review on the grounds that; the appellate review panel has committed an oversight or a misstatement which undermines the decision of the High Court of Jakarta affirming the correct and correct

³² Supreme Court Decision Number 41 PK/Pdt/2014, Op. cit, p. 16

³³ *Ibid*, p.13.

verdict of the South Jakarta District Court by granting part of the plaintiff's claim and declaring the defendant's act to be unlawful, even with new evidence filed in the request for judicial review , what has been challenged by the defendant / petitioner of the review is in accordance with the legal procedure, so that the appeal ruling should be canceled by following the decision of the High Court / District Court.³⁴

D. Summary of Decision

a. South Jakarta District Court Decision No. 204/ Pdt.G /2010 / PN.Jkt Sel

Whereas to the lawsuit, the South Jakarta District Court has taken the decision, namely the decision No. 204 / Pdt.G / 2010 / PN.Jkt Sel dated September 30, 2010 which is stated as follows:

IN THE EXCEPTION:

- Rejects the exception of the Defendant entirely;

IN THE PRINCIPAL CASE:

1. Declaring the Plaintiff's claim is unacceptable;
2. Burdening the Plaintiff to pay the cost of the case up to now amounting to Rp.161.000, - (one hundred sixty one thousand rupiah);

b. Jakarta High Court Decision No. 158/PDT/2011/PT.DKI

³⁴*Ibid*, p.24

The appellate court upheld the decision of South Jakarta District Court Number 204/ Pdt.G /2010 / PN.Jkt Sel , through the decision of the Jakarta High Court Number 158/PDT/2011/PT.DKI dated August 23, 2011.

c. Supreme Court Decision No. 599 K / Pdt / 2012

Pemerintah Kabupaten Aceh Utara (plaintiff) filed an appeal to the Supreme Court and through the decision No. 599 K / Pdt / 2012 that stated:

ADJUDICATE

To grant a cassation from the Cassation Appellant: PEMERINTAH KABUPATEN ACEH UTARA;

Canceled the Jakarta High Court's decision. 158 / PDT / 2011 / PT.DKI dated August 23, 2011 which reinforced the decision of South Jakarta District Court. 204 / Pdt.G / 2010 / PN.Jkt Cells dated September 30, 2010;

ADJUDICATE BY PART:

IN EXCEPTION:

- Reject the Defendants' entire exception;

IN THE PRINCIPAL CASE:

1. Granting the Plaintiff's claim partly;
2. Declare the act of the Defendant is an act against the law (*onrechtmatigedaad*);

3. Punishing the Defendant to return the principal fund of the Plaintiff as much as Rp.220,000,000,000, - (two hundred and twenty billion rupiah) in cash and instantly;
4. Punishing the Defendant to pay the interest that should have been received by the Plaintiff from June 2009 to February 2010 amounting to Rp.17.277.584.274, (seventeen billion two hundred seven million five hundred eighty four thousand two hundred seventy four rupiah) and will continue to be accounted for until this case has permanent legal power;
5. Rejecting the Plaintiff's claim entirely

Punish the Defendant Cassation / Defendant to pay court fees at all levels of court which in this cessation level is set at Rp.500.000, - (five hundred thousand rupiah).

d. Supreme Court Decision Number 41 PK/Pdt/2014

Supreme Court Decision decided to grant the request for Judicial review from PT. BANK MANDIRI (PERSERO), TBK that stated:

ADJUDICATE

1. To grant a request for Judicial review from the Applicant of Judicial review PT. BANK MANDIRI (PERSERO), TBK. the;
2. Cancel the Supreme Court Decision Number 599 K / Pdt / 2012 dated July 31, 2012;

ADJUDICATE IN PART:

In the Exception

- Rejects the Defendant's entire exception;

In the Principal Case

- To declare the Plaintiff's claim is unacceptable; Punishes the Plaintiff to pay court fees at all court levels under review of this amount of Rp2,500,000.00 (two million five hundred thousand rupiahs);

E. Legal Issue

Based to the description in the context of study, Statement of facts, as well as summary of decisions, the legal issue arisen from the case; how is the bank's responsibility towards the lost of customer funds based on unlawful act lawsuit?

F. Legal Consideration

The reason may be justified, for the following reasons: whereas the cassation Assembly has committed an oversight or a real mistake to overturn the decision of the Jakarta High Court upholding the correct and correct verdict of the South y 2012 and the Supreme Court will hear Jakarta District Court by granting part of the Plaintiff's claim and declaring the act of the Defendant to be deed against the law, whereas with the evidence presented in the hearing with new evidence filed in the request for reviewing what is done by the Defendant / Requestant of Review is in accordance with

the legal procedure, so the decision of cassation should be canceled by following the decision of the High Court / District Court; Considering it, the Supreme Court is that of opinion that there is sufficient reason to grant a review request from the Request for Re Review: PT. Bank Mandiri (Persero), Tbk. and canceled the Supreme Court Decision Number 599 K/Pdt/2012 dated 31 July this case with a verdict as will be mentioned below; Considering, that the Respondent of the Review / Plaintiff is on the losing side, it is punished to pay the cost of the case at all levels of the judiciary; Taking into account Law Number 48 Year 2009 regarding Judicial Power, Law Number 14 Year 1985 regarding the Supreme Court as amended and supplemented by Law Number 5 Year 2004 and the second amendment with Law Number 3 Year 2009 as well as other laws and regulations concerned.

G. Legal Analysis

Based on the description of the position of the case, the writer will analyze the contractual relationship between the Bank and the customer and the bank's responsibility for the loss of customer funds.

