LAW RESEARCH
Review Quarterly

Law Research Review Quarterly is a **Journal for Law, Justice, and Crime in Indonesia and Southeast Asia**. The Journal is a peer-reviewed journal published by Faculty of Law Universitas Negeri Semarang, Indonesia. The Journal published quarterly on February, May, August, and November. ISSN 2716-3415 (Online)
Online at https://journal.unnes.ac.id/snh

Bank Liability for Employees' Unlawful Acts in the Misuse of Land Rights Certificates as Credit Collateral

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Abstract

Banks as public trust institutions are not only responsible for the security of customer funds, but also for all documents and assets under their control, including land title certificates used as loan collateral. However, in practice, control of these documents has the potential to create loopholes for internal employees to act beyond their authority, as occurred at one of the PD. BPR BKK in Central Java. This study aims to analyze the legal responsibility of banks for unlawful acts of employees in the misuse of land title certificates as loan collateral, as well as the form of legal protection for certificate owners who are harmed. This study uses a normative legal research method through a literature study with a statutory and conceptual approach. The results of the study indicate that banks can be held legally responsible based on the construction of Article 1365 in conjunction with Article 1365. Article 1367 paragraph (3) of the Civil Code through a functional interpretation of the phrase "in carrying out assigned work," which is reinforced by the institutional negligence of BPR in implementing the internal control system as required by POJK Number 9 of 2024. Legal protection for certificate owners is available preventively through POJK Number 22 of 2023 and POJK Number 9 of 2024, as well as repressively through civil lawsuits to the District Court and complaints to the OJK. This study concludes that it is necessary to strengthen regulations that specifically regulate protection mechanisms for customers in this dilemma in order to realize an accountable and fair banking system in accordance with the mandate of SDGs 16.

KEYWORDS:
legal liability of banks; unlawful acts; misuse of collateral certificates; legal protection

Introduction

The economic development of a country cannot be separated from the role of the financial sector, especially banking, in providing financing for business activities.[1]In its role, banks have an intermediary function by collecting funds from the public and distributing them in the form of credit.[2] In addition, intermediation also aims to create a healthy domestic banking structure that is able to meet the needs of the community so that it can encourage national economic development.[3]

In carrying out their functions, banks operate not only based on market mechanisms but also rely on a single foundation: customer trust. Furthermore, banks also hold public trust (public trust institutions) in

[1] Sendi Sanjaya and Gunawan Widjaja, "THE FUNCTION OF LAND RIGHTS CERTIFICATES AS BANKING CREDIT GUARANTEES IN EXPANDING CAPITAL ACCESS AND ENCOURAGING BUSINESS INVESTMENT," BORGEOS: JOURNAL OF ECONOMY 2, no. 4 (2025): 272–83.
[2]Diamond and Dybvig (1983, as cited in"BANKING INTERMEDIATION FUNCTION ARCHITECTURE IN THE FRAMEWORK OF INDONESIAN BANKING ARCHITECTURE: ANALYSIS OF REGIONAL BANKING INTERMEDIATION FUNCTION," nd, accessed May 21, 2026, https://repository.unhas.ac.id/id/eprint/52884/2/A033211005-DISERTASI-BAB%201-2%28FILEminimizer%29.pdf.)
[3] "BANKING INTERMEDIATION FUNCTION ARCHITECTURE IN THE FRAMEWORK OF INDONESIAN BANKING ARCHITECTURE: ANALYSIS OF REGIONAL BANKING INTERMEDIATION FUNCTION."

carrying out their role as financial intermediaries.[4]Trust is the basis of interactions between banks and customers, where customers entrust their funds and personal information to the bank.[5]However, not only that, trust also includes security for all customer documents and assets submitted to the bank, including ownership certificates used as collateral in credit agreements.[6]

In banking credit practices in Indonesia, property rights certificates are the most common collateral instrument and are most widely used by debtors.[7]This is inseparable from the high economic value of the certificate and its legal force as proof of ownership recognized by the state, so that its existence provides a sense of security for banks in distributing credit.[8]Based on Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land, land title certificates can be used as objects of mortgage rights which provide a preferential position for creditors in the event of a debtor's default.[9]In its implementation during the credit agreement period, the certificate is physically in the bank's possession.[10]This situation places the bank in a position of having full control over the debtor's most valuable documents, and this is where the potential risk of misuse actually begins.

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[4] Verenly Yeremia Pesak, "LEGAL RESPONSIBILITY OF COMMERCIAL BANKS FOR DIGITAL SERVICE RISKS BASED ON FINANCIAL SERVICES AUTHORITY REGULATIONS," LEX CRIMEN 14, no. 3 (2025), https://ejournal.unsrat.ac.id/v3/index.php/lexcrimen/article/view/66079.

[5] Amra Amra et al., "Analysis of Trust in Maintaining Customer Loyalty of Mandiri Tabungan (Case Study of PT Bank Mandiri (Persero) TBK KCP Masamba)," Innovative: Journal of Social Science Research 5, no. 3 (2025): 6110–19, https://doi.org/10.31004/innovative.v5i3.19889.

[6] Dinda Anna Zatika, "OPENING THE PRINCIPLE OF BANK SECRECY AS AN UNLAWFUL ACT (Case Study of Bank BCA)," SASI 26, no. 4 (2020): 500–513, https://doi.org/10.47268/sasi.v26i4.238.

