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The Application of the Contributory Negligence Doctrine in Determining Bank Liability for Customer Losses

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ABSTRACT
This article examines the legal consequences of applying the contributory negligence doctrine to bank liability for customer losses arising from errors, negligence, or misconduct committed by bank employees. The central issue is whether a bank, as a financial services business actor, may rely on customer fault to exclude liability even when the loss is causally connected to employee conduct performed within the bank's operational sphere. Using normative legal research, this article applies statutory, conceptual, and case approaches to Indonesian civil law, banking regulation, financial consumer protection norms, and selected court decisions. The analysis focuses on Article 10 of Financial Services Authority Regulation Number 22 of 2023 on Consumer and Public Protection in the Financial Services Sector, the Indonesian Civil Code, the Banking Law, and relevant dispute-resolution mechanisms. The findings indicate that banks bear prima facie responsibility for losses caused by employees, directors, commissioners, or third parties acting on behalf of the bank. Article 10(2), which allows financial services providers to avoid liability when consumer involvement or negligence is proven, functionally resembles contributory negligence. However, an absolute or all-or-nothing application of that provision is difficult to reconcile with the structural imbalance between banks and customers, the prudential principle, and modern financial consumer protection standards. The article argues that Indonesian banking liability should be interpreted through a proportional model closer to comparative negligence, so that customer fault may reduce but should not automatically extinguish bank liability where employee negligence remains a substantial cause of loss.

Keywords: bank liability; contributory negligence; comparative negligence; financial consumer protection; employee negligence; Indonesia

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INTRODUCTION

The banking sector occupies a strategic position in the national economy because banks perform intermediation functions, maintain payment-system continuity, and manage public funds. This role makes trust the foundational element of the legal relationship between banks and customers. A bank is not merely a commercial institution; it is also a regulated financial services provider entrusted with customer assets, data, and transactions. Therefore, banking activities must be conducted professionally, carefully, and consistently with the prudential principle. Indonesian banking scholarship has similarly emphasized that prudential banking is indispensable for mitigating credit, operational, and legal risks in financial services (Salamah, 2023).

In practice, disputes between banks and customers often arise when customers suffer financial losses caused by administrative errors, abuse of authority, weak internal controls, failure to comply with standard operating procedures, or intentional misconduct

by bank employees. These situations raise a central question of responsibility: should the loss be borne by the customer, the individual employee, or the bank as the legal entity whose system, authority, and institutional trust enabled the transaction? Under Indonesian civil law, the answer cannot be separated from the doctrines of unlawful acts, negligence, and responsibility for the acts of persons under one's supervision, as reflected in Articles 1365, 1366, and 1367 of the Indonesian Civil Code.

The current regulatory framework strengthens this civil-law foundation. Article 10(1) of Financial Services Authority Regulation Number 22 of 2023 on Consumer and Public Protection in the Financial Services Sector provides that a Financial Services Business Actor (*Pelaku Usaha Jasa Keuangan*, PUJK) is responsible for consumer losses caused by fault, negligence, or unlawful conduct committed by directors, commissioners, employees, or third parties representing or working for the PUJK. Nevertheless, Article 10(2) allows a PUJK to avoid responsibility where it can prove the involvement, fault, negligence, or unlawful conduct of the consumer. This second provision gives rise to a difficult doctrinal issue because it may be used as a regulatory basis for invoking contributory negligence in banking disputes.

Contributory negligence originated in common-law adjudication and is generally associated with *Butterfield v. Forrester* (1809). In its strict form, the doctrine applies an all-or-nothing logic: a claimant whose negligence contributed to the loss may be barred from recovering damages. Such a model is controversial in the banking context because the relationship between banks and customers is structurally asymmetrical. Banks control account systems, product design, employee supervision, documentation, risk management, and transaction verification infrastructure. Customers, by contrast, ordinarily rely on the bank's expertise, representations, internal controls, and institutional reliability.

This doctrinal tension has practical consequences. Banks frequently attempt to shift or reduce liability by alleging that customers were careless, imprudent, or failed to verify transactions. However, selected Indonesian court decisions show that judges have not always accepted contributory negligence arguments when customer losses were substantially caused by bank employee misconduct. These decisions suggest that Article 10(2) should not be read as a mechanical exclusion of bank liability. Instead, the provision requires careful evidentiary assessment of causation, the degree of fault, the customer's actual capacity to prevent the loss, and the bank's internal-control failures.

The research gap addressed by this article lies in the limited integration between three bodies of analysis: Indonesian bank liability under civil and financial-services regulation; the common-law doctrine of contributory negligence; and the judicial tendency to prioritize customer protection when losses are linked to employee misconduct. Existing discussions often examine these issues separately. This article contributes by reassessing whether Article 10(2) should operate as an absolute liability bar or as a proportional mechanism for allocating responsibility.

Accordingly, this article addresses two research questions. First, how should bank liability be constructed when customer losses arise from errors, negligence, or misconduct committed by bank employees? Second, how should the contributory

negligence doctrine be applied in Indonesian banking disputes so that the regulatory framework remains consistent with substantive justice and consumer protection?