1. Contractual Relationship between Bank and Customer

It is known that the main function of Indonesian banking is to collect and channel public funds. Based on the two main functions of the bank; namely the fund-raising function and the function of fund distribution, there are two legal relationships

between the bank and its customers, i.e. the legal relations between banks and depositors and legal relations between banks and debtor customers.³⁵

The form of legal relations between banks and depositors is able to be seen from the legal relations that arise from banking products such as deposits, savings, checking accounts and so on. This form of legal relationship is stated in the form of an agreement made by the bank concerned with the general conditions that must be obeyed by the depositors. These conditions must be adjusted to existing banking products, because the requirements of a banking product will not be the same as other banking products.³⁶

As for banking products such as savings and time deposits, general terms and conditions for deposit accounts and savings accounts. As explained in article 1 number (5) of the Banking Law, deposits are funds that the public gives to banks by the public to banks based on funds storage agreements in the form of demand deposits, deposits, certificates of deposit, savings and / or other forms equivalent to that.³⁷

The contractual relationship between the bank and the customer in transactions in banking is a contractual relationship based on an agreement agreed upon by both parties which is regulated in Article 1320 of the Civil Code which is to agree that they are binding, the ability to make an engagement, a lawful reason and a certain thing.³⁸

³⁵ Ronny Sautma Hotma, Hubungan Bank dan Nasabah terhadap Produk Tabungan dan Deposito (Suatu Tinjauan Hukum terhadap Perlindungan Depositor di Indonesia Dewasa Ini), PT. Citra Aditya Bakti, Bandung, 1995, p. 32,

³⁶ Ibid, p.33

³⁷ See Article 1 Number 5 of Banking Law

³⁸ See Article 1320 of the Civil Code

The legal relationship between the Private Bank and its customers occurs after both parties sign an agreement to utilize the services offered by the bank, where each bank product always has provisions offered by the Bank. By the approval of the customer, this means that the customer has agreed to the contents of the agreement, thus applying the principle of *pacta sun servanda*.³⁹

Based on Article 1365 of Indonesian Civil Code;

“Every unlawful action that bring damage to other person, obliges the person by whose fault causing such loss, to compensate such loss.”⁴⁰

And Article 1366 of Indonesian Civil Code;

“Everybody is responsible not only for the damage caused by his deed, but also for damage caused by his negligence or carelessness”.⁴¹ When that happens, the customer is able to sue the bank in private with the indictment of breach of contract and unlawful acts (*onrechtmatigedaad*).

When a case of abuse of authority, a criminal case, and a similar case occurs within the internal scope of the bank and is performed by an employee or bank official, the bank is liable for damages or losses incurred, as described in article 1367 of

³⁹ See Article 1338 paragraph (1) of the Civil Code

⁴⁰Rany Mangunsong, Situmeang, *Indonesian Civil Code “Burgerlijk Wetboek voor Indonesie”*, (translated book), Gramedia Pustaka Utama, Jakarta, 2004. p. 294

⁴¹ *Ibid*

Indonesian Civil Code; “A person is not only responsible for the damage caused by his own deed, but also for damage caused by the deed of persons under his responsibility, or by property under his supervision. Employers and they, who appoint other persons to represent their affairs, are responsible to any damage caused by their employees or their assistances in doing the job for which those persons are employed.”⁴²

Liability is the state of being bound or obliged in law or justice to do, pay, or make good something; legal responsibility. While, vicarious liability is obligation rising from a parties relationship with each other. Also known as vicarious responsibility.⁴³

Vicarious liability, also known by the Latin term “*respondeat superior*,” is the holding of a person or entity responsible for damages or harm caused by someone else. *Respondeat superior* is an extension of the principle of vicarious liability that holds an employer responsible for the conduct of an employee. The responsibility of the employer is dependent upon the ability of the injured party to prove negligence on the part of the employee. In other words, if there is not enough evidence to prove that an employee was negligent, then the case would have to be dismissed against the employer as well.⁴⁴

Most commonly thought of in employee-employer relationships, it applies in other situations in which a person or entity holds a superior position to an agent. The

⁴²*Ibid*

⁴³ What is vicarious liability <https://thelawdictionary.org/vicarious-liability/>

⁴⁴ What is vicarious liability <https://legaldictionary.net/vicarious-liability/>

concept of vicarious liability is rooted in the fact that the superior party (such as an employer) has induced, facilitated, or otherwise contributed to its agent's acts. An example of vicarious liability is when an employer is held liable for the action of one of his employees.⁴⁵

Employers can be held liable for the actions or omissions during the commission of the employee's job. In order for the act to be considered "in the course of employment," the employer must have authorized or directed the act, or be otherwise connected with the act. The best ways to perform functions must, on the whole, mean the best performance, in his interpretation of his instructions, to serve his master's interest. An employer is not, however, responsible for actions taken by his employee which are not within the scope of his employment.⁴⁶

2. Banking Principle and Banking Law

The importance of public trust in the bank has created a relationship of public trust in the bank has created a trust relationship between the bank and its customers becomes important. This happens because the bank has a unique status in the middle of the community, in addition to the bank as a backbone of a belief it also occupies a special position as a safe place. In addition, in carrying out its business activities, the bank is also involved with internal problems of the company and individuals so that

⁴⁵ *Ibid*

⁴⁶ THE BASIS OF VICARIOUS LIABILITY by HAROLD J. LASKI
<https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=2522&context=yj>

the role of the bank has gone beyond the traditional relationship between debtors and creditors.

In such characteristics, the relationship between the bank and the customer is a trust relationship. This is further emphasized in modern banking practices that involve very complex structures and often causes banks to act as financial advisors to their customers, thus creating a relationship of trust and confidentiality which in turn results in a fiduciary duty to the bank when dealing with its customers. In such a relationship, the bank has an obligation to disclose all material facts to its customers, if the bank has knowledge that may be very important for the customer⁴⁷

Article 1 number (2) of Law No. 10 of 1998, that "Banks are business entities that collect public funds in the form of deposits and channel them to the public in the form of credit and/or other forms in order to improve the standard of living of the people". Among Commercial Bank businesses as above, there are other businesses that are issuing letters of acknowledgment of debt, buying, selling or guaranteeing at their own risk or for the benefit of the orders of their customers. Commercial Bank business in collecting funds from the public is in the form of deposits, the definition of deposits specified in Article 1 number 5 of Law No. 10 of 1998, that "Deposits are funds entrusted by the public to the Bank based on the agreement to deposit funds in the form

⁴⁷ Zulkarnain Sitompul, *Perlindungan Dana Nasabah Bank*, Universitas Indonesia, Jakarta, 2002, p. 31

of demand deposits, deposits, certificates of deposit, savings and / or other equivalent forms".

Based on the provisions of Article 1 point (5) of Law No. 10 of 1998 the relationship between banks and depositors has two relations, namely:

- 1) relationships based on trust, and
- 2) relationships that are based on storage agreements

The depositor is a customer who places funds in a bank in the form of deposits based on a bank agreement with the customer concerned. (Article 1 number 17 of Law Number 10 of 1998).

In banking law, there are several banking principles which are general principles, so that any banking activities based on banking functions and activities, either to collect funds from the community or channel funds to the public in the form of loans are expressed in the form of an 'agreement' or 'contracts' must use the following four principles: the principle of trust; fiduciary relation principle, the prudential principle, the secrecy principle, and know your customer principle.

