

**CONSUMER PROTECTION TOWARDS
BANK DEPOSIT IN INDONESIA
(Study on the Loss of Customer's Funds in Maybank)**

THESIS



By:

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**INTERNATIONAL PROGRAM
FACULTY OF LAW
UNIVERSITAS ISLAM INDONESIA
YOGYAKARTA**

2023

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



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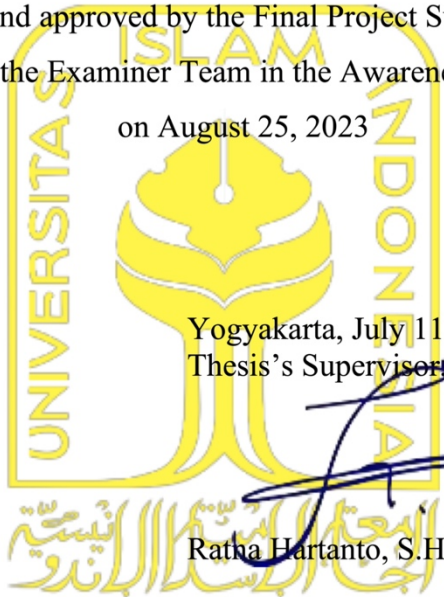
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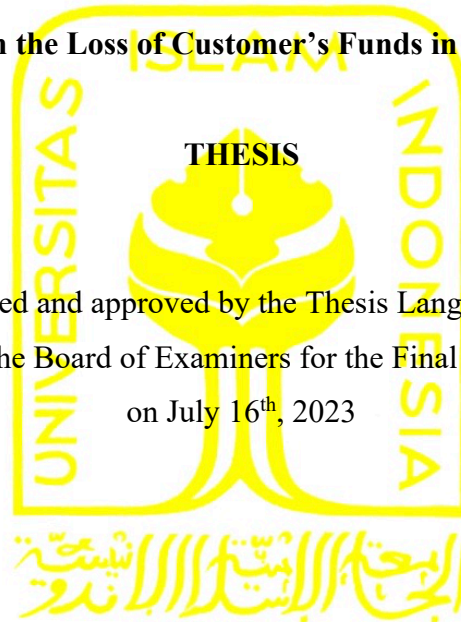


بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

THESIS LANGUAGE ADVISOR APPROVAL PAGE

**CONSUMER PROTECTION TOWARDS
BANK DEPOSIT IN INDONESIA**

(Study on the Loss of Customer's Funds in Maybank)



Has been examined and approved by the Thesis Language Advisor to be submitted before the Board of Examiners for the Final Thesis Examination on July 16th, 2023

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**CONSUMER PROTECTION TOWARDS
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IN MAYBANK)**

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(Study on the Loss of Customer's Funds in Maybank)**

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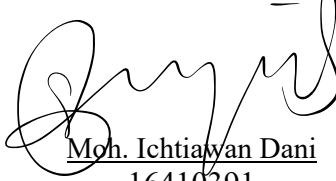
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MOTTO AND DEDICATION

Forgive yourself
and have no regrets.

*Dedicated to my mom, my dad,
my brothers, my sisters,
and me.*

PREFACE

Alhamdulillah, all the praises and thanks be to Allah, for the grace and mercy given to us especially the blessings given to me so I can finish this work. *Shalawat* and *Salam* are also sent upon the Prophet, *Rasulullah* Muhammad ﷺ who guided us from darkness to light.

The title of this final assignment is “Consumer Protection towards Bank Deposit in Indonesia (Study on the Loss of Customer’s Funds in Maybank)” and surely this writing has lots of flaws and mistakes and is far from excellent, so criticisms and suggestions are welcome, it will allow me to learn and develop.

This assignment will never be finished without the people who supported and assisted me, so allow me to express my sincere appreciation to:

1. My family, a loving mom, a caring dad, and thoughtful brothers and sisters, who are always supporting, motivating, encouraging and praying for my success.
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ABSTRACT

In 2020 a customer of a renowned private bank reported that her deposit is missing from her accounts, there are two accounts which were made in 2014 and 2016. But she started to save money in 2015. By the time this case reported, her savings reached approximately 22,879 billion IDR. In November 2020, the bank posted a press statement on their website stating that the bank has reported and processed the complaint which was alleged to be a crime. And The Criminal Investigation Department established the Head of the branch office as a suspect. The investigation found out that the suspect has an account for collecting the customer's money which he used for his personal needs. Later that year, the spokesperson of the bank clarified that they are willing to compensate the customer but only with 16,8 billion IDR, but that is not equal to the amount of money the customer has lost. This research rises problems such as: How is the responsibility of bank towards the loss suffered by the depositing customers? and how are the legal protections given to the depositing customers who lost their money? In this normative research, conceptual approach will be used by analyzing the law and the application of it, this writing will use the study of literature and documents, where the materials will be collected by studying books, journals, laws and regulations related to the banking and financial consumer protection. The result shows that the bank is responsible for the injury it's caused to its customers even when the actions is committed by its employee, this transfer of responsibility is given through the vicarious liability principle, therefore, the bank has the obligation to recompense the victim. As for the legal protections, the law has provided adequate protections for bank's customers, it's just that due to the lack of enforcement those protections do not seem to be able to protect the customers properly. Consequently, banks who are responsible for their employees should improve their internal supervision and security so the actions of their employees wouldn't harm their customers. And the protection to the customers who lost their money, should be enforceable to the responsible parties, this way the customer can have their possessions back.

Keywords: Consumer Protection, Loss of Funds, Bank Deposit.

CHAPTER I INTRODUCTION

A. Context of Study

People need the law as it is the norms and principles that can maintain the interest of everyone, the law determines our behaviors by creating guidance.¹ According to Immanuel Kant, “law is conditions that cause the free will of one person to conform the free will of others”² because everyone has similar fundamental rights, and following those rights, come obligations to reckon rights of others. Everyone owns their rights, and those rights shall not be taken away by anyone.³

In Indonesia, the people are protected by article 28A until 28J of the Constitution⁴ regarding Human Rights Law, which confirms that the law intends to protect society as a group of respectable human beings. Apart from regulating several rights that must be possessed by every individual, the Constitution also establishes the right to protect personal property to be one of them. It says:

“Every person shall have the right to protect himself, his family, his honor, his dignity, and the property under his ownership, and shall have the right to feel

¹ Sudikno Mertokusumo, *Mengenal Hukum: Suatu Pengantar*, Revised Edition, Cahaya Atma Pustaka, Yogyakarta, 2016, p.5.

² C.S.T. Kansil, *Pengantar Ilmu Hukum dan Tata Hukum Indonesia*, Balai Pustaka, Jakarta, 1986, p.36.

³ Eko Riyadi, *Hukum Hak Asasi Manusia: Perspektif Internasional, Regional, dan Nasional*, Rajawali Pers, Depok, 2018, p.45.

⁴ The word constitution is referring to Undang Undang Dasar 1945.

safe and shall have the right to receive protection from any threat to do or not to do something that considered as human rights.”⁵

The article above indicates that people have the right to protect their properties as much as they get protection for themselves. Mostly this article refers to thievery, or when someone takes another person’s belongings, which the victim has every right to protect the stolen property, but it also can be seen as a base to protect the customer’s rights over one product or service. Because whenever people buy a product or pay to any kind of service, they are allowed to expect the same result for the money they spent. So, when someone does not get the service or the goods they paid for, they are allowed to make a complaint. It is regulated under consumer protection law.

Lowe defined Consumer protection as “... rules of law which recognize the bargaining weakness of the individual consumer, and which ensure that weakness is not unfairly exploited.”⁶ The law is essential because if we compare the consumer and the producer/business actor, the power of the former is insignificant. This is the relationship where the one who consume has the weaker capacity and control than the one who produce, due to the reliance on goods provided by producers.⁷ That weakness creates the necessity for the existence of this law to protect customers, because one of the functions of the law is protecting community.⁸

⁵ Article 28G of Constitution of Indonesia 1945.

⁶ Shidarta, *Hukum Perlindungan Konsumen*, Revised Edition, Grasindo, Jakarta, 2004, p.11.

⁷ Celina T. S. Kristiyanti, *Hukum Perlindungan Konsumen*, Sinar Grafika, Jakarta, 2017, p.10.

⁸ Shidarta, *Loc. Cit.*

In Indonesia it is known as Law number 8 of 1999 on Consumer Protection. According to the Law consumer protection is “... any effort that shall ensure legal certainty to give protection to the customers.”⁹ From the definition we can conclude that the law was made to guarantee the satisfaction of customers, which the law described as “... everyone who uses the products and/or services available in society, whether for the benefit of themselves, their families, other people, or other living creatures and not reselling the product.”¹⁰ In the consumer protection law, we can find the rights of customers as follows:¹¹

8. the right of being comfortable, secure and safe in consuming the products and/or services;
9. the right to select products and/or services, and to obtain something equal with the price and conditions as well as the promised assurance;
10. the right for obtaining the correct, clear, and honest information regarding the conditions and assurance of products and/or services;
11. the right to be heard on his/her opinions and complaints regarding the products and/or services used;
12. the right to get advocacy, protection, and effort to settle the dispute properly;
13. the right to receive consumer advice and education;

⁹ Point 1, Article 1 of Law number 8 of 1999 on Consumer Protection.

¹⁰ Point 2, Article 1 of Law number 8 of 1999.

¹¹ Article 4 of Law number 8 of 1999.

14. the right to be treated or served correctly and honestly and without any discrimination;
15. the right to get compensation, repayment and/or replacement, if the products and/or services received are not in accordance with the agreement or not as it should be;
16. the other rights regulated in the other laws and regulations.

If we look to the article above, point 4, 5 and 8 are the closest to the subject of this writing, where the customer gets to complain and resolve the dispute when the product or service is not worth the amount of money, or the service is not in accordance with the contract agreed. But also, the formulation of the last paragraph, point 9, is very significant, because it became the basis for the connection between the law of consumer protection and our discussion. The paragraph signifies that in addition to the other eight rights mentioned, there are other rights that has been or will be regulated with the other laws.¹²

As hinted in the earlier paragraph we can see there are two types of objects that a customer can buy, namely product and service. Product is "... any object either tangible or intangible, movable or immovable, consumable or non-consumable, which can be traded, used, or utilized by customers"; and service is "... any form of work or performance traded in the society to be used by the customers."¹³ We can see both product and service are distinguishable by their definition. Product is received as an object and service come in the form of performance of tasks.

¹² Inosentius Samsul, "Perlindungan Konsumen Jasa Keuangan Pasca Pembentukan Otoritas Jasa Keuangan (OJK)", *Negara Hukum*, Vol. 4/No. 2/November/2013, p.159.

¹³ Point 4, 5, Article 1 of Law number 8 of 1999.

Bank is one of the business actors that provide service, especially in the financial category. According to the law, the main function of bank is to collect and distribute the money to help equal development throughout the country. According to Kasmir, the function of bank is to act as an intermediary between people who have money and people who don't.¹⁴ Because usually people with more money would save their money in a bank and people with less money would borrow it from the bank. Therefore, people who put their money in the bank and people who take the money as a loan from it must be protected by the consumer protection law so they can perform transaction securely under the protection of law.

In Indonesia, Banking Law is regulated in Law number 7 of 1992 and its amendment, Law number 10 of 1998, and also there are several changes made in the Law number 4 of 2023 on the Development and Strengthening of the Financial Sector. The law defines a bank as "... a business entity that collects funds from the public in the form of savings and distributes them to the public in the form of credit or financing and/or other forms in order to improve the standard of living for the people at large."¹⁵ This article settled there are two kinds of the main services provided by banks:

1. To accumulate money by savings, current account and time deposit;¹⁶ and
2. To distribute money by credit.

¹⁴ Kasmir, *Bank dan Lembaga Keuangan Lainnya*, Revised Edition, RajaGrafindo Persada, Jakarta, 2014, p.9.

¹⁵ Point 2, Article 1, Chapter 4, Part 2 of Law number 4 of 2023 on Banking.

¹⁶ These terms are obtained from the footer of this [Maybank](https://www.maybank.co.id/en) page (<https://www.maybank.co.id/en>).

Other than these two, the bank also provides other kinds of services such as an automatic teller machine (ATM), transfer, clearing, *inkaso* (collection), safe deposit box, credit card, bank guarantee, letter of credit and travelers cheque.¹⁷

The article denotes that banks which deliver services related to collecting and distributing money must differ from other services provided by the other business sectors. Then how will the law protect the customers?