[7] Sanjaya and Widjaja, "THE FUNCTION OF LAND RIGHTS CERTIFICATES AS BANKING CREDIT GUARANTEES IN EXPANDING CAPITAL ACCESS AND ENCOURAGING BUSINESS INVESTMENT."

[8] Sanjaya and Widjaja, "THE FUNCTION OF LAND RIGHTS CERTIFICATES AS BANKING CREDIT GUARANTEES IN EXPANDING CAPITAL ACCESS AND ENCOURAGING BUSINESS INVESTMENT."

[9]See Article 4 and Article 6"Law No. 4 of 1996," Regulation Database | JDIH BPK, accessed June 1, 2026, http://peraturan.bpk.go.id/Details/46093/uu-no-4-tahun-1996.

[10] "BKK General Credit (KUB)," PT BPR BKK Jateng (Perseroda), November 3, 2023, https://bkkjateng.co.id/produk/kredit-umum-bkk-kub/.

However, the ownership of certificates, which are intended to protect the bank as a creditor, can potentially create loopholes for internal employees to exceed their authority. One concrete example occurred at PD. BPR BKK Mandiraja in Central Java. In this case, a bank employee allegedly misused a land ownership certificate belonging to a customer that was being used as collateral for an active loan between 2017 and 2023, using it as collateral for a fictitious loan in his own name without the knowledge or consent of the certificate owner.[11]The case has even been reported to the police and is currently being handled by the prosecutor's office. This misuse not only resulted in tangible material losses for customers, but also reflects serious weaknesses in the internal control systems of BPRs, financial institutions that directly interact with lower-middle-class rural communities.[12]

Legally, the actions of bank employees who use a customer's land title certificate without permission and without a valid legal basis constitute an act that fulfills the elements of an unlawful act as stipulated in Article 1365 of the Civil Code. This article states that if there is a violation of rights that results in a loss for the customer, where the bank commits the unlawful act, the bank can be asked for compensation by the customer.[13]Under Article 1367 of the Civil Code, a bank where an employee works can be held liable for unlawful acts committed by its employees against customers. This legal construct is known in civil law doctrine as the principle of vicarious liability, a principle that asserts that an employer cannot completely absolve itself

[11] antaranews.com, “BPR BKK Mandiraja employee detained in Rp6.6 billion corruption case,” Antara News, accessed August 11, 2026, https://www.antaranews.com/video/5661341/pegawai-bpr-bkk-mandiraja-ditahan-dalam-kasus-korupsi-rp66-miliar.

[12]Prena & Kusmawan (2020, inSekar Melati et al., ANALYSIS OF THE IMPACT OF WEAKNESSES IN INFORMATION SYSTEMS AND INTERNAL CONTROL IN FINANCIAL INSTITUTIONS:, 9 (2025): 3.)

[13] Firda Amelya Malik et al., “Bank Responsibilities to Customers in Fictitious Credit Cases Involving Bank Employees,” ALADALAH: Journal of Politics, Social, Law and Humanities 2, no. 2 (2024): 6, https://doi.org/10.59246/aladalah.v2i2.694.

from the legal consequences of its subordinates' actions within the context of an employment relationship.[14]

However, the application of Article 1367 of the Civil Code in Indonesian judicial practice is not as straightforward as it appears. The ambiguity of the phrase "in carrying out assigned work" in Article 1367 of the Civil Code creates multiple interpretations and legal uncertainty in judicial practice. This uncertainty is clearly illustrated in Supreme Court Decision Number 2600 K/Pdt/2022, where there are differences in the judges' considerations between the first instance and the appeal and cassation levels regarding the application of Article 1367 paragraph (3) of the Civil Code. In the first instance court, the judge declared the bank liable, while at the appeal and cassation levels, the judge actually acquitted the bank of such responsibility. This striking difference in decisions is not merely a matter of judicial technicality, but reflects the lack of a clear and consistent legal construction regarding the limits of a bank's liability for unlawful acts committed by its employees.[15]

On the other hand, from a consumer protection perspective, customers as the most disadvantaged party in this situation should receive adequate legal protection. Article 3 Paragraph (2) of POJK Number 22 of 2023 concerning Consumer and Community Protection in the Financial Services Sector contains seven main principles of consumer protection, including those mentioned in letter d regarding the protection of consumer assets, privacy, and data, and letter e regarding effective and efficient complaint handling and dispute resolution. However, in practice, although Article 10 paragraph (1) of POJK No. 22 of 2023 normatively recognizes PUJK's responsibility for violations by its employees, the available mechanisms have not been adequately designed to restore the rights of customers who

[14] Sekar Ayu Dita and Atik Winanti, "Analysis of the Principle of Vicarious Liability in Substitute Liability for Unlawful Acts of Bank Employees," USM LAW REVIEW JOURNAL 6, no. 2 (2023): 526–42, https://doi.org/10.26623/julr.v6i2.7037.
[15] Mayang Dias Putri, Analysis of Bank Liability for Unlawful Acts of Bank Employees that Harm Customers (Case Study of Supreme Court Decision Number 2600 K/Pdt/2022), 3 (2024).

are direct victims of internal bank fraud, primarily due to the absence of a temporary recovery mechanism. In addition, the imbalance in the burden of proof on customers often makes it difficult for customers to prove whether a fraud stems from the bank's internal negligence or the customer's own negligence. In this case, the existing regulations are more oriented towards preventing and supervising PUJK behavior institutionally, rather than towards restoring the rights of victims individually, so that customers who suffer losses do not have a fast and proportional recovery path to the losses they have experienced.