- 1) Fiduciary principle

The principle of trust is a principle that underlies the relationship between banks and bank customers. The Bank strives from public funds that are kept based on trust, so that every bank needs to maintain the health of its bank while maintaining and

maintaining public trust. The principle of trust is regulated in Article 29 paragraph (4) of Law No. 10 of 1998. "For the benefit of customers, banks must provide information regarding possibilities the occurrence of risk of loss in connection with customer transactions conducted through a bank. ”

Fiduciary principle or the principle of trust is a principle that states that a bank's business is based on a trust relationship between the bank and its customers. The bank mainly works with funds from the public that are stored in it on the basis of trust, so that each bank must and needs to continue to maintain its health while maintaining and maintaining public trust in the bank.⁴⁸

2) Prudential Principle

The prudential principle is a principle that affirms that bank in carrying out business activities both in raising funds and distributing funds to the public must be very careful. The purpose of this prudential principle is to ensure that the bank is always in good health to run its business well and comply with the legal provisions and norms that apply in the banking world. The prudential principle is stated in Article 2 and Article 29 paragraph (2) of Law No. 10 of 1998.⁴⁹

3) Principle of Confidentiality

⁴⁸ *Ibid*, p. 33

⁴⁹ See Article 2 and Article 29 paragraph (2) of Banking Law

The principle of bank secrecy is regulated in Article 40 to Article 47 A of Law No. 10 of 1998. According to Article 40 banks are required to keep confidential information about deposit customers and their deposits. But in this provision the obligation to keep it a secret is not without exception. The obligation to keep it a secret is excluded in matters for tax purposes, settlement of bank debt debts that have been submitted to the Receivables and Auction / Committee of State Receivable Affairs (UPLN / PUPN), for the sake of criminal cases, in civil cases between banks and customers , and in the framework of exchanging information between banks.⁵⁰

4) Know Your Customer Principles

The principle of getting to know customers is the principle applied by banks to identify and know the customer's identity, monitor customer transaction activities including reporting any suspicious transactions. The principle of recognizing customer customers is regulated in Bank Indonesia Regulation No.3 / 10 / PBI / 2001 concerning application of Know Your Customer Principles. The aim to be achieved in the application of the principle of recognizing customers is to increase the role of financial institutions with various/ policies in supporting the practice of financial institutions, avoiding the possibilities of financial institutions being used as crime and illegal

⁵⁰ See Article 40 to Article 47 A of Banking Law

activities carried out by customers, and protecting the reputation and reputation of financial institutions.⁵¹

Banks must maintain a healthy level, for the implementation of the bank must carry out business activities with the precautionary principle, and Bank Indonesia conducts guidance and supervision of banks. Guidance and supervision of banks is a provision in the Banking Law that aims to provide protection to the bank concerned and customers depositors, therefore if there is a violation of the bank's obligations relating to the provisions governing the principle of prudence, guidance and supervision, the bank is subject to administrative sanctions in accordance with Article 52 of the Banking Law in the form of a written warning, and the violation can be calculated with the bank's health level component , even banks can be given sanctions for revocation of business licenses, and with the provisions of Article 49 paragraph (2) letter b of the Banking Law, the Directors of the bank concerned can be complained by customers as having committed a criminal act and subject to criminal sanctions. ⁵²

In the Banking Law, there is no further explanation regarding the legal construction of the bank's deposit fund agreement. From the provisions as stipulated in the Banking Law, it is known that when a customer wants to place his funds in a bank in the form of deposits or investments, a deposit agreement between a bank with the customer concerned, in the form of a deposit agreement, a deposit agreement deposit

⁵¹ See Bank Indonesia Regulation No.3 / 10 / PBI / 2001 concerning application of Know Your Customer Principles

⁵² See Article 52 Law No. 10 of 1998 about Banking

agreement, a deposit certificate deposit storage agreement or a savings fund storage agreement. In essence, the agreement to deposit bank funds will occur if a person places a number of funds in the bank in the form of deposits, provided that the customer will receive the funds deposited with the funds provided by the bank. Funds placed by someone at the bank can be used by banks to carry out their business activities.⁵³

The legal protection, among others, is regulated in Article 29 of the Banking Law concerning banking supervision and control, which states that:

- 1) Bank supervision and supervision is carried out by Bank Indonesia.
- 2) Banks are required to maintain bank soundness in accordance with the provisions of capital adequacy, asset quality, management quality, liquidity, profitability, solvency, and other aspects related to the bank's business, are obliged to conduct business activities in accordance with the prudential principle.
- 3) In providing Credit or Financing based on Sharia Principles and conducting other business activities, banks are required to take measures that do not harm the bank and or the interests of customers who entrust their funds.

⁵³ Rachmandi Usman, *Aspek-Aspek Hukum Perbankan Indonesia*, Gramedia Pustaka Utama, Jakarta, 2001, p. 99

- 4) For the interest of the customer, the bank shall provide information concerning the possibility of a risk of loss in connection with a customer's transactions done through the bank⁵⁴

The Bank conducts its business based on the principle of trust. The principle of trust is regulated in Article 29 paragraph (4) of Law Number 10 of 1998 concerning Amendments to the Banking Law Number 7 of 1992 concerning Banking (hereinafter referred to as the Banking Law).⁵⁵ That stated:

The principle of trust or fiduciary principle is a principle that states that a bank's business is based on a trust relationship between the bank and its customers. The customer saves or deposits funds without collateral from the bank. Article 1 paragraph (2), the Banking Law states "Banks are business entities that collect funds from the public in the form of deposits and channel them to the public in the form of credit and / or other forms in order to improve the standard of living of the people".⁵⁶ On the contrary, to maintain that trust, banks must apply risk management. Banks are required to maintain and manage customer funds with due care.