This question emerged from the case that recently occurred, regarding approximately 22 billion IDR owned by an e-sport athlete (Winda Lunardi) vanished when it was supposed to be kept safe in her bank account (Maybank). This case is registered on 8 May 2020 as LP/B/0239/V/2020/Bareskrim. On 17 February 2020 Winda D. Lunardi a bank customer issued a complaint regarding the disappearance of money in her Maybank account opened in 2014 and her mother's (Floletta Lizzy Wiguna) opened in 2016. She started to deposit her money in 2015. By the time this case appears, her savings reached approximately 22,879 billion IDR¹⁸ (20,8 without the interest).¹⁹

In one interview she mentioned that the bank sent her monthly bank statement, her lawyer stated that the type of account she has is a savings account with 9% interest promised. The lawyer also mentioned that the bank did not give a good

¹⁷ Rini Fatriani, "Bentuk-Bentuk Produk Bank Konvensional dan Bank Syariah di Indonesia", *Ensiklopedia of Journal*, Vol. 1 No. 1, 2 October 2018, p.222.

¹⁸ Tvonenews, *Uang Nasabah Dibobol Rp 22 M, Manager Maybank Cipulir Ditetapkan Sebagai Tersangka*, <https://www.tvonenews.com/channel/news/26151-uang-nasabah-dibobol-rp22-m-manager-maybank-cipulir-ditetapkan-sebagai-tersangka-tvone>, 06 Nov 2020 (accessed on Apr 10 2021).

¹⁹ Fika N. Ulya, *Kompas, Kronologi Lengkap Kasus Uang Rp 22 Miliar Winda Earl dan Pembelaan Maybank*, <https://money.kompas.com/read/2020/11/10/090100026/kronologi-lengkap-kasus-uang-rp-22-miliar-winda-earl-dan-pembelaan-maybank>, 10 Nov 2020 (accessed on Jan 20 2021).

response to the complaint by making things complicated.²⁰ On 6 November 2020, the bank posted a press statement on their website stating that the bank has reported and processed the complaint which was alleged to be a crime.²¹ The Criminal Investigation Department (BARESKRIM) established the Head of Maybank Cipulir as a suspect, in fact, they even said that the suspect is acknowledged to have an account for collecting the customer's money which he used for his personal needs.²²

The Head of National Antifraud of Maybank proved that the account opened for Winda is a saving account, and he also stated that Winda should have a passbook and an ATM/debit card like an ordinary savings account, but both passbook and card are kept by the suspect, Head of Maybank Cipulir.²³ On 25 November 2020, the spokesperson of Maybank clarified that the bank is ready to compensate Winda but only with 16,8 billion IDR,²⁴ which is not equal to the amount of money she

²⁰ Tvoneneews, Uang Rp20 M di Maybank Hilang, Rekening Koran Yang Diterima Setiap Bulan Palsu, <https://www.tvoneneews.com/channel/news/26155-uang-rp20-m-di-maybank-hilang-rekening-koran-yang-diterima-setiap-bulan-palsu-tvone>, 06 Nov 2020 (accessed on Apr 10 2021).

²¹ Maybank, Press Statement (Pernyataan Media), <https://www.maybank.co.id/id/NewsAndAnnouncement/NewsAndAnnouncements/2020/11/06/09/14/press-statement-terkait-pengaduan-nasabah>, 06 Nov 2020 (accessed on Apr 10 2021)

²² Kadek Melda, Detik News, Kacab Maybank Tilap Duit Winda Earl Akui Punya Rekening Tampung Uang Nasabah, <https://news.detik.com/berita/d-5259041/kacab-maybank-tilap-duit-winda-earl-akui-punya-rekening-tampung-uang-nasabah/>, 17 Nov 2020 (accessed on Feb 22 2021).

²³ Tvoneneews, Polemik Kasus Uang Rp 22 Miliar Raib di Maybank, <https://www.tvoneneews.com/channel/investigasi-tvone/27157-polemik-kasus-uang-rp-22-miliar-raib-di-maybank-tvone>, 19 Nov 2020 (accessed on Apr 10 2021).

²⁴ Fika N. Ulya, Kompas, Maybank Bakal Ganti Uang Winda Earl Rp 16,8 Miliar, Bagaimana Sisanya?, <https://money.kompas.com/read/2020/11/25/124047726/maybank-bakal-ganti-uang-winda-earl-rp-168-miliar-bagaimana-sisanya?page=all>, 25 Nov 2020 (accessed on Apr 25 2021).

lost. But until 12 December 2020 Winda mentioned that the money has not yet been returned.²⁵

Based on the background described above, I am interested in doing research related to the legal protection given to the customer of banks in Indonesia with the title “Consumer Protection towards Bank Deposit in Indonesia (Study on the Loss of Customer’s Funds in Maybank)”

B. Problem Formulation

1. How is the responsibility of bank towards the loss suffered by the depositing customers?
2. How are the legal protections given to the depositing customers who lost their money?

C. Purpose of Study

The purpose of this study is to analyze what kind of protection is offered to the customer of a bank based on the law of consumer protection and the banking law in Indonesia. Also, to identify the option that a bank customer has when they face an issue like the case. On top of that, with this study, we can understand deeper the consumer protection law in banking sector, and how important the said law is.

²⁵ Martini, Indosport, Terkuak! Uang Rp 22 Miliar EVOS Winda Earl Belum Dikembalikan Maybank, <https://www.indosport.com/esports/20201212/terkuak-uang-rp-22-miliar-evos-winda-earl-belum-dikembalikan-maybank>, 12 Dec 2020 (accessed on Apr 25 2021).

D. Research Originality

As there are several writings already discussed the law of consumer protection, especially in the banking sector. This section will compare those writings to this one to prove its originality.

No	Title and Author	Containing	Difference
1	Mohammad Wisno Hamin, Perlindungan Hukum Bagi Nasabah Bank Sebagai Konsumen Pengguna Jasa Bank Terhadap Risiko Dalam Perjanjian Kredit Bank, Lex Crimen, Vol. VI/No. 1/January- February/2017, p. 46- 53.	This one was conducted with the objective to understand how the law provides protection for customers of the bank and what is the responsibility of the bank if there is a risk related to the bank credit agreement.	The difference can be identified from the service offered by the bank. While my research looks at it from a person who saves money in the bank, this researcher used the perspective of a person who owes money from the bank.
2	Rati Maryani Palilati, Perlindungan Hukum Konsumen Perbankan oleh	The objective of this research is to analyze the legal protection of the bank customer by	It is different because my research will be analyzed using varied

	Otoritas Jasa Keuangan, Jurnal IuS, Vol. IV/No. 3/December/2016, p. 50-67.	the OJK and to analyze the role of OJK in providing legal protection to the customer according to the positive law.	regulations and different perspectives of consumer protections in the banking sector.
3	Rani Apriani, Perlindungan Hukum Terhadap Konsumen Pengguna Jasa Perbankan di Indonesia, Jurnal hukum De'Jure, Vol. 2/No. 2/September/2017.	This writing described the protection of customers by aiming to understand and recognize the legal protection of bank customers and the risks that might arise in banking activities.	The difference between this writing and my research is that Mine will discuss a particular case that is considered a new case that was not discussed by Rani before.

E. Theoretical Framework

1. Consumer Law Protection

Consumers are vulnerable because they have bigger risks than the business actor, their rights are also risky because of their weak bargaining power,²⁶ dependency on the product, and lack of knowledge regarding the production process.²⁷ Therefore, those rights must be protected by the power of law, because producers often commit fraud to profit their business in a way that might harm their customers.²⁸ This problem is not about protecting one single customer individually but protecting the whole society because we all act as consumers of products.²⁹ Consumer protection law also proposes to facilitate options and power to the customer. The power is given when the customer is faced with choices and chances to choose effectively among those options.³⁰

The Law of Consumer Protection in Indonesia was issued in 1999 hoping that the law can educate the society to be familiar with their rights as a user of a product and recognize their duties towards the business actor.³¹ In the Law, one of the articles mentioned 5 principles of Consumer Protection Law: "... the principle of

²⁶ Abdul H. Barkatullah, *Hak-Hak Konsumen*, Penerbit Nusa Media, Bandung, 2010, p.1.

²⁷ Burhanuddin, *Pemikiran Hukum Perlindungan Konsumen dan Sertifikasi Halal*, UIN-Maliki Press, Malang, 2011, p.2.

²⁸ Janus Sidabalok, *Hukum Perlindungan Konsumen di Indonesia*, Citra Aditya Bakti, Bandung, 2014, p.4.

²⁹ *Ibid*, p.3.

³⁰ Neil W. Averitt, and Robert H. Lande, "Consumer Sovereignty a Unified Theory of Antitrust and Consumer Protection Law", *Antitrust Law Journal*, 713, Spring, 1997, p.1.

³¹ Gunawan Widjaja, and Ahmad Yani, *Hukum tentang Perlindungan Konsumen*, Gramedia Pustaka Utama, Jakarta, 2001, p.2.

benefit, the principle of justice, the principle of balance, the principle of consumer security and safety, and the principle of legal certainty.”³²

These principles can be interpreted as follows: with the principle of benefit both consumer and producer must take the advantage of the enforcement of consumer protection; the principle of justice aims to give chance to both consumer and producer to acquire their rights and fulfill their duties fairly; the principle of balance emphasizes that the interest of consumer, producer and government must be unbiased; the principle of consumer security and safety guarantees the product delivered to the consumer is risk-free; and the last principle makes sure that consumer or producer obey and treated fairly by the enforcement of Consumer Protection Law in Indonesia.³³

2. Rights and Duties of Customer

As a customer, we have rights and duties that are protected by the law. According to John Locke's view, the rights of customers need to be protected, he stated that the state of nature is a condition in which all people have "natural rights" to "life, liberty, and property".³⁴ It is the duty of a country to ensure that these basic rights are protected.³⁵

In general, customer's rights are:³⁶

1. To feel comfortable, secure, and safe;

³² Article 2 of Law number 8 of 1999.

³³ Burhanuddin, *Op. Cit*, p.4.

³⁴ Theresia Anita Christiani, *Dinamika Asas Keseimbangan Kepentingan dalam Perkembangan Pengaturan Perlindungan Nasabah Bank di Indonesia*, Penerbit Universitas Atma Jaya, Yogyakarta, 2012, p.12.

³⁵ *Ibid*, p.13.

³⁶ Article 4 of Law number 8 of 1999.

2. To have choices and obtain something equal to the price;
3. To get information;
4. To be heard;
5. To get protection and to settle any dispute;
6. To receive consumer education;
7. To be treated or served without any discrimination; and
8. To get compensation.

Along with these rights, we were also given some duties namely:³⁷

1. Understand the instructions;
2. Have good intentions;
3. Pay for the product or service; and
4. Comply with legal efforts to resolve consumer protection disputes properly.

Rights and Duties of Bank Customer

For the user of bank services, the customer has specific rights:³⁸

1. To know the services offered in detail, to determine which banking products are suitable for them.
2. To receive interest for savings and time deposit products that have been agreed upon beforehand.
3. To receive facilities provided by banks.

³⁷ Article 5 of Law number 8 of 1999.

³⁸ Apriya Altji Papendang, "Hak dan Kewajiban Nasabah Bank serta Perlindungan Hukum Menurut Undang-Undang Nomor 10 Tahun 1998", *Lex Administratum*, Vol. IV/No. 3/Maret/2016, p.78.

4. To get reports of every transaction.
5. To be able to take legal action if confidential information is leaked.

The customer also has specific duties:³⁹

1. Fill out and sign the form provided by the bank.
2. Fill out the requirements specified by the bank.
3. Deposit the initial funds determined by the bank.

3. Bank Services

According to the law, the bank generally provides services as follows:

1) Savings account is a deposit (funds entrusted by the customer to a bank based on a funds deposit agreement in the form of current account, time deposit, certificate of deposit, savings, and or other equivalent forms)⁴⁰ that can only be withdrawn with certain agreed terms. This deposit cannot be withdrawn by cheque (an order from the customer to the bank to pay a sum of money to the cheque holder)⁴¹, bilyet giro (an order from the customer to the bank to transfer an amount of money to the recipient)⁴² and/or other equivalent means.⁴³ Certain agreed terms mentioned is referring to the contract between customer and bank.⁴⁴ 2) Current account (*giro*) is the funds entrusted by the public to a bank that can be withdrawn at any time with cheque, bilyet giro, or other means of payment.⁴⁵ 3) Time deposit

³⁹ *Ibid*, p.79.

⁴⁰ Point 5, Article 1, Chapter 4, Part 2 of Law number 4 of 2023.

⁴¹ Kasmir, *Op. Cit*, p.62.

⁴² *Ibid*, p.65.

⁴³ Point 9, Article 1, Chapter 4, Part 2 of Law number 4 of 2023.

⁴⁴ Kasmir, *Op. Cit*, p.70.