Several previous studies have addressed issues related to this topic. Research conducted by Ayu Dita and Winanti (2023) on the principle of vicarious liability in vicarious liability for unlawful acts by bank employees concluded that the law cannot absolutely categorize all employee actions as the employer's responsibility. Therefore, the injured party must prove that all criteria required by Article 1367 of the Civil Code have been met.[16]Another study by Ismaidar et al. (2024), which analyzed bank accountability for embezzlement of customer funds by bank employees, concluded that, according to Law No. 10 of 1998 concerning Banking, corporations cannot be held criminally liable. If a bank employee commits a crime, criminal liability will be imposed on the individual (the perpetrator) or the corporate administrator, provided the corporation benefits from the crime committed by its employee.[17]Meanwhile, research by Ilyasa and Wahyuni (2025) which analyzed the South Jakarta District Court Decision Number 237/Pdt.G/2022/PN Jkt.Sel found an expansion of the interpretation of Article 1367 of the Civil Code by placing failure of supervision as the basis for imposing employer responsibility, even though

[16] Sekar Ayu Dita and Atik Winanti, "Analysis of the Principle of Vicarious Liability in Substitute Liability for Unlawful Acts of Bank Employees," USM LAW REVIEW JOURNAL 6, no. 2 (2023): 526–42, https://doi.org/10.26623/julr.v6i2.7037.
[17] Ismaidar Ismaidar et al., "Corporate Liability for Criminal Acts of Embezzlement of Customer Funds Committed by Bank Employees," Innovative: Journal of Social Science Research 4, no. 3 (2024): 7940–50, https://doi.org/10.31004/innovative.v4i3.11348.

the subordinate's actions were carried out outside the applicable standard operating procedures.[18]

However, none of these studies have specifically addressed the misuse of land title certificates as collateral for credit by bank employees in the context of employment relationships, while also analyzing the forms of legal protection for customers who find themselves in the dilemma of being both active debtors and victims of internal bank actions. This gap is the starting point and novelty of this research. Filling this gap is not only academically important but also practically urgent, considering that rural banks (BPRs), as the financial institutions closest to the lower-middle class, operate under a relatively looser supervisory system than commercial banks. Therefore, the potential misuse of collateral documents by internal parties requires serious attention from a legal perspective.

This research is not only relevant in the context of national law, both civil and criminal, but also intersects with the global sustainable development agenda. Sustainable Development Goal (SDG) 16 focuses primarily on peace. Peace among people is realized and maintained by law by protecting human interests from harm.[19]SDG 16 promotes the establishment of effective, accountable, and transparent institutions at all levels, and ensures equal and equitable access to justice for all parties. In the banking context, the institutional accountability of banks for unlawful acts committed by their employees directly reflects the principle of good governance at the heart of SDG 16. This principle explains that institutions entrusted with public trust must be fully responsible for all actions taken within their operational scope.

The misuse of ownership certificates by bank employees, left without clear legal accountability, not only harms customer interests but also undermines public trust in the financial system as a whole. This situation,

[18] Ahmad Rosyad Ilyasa and Ridha Wahyuni, "Employer's Responsibility for Subordinate's Unlawful Acts from a Vicarious Liability Perspective," USM LAW REVIEW JOURNAL 8, no. 3 (2025): 2545–61, https://doi.org/10.26623/julr.v8i3.13074.
[19] Ubaidillah Kamal, Fundamentals of Legal Science (2020; BPFH UNNES, nd), 32.

of course, directly contradicts the spirit of SDGs 16, which requires institutions to be resilient and trustworthy. Therefore, this research contributes to strengthening normative arguments regarding the importance of bank institutional accountability and the availability of effective legal protection mechanisms for customers, as part of efforts to realize a fair, transparent, and responsible financial institutional system in accordance with the mandate of SDGs 16.

Method

This research is a normative legal research conducted through library research, namely by examining, identifying, and analyzing legal materials relevant to the problem being researched.[20]The approaches used are the statutory approach and the conceptual approach. The statutory approach is carried out by reviewing laws and regulations related to the main problem, including the Civil Code, especially Articles 1365, 1366, and 1367, Law Number 4 of 1996 concerning Mortgage Rights, and Financial Services Authority Regulation Number 22 of 2023 concerning Consumer and Community Protection in the Financial Services Sector, Financial Services Authority Regulation Number 7 of 2024 concerning People's Economic Banks and Sharia People's Economic Banks, Law Number 1 of 2023 concerning the Criminal Code, and Law Number 10 of 1998 concerning Banking. Meanwhile, the conceptual approach is carried out by reviewing the doctrine of unlawful acts, the principle of vicarious liability, and the principle of prudential banking as the main analytical tools.