The basis of the obligation of fiduciary duty is the obligation to be loyal (duty of loyalty) which means that a fiducia holder is not justified in sacrificing the interests of the fiducia giver (beneficiary) by prioritizing his own interests. Fiducia holders are

⁵⁴ See Article 29 Law No. 10 of 1998 about Banking Law

⁵⁵ See Article 29 paragraph (4) of Banking Law

⁵⁶ See Article 1 paragraph (2) Banking Law

obliged to carry out duty of care. Failure to carry out the duty of care is in itself a violation of the fiduciary duty without regard to whether the act actually causes a loss to the fiducia provider.⁵⁷

In carrying out banking duties, each bank and other financial service players work under the supervision of Bank Indonesia. Based on article 29 paragraph (1) Law No. 8 of 1998 concerning Banking states that: Bank supervision and supervision is carried out by Indonesian banks. In the elucidation of article 29 paragraph 1, it is explained that what is meant by coaching is: the efforts carried out by establishing regulations concerning aspects: Institutional; Ownership; Management; Business activities; Reporting; and other aspects related to bank operations.⁵⁸

Furthermore, what is meant by supervision in paragraph (1) includes indirect supervision, especially in the form of early supervision through research, analysis, and evaluation of bank reports, and direct supervision in the form of checks followed by corrective actions. Accordingly, Bank Indonesia is given the authority, responsibility and obligation in its entirety to conduct guidance and supervision of the bank by taking measures both preventive and repressive. On the other hand, banks are required to have and implement an internal supervision system in order to ensure the implementation of the decision making process in bank management in accordance with the precautionary

⁵⁷ Zulkarnain Sitompul, *Perlindungan Dana Nasabah Bank*, Universitas Indonesia, Jakarta, 2002, p. 32

⁵⁸ See elucidation of Article 29 Paragraph (1) Law No. 8 of 1998 of Banking Law

principle. Considering that banks mainly work with funds from the public that are kept in banks on the basis of trust, every bank needs to continue to maintain its health and maintain public trust in it.⁵⁹

Elucidation of article 29 paragraph (1) Law No. 10 of 1998 concerning Banking, also explained the objectives of the guidance and supervision by Bank Indonesia, namely:

- 1) The two functions must be carried out by Bank Indonesia as the Central bank, considering that banks mainly work with funds from the community that are kept in banks on the basis of trust, therefore the condition of a bank needs to be monitored by Bank Indonesia;
- 2) The goal of health care for a bank is maintained, because public trust in banking institutions can only be grown if the banking institutions in their business activities are always in good health;
- 3) Correspondingly, Bank Indonesia must be given the authority, responsibility and obligation in its entirety to conduct supervision and guidance of banks by taking measures, both preventive in the form of provisions and guidance, advice and guidance and directive and repressive in the form of examination followed by corrective actions.

⁵⁹ See elucidation of Article 29 Paragraph (1) Law No. 8 of 1998 concerning Banking

- 4) On the other hand, banks are required to have and implement an internal supervision system in order to ensure the implementation of the decision-making process in the management of banks in accordance with the precautionary principle.⁶⁰

The bank works with funds from the public that are kept on it on the basis of trust, so that each bank needs to continue to maintain its health by maintaining and maintaining the public's trust in it. The willingness of the people to save some of their money in the bank is based solely on the belief that the money will be returned at the desired time or in accordance with the agreement and accompanied by rewards.⁶¹

If the trustee of the depositor's funds to a bank has been reduced, it is possible that there will be a *rush* of funds deposited. Rush is a simultaneous withdrawal of money and a large amount of savings at the Bank. The impact is that the Bank will experience a money crisis that will cause economic turmoil.⁶² With this movement, the Bank will experience destruction and bankruptcy, which in turn will cause a crisis of confidence in the community towards banking. Various factors can cause customer distrust of a bank. According to banking law, the relationship between the bank and the customer is not just an ordinary contractual relationship (lending-borrowing

⁶⁰ Rachmandi Usman, *Aspek-Aspek Hukum Perbankan Indonesia*, Gramedia Pustaka Utama, Jakarta, 2001, p. 123

⁶¹ Zulfi Diane Zaini, *Independensi Bank Indonesia dan Penyelesaian Bank Bermasalah*, Keni Media, Bandung, 2012, p. 55

⁶² Mehulika Sitepu, 'Rush money' merusak kepentingan masyarakat, at <https://www.bbc.com/indonesia/indonesia-38024407> last visited Oct. 2, 2018.

relationship) between the debtor and the creditor which is covered by the general principles of the contract law, but also the trust relationship is covered by the principle of trust.

The banking industry is one of the most regulated branches of industry by the Government because the stability of the banking and financial systems is an absolute prerequisite for the growth and stability of the economy as a whole reason for government intervention are:⁶³

First, safeguarding the security and health of banking institutions and the financial system as a whole. Without the existence of banking institutions and the financial system as a whole. Without the existence of a banking institution and a financial system that is trusted, it is impossible for the public to accept money as a medium of exchange, as a measure of value, as a means of storing wealth, as well as a means of resolving the relationship of debt in the future (deferred payment).

Second, to control the money supply in maintaining the stability of the price level. The more advanced an economy, the smaller the role of banknotes and coins circulating because of the greater role of debt securities issued by banking institutions as a substitute for banknotes and metals. With the high level of trust held by financial institutions, debt securities issued by banks can be accepted by the public as money.

⁶³ E. Gerald Corrigan, "Central Banks and The Financial System"
https://www.newyorkfed.org/medialibrary/media/research/quarterly_review/1990v15/v15n2article1.pdf p. 2

Third, the banking industry is considered a very strategic industry in allocating economic resources to realize various development goals. In other words, financial institutions seem to be considered as semi-state companies that can be used by the government as an instrument to realize its policy goals.

Fourth, to maintain healthy competition in the financial industry. Through healthy competition, financial institutions compete to mobilize public funds, compete to reduce the costs of inter-mediation, and compete to reduce doubtful loans due to bad credit. The decrease in inter-mediation and credit costs, will reduce the interest rates on loans. Optional credit allocation while increasing economic efficiency and increasing business activities.

Distrust in the banking industry can make the industry collapse in an instant. At present Indonesia is feeling the true importance of trust in the banking world: a lesson that must be paid expensively. Indeed, the relationship between a bank and a depository customer is not just an ordinary contractual relationship between a debtor (a bank) and a creditor (a depository customer) which is covered by the general principles of the contract law, but also a trust relationship that is covered by the principle of trust. The recognition has the consequence that the relationship between banks must not only pay attention to their own interests only, but also must pay attention to the interests of depositors.⁶⁴

⁶⁴ Djoni S. Gazali, & Rachmadi Usman,, Hukum Perbankan,Cet.ke-1, Sinar Grafika, Jakarta, 2010, p.568

3. OJK (*Otoritas Jasa Keuangan*) Regulation No. 1/POJK.07/2013 on Consumer Protection Of Financial Services Sector

In terms of protecting consumers and the public, the Financial Services Authority is given the authority to take measures to prevent consumer and community losses. This form of protection is asking financial service institutions to stop their activities if the activity is detrimental to the community. Then the OJK will conduct a legal defense for the interests of consumers in the form of filing a lawsuit in court against parties that cause harm to consumers in the financial services sector.⁶⁵