⁴⁵ Point 6, Article 1, Chapter 4, Part 2 of Law number 4 of 2023.

is the funds entrusted by the public to a bank that can only be withdrawn at a certain time based on an agreement between the customer and the bank.⁴⁶ 4) Credit is the provision of money or bills based on a loan agreement between the bank and another party, which requires the debtor to pay off the debt after a certain period with interest.⁴⁷

4. Consumer Protection in Banking Law

A bank is an entity that receives savings from the community or other parties and then redistributes the money to gain profit,⁴⁸ therefore, the bank has several functions such as an intermediary institution; agent of trust, the activity of collecting money from people is relying on how much trust people have to the institution; agent of development, which related to the responsibility of the bank to facilitate activity in the economic sector; and agent of service, because banks are considered to continuously provide services to people.⁴⁹

Bank customers in Indonesia are protected by the Financial Services Authority (OJK) with Law number 21 of 2011 on the Financial Services Authority which mentioned Consumer and Community Protection in its chapter VI the customer is also protected with the issuance of the Regulation (POJK) of Financial Services Authority number 6/POJK.07/2022 on Consumer and Public Protection in the Financial Services Sector. OJK also gave another solution by the issuance of Regulation number 18/POJK.07/2018 on Consumer Complaint Services in the

⁴⁶ Point 7, Article 1, Chapter 4, Part 2 of Law number 4 of 2023.

⁴⁷ Point 11, Article 1, Chapter 4, Part 2 of Law number 4 of 2023.

⁴⁸ Julius R. Latumaerissa, *Bank dan Lembaga Keuangan Lain*, Salemba Empat, Jakarta, 2012, p.135.

⁴⁹ *Ibid*, p.135-136.

Financial Services Sector and Regulation number 1/POJK.07/2014 regarding Alternative Institutions for Dispute Resolution in the Financial Services Sector.⁵⁰ as a complement to its regulations, OJK also issued related Circular Letters.

Other than being protected by OJK regulations, bank customers are also protected by law number 4 of 2023 on the Development and Strengthening of the Financial Sector, because several points are too specific to be regulated in Consumer Protection Law, like how the bank is obliged to keep the confidentiality of customers information “Banks and the affiliated parties are required to keep confidential information regarding Depositing Customers and their deposits.”⁵¹ and to ensure the security of customer’s money “Each bank is obliged to guarantee public funds deposited at the bank.”⁵²

F. Methodology of Research

1. Type of Research

This research will use the normative methodology to analyze the law of consumer protection and the banking law in Indonesia to identify consumer protection given to the user of bank service.

2. Research Focus

The focus of this research is to analyze the protection given to the consumer of bank services based on the law of consumer protection and the banking law in Indonesia.

⁵⁰ Rati Maryani Palilati, “Perlindungan Hukum Konsumen Perbankan oleh Otoritas Jasa Keuangan”, Jurnal IuS, Vol. IV/No. 3/Desember/2016, p.53.

⁵¹ Point 1, Article 40, Chapter 4, Part 2 of Law number 4 of 2023.

⁵² Article 37B of Law number 10 of 1998.

3. Legal Materials

There will be two types of materials used in this research:

4. Primary Legal Materials

Consists of laws and regulations related to this research concerning banking and consumer protection laws.

2. Secondary Legal Materials

Consists of books, journals, or any form of writing, related to this research concerning banking and consumer protection laws, whether online or offline.

4. Method of Collecting Materials

This research will use literature study and study of documents method, where the materials will be collected by studying books, journals, and regulations related to the banking and consumer protection laws.

5. Research Approach

The approach that will be used in this research is conceptual, by combining the application of law and the law itself. The regulations related to the banking and consumer protection laws will be analyzed to answer the problem faced by this research.

6. Materials Processing and Analysis

In this research, books, journals, and regulations related to the topic will be used as a tool to understand the materials regarding the law of consumer protection and banking in Indonesia. From the references, the materials will be discovered to identify consumer protection given to the

user of bank service. Then, the problem will be analyzed based on an accurate legal basis.

G. Structure of Writing

There will be four chapters in this writing, and every chapter described as follows:

Chapter I

This chapter is the introduction to the research, it consists of the background, problem and objective of the study.

Chapter II

This chapter is consisting of literature review, theoretical structure, and hypothesis.

Chapter III

This chapter contains the result of the study where you can find the method and the analysis of the study.

Chapter IV

This chapter delivers conclusions and recommendations.

CHAPTER II FINANCIAL CONSUMER PROTECTION TOWARDS THE CUSTOMER OF BANKS

A. Definitions of Bank

According to Law number 7 of 1992 and its amendment, Law number 4 of 2023 bank is defined as “... a business entity that collects funds from the public in the form of savings and distributes them to the public in the form of credit or financing and/or other forms in order to improve the standard of living of the people at large.”⁵³ In Black’s Law Dictionary, bank defined as “... a quasi-public institution, for the custody and loan of money, the exchange and transmission of the same by means of bills and drafts, and the issuance of its own promissory notes, payable to bearer, as currency, or for the exercise of one or more of these functions, not always necessarily chartered, but sometimes so, created to subserve public ends, or a financial institution regulated by law”⁵⁴ While according to Prof. G.M. Verryn Stuart “a bank is an entity that aims to satisfy the needs of the credit, either by its own payment instrument, with the money it received from someone else, as well as by circulating medium of exchange in the form of securities.”⁵⁵

⁵³ Point 2, Article 1, Chapter 4, Part 2 of Law number 4 of 2023.

⁵⁴ BANK, Black's Law Dictionary (11th ed. 2019).

⁵⁵ O. P. Simorangkir, *Pengantar Lembaga Keuangan Bank dan Non Bank*, Ghalia Indonesia, Jakarta, 2004, p.10.

Definitions of a bank as presented above explained that a bank is a financial institution as a place to store funds, get credit, and other services.⁵⁶ A bank is also a financial institution with the function to distribute funds to other parties.⁵⁷ Generally, a bank is known as an institution whose main activity is receiving deposits and a place to borrow money for people who need it. Moreover, a bank is also recognized as a place to exchange money, transfer money or accept all forms of payments and funds.⁵⁸ A bank is also defined as an industry that is operated by a trust that connects debtors and creditors.⁵⁹

B. Functions of Bank

As a financial intermediary institution where a bank distributes funds between people who have more money with people who have less, the bank has a significant role in national development.⁶⁰ Bank is a financial institution that runs the business by collecting funds and redistributing them.⁶¹ Afterward, the bank becomes a place to carry out various monetary transactions,⁶² as well as provides funds to the community so the people can meet their needs.⁶³ As mentioned in the previous chapter, in addition to the function of a bank as an intermediary institution, there

⁵⁶ Joice Irma Runtu Thomas, "Pertanggungjawaban Bank terhadap Hak Nasabah yang Dirugikan dalam Pembobolan Rekening Nasabah", *Lex et Societatis*, Vol. I/No. 1/January-March/2013, p.126.

⁵⁷ Theresia Anita Christiani, *Op. Cit*, p.71.

⁵⁸ Kasmir, *Op. Cit*, p.24.

⁵⁹ Julius R. Latumaerissa, *Op. Cit*, p.135.

⁶⁰ Rani Apriani, "Perlindungan Hukum Terhadap Konsumen Pengguna Jasa Perbankan di Indonesia", *Jurnal hukum De'Jure*, Vol. 2/No. 2/September/2017, p.343.

⁶¹ Kasmir, *Op. Cit*, p.24-25.

⁶² Rini Fatriani, *Op. Cit*, p.219.

⁶³ Rani Apriani, *Loc. Cit*.

are 3 more functions of a bank namely agent of trust, agent of development, and agent of service,⁶⁴ which are explained as follows:

The first one is a bank as an agent of trust: The activity of collecting and distributing the money relies on how much confidence customers have in the institution and vice versa, because the intermediation activities carried out by the bank are performed based on the principle of trust. The trust given by the customers towards the credibility of each bank is prominent so that the public can entrust their funds to the bank. On the other hand, as the party that provides credit loans to the public, the bank needs to trust the credit recipient too. This trust includes the honesty of the customer to use the given credit in accordance with the purpose of the credit requested so that the goals of both parties can be achieved.⁶⁵

The second one is a bank as an agent of development: This function is related to the responsibility of the bank in supporting the running of economic transactions carried out using money as a means of payment. The bank as a financial institution certainly has a very strategic role to bridge all the interests of economic actors in the economic transactions which consist of:⁶⁶

1. Production activities that increase the value of items made to fulfill the demand of the public;
2. Distribution activities which related to the activities of delivering items from producers to consumers; and

⁶⁴ Hari Sutra Disemadi, and Paramita Prananingtyas, "Perlindungan Hukum Terhadap Nasabah Perbankan Pengguna CRM (Cash Recycling Machine)", *Udayana Master Law Journal*, Vol. 8/No. 3/September/2019, p.391.

⁶⁵ Julius R. Latumaerissa, *Op. Cit.*, p.135-136.

⁶⁶ *Ibid*, p.136.

3. Consumption activities to reduce the value of an item.

And the last one is a bank as an agent of service: The banking industry is an institution that carried in financial and non-financial services. Because a bank is considered to continuously provide services to the people, besides providing financial services as intermediation activities, the bank also participates in providing other services.⁶⁷

C. Products and Services of Banks

As mentioned by Law number 4 of 2023 which defined a bank as “... a business entity that collects funds from the public in the form of savings and circulates them to the public in the form of credit or financing and/or other forms”⁶⁸ The bank provides two types of service such as, accumulating money (savings, current account, and time deposit) and distributing money (credit). But the bank also provides other kinds of services such as ATM, transfer, clearing, *inkaso* (collection), safe deposit box, credit card, bank guarantee, letter of credit, and also travellers cheque.⁶⁹

These are the services provided by the bank:

1. Savings account is the funds entrusted by the public to a bank that can only be withdrawn with certain agreed terms.⁷⁰ This deposit cannot be withdrawn by an order from the customer to the bank to pay a sum of money to the cheque holder, an order from the customer to

⁶⁷ *Ibid.*

⁶⁸ Point 2, Article 1, Chapter 4, Part 2 of Law number 4 of 2023.

⁶⁹ Rini Fatriani, *Op. Cit.*, p.222.

⁷⁰ Kasmir, *Op. Cit.*, p.69-70.

transfer an amount of money to the recipient (bilyet giro), and/or other equivalent means. Certain agreed terms mentioned is referring to the contract between customer and bank.⁷¹ For the wider community, this savings service is more intended for precautionary purposes or to guard and to secure funds.⁷²

2. Current account is the funds entrusted by the public to a bank which is used as a medium of exchange that can be withdrawn at any time with cheque, bilyet giro, or other means of payment.⁷³ This account is a very practical payment instrument for withdrawals and is also safer than carrying cash.⁷⁴

3. Time deposit is the funds entrusted by the public to a bank that can only be withdrawn at a certain time based on an agreement between the customer and the bank.⁷⁵ Broadly speaking, the deposit can be divided into three types namely, time deposit, certificate of deposit, and the deposit on call. But in general, when people mention the word deposit, they are thinking about this specific kind of deposit. because the time deposit is the most widely known among the three.⁷⁶

The ownership of time deposit is non-transferable.⁷⁷

⁷¹ Julius R. Latumaerissa, *Op. Cit*, p.243.

⁷² Ika Wahyuni, and Anggun Mega Lestari, “Analisis Peranan Perkembangan Jumlah Giro, Deposito dan Tabungan Masyarakat Terhadap Perkembangan Jumlah Sertifikat Bank Indonesia (Studi Kasus pada Bank BCA)”, *Jurnal Ekonomi dan Bisnis GROWTH*, Vol. 13/No. 1/May/2015, p.100.

⁷³ Kasmir, *Op. Cit*, p.61.

⁷⁴ Julius R. Latumaerissa, *Op. Cit*, p.252.

⁷⁵ Kasmir, *Op. Cit*, p.75.

⁷⁶ Julius R. Latumaerissa, *Op. Cit*, p.247.

⁷⁷ Ika Wahyuni, and Anggun Mega Lestari, *Op. Cit*, p.99.

4. Credit is the provision of money or bills based on a loan agreement between the bank and another party, which requires the debtor to pay off the debt after a certain period with interest.⁷⁸ Credit can be interpreted as trust derived from the Latin word “credere” which means “believe”. For the creditor, the trust is interpreted when they believe that the money given to the recipient will be returned according to the agreement. While for the recipient it is when they are burdened by the trust, the recipient has an obligation to pay on time.⁷⁹

5. Transfer, this one is a service where a customer can transfer their money to any account in domestic (inside or outside the region) or foreign banks. The time cost and the time spend to deliver depends on the instrument used to send it.⁸⁰ With transfer, we can speed up the process of sending money anywhere in a short time.⁸¹

6. Clearing is an interbank debt arrangement service by handing over documents (warkat) to be cleared at the clearinghouse.⁸² The clearinghouse was established by Bank Indonesia on March 7, 1967.⁸³ The clearing was conducted by Bank Indonesia, and in other places where there is no Bank Indonesia, clearing operations are given to a bank appointed by Bank Indonesia. This appointed bank must meet

⁷⁸ Point 11, Article 1, Chapter 4, Part 2 of Law number 4 of 2023.