The sources of legal materials in this study include primary legal materials in the form of laws and regulations and jurisprudence, secondary legal materials in the form of textbooks, scientific journals, and previous research results, and tertiary legal materials in the form of legal dictionaries and encyclopedias as supporting sources. The analysis of legal materials is carried out in a prescriptive-analytical manner, namely not only describing

[20] Ahmad Rosidi et al., Normative and Empirical Legal Research Methods (CV. Insight Media, 2026), 8.

the applicable norms, but also evaluating the adequacy and suitability of these norms in answering the issue of the bank's legal responsibility for the actions of its employees and legal protection for owners of property certificates who are harmed due to misuse of credit collateral by internal parties of the bank.[21]

Results and Discussion

1. Legal Responsibility of Banks for Employee Unlawful Acts in the Misuse of Land Rights Certificates as Credit Collateral

The legal relationship between customers and banks in credit dynamics is a relationship based on a loan agreement.[22]In this case, the customer acts as the debtor, while the bank acts as the creditor, channeling funds to the public as part of its function. Furthermore, the bank also has a legal relationship with its employees. This is based on an employment relationship, where the bank acts as an employer, employing its employees to perform activities necessary to run the company.[23]Every action or omission committed by a bank employee will have consequences for the bank. So, the bank is responsible for all employee actions, especially those that cause losses to customers due to employee negligence or errors.

In this study, the customers are debtors who enter into a credit agreement with the bank. To enter into a credit agreement, debtors must fulfill several requirements, one of which is submitting a land title certificate, which is then used as collateral to guarantee debt repayment. At this stage, the bank authorizes its employees. There are three positions

[21] "T 543- Research Methods and Writing of Legal Scientific Papers: A Comprehensive Approach (Revision 2).Pdf," nd, 2, accessed August 11, 2026, http://repository.mediapenerbitindonesia.com/766/1/T%20543-%20Metode%20Penelitian%20dan%20Penulisan%20Karya%20Ilmiah%20Hukum%20Suatu%20Pendekatan%20Komprehensif%20%28Revisi%202%29.pdf.
[22] Raysah Afdila Fachriah et al., Financial Institution Law (CV. Ekadanta Press, 2025), 102.
[23] Mayang Putri, "Analysis of Bank Liability for Unlawful Acts of Bank Employees that Harm Customers (Case Study of Supreme Court Decision Number 2600 K/Pdt/2022)," Lex Patrimonium 3, no. 2 (2024): 3, https://scholarhub.ui.ac.id/lexpatri/vol3/iss2/8.

closely related to credit documents, such Account Officer or Credit Marketing, Credit Analyst, and Credit Admin or Legal. The handover of credit documents, as stipulated in the BPR BKK procedures, is carried out by the Account Officer.[24]Therefore, banks have a duty to regulate governance and implement prudent principles. Furthermore, banks also have a duty to protect customers from any losses arising from errors or negligence by their employees.[25]

Before determining the bank's liability as an institution in the case of misuse of Land Rights Certificates as credit collateral by Bank Employees, there are conditions that must be met first to be able to determine whether the bank employee's actions can be said to be an Unlawful Act based on Article 1365 of the Civil Code. This is because the employer's liability for subordinates as referred to in Article 1367 of the Civil Code cannot stand alone without first proving the Unlawful Act carried out by the subordinate.

Article 1365 of the Civil Code stipulates that any unlawful act that results in harm to another person requires the person causing the harm to compensate. In her dissertation, Rosa Agustina explained that the concept of "unlawful" is no longer interpreted narrowly as merely a violation of written law.[26]The broadening of the interpretation of Unlawful Act occurred since the adoption of a broad interpretation referring to the Arrest Hoge Raad in 1919 in the Cohen-Lindenbaum case. In the cassation level decision of the case, the definition of unlawful includes four categories, namely violation of the subjective rights of others guaranteed by law, contrary to the

[24] PT BPR BKK PURWOKERTO (PERSERODA), "PT BPR BKK PURWOKERTO," accessed August 16, 2026, https://bprbkk-pwt.co.id.
[25] Erna Susanti and Sulung Nugroho, Bank Responsibilities to Customers Following Court Decisions on Bank Employee Corruption Crimes, 20 (2024).
[26] Normand Edwin Elnizar, "7 PMH that Develop in Jurisprudence and Court Decisions," hukumonline.com, accessed June 22, 2026, https://www.hukumonline.com/stories/article/lt6021413eed37f/7-pmh-yang-berkembang-dalam-yurisprudensi-dan-putusan-pengadilan/.

legal obligations of the perpetrator, contrary to morality, and contrary to the prevailing propriety in society in considering the interests of others.[27]

To be held accountable under Article 1365 of the Civil Code, an act must cumulatively fulfill five elements. The five main elements that must be fulfilled for an act to be qualified as Unlawful Act, namely there must be an act, either positive (doing an action) or negative (not doing something even though one is obliged to do something), the act is against the law, there must be an error (schuld) in the form of intent (opzet) or negligence (culpa), there must be a loss (schade) either material or immaterial, and there must be a causal relationship (causalverband) between the act and the loss caused.[28]These five elements are cumulative, so the lawsuit will be rejected if one of the elements is not met.[29]

1. The existence of an act

    In the case of SHT misuse at a PD. BPR BKK in Central Java, a bank employee actively used a customer's ownership certificate under his control. This occurred based on his position as a collateral document manager as a condition for another party's credit guarantee without the knowledge and consent of the certificate owner. This action constitutes an active act (act of commission) carried out consciously, not merely passive negligence, thus fulfilling the first element, namely the act. Furthermore, the bank employee's actions can be interpreted as malfeasance, namely an act carried out even though the perpetrator does not have the right to do so.[30]