One of the objectives of the establishment of the Financial Services Authority (OJK) is to protect the interests of consumers and the public in carrying out activities in the financial services sector. Consumer protection mandated to OJK is explicitly stated in Article 4 (c) of Law No. 21 of 2011 concerning the Financial Services Authority (hereinafter abbreviated as UUOJK) which is stated as follows, "OJK was formed with the aim that all activities in the financial services sector: (c) are able to protect the interests of consumers and society."⁶⁶ Consumer protection in the financial services sector aims to creating a reliable consumer protection system, increasing consumer empowerment, and fostering awareness of Financial Service Business Actors

⁶⁵ Kasmir, *Dasar-Dasar Perbankan Edisi Revisi 2014*, PT RajaGrafindo Persada, Jakarta, 2014, p. 273

⁶⁶ See Article 4 (c) of Law No. 21 of 2011 UU OJK

regarding the importance of consumer protection so as to increase public confidence in the financial services sector.

CHAPTER I

GENERAL REQUIREMENTS

Article 1

In this Financial Services Authority Regulation:

1. Financial Service Business Actors are Commercial Banks, Rural Banks, Securities Companies, Investment Advisers, Custodian Banks, Pension Funds, Insurance Companies, Reinsurance Companies, Financing Agencies, Pawn Companies, and Guarantee Companies, both those carrying out their business activities conventionally and in sharia.
2. Consumers are parties who place their funds and / or utilizing services available in Financial Services Institutions, among others, customers in Banking, capital market investors, policy holders in insurance, and participants in the Pension Fund, based on the laws and regulations in the financial services sector.
3. Consumer Protection is the protection of consumers with the scope of behavior of Financial Services Business Actors.

4. Commercial Banks are banks that carry out business activities conventionally and or based on Sharia Principles which in their activities provide services in payment traffic.⁶⁷

In the financial services sector, which meant by consumers is' parties who place their funds and / or utilize services available in Financial Services Institutions, among others, customers in Banking, capital market investors, policy holders in insurance, and participants in the Pension Fund, based on the laws and regulations in the financial services sector. 'The meaning of the Financial Services Institution, which is also called the Financial Services Business Actor/*Pelaku Usaha Jasa Keuangan* (here in after referred to as PUJK) is' Commercial Banks, Rural Banks, Securities Companies, Investment Advisors, Custodian Banks, Pension Funds, Insurance Companies, Reinsurance Companies, Financing Agencies, Pawn Companies, and Guarantee Companies, both those carrying out their business activities conventionally and in sharia. "⁶⁸

Regarding the discussion above, there are five important principles of consumer protection regulated in POJK No. 1 / POJK.07 / 2013. These five principles must be adhered to so that consumer protection can run effectively. The five principles are as follows:

⁶⁷ See General Requirements Article 1 POJK No. 1/POJK.07/2013

⁶⁸ See Article 1 &2 of POJK No. 1/POJK.07/2013

First, transparency. This principle requires Financial Service Business Actors (PUJK) to provide information in an open, clear and easy-to-understand language to consumers about all products owned. This is important so that consumers can understand perfectly the product offered.

Second, fair treatment. This principle emphasizes that the PUJK is fair and non-discriminatory to consumers by giving different treatment between consumers, especially based on ethnicity, religion and race.

Third, reliability. The purpose of 'reliability' in this principle is everything that can provide accurate services through reliable systems, procedures, infrastructure and human resources.

Fourth, confidentiality and consumer data / information security. This principle regulates that the PUJK maintains and secures and safeguards consumer data. PUJK is only permitted to use data and information in accordance with the interests and objectives agreed to by the consumer, unless otherwise stipulated by the legislation.

And fifth, handling complaints and resolving consumer disputes in a simple, fast and affordable manner. This principle is related to the service / settlement of complaints made by consumers in solving the problems they face. This consumer complaints service is facilitated by OJK to facilitate complaints. Then the dispute resolution

mechanism through an effective alternative dispute resolution institution is also offered to consumers so that disputes can be resolved quickly.⁶⁹

Article 25:

“Financial Service Providers are required to maintain deposit security, funds, or Consumer assets that are under the Financial Services Business Actor's responsibility.”

Article 29:

“Financial Service Providers must be responsible for the loss of the Customer arising from errors and / or negligence, management, employees of the Financial Services Business Actors and / or third parties working for the interests of Financial Services Business Actors.”

With explanation below:

Article 29

“What is meant by "mistakes and / or omissions" in this article is mistakes and / or negligence in carrying out business activities of Perpetrators Financial Services Business, whether implemented by management, employees Financial Services

⁶⁹ See explanation of Article 2 of POJK No. 1/POJK.07/2013

Business Actors and / or third parties working for the interests of Financial Services Business Actors.”⁷⁰

Bank Mandiri is one of the conventional state-owned banks, which is of course included in the category of commercial banks mentioned in the POJK above and has full responsibility for the customer funds entrusted to them. Moreover, Bank Mandiri is the largest bank in Indonesia in terms of assets, loans and deposits. In the case of the loss of customer funds decided in the Supreme Court's ruling No. 41 PK / Pdt / 2014, whereby Bank Mandiri filed a judicial review stating that criminal proceedings against employees who commit corruption and money laundering are in the criminal process of returning the customer's money so that the judge decides to cancel the Supreme Court's verdict at the cassation level that previously sentenced the Bank Mandiri for unlawful acts and punishes Bank Mandiri for returning customer funds and interest that should be obtained. The bank must carry out its responsibility from the beginning to return customer funds due to the negligence of its employees as explained in Article 25 and 29 of the POJK No. 1/POJK.07/2013.⁷¹

According to the Indonesian banking legal system, protection of depositors can be done in two ways, namely;⁷²

⁷⁰ See explanation of Article 29 of POJK No. 1/POJK.07/2013

⁷¹ See Article 25 and 29 of the POJK No. 1/POJK.07/2013

⁷² S. Sundari Arie, M. , Hubungan Hukum antara Bank dan Nasabah dalam Kaitannya dengan Kedudukan Hukum Simpanan Dana Nasabah, Majalah Hukum Nasional, BPHN, Nomor 1, Jakarta, 1998, p. 18.

1. Implicit Deposit Protection, which is the protection provided through the supervision and control of banks that can avoid bankruptcy of banks that can be monitored.
2. Explicit Deposit Protection, namely protection through the establishment of an institution that guarantees public savings so that if a bank fails, the institution will replace the customer's funds that have been planted in a bank.