⁷⁹ Kasmir, *Op. Cit*, p.85-86.

⁸⁰ Kasmir, *Op. Cit*, p.130-131.

⁸¹ Julius R. Latumaerissa, *Op. Cit*, p.230.

⁸² Kasmir, *Op. Cit*, p.132.

⁸³ Jesica Martina Pangau, “Peran Bank Indonesia terhadap Pelaksanaan Kliring antar Bank”, *Lex Privatum*, Vol. III/No. 1/January-March/2015, p.30.

several requirements related to administrative capability.⁸⁴ Clearing is intended to make transaction settlements carried out quickly, safely, effectively, and efficiently.⁸⁵

7. *Inkaso* (collection) is a bank service that allows the customer to collect documents (warkat) from outside the city or abroad.⁸⁶ *Inkaso* can be done through a bank that has obtained a permit from Bank Indonesia.⁸⁷ *Inkaso* provides services to customers in the process of collecting documents, where customers no longer need to come to the bank of the drawee, but simply authorize the remitting bank to collect their documents.⁸⁸ *Inkaso* is carried out to settle invoices from the customer in the form of documents or securities that cannot be immediately paid because the debtor is in a different city or something similar.⁸⁹

8. Safe deposit box is one of bank services that are categorized as non-financial.⁹⁰ Where the bank rents out a safe box of a certain size to store valuables approved by the bank for a certain period. There is an aspect of confidentiality in this service since only the customer

⁸⁴ *Ibid.*

⁸⁵ Abdul Salam, "Mekanisme Kliring pada Perbankan Konvensional Perspektif Islam", *Jurnal Ekonomi Syariah Indonesia*, Vol. II/No. 2/December/2012, p.188.

⁸⁶ Kasmir, *Op. Cit*, p.134.

⁸⁷ Julius R. Latumaerissa, *Op. Cit*, p.261.

⁸⁸ *Ibid.*

⁸⁹ I Nyoman Supartayana, Harly Stanly Muaja and Roosje M. S. Sarapun, "Pelayanan Jasa-Jasa Bank dalam Kegiatan Usaha Perbankan di Indonesia Menurut Undang-Undang Nomor 10 Tahun 1998", *Lex Privatum*, Vol. VIII/No. 2/April-June/2020, p.107.

⁹⁰ Julius R. Latumaerissa, *Op. Cit*, p.279.

knows what is stored inside the box,⁹¹ even bank officials are not allowed to inspect the safe boxes without any approval from the customer.⁹²

9. Credit card is an instrument of payment that can replace the role of cash or cheque.⁹³ And this is a result of the modification of the traveller's cheque.⁹⁴ A credit card can be used at places that have a relationship with the bank that issued the credit card. One of the advantages of having a credit card is that it has a wide range of use, covering almost all countries in the world. This type of card is a special kind that is recognized as a payment instrument at several merchants that must be used in accordance with the conditions and limits set by the bank.⁹⁵

10. Bank guarantee is a payment in a form of assurance given by a bank to a recipient of a guarantee, either an individual, company, or other institution in the form of a guarantee letter⁹⁶ to fulfill an obligation if in the future the guaranteed person does not accomplish their duty to the recipient in accordance with their agreement.⁹⁷

11. Letter of Credit is a form of bank service provided to the public to facilitate the flow of supplying commodities from one place

⁹¹ *Ibid.*

⁹² I Nyoman Supartayana, et al., *Loc. Cit.*

⁹³ *Ibid.*

⁹⁴ Julius R. Latumaerissa, *Op. Cit.*, p.272.

⁹⁵ *Ibid.*, p.273.

⁹⁶ Kasmir, *Op. Cit.*, p.146.

⁹⁷ I Nyoman Supartayana, et al., *Loc. Cit.*

to another, especially within the country.⁹⁸ And this is also one of the payment methods used in international trade by using documentary credit in the form of valuable documents.⁹⁹

12. Travelers cheque, this cheque is known as tourist cheque, which is usually used by tourists, this is a type of securities issued in certain denominations that can be used as a medium of exchange replacing cash.¹⁰⁰ Because carrying a large amount of cash nowadays is very risky for the owner of the money, this cheque has many benefits in terms of convenience and security. This cheque can be cashed out worldwide if the bearer of the traveler's cheque goes to a foreign exchange bank.¹⁰¹

13. ATM (Automatic Teller Machine), ATM is a facility provided by the bank to improve service to customers, especially to customers with savings accounts.¹⁰² This service is an electronic banking service system, where customers can perform financial transactions without dealing directly with bank officers, both inside and outside working hours. The transactions that usually can be done from ATMs are withdrawing money in cash and viewing their current or savings account balances or transferring money.¹⁰³

⁹⁸ Thomas Suyatno, et al., *Kelembagaan Perbankan*, Third Edition, Penerbit Gramedia Pustaka Utama, Jakarta, 2007, p.56.

⁹⁹ *Ibid*, p.59.

¹⁰⁰ Kasmir, *Op. Cit*, p.140-141.

¹⁰¹ Julius R. Latumaerissa, *Op. Cit*, p.262.

¹⁰² I Nyoman Supartayana, et al., *Op. Cit*, p.108.

¹⁰³ Julius R. Latumaerissa, *Op. Cit*, p.284.

D. Financial Services Authority

Since 2014 customers in financial sectors are protected by an institution called the Financial Services Authority of Indonesia or *Otoritas Jasa Keuangan* (OJK).¹⁰⁴ This organization is an independent institution which has the functions, duties, and authority to regulate, supervise, inspect, and investigate.¹⁰⁵ The institution was formed so that all activities in the financial services sector are carried out in an orderly, fair, transparent, and accountable manner, to create a financial system that grows stably and sustainably, and to protect the interests of consumers and society.¹⁰⁶ OJK was established to organize the system of regulation and supervision that is integrated into the overall activities in the financial services sector, actively maintain Financial System Stability in accordance with its authority and provide protections to customers and society.¹⁰⁷

As an authority in the financial sector OJK has power over the banking sector, it is stated in Law number 4 of 2023 which read “OJK carries out regulatory and supervisory duties on: (one of them is) financial service activities in banking sector”¹⁰⁸ this stipulation allows the regulations issued by OJK to be applied in banking activities. Specifically on the subject of consumer protection, in order to complement their regulations, OJK released several circular letters namely, Circular Letter of Financial Services Authority number 1/SEOJK.07/2014 concerning

¹⁰⁴ Zulkarnain Sitompul, “Konsepsi dan Transformasi Otoritas Jasa Keuangan”, Jurnal Legislasi Indonesia, Vol. 9/No. 3/October/2012, p.343.

¹⁰⁵ Point 1, Article 1, Chapter 3, Part 4 of Law number 4 of 2023 on Financial Services Authority.

¹⁰⁶ Article 4 of Law number 21 of 2011.

¹⁰⁷ Article 5, Chapter 3, Part 4 of Law number 4 of 2023.

¹⁰⁸ Article 6, Chapter 3, Part 4 of Law number 4 of 2023.

Implementation of Education For Improving Financial Literacy to the Consumers and/or The Public, number 2/SEOJK.07/2014 concerning Handling and Resolving Consumer Complaints on Financial Services Businesses, number 12/SEOJK.07/2014 Concerning Delivery of Information for Marketing of Financial Products and/or Services, and number 14/SEOJK.07/2014 Concerning Confidentiality and Security of Consumers' Personal Data and/or Information.

OJK has taken over one of the vital responsibilities of Bank Indonesia to be in control over the supervision of the bank, which was previously part of the duties and authorities of Bank Indonesia.¹⁰⁹ This change resulted in the separation of macro-prudential supervision and micro-prudential supervision functions in the banking sector.¹¹⁰ Macro-prudential supervision is an obligation to supervise banks on matters that have a significant influence on the financial system or the economy of the country. The macro-prudential function is given to Bank Indonesia, while the function of micro-prudential supervision which is owned by OJK is the obligation to supervise banks in order to maintain their soundness level individually.¹¹¹

E. Consumer Protection in Banking Sector

According to OJK Regulation number 6/POJK.07/2022 regarding Consumer and Public Protection in the Financial Services Sector, is an effort to provide knowledge and understanding of products and/or services to be used or utilized by

¹⁰⁹ Inosentius Samsul, *Op. Cit*, p.157.

¹¹⁰ Khopiatuziadah, "Hubungan Kelembagaan Antar Pengawas Sektor Perbankan: Perspektif Undang-Undang tentang Otoritas Jasa Keuangan", *Jurnal Legislasi Indonesia*, Vol. 9/No. 3/October/2012, p.441.

¹¹¹ Hasbi Hasan, "Efektivitas Pengawasan Otoritas Jasa Keuangan terhadap Lembaga Perbankan Syariah", *Jurnal Legislasi Indonesia*, Vol. 9/No. 3/October/2012, p.382.

customers and/or the public, and efforts to provide legal certainty to protect customers in fulfilling their rights and obligations in the financial services sector.¹¹²

Or in this topic, we can say that the law was made to protect bank customers from the bank by using the institution's performances as the subject of examination.

Like the definition given by the OJK regulation, chapter 3 part 4 of Law number 4 of 2023 on the Development and Strengthening of the Financial Sector, defined customers as "... parties who utilize bank services"¹¹³ which means anyone who sign-up to use any service provided by the bank is considered as a bank customer. On the other hand, the Law categorized the customers into two types, the first one is a Debtor Customer, which is a customer who obtains credit or financing facilities from the bank,¹¹⁴ and the second one is a Depositing Customer, which is a customer who placed their money in the bank.¹¹⁵ The latter is the type of customer that will be discussed in this writing.

The existence of legal protection for bank customers is very urgent because the position of the parties is often unequal.¹¹⁶ No different from any customer who utilizes and consumes other services and products, bank customers are as vulnerable as any customer in the market, their rights are at risk¹¹⁷ and the risks they have are bigger than the bank's, and they are also relying on the products and services given

¹¹² Point 4, Article 1 of Regulation of Financial Services Authority number 6/POJK.07/2022.

¹¹³ Point 16, Article 1, Chapter 4, Part 2 of Law number 4 of 2023.

¹¹⁴ Point 18, Article 1, Chapter 4, Part 2 of Law number 4 of 2023.

¹¹⁵ Point 17, Article 1, Chapter 4, Part 2 of Law number 4 of 2023.

¹¹⁶ Mohammad Wisno Hamin, *Perlindungan Hukum Bagi Nasabah Bank Sebagai Konsumen Pengguna Jasa Bank Terhadap Risiko Dalam Perjanjian Kredit Bank*, Lex Crimen, Vol. VI/No. 1/January-February/2017, p.48.

¹¹⁷ Abdul H. Barkatullah, *Op. Cit*, p.1.

by the bank.¹¹⁸ Financial consumer protection for the most part was constructed in order to increase the level of customer empowerment so that the customers can protect themselves, reduce the imbalance between the position of business actors and customers, eliminate the delivery of wrong information, abuse of authority, and fraud.¹¹⁹ Moreover, when bank customers encountered problems in the future, the Financial Consumer Protection Law must present them with options and opportunities to defend themselves and facilitate the customers with power to claim their rights.¹²⁰

This kind of protection is creating fair treatment, stability, efficiency, transparency, reducing information asymmetries (when a party has more information than other participating parties which might ease their position in a particular situation¹²¹) and power imbalances between bank and customer.¹²² So, it is necessary that the customers are given the correct pieces of information and protection from any misconduct and chances to be compensated.¹²³ And since the basis of the relationship between customers and bank is trust, it feels like having more protection provided by law is a proper way to make the customers feel safer when using the services from banking institutions.¹²⁴

¹¹⁸ Burhanuddin, *Op. Cit*, p.2.

¹¹⁹ Elucidation of Regulation of Bank Indonesia number 22/20/PBI/2020.

¹²⁰ Neil W. Averitt, and Robert H. Lande, *Op. Cit*, p.1.

¹²¹ Gavin Clarkson, Trond Jacobsen, and Archer Batcheller, "Information Asymmetry and Information Sharing", *Government Information Quarterly* 24, October 2007, p.828.

¹²² Maryam Kriese, Joshua Yindenaba Abor, and Elipklimi Agbloyor, "Financial Consumer Protection and Economic Growth", *International Journal of Emerging Markets*, Vol. 14/No. 5/2019, p.1060.