2. Acts committed against the law

[27]Munir Fuady (2014, as quoted inMahlil Adriaman et al., Civil Law (CV. Gita Lentera, 2024), 71–72.)
[28]Prayogo (2016, as quoted byAlexander Kennedy, in “Unlawful Acts as an Effort to Protect Subjective Rights,” Ethics and Law Journal: Business and Notary 3, no. 4 (2025), https://doi.org/10.61292/eljbn.287.)
[29] Kennedy, “Unlawful Acts as an Effort to Protect Subjective Rights,” 287.
[30] Gisni Halipah et al., “Legal Review of the Concept of Unlawful Acts in the Context of Civil Law,” SERAMBI HUKUM RESEARCH JOURNAL 16, no. 01 (2023): 140, https://doi.org/10.59582/sh.v16i01.923.

The employee's actions meet at least two broad unlawful categories. First, the action violates the client's ownership rights to land as guaranteed by Article 570 of the Civil Code, which grants the owner the right to use and enjoy his property free from interference by other parties. Second, the action violates the collateral binding mechanism strictly regulated in Articles 10, 11, 13, and 14 of Law Number 4 of 1996 concerning Mortgage Rights. The encumbrance of a mortgage on a land title certificate can only be done through a Deed of Granting of Mortgage Rights (APHT) drawn up before a Land Deed Making Officer (PPAT) and registered with the Land Office. However, in the misuse of SHT, none of these mechanisms are fulfilled in the employee's actions.

3. There was an error

Fault (schuld) is a stand-alone element in an unlawful act. Rosa Agustina and MA Moegni Djojodirdjo share the same opinion and view that the use of the term fault (schuld) should be viewed broadly, namely not only encompassing intentional acts but also encompassing acts of negligence (onachtzaamheid).[31]Article 1365 of the Civil Code itself does not distinguish between the consequences of errors caused by intent or negligence. Therefore, legal liability arising from errors, whether intentional or negligent, is the same, namely the obligation to pay compensation for losses suffered by another party due to the unlawful act committed by the person who caused the error.

In the case of SHT misuse by a bank employee, the misuse was intentional (opzet) and not simply negligent. Therefore, under civil law doctrine, the perpetrator consciously knew and intended their

[31] Muhammad Ihsan Abdurrahman and SH Prof. Dr. Rosa Agustina, "Analysis of Differences in the Principle of Fault and Its Implications for Responsibility in Unlawful Acts: A Comparative Study Between Indonesian Law and English Law," Lex Patrimonium 3, no. 1 (2024): 5, https://scholarhub.ui.ac.id/lexpatri/vol3/iss1/5.

actions and their consequences. This makes the perpetrator responsible for compensation. Unlike criminal law, intent or negligence in PMH under civil law does not affect the amount of compensation awarded.[32]

4. There is an element of loss and causal relationship.

   In the misuse of Land Rights Certificates by bank employees, there is a causal relationship between the unlawful act and the resulting losses. These losses can include loss of land ownership rights, disruption of ownership, and economic losses due to the inability to utilize the land.[33]This can be seen from the real losses experienced by the customer in the form of the inability to access and reuse his Land Rights Certificates for an unspecified period of time. Furthermore, the customer's rights are also hampered in carrying out legal actions on the land, such as buying and selling land, using Land Rights Certificates as collateral to another bank, and being unable to transfer his rights. However, not only that, the customer also experiences immaterial losses in the form of legal uncertainty because his Land Rights Certificates is currently being held by the bank. Therefore, the causal relationship between the employee's actions and the customer's losses is direct. Because without the employee's actions misusing the Land Rights Certificates, the losses would not have occurred.

All elements of the Unlawful Acts stipulated in Article 1365 of the Civil Code must be cumulatively met in this case to meet the requirement for tangible and provable losses. Once these five Unlawful Acts elements are met, the bank employee can be held personally liable for their unlawful acts.

[32] *Analysis of the Differences in the Principle of Fault and Its Implications for Responsibility in Unlawful Acts: A Comparative Study Between Indonesian Law and English Law*, 3 (2024): 6.

[33] Raihan Dewangga Mughni and Siti Malikhatun Badriyah, "Unlawful Acts in Land Disputes: A Legal Analysis Based on the Jurisprudence of the Supreme Court," Khatulistiwa: Journal of Education and Social Humanities 5, no. 2 (2025): 262, https://doi.org/10.55606/khatulistiwa.v5i2.5833.

However, a fundamental and more complex issue arises when that responsibility can also be assigned to the bank as an institution.

The legal responsibility of employers towards their subordinates is contained in Article 1367 of the Civil Code. This contains the doctrine of vicarious liability, or substitute responsibility, which in civil law is regulated in Article 1367 paragraph (3) of the Civil Code. This doctrine stipulates that employers are responsible for unlawful acts committed by their subordinates, where such acts are committed within the scope of their employment. Banks, as employers who have an employment relationship with their employees, can be held responsible for unlawful acts committed by employees against their customers.