The bank's obligation to its customers is greater than its obligation to the community. Because of its more direct relationship with its customers compared to its relationship with the public, top management of the bank must always pay attention to the influence of policies and practices on the welfare of its customers. Especially for customers who have entrusted their money to the bank and to customers who have entrusted their money to the bank and to customers who have established reliable lending or other relationships.⁷³

Legal protection in banking transactions as a matter that can be carried out by the parties can be protected. Basically, the form of legal protection is a law enforcement effort. Conceptually, the law outlines the activity and harmonization of values and manifests and acts as an elaboration of the final values to create, protect, and maintain

⁷³ Zulfi Diane Zaini & Syopian Febriansyah, *Aspek Hukum dan Fungsi Lembaga Penjamin Simpanan*, Keni Media, Bandung 2014, p.

peace in life. More concrete elaboration is manifested in the form of legal norms that guide behavior or actions that are considered appropriate.⁷⁴

To create health banking, an approach consisting of 3 (three) main pillars namely supervision, internal governance and market discipline. This approach should be done because supervision will not be able to keep pace with the speed of liberalization, globalization and technological advances in financial instruments. Thus, supervision must be complemented by internal and external discipline of the banking system. By involving internal governance, the supervisory approach incorporates the view that banking itself is the best place to organize and maintain sound management practices. The inclusion of market discipline reflects the fact that without a competitive and punitive market for failure to compete in the market it is not sufficiently intensive for bank owners, managers and customers to make sound financial decisions.⁷⁵

4. Bank Obligations to The Security of Customer Funds

From year to year the existence of banking in Indonesia is growing and developing, it is marked by the presence of new and conventional sharia banks that are growing and developing, the funds raised from the Indonesian people are also a sign of the success of banks in carrying out their business. The amount of funds that can be collected by a bank is a reflection of increasing public trust in the bank. The more funds

⁷⁴ Pelupessy, E. 2010. Hukum Dagang. Bandung: Logoz Publishing, p. 34

⁷⁵ Eddy Pelupessy, Budiyanto, Misuse of Customer Saving Funds as a Banking Crime <https://iiste.org/Journals/index.php/JLPG/article/view/39952/41072>, 2017

collected means an indication for the bank, that the bank concerned has the trust of the community. The banking business is a trust business, therefore careful management is very necessary because funds from the public are entrusted to it.

Rights and obligations between banks and customers are realized in a form of achievement that has been determined in the agreement made between the bank and the customer.

Bank obligations to customers including as follows:

- 1) The bank's obligation to keep the customer's financial secret, that is "everything related to information about the depositing customer and his deposit (Article 1 number 28 of Law No. 10 of 1998);
- 2) The bank's obligation to secure customer funds, which in relation to the responsibility of securing money the customer needs to hold a deposit of money with the bank.
- 3) Obligation to receive a sum of money from the customer, keeping in mind the main function of the bank as a public fund collector, the bank is obliged to receive a sum of money from the customer for the chosen banking product, such as savings and time deposits.

- 4) The obligation to report banking activities transparently to the public. The obligation referred to is the bank must report its banking activities to the public transparently, meaning for a certain period of time.
- 5) Bank's obligation to know in depth about its customers. The meaning of this obligation is that banks are required to ask for proof of information from customers that aims to prevent unwanted matters at a later date if someone will take or withdraw their money from the bank concerned. Problems that are also present are in agreement with the implementation of each responsibility sometimes customers do not understand their rights as stipulated in the legislation. Thus, customers who do not understand this often lose their rights as consumers and lose the opportunity to demand what is the bank's obligations.⁷⁶

The other Bank's obligation explained below:⁷⁷

- 1) Ensure the confidentiality of the customer's identity along with the funds deposited with the bank, unless the laws and regulations specify otherwise.
- 2) Submit funds to customers in accordance with the agreement.

⁷⁶ Lukman Santoso., Hak dan Kewajiban Hukum Nasabah Bank, Pustaka Yustisia, Yogyakarta, 2011, p. 101

⁷⁷ Sentosa Sembiring, Hukum Perbankan, Cv Mandar Maju, Bandung, 2008, p. 63

- 3) Paying deposit interest in accordance with the agreement.
- 4) Changing the position of the debtor in the event that the customer is unable to carry out his obligations to a third party.
- 5) Make payments to exporters in the case of using letter of credit facilities, as long as the requirements for that have been fulfilled.
- 6) Provide reports to customers regarding the development of funds deposits in the bank.

Deposits from customers are entrusted to the bank as “amanah” for safekeeping and management, and can be taken in accordance with the rules agreed by both parties. So that the bank as a trustee must maintain the funds. In Al Quran explained;

﴿إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ إِنَّ اللَّهَ نِعِمَّا يَعِظُكُمْ بِهِ إِنَّ اللَّهَ كَانَ سَمِيعًا بَصِيرًا﴾

Indeed, Allah commands you to render trusts to whom they are due and when you judge between people to judge with justice. Excellent is that which Allah instructs you. Indeed, Allah ever hears and Seeing. [QS An Nisa: 58]

Surely God commands you to deliver trusts back to their owners. In this verse the lovingly kind Lord, the generous and right-knowing, the care-taker of the servants, commands His servants to give back trusts. He is saying, “Return the trusts

at your own liability to their folk.” In other words, do not intervene in them, and avoid betrayal, for after the faith and recognition of the servant, there is no attribute greater than holding in trust; and after unbelief, there is no attribute uglier than betrayal. The servant's obedience comes forth from holding in trust, and disobedience comes from betrayal. Betrayal is the basis of corruption, the beginning of every mis- fortune, and the foundation of disobedience. Holding in trust is the pillar of the religion, the perfection of tawḤīd, and the attribute of the prophets and the angels. ⁷⁸

Verily, God commands you to restore trusts back to their owners, that is, [to give] what is due to the person to whom it is due by fulfilling what is due of preparedness first, then by fulfilling what is due to all of the faculties in terms of the perfections which they entail, then by fulfilling what is due to God, exalted be He, in terms of restoring to Him the attributes, then by restoring [to Him] existence. It is said of God that He has deposited trusts with you so to return the trust amāna to its rightful owner is to surrender it intact to God secure from any breach of faith khiyāna on your part regarding it. God is ever Hearer, of the statements you make in arbitrations between people, and whether these are truth-inspired and sound or soul-inspired and

⁷⁸ Kashf Al Asrar Tafsir, QS An Nisa (4:58)

<https://www.altafsir.com/Tafasir.asp?tMadhNo=0&tTafsirNo=109&tSoraNo=4&tAyahNo=58&tDisplay=yes&UserProfile=0&Languageld=2jj>

corrupt; Seer, of your deeds and whether they issue from the attributes of your souls or from the attributes of the Truth.⁷⁹

As to whom the addressee of this command, there are two probabilities: It could have been addressed to the general body of Muslims, or it could have been addressed particularly to those in authority. What is more obvious here is that the ayah is addressed to everyone who holds anything in trust. This includes the masses and also those in authority.