¹²³ *Ibid*, p.1061.

¹²⁴ Theresia Anita Christiani, *Op. Cit*, p.2.

To illustrate the necessity of consumer protection in the banking sector, we can look back to several years before OJK, Bank Indonesia already planned a program that include customer protection in it. Customer protection in the banking sector was brought up in pillar VI of Indonesian Banking Architecture or *Arsitektur Perbankan Indonesia (API)* which was established by Bank Indonesia (BI) in 2004. API is a program as the core framework of the banking system in Indonesia in order to provide direction, formation, and structure for a healthy, strong, and efficient banking industry.¹²⁵ The program has six pillars, which means that customer protection is contained in the last pillar, which reads as follows:

“Empowerment and protection for customers of banking services”

This program is carried out in order to empower customers by setting standards in the preparation of consumer complaint mechanisms, establishing independent mediation institutions, and increasing transparency of banking product information as well as improving customer education. This program aims to increase the confidence of customers in the banking system.¹²⁶

F. Regulations of Financial Consumer Protection

Consumer Protection Law number 8 of 1999 is the umbrella for all laws and regulations related to consumer protection.¹²⁷ The Law also acknowledges other

¹²⁵ Bambang Murdadi, “Arsitektur Perbankan Indonesia (API) Roadmap Tak Berujung”, Value Added: Majalah Ekonomi dan Bisnis, Vol. 11/No. 2/2015, p.51.

¹²⁶ Otoritas Jasa Keuangan, *Arsitektur Perbankan Indonesia*, <https://www.ojk.go.id/id/kanal/perbankan/arsitektur-perbankan-indonesia/Pages/Perlindungan-Nasabah.aspx>, (accessed on May 10, 2021).

¹²⁷ David Y. Wonok, “Perlindungan Hukum atas Hak-Hak Nasabah sabagai Konsumen Pengguna Jasa Bank terhadap Risiko yang Timbul dalam Penyimpangan Dana”, *Jurnal Hukum Unsrat*, Special Edition, Vol. 1/No. 2/April-June/2013, p.64.

Laws that appeared after Law number 8 of 1999 as part of the consumer protection law.¹²⁸ The financial consumer protection Laws are an example of a law that was born years after the law of consumer protection that will strengthen the system of consumer protection law.¹²⁹ Customers of bank in Indonesia are protected under:

1. Law number 7 of 1992 on Banking;
2. Law number 10 of 1998 as the amendment of Law number 7 of 1992 on Banking;
3. Law number 21 of 2011 on the Financial Services Authority;
4. Law number 4 of 2023 on the Development and Strengthening of the Financial Sector;
5. Regulation of Financial Services Authority number 1/POJK.07/2014 on Alternative Institutions for Dispute Resolution in the Financial Services Sector;
6. Regulation number 18/POJK.07/2018 on Consumer Complaint Services in the Financial Services Sector.
7. Regulation of Financial Services Authority number 6/POJK.07/2022 on Consumer and Public Protection in the Financial Services Sector; and
8. Circular Letter of Financial Services Authority number 1/SEOJK.07/2014 on Implementation of Education for Improving Financial Literacy to the Consumers and/or The Public;

¹²⁸ Inosentius Samsul, *Op. Cit*, p.156.

¹²⁹ *Ibid*.

9. Circular Letter of Financial Services Authority number 2/SEOJK.07/2014 on Handling and Resolving Consumer Complaints on Financial Service Businesses;
10. Circular Letter of Financial Services Authority number 12/SEOJK.07/2014 on Delivery of Information for Marketing of Financial Products and/or Services; and
11. Circular Letter of Financial Services Authority number 14/SEOJK.07/2014 on Confidentiality and Security of Consumers Personal Data and/or Information.

G. Rights and Duties

1. Rights and Duties of Customer

In practice, customers have various rights which can provide protection against abuse that may occur to services provided by the bank in the future. It is essential to identify our rights because customers who do not understand their rights often lose the opportunity to claim what the banks owe.¹³⁰

These are the rights that must be given to the bank customers:¹³¹

1. The customers have the right to know the information regarding the banking products in detail, with accurate, honest, clear, and not misleading information, to determine

¹³⁰ Aprilya Altji Papendang, *Op. Cit*, p.83.

¹³¹ Sikapi Uangmu OJK, Apa Saja Hak Kamu Sebagai Konsumen Keuangan (2) (Edisi Konsumen Keuangan - Perbankan), <https://sikapiuangmu.ojk.go.id/FrontEnd/CMS/Article/10438>, (accessed on May 11, 2021).

suitable banking products. Customers also should be treated equally in carrying out agreements.

2. The customers are entitled to interest on savings and time deposit services which have been promised beforehand.
3. The customers are entitled to services provided by banks such as ATM facilities, transaction reports, and to have the collateral returned when the customer completed the credit.
4. The customers have the right to receive Rupiah that must be authentic, legally valid as a payment instrument, decent condition, and to receive the money in the denomination which customers need.
5. The customers have the right to submit a complaint and the complaint must be responded to.
6. The customers have the right to receive compensation, reimbursement, or replacement for losses due to the utilization of the products or services provided. Compensation or reimbursement must also be given if the products or services received are not like what was arranged in the agreement.

Apart from having several rights, the customers also got duties to fulfill, the duties are:¹³²

¹³² Aprilya Altji Papendang, *Op. Cit*, p.79.

1. The customers have to fill out and sign the form provided by the bank, in accordance with the services desired by the customer.
2. The customers have to complete any requirement determined by the bank.
3. The customers have to deposit the initial funds required by the bank. (Initial funds are varied depending on the type of service).

2. Rights and Duties of Bank

Not only customers are given rights and duties in the relationship between customer and bank, but banks also have their rights and duties which will be mentioned below:

These are some of the rights of the bank that can be found in the law.

1. The bank has the right to collect money from and lend money to the public.
2. The bank has the right to issue debt acknowledgment letters.
3. The bank has the right to move money.
4. The bank has the right to place funds in, borrow funds from or lend funds to other banks.
5. The bank has the right to provide a place to store goods and securities.
6. The bank has the right to ensure the good faith of the customer and obtain information or documents that are

accurate, up to date, honest, clear, and not misleading about the customer,¹³³

7. The bank has the right to carry out any other activities that are commonly carried out by banks that do not conflict with the prevailing laws and regulations.

And these are the duties of the bank:¹³⁴

1. To maintain the confidentiality of customers' financial information. Banks are required to keep all transactions that occur between banks and customers from any party confidential except in certain cases.
2. To secure customers' funds.
3. To receive money from customers. Banks are obliged to receive a sum of money from customers for services used by the customer, which then the money will be channeled into other services like credit.
4. To report any banking activities in a certain period transparently to the public.
5. To know the customer. Banks are required to ask for proof of customer identity when withdrawing money from the bank, to prevent unwanted things in the future.

¹³³ Article 5 of Regulation of Financial Services Authority number 6/POJK.07/2022.

¹³⁴ Lukman Santoso Az, *Hak dan Kewajiban Hukum Nasabah Bank*, Pustaka Yustisia, Yogyakarta, 2011, p.100.

6. To keep personal data and information about customers (such as name, address, age, and/or phone number)¹³⁵ confidential from third parties, unless the customer gives written consent, or the information is required by Laws.¹³⁶

H. Legal Protections

In carrying out and providing legal protections, we need tools to implement the law which is referred to as the instruments of legal protection,¹³⁷ According to Law number 21 of 2011, in the banking sector the instruments are divided into two types,¹³⁸ namely:

1. Efforts through the provisions of laws and regulations to prevent any unexpected situations that might happen to the customer in the future. (preventive)¹³⁹
2. Efforts to resolve disputes or other problems that appeared. (repressive)¹⁴⁰

1. Preventive

In order to help bank customers to avoid any damage, OJK has the authority to take necessary actions in accordance with the Law. OJK is given the power to stop banks from carrying out any activity that has the potential to harm bank

¹³⁵ Point 1, Paragraph I of Circular Letter of Financial Services Authority number 14/SEOJK.07/2014 on Confidentiality and Security of Consumers Personal Data and/or Information.

¹³⁶ Paragraph II of Circular Letter of Financial Services Authority number 14/SEOJK.07/2014.

¹³⁷ Rati Maryani Palilati, *Op. Cit.*, p.55.

¹³⁸ Hari Sutra Disemadi, and Paramita Prananingtyas, *Op. Cit.*, p.393.

¹³⁹ Article 28 of Law number 21 of 2011.

¹⁴⁰ Point (1), Article 30 of Law number 21 of 2011.

customers. OJK is also required to inform and educate the customers regarding the characteristics, services, and products of the financial services sector.¹⁴¹

OJK has the authority to instruct Financial Services Business Actors, which in this context are banks, to organize educational programs to improve financial literacy (the ability to understand financial knowledge and skills to manage financial resources to achieve prosperity) to consumers and/or the public, which must be arranged in an annual program that is reported to the OJK. The implementation of the program must cover all groups of people, be delivered systematically, be easy to understand and be simple. The program is expected to cover an even wider community by allowing it to be accessible via internet.¹⁴²

Furthermore, OJK must provide specific service where customers can submit complaints, by preparing qualified service equipment and creating mechanisms for complaints submitted by customers who are harmed by actors in the Financial Services Institutions.¹⁴³ Relating to the service of consumer complaints OJK demanded banks regulate provisions as well as mechanisms regarding service and settlement of consumer complaints. Banks are required to periodically report any complaint and follow up on the service and settlement of such complaints to the OJK. Reports are submitted periodically every three months (March, June,

¹⁴¹ Article 28 of Law number 21 of 2011.

¹⁴² Circular Letter of Financial Services Authority number 1/SEOJK.07/2014 on Implementation of Education for Improving Financial Literacy to the Consumers and/or The Public.

¹⁴³ Article 29 of Law number 21 of 2011.

September, and December), and if the bank does not submit the report for more than 3 consecutive months, the bank is required to pay sanctions for the delay.¹⁴⁴

In providing consumer complaints service, banks are required to conduct training and evaluation of all bank employees at least once during their working period. But specifically for employees who deal directly with customers, supervise the implementation of services and settlement of consumer complaints, or are related to preparing reports to the OJK, these employees are required to receive regular training and evaluation.¹⁴⁵

The bank that violates the provisions of OJK Regulations will be given administrative sanctions such as:¹⁴⁶

1. Written warning;
2. Fine;
3. Prohibited from becoming the main party;
4. Restrictions on products and/or services and/or business activities;
5. Freezing of products and/or services and/or business activities;
6. Revocation of product and/or service license; and
7. Revocation of business license.

2. Repressive

¹⁴⁴ Paragraph VIII of Circular Letter of Financial Services Authority number 2/SEOJK.07/2014 on Handling and Resolving Consumer Complaints on Financial Services Businesses.

¹⁴⁵ Paragraph VI of Circular Letter of Financial Services Authority number 2/SEOJK.07/2014.

¹⁴⁶ Article 45 of Regulation of Financial Services Authority number 6/POJK.07/2022.

In order to assist customers to resolve consumer complaints, OJK must facilitate the settlement of complaints submitted by customers in accordance with the Laws of the financial services sector.¹⁴⁷ OJK has the authority to carry out legal defenses to protect customers and the public, by ordering the bank or taking certain actions against the bank in order to resolve the complaints of the customer who are harmed by the bank.¹⁴⁸ According to the OJK Regulation, before bringing the dispute to the next level, the complaint must be settled internally by the bank, and if the parties cannot reach any agreement in resolving the complaint, the customer and the bank can settle it in court or outside the court.¹⁴⁹

Banks are required to provide a consumer complaints service, as a place for customers to express their dissatisfaction created by financial losses or potential losses that are suspected to be caused by bank errors or negligence, and for that matter, the bank is also required to resolve the complaints immediately. The information about the complaining customer must be kept confidential, except in certain situations and to certain parties. Complaints must be served and resolved in a balanced and objective manner. And the bank must provide opportunities for customers and other interested parties to give clarifications regarding the complaint. On this service, the bank is not allowed to charge the complaining customers.¹⁵⁰

After receiving a complaint, the bank is required to conduct an examination towards the complaint objectively, competently, and correctly. Then the bank must

¹⁴⁷ Point c, Article 29 of Law number 21 of 2011.

¹⁴⁸ Point (1) a, Article 30 of Law number 21 of 2011.

¹⁴⁹ Point (1) and (2), Article 2 of Regulation of Financial Services Authority number 1/POJK.07/2014 on Alternative Institutions for Dispute Resolution in the Financial Services Sector.