However, there are three conditions that must be met for a bank as an institution to be held liable for Unlawful Acts committed by its employees or subordinates. This is as stated in Article 1367 Paragraph (3) of the Civil Code. The conditions that must be met include an employment relationship, the act carried out is assigned work, and it causes harm to a third party.[34]

1. The first requirement is an employment relationship between the bank and the employee. According to Moegni Djojodirdjo, there are several circumstances that give rise to employer liability, including an employment agreement (or labor agreement) between the employer and employee. Furthermore, there may be no employment relationship between the employer and employee, but the employee still delegates work to the individual who is in charge of the work.[35]This requirement is clearly met in the case of SHT misuse by bank employees. PD. BPR BKK employees are bound by a formal

[34] Mayang Putri, "Analysis of Bank Liability for Unlawful Acts of Bank Employees that Harm Customers (Case Study of Supreme Court Decision Number 2600 K/Pdt/2022)," Lex Patrimonium 3, no. 2 (2024): 9, https://scholarhub.ui.ac.id/lexpatri/vol3/iss2/8.
[35]Djojodirdjo (1982: 128, as quoted inPutri, "Analysis of Bank Liability for Unlawful Acts of Bank Employees that Harm Customers (Case Study of Supreme Court Decision Number 2600 K/Pdt/2022)," 2024, 9.)

employment relationship with the bank, making the bank an "employer" within the meaning of Article 1367 of the Civil Code.

2. The second requirement is that the act was committed in the course of performing assigned work. In this case, the bank employee was only able to access, control, and use the customer's Land Rights Certificates due to the position and authority delegated to him by the bank. Without that position, the act would not have been possible. The research results indicate an expanded interpretation of Article 1367 of the Civil Code, placing failure of supervision as the basis for imposing liability on the employer even though the subordinate's actions were outside of formal authority.

   Banks knowingly delegate control of high-value documents, such as customer Land Rights Certificates to their employees as part of their credit operations. This delegation creates institutional risk that must be borne by the bank as the party that created it, rather than being entirely transferred to the customer, who has no control over the situation. This principle aligns with the risk liability theory in civil law, which places responsibility on the party that creates the conditions that allow for loss.

   This position is reinforced by inconsistencies found in Indonesian judicial practice. In the case of liability in Supreme Court Decision Number 2600 K/Pdt/2022, there are differences in the judge's considerations between the first level and the appeal and cassation levels regarding the application of Article 1367 paragraph (3) of the Civil Code. At the first level, the District Court stated its consideration that the bank was responsible for the mistakes of employees, in this case the bank's management, based on the principle of absolute responsibility for the actions of subordinates (vicarious liability) of Article 1367 of the Civil Code, where the banking institution is responsible for customer losses caused by its employees. Meanwhile, at the cassation level, the Supreme Court acquitted the bank for the reasons as stated in its decision as follows.

"The Plaintiffs are declared to be lacking parties (plurium litis consortium) who are not interested as parties in the a quo case, namely parties who are personally responsible and the parties in question are those whose status and position they work for the Defendant and for their actions and deeds have been declared guilty and sentenced to have committed a criminal act of corruption as per the criminal case decision which has permanent legal force (inkracht van gewijsde)."

The fact that the first-instance court found the bank liable while the Supreme Court acquitted it demonstrates the lack of jurisprudential consistency in the application of Article 1367 of the Civil Code in the banking sector. Therefore, it is important to examine and analyze the application of Article 1367 of the Civil Code in greater depth.

3. The third requirement is causing harm to a third party. This requirement has been met as outlined in the analysis of the Unlawful Acts elements above. The customer holding the Land Rights Certificates is the party who suffered a real loss due to the actions of the bank employee. Article 1367 paragraph (5) provides room for the employer to prove that he could not have prevented the actions of his subordinates. However, in this context, this defense is difficult for the bank to maintain. This is because the implementation of the internal control system should be carried out through various mechanisms such as segregation of duties, a transaction authorization system, internal audits, operational supervision, and the use of information technology to support effective supervision.[36]If a customer's Land Rights Certificates can be accessed and used unilaterally by a single

[36] Annisa Adhelia Pratiwi et al., "The Role of Internal Control Systems in Fraud Prevention in Islamic Banks," PENG: Journal of Economics and Management 3, no. 2 (2026): 1443, https://doi.org/10.62710/201z6v14.

> employee without any multi-layered verification mechanism, this is clear evidence that the bank's internal control system is not functioning as it should. In other words, the bank has failed to demonstrate that it has taken all reasonable precautions.

The analysis of bank liability does not stop solely within the framework of the Civil Code. Under Indonesian banking regulations, banks, including rural banks (BPRs), are burdened with a number of imperative governance obligations that directly impact the assessment of institutional negligence. This is evident in OJK Regulation No. 7 of 2024, which regulates BPR institutions, from establishment and licensing to capital. OJK Regulation No. 9 of 2024 concerning the Implementation of Governance for BPRs and BPRSs is a refinement of the previous OJK Regulation, which was drafted to encourage strengthened governance in BPR and BPRS operations and to implement the mandate of the Financial Sector Development and Strengthening Law.[37]

Article 2 Paragraph (2) of POJK No. 7 of 2024 explains that BPR and BPR Syariah have an obligation to implement Good Governance which includes the principles of openness, accountability, responsibility, independence, and fairness. Furthermore, in Article 2 Paragraph (3), OJK requires BPR and BPR Syariah to have the implementation of risk management and anti-fraud strategies, including an internal control system. In these provisions, BPR is required to have an adequate internal control system, which includes securing all assets and documents belonging to customers under the control of the bank, including land title certificates used as credit collateral. This obligation is not merely an administrative

[37] "Implementation of Governance for People's Economic Banks and Sharia People's Economic Banks," accessed July 19, 2026, https://ojk.go.id/id/aturan/Pages/POJK-9-2024-Penerapan-Tata-Kelola-bagi-BPR-dan-BPRS.aspx.

recommendation, but a minimum standard of governance that must be met by every BPR.