5. Legal Relationship between Bank and Employee

Legal relationship is a relationship with which the law attaches rights to one party and attaches obligations to the other party. If one party does not heed or violate this relationship, the law can force the legal relationship to be fulfilled or restored.⁸⁰

Explanation in Article Article 49 of the Banking Law states; Paragraph (1) The meaning of bank employees is all bank officials and employees. Paragraph (2) Letter a Bank employees are all bank officials and employees. Letter b What is meant by bank employees is a bank official who has authority and responsibility regarding matters relating to the business of the bank concerned.⁸¹

⁷⁹ Kashani Tafsir, QS An Nisa (4:58)
<https://www.altafsir.com/Tafasir.asp?tMadhNo=0&tTafsirNo=107&tSoraNo=4&tAyahNo=58&tDisplay=yes&UserProfile=0&LanguageId=2>

⁸⁰ Mariam Darus Badruzaman, Kompilasi Hukum Perikatan, Citra Aditya Bhakti, Bandung, 2001, p. 1-2

⁸¹ See explanation of Article Article 49 of the Banking Law

According to banking law Bank employees are all bank officials and employees who have authority and responsibility regarding matters relating to the business of the bank concerned. A more detailed explanation is found in the OJK Regulation Number 45/POJK.03/2015 concerning on the Implementation of Governance in the Provision of Remuneration for Commercial Banks, a definition of bank employees which describes the legal relationship between banks and bank employees. Article 1 number 28 POJK states that a bank employee is a person who works in a bank based on an agreement to carry out a job in a certain position or activity by obtaining compensation, including employees with a work agreement at a certain time.⁸²

The legal relationship between the bank and its employees is based on a work agreement or work agreement for a certain time. In this case, the bank's embezzlement suspect, Cahyono Syam Sasongko, was a head of one of the branches of Bank Mandiri at the Jelambar branch⁸³, which of course was a permanent employee of Bank Mandiri. The head of the branch is based on a decree from the bank's directors to take legal action on behalf of the company.

6. The Bank Responsibility of The Lost of Customer Funds

Article 37 B paragraph (1) of Banking law stated ;” Every bank is required to guarantee public funds deposited with the bank concerned.”⁸⁴ With the bank unable to

⁸² See Article 1 number 28 of OJK Regulation Number 45 / POJK.03 / 2015

⁸³ See Supreme Court Decision No. 41 PK/ Pdt/ 2014, p. 12

⁸⁴ See Article 37 B paragraph (1)of Banking law

guarantee the security of deposits owned by customers by withdrawing funds without the customer's permission and the knowledge of the customer, the bank is responsible for guaranteeing the refund to a customer, namely the North Aceh District Government.

Due to the disbursement of deposit funds held by customers in banks by bank officials and occurring within the scope of bank operations, this is a bank operational risk in accordance with article 1 Paragraph (9) PBI 11/25/PBI/2009 concerning Amendments to Bank Regulations Indonesia Number 5/8/PBI/2003 concerning Application of Risk Management for Commercial Banks that regulate;⁸⁵

"Operational risk is a risk due to insufficiency and / or non-functioning of internal processes, human errors, system failures, and / or the presence of external events that affect the Bank's operations"

Therefore, the transfer and withdrawal of funds from customers by the Mandiri branch of Jelambar branch conducted without the permission of the customer and carried out without the knowledge of the customer and carried out within the bank's operational scope, is the bank's operational risk which is entirely the bank's responsibility in guaranteeing customer funds.

⁸⁵ See Article 1 Paragraph (9) PBI 11/25 / PBI / 2009 concerning Amendments to Bank Regulations Indonesia Number 5/8 / PBI / 2003 concerning Application of Risk Management for Commercial Banks

Article 29 paragraph (2) and paragraph (3) of the Banking Law concerning banking supervision and control, which states that;

(2) Banks that are liable to bank soundness are in accordance with the provisions of capital adequacy, asset quality, management quality, liquidity, profitability, solvability, and other aspects related to bank business, and are obliged to conduct business activities in accordance with the prudential principle.

(3) In providing credit or financing through Sharia Principles and conducting other business activities, banks must be carried out in a way that does not harm the bank and the purpose of the bank entrusting funds to the bank.⁸⁶

In carrying out its functions, banks be obliged in managing an internal control system to reduce financial impacts, losses, wrongdoings including fraud, and violation of the prudential principle. Banks should be able to detect early on the transfer of deposits that value is not small to personal accounts or companies that if not related to North Aceh Regency Government as the customer who owns the funds as explained in the lawsuit of Supreme Court Decision Nomor 599 K/Pdt/2012 of 31 Juli 2012 and written in Supreme Court Decision No.41 PK/ Pdt/2014;

whereas the Defendant has made a mistake and has obviously committed an unlawful act that has caused a loss to the Plaintiff;

That the Defendant has committed an unlawful act because without the knowledge / permission of the Plaintiff to have transferred funds to the account of

⁸⁶ See Article 29 paragraph (2) and paragraph (3) of Banking Law

another party, namely to the account of PT. Agro Sinjatara for IDR 20,000,000,000.00 (twenty billion rupiahs);

- a. That in addition, on May 5, 2009, without the knowledge / permission of the Plaintiff it turned out that the Defendant had transferred funds amounting to Rp. 200,000,000,000.00 (two hundred billion rupiah) to the account of another party, by means of as if the Plaintiff had ordered did that⁸⁷

The transfer of deposit funds owned by customers amounted to 220 billion rupiah, which was carried out without orders and knowledge of the customer because it was based on documents that were never signed by the customer staff who were authorized to take action against the funds, this indicates that the defendant did not implement Customer Due Diligence properly. Customer Due Diligence (CDD) is an activity in the form of identification, verification and monitoring carried out to ensure that transactions are carried out in accordance with the profile of the bank service user⁸⁸