¹⁵⁰ Paragraph II of Circular Letter of Financial Services Authority number 2/SEOJK.07/2014.

investigate it to ensure the truth of the complaint, if the complaint is accurate, the bank must state an apology and offer compensation to the complaining customer.¹⁵¹ Regarding the compensation, it is only given to losses that occur due to financial aspects, and it can be given if the customer demanded the compensation, the complaint submitted is declared correct, there is a discrepancy between the agreed service and the received service, there is a material loss, and given when the customer fulfilled their obligations.¹⁵²

OJK may also file a lawsuit in order to recover the assets owned by the suffered party from the party who caused the damage, whether under the control of the party who caused the damage or under the control of another party with bad faith, or OJK may file a lawsuit to obtain compensation from parties who cause the damage to customer and/or the bank as a result of the violation of the provisions of financial services sector laws.¹⁵³ In the latter condition, compensation is given to the injured party.¹⁵⁴

Disputes that wanted to be resolved out of the court can be carried out through the Agencies for Alternative Dispute Resolution or *Lembaga Alternatif Penyelesaian Sengketa* (LAPS) which was determined by OJK.¹⁵⁵ In the banking sector, the out-of-court settlements are carried out through the Alternative Dispute Resolution Institution of Indonesian Banking or *Lembaga Alternatif Penyelesaian*

¹⁵¹ Article 14 of Regulation of Financial Services Authority number 18/POJK.07/2018.

¹⁵² Point 2, Paragraph III of Circular Letter of Financial Services Authority number 2/SEOJK.07/2014.

¹⁵³ Point (1) b, Article 30 of Law number 21 of 2011.

¹⁵⁴ Point (2), Article 30 of Law number 21 of 2011.

¹⁵⁵ Point (3) and (4), Article 2 of Regulation of Financial Services Authority number 1/POJK.07/2014.

Sengketa Perbankan Indonesia (LAPSPI) which was established by the association of the banking sector.¹⁵⁶ LAPS services can be accessed easily, cheaply and fast and are carried out by competent human resources who understand the financial services industry. In this alternative institution, dispute resolution service includes:¹⁵⁷ Mediation, adjudication, and arbitration.

I. Islamic Perspective

In the viewpoint of Islam, there are some conditions in performing transactions that a person cannot do such as uncertainty in transactions or *Gharar*, gambling or *Maysir* and interest rate or *Riba*.¹⁵⁸ These conditions especially the latter are one of the reasons why Islamic banking was established.¹⁵⁹

Islamic banking is a type of bank that carries out business activities based on sharia principles and does not promote *gharar*, *maysir*, *riba* and forbidden (haram) objects like the conventional bank does.¹⁶⁰ To replace the function of bank interest or known as *riba*, Islamic banking adopted the profit-sharing principle. It was later discovered that the profit-sharing principle gives several advantages, such as

¹⁵⁶ Article 4 of Regulation of Financial Services Authority number 1/POJK.07/2014.

¹⁵⁷ Otoritas Jasa Keuangan, Lembaga Alternatif Penyelesaian Sengketa, <https://www.ojk.go.id/id/kanal/edukasi-dan-perlindungan-konsumen/pages/lembaga-alternatif-penyelesaian-sengketa.aspx>, (accessed on Jun 25, 2021).

¹⁵⁸ Inutu Lukonga, "Islamic Finance, Consumer Protection and Financial Stability", IMF Working Paper, Middle East and Central Asia, WP/15/107/May/2015, p.7.

¹⁵⁹ A. Taufiq Buhari, "Bank dan Riba: Implikasinya dalam Ekonomi Islam", Jurnal Al-Insyiroh: Jurnal Studi Keislaman, Vol. 6/No. 1/March/2020, p.128.

¹⁶⁰ Otoritas Jasa Keuangan, Perbankan Syariah dan Kelembagaannya, <https://www.ojk.go.id/id/kanal/syariah/tentang-syariah/Pages/PBS-dan-kelembagaan.aspx>, (accessed on Jul 2, 2021).

reducing the risk of loss, and the profit obtained from such principle is higher than the interest given by the conventional bank.¹⁶¹

Even though islamic banking is not considered a large part of global finance yet, but lately, islamic banking is starting to develop rapidly in various aspects around the globe. The islamic banking sector is now an important consideration in several countries, and in many others, the islamic bank is starting to grow.¹⁶² The rapid development that occurred in islamic banking led to a serious increase in the number of bank customers, therefore, consumer protection law in islamic banking became increasingly significant to be organized in order to protect the business of customers in the sector.¹⁶³

1. Financial Consumer Protection in Islam

The legal sources of consumer protection in islamic banking are the same as the four sources of islamic law, which are: Qur'an, Sunnah, Ijma' (consensus), and Qiyas (analogy).¹⁶⁴ But also, there is a term known as *maslahah* which is defined by imam al-Ghazali as:

“As for *maslahah*, it is essentially an expression for the acquisition of benefit (*manfa'ah*) or the repulsion of injury or harm (*madarrah*), but that is not what we mean by it, because the acquisition of benefits and the repulsion of harm represent human goals, that is, the welfare of humans through the attainment of these goals. What we

¹⁶¹ A. Taufiq Buhari, *Op. Cit*, p.130.

¹⁶² Inutu Lukonga, *Op. Cit*, p.4.

¹⁶³ *Ibid*.

¹⁶⁴ Muhammad Akbar Khan, “Consumer Protection in Islamic Law (Shariah): An Overview”, *Al-Adwa* 45:31, p.78.

mean by *maslahah*, however, is the preservation of the purpose of the *shari'ah*.”¹⁶⁵

Imam al-Ghazali emphasized that *maslahah* is not the fifth source of law to add after the Qur'an, Sunnah of the Prophet Muhammad, *Ijma'*, and *Qiyas*, but *maslahah* is a proposition to preserve the purpose of *shari'ah* also known as *maqasid al-shari'ah*.¹⁶⁶ *Maqasid al-shari'ah* as the objectives of Islamic law is related to the rules of *shari'ah* itself.¹⁶⁷ The *maqasid al-shari'ah* is intended to ensure the clarity and the protection of Islamic law.¹⁶⁸ There are five purposes of *maqasid al-shari'ah*, which are:¹⁶⁹

1. To protect *ad-din* or religion;
2. To protect *an-nafs* or life;
3. To protect *al-aql* or intellect;
4. To protect *an-nasl* or prosperity; and
5. To protect *al-mal* or property.

As one of the five objectives of Islamic law, protecting *al-mal* or property is compulsory for a Muslim. Islam has specified ways for Muslims to earn their property. Some things are allowed or *halal* and some of them are prohibited or

¹⁶⁵ Hukum Ekonomi Syariah Universitas Darussalam Gontor, Understanding *Maslahah* In Islamic Fiqh, <https://hes.unida.gontor.ac.id/understanding-maslahah-in-islamic-fiqh/>, (accessed on Jul 11 2021).

¹⁶⁶ Akbar Sarif, and Ridzwan Ahmad, “Konsep *Maslahat* dan *Mafsadah* menurut Imam al-Ghazali”, *Journal Tsaqafah*, Vol. 13/No. 2/November/2017, p. 358.

¹⁶⁷ Muhammad Akbar Khan, *Loc. Cit.*

¹⁶⁸ Ro'fah Setyowati, Lastuti Abubakar, and Nunung Rodliah, “Sharia Governance on Islamic Banking: Spiritual Rights Perspective on Consumer Protection in Indonesia”, *Diponegoro Law Review*, Vol. 2/No. 1/April/2017, p.6.

¹⁶⁹ Sandy Rizki Febriadi, “Aplikasi *Maqashid* Syariah dalam Bidang Perbankan Syariah”, *Amwaluna: Jurnal Ekonomi dan Keuangan Syariah*, Vol. 1/No. 2/July/2017, p.240.

haram. And muslims were taught which thing is halal and which is not. The way Islam teaches about one's properties is also applied in the commercial transaction.¹⁷⁰ And consumer protection in islamic banking must follow this kind of rule so they can protect not only the property of customers but also protecting the rights of muslim customers to preserve shari'ah.¹⁷¹

The Arabic term for consumer protection is *himayat al mustahlik*. The word came from *istihlak* or consumption which is derived from the word *halaka* which means the transformation of something beneficial to become non-beneficial.¹⁷² The phrase *himayat al mustahlik* or consumer protection does not appear or is even mentioned in the writings of classical islamic scholars or classical books of fiqh. This might be because the term is known as a rather new terminology that was established recently in the modern era. But there is proof that the practice of consumer protection is already discussed and performed among muslim scholars before the term was even invented.¹⁷³

The consumer protection law that is currently used in conventional banks was developed for products and services that are made with different principles from those in islamic banking, so the structures of consumer protection designed for conventional banks will not be sufficient to address the customer vulnerabilities that might arise in islamic banking.¹⁷⁴ But the frameworks of conventional consumer

¹⁷⁰ Muhammad Akbar Khan, *Op. Cit*, p.83.

¹⁷¹ *Ibid*, p.84.

¹⁷² *Ibid*, p.77.

¹⁷³ Nur I'ffah M. Nasir, and Rusni Hassan, "Financial Consumer Protection Principles in Accordance with the Quran and Sunnah", *Journal of Emerging Economies & Islamic Research*, Vol. 7/No. 2/January/2019, p.57.

¹⁷⁴ Inutu Lukonga, *Op. Cit*, p.8.

protection are still applicable to islamic banking with some adjustments to undertake the risks specific to islamic banking services and products.¹⁷⁵ And the frameworks are relevant if they do not go against islamic law.¹⁷⁶

Islamic law has arranged several kinds of sanctions against people who harm the interests of the customer, such as imposing fines or other punishments. However, since islamic law is executed based on faith, those people who break the law are not only given punishment in this world but also hereafter. But it seems that we still need solid and concrete laws and policies, which accordance with the shari'ah, to protect the interests of the customer, especially these days.¹⁷⁷ In Indonesia, islamic banking is also supervised and regulated under the authority of OJK with the application of sharia principles.¹⁷⁸

2. Islamic Principles on Consumer Protection

These are several principles obtained in the Qur'an and Sunnah, from instructions and prohibitions by preventing problems before they arise or eliminating the causes of the problem that has already occurred to prevent the problems from happening again. These principles will provide assurance and protection for customers to receive fair treatment from banks or other business actors. The principles are:¹⁷⁹

1. Fear of Allah and recall of being under His observations.

¹⁷⁵ *Ibid*, p.5.

¹⁷⁶ Nur I'ffah M. Nasir, and Rusni Hassan, *Loc. Cit.*

¹⁷⁷ Muhammad Akbar Khan, *Op. Cit*, p.93.

¹⁷⁸ Ro'fah Setyowati, et al., *Op. Cit*, p.10.

¹⁷⁹ Nur I'ffah M. Nasir, and Rusni Hassan, *Op. Cit*, p.57-61.

“And Paradise will be brought near to the righteous, not far, ◊ [It will be said], ‘This is what you were promised - for every returner [to Allah] and keeper [of His covenant]. ◊ Who feared the Most Merciful in the unseen and came with a heart returning [in repentance]. ◊ Enter it in peace. This is the Day of Eternity.’”¹⁸⁰

To be afraid of Allah and always remember that we all are under His observation is the highest principle possible that makes a distinction between the conventional consumer protection from the islamic version. It will always make the business actors be reminded of their responsibility to Allah, which is placed over their responsibility to the customers, by obeying His commands and avoiding His prohibitions without relying on other party’s supervision.

2. Truthfulness.

“Abu Sa’eed narrated that The Prophet, PBUH, said, ‘The truthful, trustworthy merchant is with the Prophets, the truthful, and the martyrs.’”¹⁸¹

Muslims are encouraged to be truthful and honest, and honesty is one of the basic foundations of consumer protection in any transaction. Honest business actors will choose to be transparent and never cheat on their contracts.

3. Trustworthiness.

“O you who have believed, do not betray Allah and the Messenger or betray your trusts while you know [the consequence].”¹⁸²

Another foundation of consumer protection is being reliable or trustworthy. Trustworthy business actors will be responsible for their actions towards the

¹⁸⁰ Q.S. Qaf verse 31-34.

¹⁸¹ Jami’ at-Tirmidhi 1209.

¹⁸² Q.S. Al-Anfal verse 27.

customer, they will guarantee the fulfillment of the customer's rights so the customers will not be victimized.

4. Documentation of business transactions.

“O you who have believed, when you contract a debt for a specified term, write it down ...”¹⁸³

This verse is considered one of the most remarkable commands in the Qur'an because it is related to business documentation like the one we can find nowadays. The transactions must be written in detail, accurate and clear so both parties can make sure that the contract is neutral, unbiased, and fair.