The BPR's failure to ensure that a customer's SHT cannot be accessed and used unilaterally by a single employee without a multi-layered approval mechanism constitutes institutional negligence that can be proven normatively. This negligence serves a dual function in the construction of accountability. First, it strengthens the argument that the employee's actions occurred within the bank's operational scope that failed to be supervised, strengthening the application of Article 1367 paragraph (3). Second, it closes the door for the bank to use the defense of Article 1367 paragraph (5), because the inability to prevent the employee's actions actually arose from the bank's own institutional failure, not from factors beyond its control.

In addition to the civil law perspective, which is the primary focus of this research, the actions of bank employees who misused customer land certificates also intersect with criminal law. Article 488 of Law No. 1 of 2023 concerning the Criminal Code regulates the embezzlement of assets obtained through employment relationships, stating that:

"In the event that the act as referred to in Article 486 is carried out by a person whose control over the Goods is due to an employment relationship, due to his profession, or because he receives wages for control over the Goods, the punishment shall be a maximum of 5 (five) years imprisonment or a maximum fine of category V."

Criminal threats for bank employees are also contained in Law Number 7 of 1992 in conjunction with Law Number 10 of 1998 concerning Banking. Article 49 paragraph (2) letter b states that:

"Members of the board of commissioners, directors, or bank employees who intentionally do not implement the necessary steps to ensure the bank's compliance with the provisions of this law and the provisions of

other laws and regulations applicable to banks, shall be subject to imprisonment for a minimum of 3 (three) years and a maximum of 8 (eight) years and a fine of a minimum of Rp. 5,000,000,000.00 and a maximum of Rp. 100,000,000,000.00."

Based on the contents of the article above, the Banking Law threatens criminal penalties for members of the board of commissioners, directors, or bank employees who intentionally make or cause false records, remove or fail to include correct information, or misuse documents in banking activities.

It should be emphasized that criminal proceedings do not eliminate or preclude a civil lawsuit a customer may file against the bank. This refers to the theory of legal dualism, which states that a single legal event can have both criminal and civil dimensions, allowing both to proceed in parallel if the respective evidentiary requirements are met.[38]The criminal charges are directed against the employee as the individual perpetrator, while the civil lawsuit against the bank is directed against the bank as the institution responsible as the employer. The ongoing criminal proceedings strengthen the argument for the unlawful element in the civil lawsuit against the bank, as the state, through its law enforcement agencies, has formally acknowledged that the act is prohibited by law.

However, with the enactment of Law No. 1 of 2023 concerning the Criminal Code, corporations, including banking institutions, are legally recognized as legal subjects that can be punished on the condition that the actions are carried out by people who have an employment relationship or act in the interests of the corporation, either alone or together as stated in Article 45 Paragraph (1) and Article 46. Then, based on Article 48, banks can be punished if the actions unlawfully benefit the bank, are accepted as bank policy, or if the bank allows the crime to occur and is negligent in

[38] Adinda Akhsanal Viqria and Nisa Fadhilah, "Harmonization of Criminal and Civil Law in the Settlement of Criminal Acts of Fraud Under the Guise of Agreements," KeadilaN Journal of the Faculty of Law, Tulang Bawang University 23, no. 3 (2025): 462.

taking preventive and supervisory measures. Criminal sanctions for Corporations refer to Article 118 of Law No. 1 of 2023 which can be in the form of principal penalties (fines) or additional penalties, such as payment of compensation, reparations for criminal acts, to revocation of business licenses. The new Criminal Code also regulates the responsibility of Management as stated in Article 49 that criminal penalties can be imposed on the corporation itself, managers who have functional positions, those who give orders, or those who hold control of the bank.

2. Legal Protection for Certificate Owners against Misuse of Land Rights Certificates as Credit Collateral by Bank Employees

The fulfillment of the elements of an unlawful act as outlined in the previous discussion, as well as the construction of the bank's legal responsibility based on Article 1365 in conjunction with Article 1367 of the Civil Code, does not automatically resolve the problems faced by customers as certificate owners who have suffered losses. The affirmation of the bank's legal responsibility in a normative manner only functions if it is accompanied by the availability of a concrete legal protection mechanism that is accessible to the injured party. In this context, legal protection is not merely understood as the right to claim compensation after a loss has occurred, but also includes preventive measures that should be taken by the bank as a trust institution to prevent misuse of collateral documents from the outset.

Philipus M. Hadjon distinguishes legal protection into two forms, namely preventive legal protection which aims to prevent disputes from occurring, and repressive legal protection which aims to resolve disputes that have already occurred.[39]Based on this framework, the following discussion will analyze to what extent the applicable banking and consumer protection regulations, specifically POJK Number 22 of 2023 concerning Consumer and Community Protection in the Financial Services Sector and POJK Number 7 of 2024 concerning People's Economic Banks, are able to provide adequate legal protection for land title certificate holders who are victims of misuse by bank employees, both preventively and repressively.