H. Conclusion

Based on legal analysis presented about the case of PT. Bank Mandiri as the defendant or the *Persero* appellant against PEMKAB Aceh Utara as plaintiff or defendant appeal. That Plaintiff having deposited his funds in one of the Defendant's

⁸⁷ See Supreme Court Decision No. 41 PK/Pdt/2014 point 11 and 11 a, p. 4

⁸⁸ Peraturan Bank Indonesia Nomor: 12/20/PBI/2010
https://www.bi.go.id/id/peraturan/perbankan/Pages/pbi_122010.aspx

branches, in Jelambar branch ,West Jakarta amounting to IDR 220,000,000,000 (two hundred and twenty billion rupiah) with the interest rate as stated in the certificate of deposit and the placement of the deposit agreement between the Plaintiff and the Def

A month later, Plaintiff or customer has tried to disburse and subsequently to transfer all funds in the deposit to the Defendant amounting to IDR 220,000,000,000 (two hundred twenty billion rupiah) to the Plaintiff's account at the Lhokseumawe branch, but apparently this can not be done because the total amount of IDR 220,000,000,000 (two hundred twenty billion rupiah) has been transferred first by the Defendants' officers without the knowledge / permission of the Plaintiff by disbursing such deposits and unlawfully transferring them to other accounts. The funds of North Aceh Regency are disbursed to PT Agro Sinjatarata account of IDR 20,000,000. In order to trick the plaintiff, the defendant's employee has made a fake deposit certificate. Without the knowledge / permission of the plaintiff, the defendant has transferred IDR 200,000,000 (two hundred billion rupiah).

Whereas to the lawsuit, the South Jakarta District Court has taken the decision, namely the decision No. 204/Pdt.G/2010/PN.Jkt Cell dated September 30, 2010 stating that the Plaintiff's claim is declared unacceptable. Furthermore, that in the appeal level of the Plaintiff's request the District Court decision has been declared corroborated by the Jakarta High Court with decision of No.158/PDT/2011/PT.DKI dated 23 August 2011.

Since the plaintiff was dissatisfied with the decision of the district court and the appeal decision at the Jakarta High Court, the plaintiffs filed an appeal to the Supreme Court. The Supreme Court granted the appellant from the plaintiff and stated the reason for the plaintiff's appeal is justified. based on articles 2, 3 c and 4 of Law No.10 of 1998 which constitute amendment to Act No.7 of 1992 concerning banking, in essence, the customer shall be protected when he / she keeps his funds in the form of demand deposit or deposit and the bank is obliged to maintain the stability or health of the bank; That in order to protect the customer's funds and maintain the stability/health of the bank, the bank must apply the principles of prudence; That the occurrence of bank burglary due to fraud or embezzlement is the risk borne by the bank and the loss can not be charged to the customer, the bank must return the customer's money without having to wait for the criminal process.

Based on decision Number 599 K/Pdt/2012 the Supreme Court decided to grant the appeal and cancel the decision of Jakarta High Court Number 158/PDT/2011/PT.DKI dated August 23, 2011 which reinforced the decision of South Jakarta District Court. 204/Pdt.G/2010/PN.Jkt Sel September 30, 2010. And decided to punish the Defendant to return the principal fund of the Plaintiffs IDR 220,000,000,000 (two hundred and twenty billion rupiah) in cash and instantly; along with the interest that the plaintiff should have received.

In 2014, PT. BANK MANDIRI (PERSERO), TBK as the applicant of Judicial Review in this case (formerly Pleated Cessation/ Defendant of Appeal /

Defendant) filed a Judicial Review against PEMERINTAH KABUPATEN ACEH UTARA as the pleated of Judicial review in this case (formerly Applicant of Cessation/ Plaintiff of Appeal/ Plaintiff) is arguing that the investigation and punishment of corruption cases and money laundering crimes was committed other than in order to criminalize the defendant , also in the framework of returning all the money belonging to the Regency Government. North Aceh from the hands of the Detainees, and the court has granted additional rulings in the form of appropriation and payment of replacement money to refund the funds belonging to The Regency Government of North Aceh (Respondent for Judicial Revie / Plaintiff).

The prosecution service as the executor has also taken the plunder and executed or received the surrender of surrogate money from the defendant to be returned to The Regency Government of North Aceh (Respondent of Judicial Review / Plaintiff), so the loss of the plaintiff has been restored again. Based on Supreme Court Decision Number 41 PK/Pdt/2014 decide to grant the request for Judicial review from PT. BANK MANDIRI (PERSERO), TBK. and canceled the Supreme Court Decision Number 599 K / Pdt / 2012 dated July 31, 2012. So the defendant is free from all previous sentences.

In fact, the North Aceh Regency Government as a customer has the right to deposit money along with its interest and compensation for the loss of the money. Moreover, the money should be used immediately for development and other needs in the North Aceh Regency. Although the suspects have been convicted through criminal

proceedings, there is no guarantee that the customer's money and interest will return in full.

This case, of course can be avoided if the bank implements banking principles, laws, and rules, as well as existing operational standards. The bank's negligence caused a loss to the customer who had entrusted his funds to the bank. So the bank should take part to be responsible for the loss of the funds.

The banking industry is one of the most important components in the national economy in order to maintain a balance of progress and national economic unity. The stability of the banking industry is necessary to maintain public confidence in banking institutions, so that the monetary and banking crisis in 1998 will not happen again. Trust in banking institutions is a key and this trust can be gained by legal certainty in the regulation and supervision of banks and the guarantee of bank customer savings to improve the viability of the banks business in a healthy way. The enactment of Law on the Deposit Insurance Agency (*Lembaga Penjamin Simpanan/LPS*) is expected to provide legal certainty for depositors to obtain adequate legal protection and realize a sound and stable banking system. This law is intended to improve the bank customer saving guarantee program which has been regulated through various political policies. Regrettably, LPS only guaranteed balance for each customer in one bank is a maximum of 2 billion rupiahs, so that in this case customer funds are indeed not included as guaranteed by LPS.

In order to minimize any misuse of customer saving funds, there needs to be legal compliance and moral of the board, officers, and affiliated parties, prioritizing the principles of trust and justice-indexed. In addition, there is a need for strict and proportional screening of any prospective employee or bank clerk by the relevant Bank Authority before being designated as a definitive employee. The role of law enforcement must be able to ensure a balance between sense of justice, usefulness and legal certainty in the enforcement of law to find satisfaction for those who crave justice. Law enforcement should be guided by justice that is beneficial or gives fair benefit and legal certainty.

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