5. Fulfillment of contracts.

“O you who have believed, fulfill [all] contracts ...”¹⁸⁴

Besides telling the business actors to document their contracts, the Qur'an also emphasizes the fulfillment of the contracts, which cover all transactions involving interactions between humans, and humans among other things.

6. Prohibition of devouring the property of others wrongfully.

“O you who have believed, do not consume one another's wealth unjustly but only [in lawful] business by mutual consent ...”¹⁸⁵

Islam recognizes and protects the rights of property. Therefore, it is forbidden to take possession of people's property illegally, such as taking control over the property of others through unethical transactions or by violating the rights of others –which includes cheating, gambling, bribery, riba, and monopoly–. However, we

¹⁸³ Q.S. Al-Baqarah verse 282.

¹⁸⁴ Q.S. Al-Maidah verse 1.

¹⁸⁵ Q.S. An-Nisa verse 29.

are allowed to take custody of other people's property by trading, the trade must be legal with mutual agreement between the parties.

7. Prohibition of price manipulation.

“Narrated by Abu Huraira that The Prophet, PBUH, said, ‘... Do not practice Najsh (i.e., Do not offer a high price for a thing which you do not want to buy, in order to deceive the people) ...’”¹⁸⁶

Price manipulation is the act of tricking the customer into paying a higher price in order to get more profit by committing fraud. Such a thing is considered immoral and sinful by islamic scholars.

8. Prohibition of false trading.

“Narrated on the authority of Abu Dharr that The Prophet, PBUH, said, ‘Three are the persons with whom Allah would not speak on the Day of Resurrection: ..., the seller of goods who sells them by taking false oath, ...’”¹⁸⁷

False trading is considered a fraudulent and deceptive act that is prohibited in Islam. False trading happens when the business actors advertise a different product or service from what it is supposed to be. This will attract consumers to buy the product or use the service without knowing its actual condition.

¹⁸⁶ Sahih al-Bukhari 2723.

¹⁸⁷ Sahih Muslim 106b.

CHAPTER III
ANALYSIS ON THE RESPONSIBILITY OF THE BANK
AND THE LEGAL PROTECTIONS TOWARDS THE LOSS
SUFFERED BY DEPOSITING CUSTOMERS

A. Bank Responsibility towards the Loss Suffered by Depositing Customers

In private matter one party who has been wronged has the right to bring the problems they are having to the authority, expecting the other party to take responsibility for it. Being responsible means “The quality, state, or condition of being duty-bound, answerable, or accountable”¹⁸⁸ or “the state of being obliged to bear everything ...”.¹⁸⁹ According to Hans Kelsen with his liability concept, a person is said to be legally responsible for a certain act, if the person may become a subject to a sanction in the case of the opposite conduct.¹⁹⁰ In private law, someone’s responsibility arises from the cause of the dispute, namely: default and tort.

Default is an event when the parties fail to accomplish their obligations in an agreement properly, and there is an element of error in their actions.¹⁹¹ In our Civil Code default is mentioned in article 1243.

“Compensation for costs, losses and interest due to non-fulfillment of an agreement is required, if the debtor, even though they

¹⁸⁸ RESPONSIBILITY, Black's Law Dictionary (11th ed. 2019)

¹⁸⁹ Tang.gung ja.wab, KBBI Daring (ed. April 2023)

¹⁹⁰ Jimly Asshiddiqie, and M. Ali Safa’at, *Teori Hans Kelsen tentang Hukum*, Penerbit Sekretariat Jenderal & Kepaniteraan Mahkamah Konstitusi RI, Jakarta, 2006, p.61.

¹⁹¹ J. Satrio, *Wanprestasi menurut KUHPerdara, Doktrin, dan Yurisprudensi*, Penerbit PT Citra Aditya Bakti, Bandung, 2012, p.3.

have been declared negligent, remains negligent to fulfill the said agreement, or if something that must be given or done can only be given or done within the time that exceeds the specified time.”¹⁹²

Prof. Subekti categorized this matter into four points. According to him, default occurred when the parties:¹⁹³

1. Do not carry out what is agreed;
2. Do what is agreed, but not properly;
3. Do what is agreed but late; or
4. Do something that is agreed not to be done.

If there is a breach of contract, then the aggrieved party can demand its fulfillment based on the agreement. This is based on Article 1338 Paragraph (1) of the Civil Code.

“All valid agreements apply to the individuals who have concluded them as law.”¹⁹⁴

Because the agreement has become law for both parties, this opens the opportunity for a lawsuit to be brought before the court.

Default is very dependent to the presence of a contract in a relationship between two or more parties. Thus, when harm is conducted between parties who are not bound by contracts, the action can be identified as tort.

¹⁹² Article 1243 of Indonesia Civil Code.

¹⁹³ Hukum Online, Pengertian Wanprestasi, Akibat, dan Cara Menyelesaikannya, <https://www.hukumonline.com/berita/a/unsur-dan-cara-menyelesaikan-wanprestasi-lt62174878376c7/?page=2>, (accessed on Nov 5, 2022).

¹⁹⁴ Paragraph (1), Article 1338 of Indonesia Civil Code.

So basically, default and tort are similar in a way, it's just that when someone committed default, the things that are violated are agreed between both parties or written in a contract,¹⁹⁵ whereas tort is an act of violating the law, it does not include breaching agreements.

The main objectives of the tort law are:

1. To provide assistance to the victim for harms caused by another party.
2. To enforce responsibility on the responsible parties.
3. To prevent others from committing harmful acts.

In Indonesia tort is stipulated in article 1365 of the Civil Code.

“Every unlawful act that causes damage onto another person obliges the wrongdoer to compensate such damage.”¹⁹⁶

To study the article 1365, we can examine and divide the article into 4 substances:¹⁹⁷

1. Unlawful act

An action carried out against the law. Despite its name, this substance not only cover the written regulations, but it also applies to any violation against the rights of others.¹⁹⁸

¹⁹⁵ *Ibid*, p.5.

¹⁹⁶ Article 1365 of Indonesia Civil Code.

¹⁹⁷ Sudikno Mertokusumo, *Perbuatan Melawan Hukum oleh Pemerintah*, Cahaya Atma Pustaka, Yogyakarta, 2014, p.11.

¹⁹⁸ Munir Fuady, *Perbuatan Melawan Hukum (Pendekatan Kontemporer)*, Penerbit PT Citra Aditya Bakti, Bandung, 2002, p.6.

In 1883 Hoge Raad interpreted the term *onrechtmatig* or “unlawful” narrowly. They interpreted it only as a violation of the articles of written applicable laws, or as an act that conflicted with its own legal obligations arising from laws.¹⁹⁹ But, in 1919 with the case of *Lindenbaum versus Cohen*, they changed their interpretation with a broader meaning. The term *onrechtmatig* until now can be interpreted as any act that violates the rights of other people or is contrary to legal obligations, or contrary to morals, or contrary to proper attitudes in society towards people or other people's goods.²⁰⁰ This broad interpretation contains:²⁰¹

1. Actions that violate applicable laws.
2. Actions that violate the rights of others guaranteed by law.
3. Actions that are contrary to the legal obligations of the perpetrator.
4. Actions that are contrary to decency.
5. Actions that are contrary to good attitudes in society to respect the interests of others.

So based on this interpretation, unlawful act or tort is not only an act of defying the rules and regulations, but it also includes unwritten principles found among society.

2. Element of fault

In tort, an act can only be held accountable if there is an element of fault of the wrongdoer, whether they carry out the illegal act intentionally or not. An action

¹⁹⁹ Sudikno Mertokusumo, *Op. Cit*, p.13.

²⁰⁰ *Ibid*, p.15.

²⁰¹ Munir Fuady, *Op. Cit*, p.11.

that is considered to contain an element of fault can be legally held liable if it fulfills the following elements:

- a. Dolus (bad faith) is a conduct intended to deceive someone,²⁰²
- b. Culpa (unintentional wrong) is the failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation.²⁰³
- c. There are no justifications or excuses, such as in a state of compulsion, self-defense, or madness.²⁰⁴

3. Damage

If someone defaults, then the person is only responsible for the material damages. But if someone committed tort not only the person is responsible for material damages, but also responsible for immaterial losses, which will also be valued in money.²⁰⁵ To demand responsibility from another party, material or immaterial injuries or the loss of profits must exist. And the article imposes that the guilty party shall recompense the victim for these damages.

4. Causality

In a tort case, a connection between cause and effect is necessary. The unlawful act and the damage must be related, as there must be a connection that the damages suffered by the victim is the result of an unlawful act committed by the wrongdoer. In this way, the wrongdoers can be held responsible. a cause-and-effect

²⁰² DOLUS, Black's Law Dictionary (11th ed. 2019)

²⁰³ NEGLIGENCE, Black's Law Dictionary (11th ed. 2019)

²⁰⁴ Munir Fuady, *Op. Cit*, p.12.

²⁰⁵ *Ibid*, p.13.

relationship from the wrongdoer to the victim needs to be proven before asking the wrongdoer to be responsible.

If someone has a legal relationship in the form of an agreement or contract with another party, and the other party violates the mutually agreed upon agreement, the victim has the right to sue his opponent on the grounds of default. But, if there was no agreement between the parties, the victim still have the right to sue the other party through the provisions of tort. However, the victim must prove these four conditions before filing a tort lawsuit. If one of them is not fulfilled, the lawsuit will be rejected.

Looking back to the case we can say that the action taken by the employee of the bank, was not a form of contract breaching, but it was fraudulent and unlawful. Large amounts of savings money owned by a customer is missing under the supervision of the bank shows that the bank is failed to fulfill its obligation to secure funds as stated in article 37B of Banking Law “Each bank is obliged to guarantee public funds deposited at the bank.”²⁰⁶

Bank is also failed to carry out its obligations stipulated in article 7 of Regulation of Financial Services Authority number 6/POJK.07/2022.

“Financial Services Business Actors must prevent their Board of Directors, Board of Commissioners, employees and/or third parties working for or representing their interests from:

a. Enriching or benefiting oneself or another party,

²⁰⁶ Point 1, Article 37B of Law number 10 of 1998.

- b. Abusing the authority, opportunity, or facilities available for them because of their position, which can be detrimental to the customer.”²⁰⁷

Moreover, the action to embezzle the money of the customer committed by the bank’s employee is performed consciously and intentionally, this fact allows us to identify the presence of bad faith, and his action is the cause of great damage suffered by the customer. So, the activity of swindling money of the customer committed by the employee of the bank for his personal use under the supervision of the bank is categorized as tort.

In this case we found that the unlawful act which created damage to the customer was executed by an employee. Then how could the wrongful action of one individual become the responsibility of the bank?

There is a principle which determine who should be responsible towards an unlawful act. Because in general, a wrongdoer who commit a harmful action must be held responsible for the said action. Which means, it is the wrongdoer who must be sued in court and pay the compensations. But sometimes a person can be held responsible for the actions of another, or in other words, the responsibility can be transferred to another person for a reason. This principle is known as the principle of vicarious liability.

Vicarious liability is a “liability that a supervisory party (such as an employer) bears for the actionable conduct of a subordinate or associate (such as an employee)

²⁰⁷ Article 7 of Regulation of Financial Services Authority number 6/POJK.07/2022.

based on the relationship between the two parties.”²⁰⁸ According to this definition, a company holds responsibility for actions committed by their employees. In the civil law of Indonesia this principle is stipulated inside the Civil Code in article 1367.

“Someone is not only responsible for losses caused by their own actions, but also by the actions of people who are their dependents or goods under their control.”²⁰⁹

In financial service sector this principle is regulated specifically under the article 8 of Regulation of Financial Services Authority number 6/POJK.07/2022.

“Financial Services Business Actors are obliged to be responsible for losses suffered by customers, from negligence or error that caused by Board of Directors, Board of Commissioners, employees and/or third parties working for or representing their interests.”²¹⁰

Therefore, bank as a business actor in the financial services bear vicarious liability caused by its employee, so as a result the bank shall be held responsible for the injury suffered by the customer.

Consequently, if we look at the case the bank is responsible to return the missing 22 billion IDR suffered by the depositing customer, even though the one who act fraudulently is its employee.

B. Legal Protections for Depositing Customers Who Lost Their Money

²⁰⁸ LIABILITY, Black's Law Dictionary (11th ed. 2019)

²⁰⁹ Article 1367 of Indonesia Civil Code.

²¹⁰ Article 8 of Regulation of Financial Services Authority number 6/POJK.07/2022.