Legal protection in this context can be divided into two main forms: preventive protection, which aims to prevent violations from occurring, and repressive protection, which provides remedial measures after a violation has occurred. In the context of preventive protection, POJK No. 22 of 2023 concerning Consumer and Public Protection in the Financial Services Sector seeks to regulate the supervision of PUJK behavior or market conduct to increase public trust in the financial services industry, build a reliable consumer protection system, increase consumer empowerment, and raise awareness among financial services business actors of the importance of consumer protection.[40] POJK Number 22 of 2023 is a refinement of the previous POJK, which includes additional consumer protection principles, affirmation of consumer rights and obligations in the financial services sector, as well as affirmation of consumer data protection and the obligation to ensure information system security.

From a preventive protection perspective, these regulations actually establish an adequate framework of obligations for banks to protect customer assets. The problem lies not in the absence of regulations, but rather in significant implementation gaps. While dual control is indirectly regulated through the obligation to apply prudential banking principles,

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[39] Dekha Isvan Mahardika, "Legal Protection for the Community in Land Dispute Settlement," Notary Law Journal 5, no. 1 (2026): 28, https://doi.org/10.32801/nolaj.v5i1.137.

[40] Ika Makherta Sutadji, "FRAME THE DIMENSIONS OF INDONESIA'S SDGS THROUGH MARKET CONDUCT STRATEGY, EDUCATION AND CONSUMER PROTECTION IN THE DIGITAL ECONOMY ERA," KRISNA: Accounting Research Collection 15, no. 2 (2024): 236, https://doi.org/10.22225/kr.15.2.2024.230-239.

there is no explicit obligation in existing regulations regarding the dual control mechanism for Land Rights Certificates control, namely the provision that collateral certificates may only be accessed and issued with the approval of at least two different bank officials. This lack of technical standards is a significant gap that allows for abuse.

Indonesian law provides several remedies that can be pursued simultaneously or alternatively. Under Article 1365 in conjunction with Article 1367 of the Civil Code, customers have the right to file a civil lawsuit against the bank as an institution and/or its employees as individuals. Claims that can be filed include the return of Land Rights Certificates (Served Assets), material compensation for tangible losses that can be calculated economically, and immaterial compensation for psychological distress and legal uncertainty experienced. The second remedy is a complaint to the Financial Services Authority (OJK). The POJK emphasizes the strengthening of the OJK's role in providing protection to consumers and the public, stating that the OJK has the authority to provide legal defense by ordering or taking certain actions against financial services businesses to resolve consumer complaints, as well as ordering lawsuits to be filed, with the threat of sanctions if they are not complied with. However, in this case, OJK's administrative sanctions do not automatically result in compensation for customers. These sanctions are public-administrative in nature, aimed only at the bank as a supervised entity and do not directly recover civil losses suffered by individual customers.

Beyond the availability of formal mechanisms outlined above, a structural gap remains unaddressed by applicable regulations, constituting the primary analytical contribution of this study. This gap lies in the customer-debtor dilemma. The customer who is the victim of Land Rights Certificates abuse in this case is in a highly vulnerable position, as he is an active debtor of the same bank where the employee works. If he files a civil lawsuit against the bank, his credit relationship could potentially be disrupted, as the bank could tighten requirements, accelerate payments, or take steps that indirectly harm his position as a debtor. No regulations explicitly provide special protection for customers who simultaneously serve as active debtors and victims of unlawful acts by internal bank parties within a single legal relationship. This situation creates a normative vacuum (leemten in het recht) that has the potential to structurally weaken the victim's position, given that available legal remedies, including civil lawsuits against the bank, risk disrupting their ongoing credit relationship with the same institution.

Conclusion

Based on the analysis that has been conducted, this study reaches two main conclusions that answer the formulation of the problem that has been set. Banks can be held legally responsible for the unlawful actions of their employees in the misuse of customer land title certificates as credit collateral. The legal construction used is Article 1365 in conjunction with Article 1367 paragraph (3) of the Civil Code, where the employee's Unlawful Acts is proven to be cumulatively fulfilled in all four elements, and the bank's responsibility as an employer can be established through a functional interpretation of the phrase "in carrying out assigned work." The institutional negligence of the BPR, which is proven by the failure of an adequate internal control system according to POJK Number 9 of 2024, simultaneously strengthens the application of Article 1367 and closes the possibility of the bank using the defense of Article 1367 paragraph (5). In addition, the employee's actions also have criminal implications based on Article 49 paragraph (1) of the Banking Law, although the criminal process runs parallel and does not eliminate the customer's right to claim civil compensation.

Furthermore, legal protection for certificate holders who have suffered losses is provided in a preventive manner through OJK Regulations No. 22 of 2023 and No. 7 of 2024. Meanwhile, repressive protection is available through filing a Unlawful Acts lawsuit with the District Court and complaints to the OJK by customers. However, there is a structural gap that has not been addressed, namely the dilemma of customers who are also debtors. This has resulted in a lack of norms (leemten in het recht) which has the potential to weaken the victim's position.

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