Legal protection can be interpreted as protecting people's rights in order to provide the rights that have been determined by the law to the people and let them benefit from it.²¹¹ In other words, providing legal protection is the same as giving a sense of security to the people from various kinds of physical and psychological disturbances and threats.²¹² Therefore, it can be concluded that legal protection was created as a form of guarantee to ensure the implementation of rights and obligations.²¹³

In banking sector, the legal protection can be used to establish the security for customers, their rights and interests from all financial risk that may occur. Such protection upholds the interests of customers so that the rights of customers who are weaker can be protected. Because every customer is an individual who has natural rights attached to them and should not be removed arbitrarily.²¹⁴ It is the law that can protect those rights so it can guarantee the rights of customers who entrust their money to the bank, because principally both parties build relationships based on trust.²¹⁵

As mentioned in previous chapter, there are two types of legal protections, namely: preventive and repressive.

²¹¹ Amalia Rani, and Anak Agung Ngurah Wirasila, "Perlindungan Hukum terhadap Konsumen akibat Persaingan Curang", Kertha Semaya: Journal Ilmu Hukum, Vol. 4/No. 1/May/2016, p.4.

²¹² Dyah Permata Budi Asri, "Perlindungan Hukum Preventif terhadap Ekspresi Budaya Tradisional di Daerah Istimewa Yogyakarta Berdasarkan Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta", Journal of Intellectual Property, Vol. 1/No. 1/August/2018, p.16.

²¹³ Theresia Anita Christiani, *Op. Cit*, p.14.

²¹⁴ *Ibid*, p.117.

²¹⁵ *Ibid*, p.12.

Preventive legal protection is the provisions of laws and regulations provided by the government with the aim of preventing violations before it happened, this legal protection is given to provide limitations in carrying out a responsibility. In the financial sector the regulations are used to prevent any unexpected situations that might harm the customer in the future.²¹⁶ In order to help customers to avoid damages, in banking sectors, the Financial Service Authority is bearing the power to take necessary actions in accordance with the law and to stop banks from carrying out activities that has the potential to harm bank customers.²¹⁷ Which in this discussion those customers are specifically referred to the depositing customers.

As defined by the law, depositing customers are the people who use bank services by putting their money in the bank based on agreement of both parties (bank and the customer) by registering themselves on savings account, current account, or time deposit.²¹⁸

Providing legal protections towards depositing customer means protecting the rights specified for them which regulated by the law. As a customer, people who are included as depositing customers are entitled to acknowledge their rights. Based on several customer's rights mentioned in previous chapter, we can specify some rights belong to depositing customers:

1. To obtain correct information regarding the banking products;
2. To gain promised interest;
3. To have access on transaction reports;

²¹⁶ Article 28 of Law number 21 of 2011.

²¹⁷ Point (b) and (c), Article 28 of Law number 21 of 2011.

²¹⁸ Point 17, Article 1 of Law number 4 of 2023.

4. To submit complaints; and
5. To be compensated, reimbursed, redressed or replaced from any damage on the utilization of the products or services provided, or when the products and services received are not what arranged in the agreement.

Along with fulfilling these customer's rights, the bank is also burdened by several obligations including to make sure that the deposited money is kept safely and securely. This obligation is stipulated in article 37B of Law number 10 of 1998.

“Each bank is obliged to guarantee public funds deposited at the bank.”

Some regulations which protecting the customers has also been issued by the Financial Service Authority, in article 7 of Regulation of Financial Services Authority number 6/POJK.07/2022.

“Financial Services Business Actors must prevent their Board of Directors, Board of Commissioners, employees and/or third parties working for or representing their interests from:

- a. Enriching or benefiting oneself or another party,
- b. Abusing the authority, opportunity, or facilities available for them because of their position, which can be detrimental to the customer.”²¹⁹

So, it is obligatory for the bank to establish any prevention and create supervisory system to monitor and control the actions taken by its employees, so these employees would not have chances or intentions to embezzle the money

²¹⁹ Article 7 of Regulation of Financial Services Authority number 6/POJK.07/2022.

deposited under the authority of bank or abuse the power trusted to them or doing any fraudulent activity that might harm the customers.

As for the right to submit a complaint, Banks are required to provide a service as a place for customers to express their dissatisfaction that created from financial or potential losses that are suspected to be caused by bank errors or negligence,²²⁰ by preparing qualified service equipment and creating mechanisms for complaints submitted by customers who are harmed by the banks.²²¹

The Financial Services Authority is also demanded banks to regulate provisions as well as mechanisms regarding service and settlement of consumer complaints. In providing consumer complaints service, banks are required to conduct training and evaluation of all bank employees at least once during their working period. But specifically for employees who deal directly with customers, supervise the implementation of services and settlement of consumer complaints, or are related to preparing reports to the Financial Service Authority, these employees are required to receive regular training and evaluation.²²²

And if the effort to prevent any fraudulent conduct is unsuccessful the bank as a company is responsible for the acts carried out by its employee, it brings us back to the principle of vicarious liability. it's stipulated in article 8 of Regulation of Financial Services Authority number 6/POJK.07/2022,

²²⁰ Paragraph II of Circular Letter of Financial Services Authority number 2/SEOJK.07/2014.

²²¹ Article 29 of Law number 21 of 2011.

²²² Paragraph VI of Circular Letter of Financial Services Authority number 2/SEOJK.07/2014.

“Financial Services Business Actors are obliged to be responsible for losses suffered by customers, from negligence or error that caused by Board of Directors, Board of Commissioners, employees and/or third parties working for or representing their interests.”²²³

In paper, we can see that customers have been provided with a set of protections created by the law, yet these protections cannot satisfy in several situations. We can look back to the case where the employee successfully enrich himself by taking money from a customer. It shows that the bank is lacking in supervising the actions of its employee. His action has failed the bank in order to fulfil its obligation to secure the money trusted to it. The victim also testifies that the complaints she made was not heard by the bank, as if they abandon her right as a customer.

Then what should customers do to claim their rights? In financial sectors there is a set of regulations for customers to make an effort to protect those rights. To know that we should dig deeper into the second type of legal protection.

Repressive legal protection is described as any effort to resolve problems and disputes that might appear between parties.²²⁴ In financial sector the Financial Services Authority has the power to carry out legal defenses to protect customers, by ordering the bank or taking certain actions against the bank in order to resolve the complaints of the customer who are harmed by the bank.²²⁵ The bank must

²²³ Article 8 of Regulation of Financial Services Authority number 6/POJK.07/2022.

²²⁴ Point (1), Article 30 of Law number 21 of 2011.

²²⁵ Point (1) a, Article 30 of Law number 21 of 2011.

provide a place for customers to express their dissatisfaction created by financial or potential losses that are suspected to be caused by the negligence of the bank.

According to the Financial Services Authority Regulation, before bringing the dispute to litigation or non-litigation, the complaint must be settled internally by the bank, and if the parties cannot reach any agreement in resolving the complaint, the customer and the bank may bring the case to the court or Alternative Dispute Resolution.²²⁶

Banks are required to resolve complaints immediately. The information about the complaining customer must be kept confidential, except in certain situations and to certain parties. Complaints must be served and resolved in a balanced and objective manner. And the bank must provide opportunities for customers and other interested parties to give clarifications regarding the complaint. On this service, the bank is not allowed to charge the complaining customers.²²⁷

After receiving a complaint, the bank is required to conduct an examination towards the complaint objectively, competently, and correctly. Then the bank must investigate it to ensure the truth of the complaint, if the complaint is accurate, the bank must state an apology and offer compensation to the complaining customer.²²⁸

Regarding the compensation it is only given if:²²⁹

1. Customer demanded the compensation related to financial aspects;

²²⁶ Point (1) and (2), Article 2 of Regulation of Financial Services Authority number 1/POJK.07/2014 on Alternative Institutions for Dispute Resolution in the Financial Services Sector.

²²⁷ Paragraph II of Circular Letter of Financial Services Authority number 2/SEOJK.07/2014.

²²⁸ Article 14 of Regulation of Financial Services Authority number 18/POJK.07/2018.

²²⁹ Point 2, Paragraph III of Circular Letter of Financial Services Authority number 2/SEOJK.07/2014.

2. The complaint is revealed to be accurate;
3. The service received by customer is different from the service agreed;
4. There is a material loss; and
5. The customer fulfilled their obligations.

Disputes that wanted to be resolved out of the court can be carried out through the Agencies for Alternative Dispute Resolution or *Lembaga Alternatif Penyelesaian Sengketa* (LAPS) which was determined by the Financial Services Authority.²³⁰

Alternative Dispute Resolution is intended to settle the disputes or differences of opinion between the parties in a particular legal relationship who have entered into an arbitration agreement which expressly states that all disputes or differences of opinion arising or which may arise from the said legal relationship will be resolved by arbitration or through alternative dispute resolution.²³¹

In the banking sector, the out-of-court settlements are carried out through the Alternative Dispute Resolution Institution of Indonesian Banking or *Lembaga Alternatif Penyelesaian Sengketa Perbankan Indonesia* (LAPSPI) which was established by the association of the banking sector.²³²

²³⁰ Point (3) and (4), Article 2 of Regulation of Financial Services Authority number 1/POJK.07/2014.

²³¹ Article 2 of Law number 30 of 1999 on Arbitration and Alternative Dispute Resolution.

²³² Article 4 of Regulation of Financial Services Authority number 1/POJK.07/2014.

LAPS services can be accessed easily, cheaply, and fast and are carried out by competent human resources who understand the financial services industry. In this alternative institution, dispute resolution service includes:²³³

1. Mediation

To settle disputes through the agency of a mediator to help the disputing parties reach an agreement.

2. Adjudication

To settle disputes through the agency of an adjudicator to decide between the parties. The adjudication decision is binding if accepted by the customer, but if the decision is refused, they can seek other remedies.

3. Arbitration

To settle disputes outside the court based on an arbitration agreement made in writing by the disputing parties. The arbitration award is final and binding to the parties.

The Financial Services Authority may also file a lawsuit in order to recover the assets owned by the suffered party from the party who caused the damage, whether under the control of the party who caused the damage or under the control of another party with bad faith, or the Financial Services Authority may file a lawsuit to obtain compensation from parties who cause the damage to customer

²³³ Otoritas Jasa Keuangan, Lembaga Alternatif Penyelesaian Sengketa, <https://www.ojk.go.id/id/kanal/edukasi-dan-perlindungan-konsumen/pages/lembaga-alternatif-penyelesaian-sengketa.aspx>, (accessed on Jun 25, 2021).

and/or the bank as a result of the violation of the provisions of financial services sector laws.²³⁴ In the latter condition, compensation is given to the injured party.²³⁵

So, if a customer who has deposited their money in a bank finds that it is missing, then they can claim their right to be compensated. This is also in accordance with the contents of article 28G of Constitution of Indonesia 1945, “Every person shall have the right to protect ... the property under their ownerships, ...” and moreover, as previously discussed, if there is an unlawful act committed, the bank is obliged to provide compensation in accordance with article 1365 of civil code. “... obliges the wrongdoer to compensate such damage.” The victim may file the complaint to the bank. But if submitting a complaint does not work, we can resolve it with the Alternative Dispute Resolution or file the lawsuit to court.

Then, as discussed earlier, this case is categorized as the conduct of unlawful act or tort, but at the same time the authorities have named the suspect as a criminal and categorized the case as a crime, can the customer still get her money back?

To answer this question, we can try to investigate the elements of the case. The fulfillment of the criminal elements does not eliminate the fact that the perpetrator also fulfills the elements of an unlawful act.²³⁶ So, both punishments can be given simultaneously, the perpetrator can be punished with criminal sanctions and at the same time still has the obligation to compensate for the losses caused by his actions, so that the victim still has the right to recover their assets.

²³⁴ Point (1) b, Article 30 of Law number 21 of 2011.

²³⁵ Point (2), Article 30 of Law number 21 of 2011.

²³⁶ Munir Fuady, *Op. Cit*, p.21.

If we take a look at the settlement reported from the case, the bank did not give the victim the full amount of money she lost. Thus, the bank's failure to return customer's money in full is an inability of the customer protection law to fully enforce the regulations to guarantee, protect and recompense the rights and assets of the customer.

CHAPTER IV CLOSING

A. Conclusion

1. Bank is responsible for the actions committed by its employee, the transfer of responsibility from an employee to an employer is given through the vicarious liability principle. Therefore, the bank has the obligation to recompense the victim as instructed in article 1365 of Civil Code.
2. The law has provided protection that is deemed sufficient to protect customers, it's just that this protection does not seem to be able to protect the customer properly, because there is still a lack of enforcement in terms of providing compensation.

B. Recommendation

1. Banks as financial service providers who are responsible for the behavior of their employees should be able to improve internal supervision and security so that in the future the actions that might cause harms to customers will no longer occur.
2. The consumer protection especially the protection towards the lost money of customers, should be enforceable on the parties who have the responsibility. So, the customer can receive their money back, and the enforcement of consumer protection can restore and increase people's trust in banks.

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