Literature Review And Analytical Framework

1. Bank-Customer Relationship, Vicarious Liability, and Financial Consumer Protection

The legal relationship between a bank and its customers is generally founded upon contract, trust, and regulatory duties. The contractual dimension arises from account-opening documents, deposit agreements, loan agreements, transfer instructions, and other banking instruments. The trust dimension arises because customers deposit assets and information with the bank and rely on the bank's institutional competence. Indonesian scholarship has described this relationship as one in which the fiduciary or trust principle requires a high level of care and accountability in banking operations (Chalim, 2017; Devinawati, 2020).

Civil liability may arise from breach of contract (*wanprestasi*) or tort/unlawful act (*perbuatan melawan hukum*). Article 1365 of the Indonesian Civil Code obliges a wrongdoer to compensate loss caused by an unlawful act. Article 1366 extends responsibility to losses caused by negligence or imprudence. Article 1367 provides the basis for responsibility for acts committed by persons under one's supervision. In banking disputes, Article 1367 is particularly important because employees act within an organizational hierarchy and often use authority, documents, systems, and institutional representations provided by the bank.

The same logic is reinforced by financial consumer protection regulation. Article 10(1) of Financial Services Authority Regulation Number 22 of 2023 expressly covers losses caused by directors, commissioners, employees, and third parties acting for the PUJK. This formulation reflects a regulatory choice to treat employee conduct as part of the provider's risk-bearing responsibility. International standards support a similar orientation: the G20/OECD High-Level Principles on Financial Consumer Protection emphasize fair treatment, responsible business conduct, protection of consumer assets against fraud and misuse, and accessible complaints handling and redress (OECD, 2022). The World Bank's Good Practices for Financial Consumer Protection also situate complaint handling, redress, transparency, business conduct, and institutional arrangements as core elements of a robust consumer protection framework (World Bank, 2017).

From a banking-supervision perspective, employee error and misconduct are not merely individual failures; they may indicate weaknesses in operational risk management, internal control, governance, and compliance culture. The Basel Committee's principles on operational risk management stress that governance, the risk-management environment, information and communication technology, business continuity, and disclosure form integrated components of a bank's operational risk management framework (Basel Committee on Banking Supervision, 2021). Thus, where customer loss arises from employee conduct, the legal assessment should examine both the employee's act and the bank's institutional failure to prevent, detect, or correct that act.

2. Contributory Negligence and Comparative Negligence

Contributory negligence is a doctrine used to evaluate whether an injured party contributed to the loss through his or her own lack of reasonable care. Historically, its strict common-law form barred recovery when the claimant's negligence contributed to the harm. *Butterfield v. Forrester* (1809) is commonly cited as the early source of this approach. The doctrine was justified on the premise that a claimant should not recover when his or her own conduct was a legally relevant cause of the loss.

The difficulty with contributory negligence lies in its all-or-nothing consequence. Even minimal fault by the injured party may defeat the claim entirely. Modern legal systems have therefore moved toward comparative negligence or comparative fault, under which damages are reduced according to the claimant's percentage of responsibility rather than eliminated automatically (Dobbs et al., 2011; Restatement (Third) of Torts: Apportionment of Liability, 2000). This approach is more consistent with proportionality because it distinguishes between minor customer inattention and serious conduct that substantially causes the loss.

In Indonesian banking regulation, Article 10(2) of Financial Services Authority Regulation Number 22 of 2023 does not expressly use the phrase “contributory negligence.” Functionally, however, the provision resembles the doctrine because it allows the PUJK to avoid liability when consumer involvement, fault, negligence, or unlawful conduct can be proven. The key interpretive issue is whether this provision should be applied as an absolute liability bar or as a proportional mechanism. This article argues for the latter, particularly where employee negligence or misconduct remains a substantial cause of customer loss.

METHOD

This article uses normative legal research, also known as doctrinal legal research. The purpose of this method is to analyze legal norms, doctrines, principles, and court reasoning rather than to collect empirical data from respondents. Normative legal research is appropriate because the research questions concern the interpretation of liability rules, the legal meaning of contributory negligence, and the relationship between statutory norms and judicial practice (Diantha, 2017).

The study applies four approaches. The statutory approach is used to examine the Indonesian Civil Code, the Banking Law, Financial Services Authority Regulation Number 22 of 2023, and Financial Services Authority Regulation Number 61/POJK.07/2020. The conceptual approach is used to analyze contributory negligence, comparative negligence, vicarious liability, prudential banking, and financial consumer protection. The case approach is used to examine selected Indonesian court decisions concerning customer losses caused by bank employee misconduct. The comparative approach is used in a limited manner to contrast the all-or-nothing logic of contributory negligence with the proportional logic of comparative negligence.

The primary legal materials consist of statutory regulations and selected court decisions. The principal statutes and regulations include Articles 1365, 1366, and 1367 of the Indonesian Civil Code; Article 29 paragraph (4) of Law Number 7 of 1992 concerning Banking as amended by Law Number 10 of 1998; Article 10, Article 68, Article

75, and Article 82 of Financial Services Authority Regulation Number 22 of 2023; and Financial Services Authority Regulation Number 61/POJK.07/2020 concerning Alternative Dispute Resolution Institutions in the Financial Services Sector. The selected decisions are Central Jakarta District Court Decision Number 568/Pdt.G/2014/PN.Jkt.Pst and Surabaya District Court Decision Number 316/Pdt.G/2012/PN.Sby.

The secondary legal materials include books, journal articles, legal commentaries, and international policy references on banking law, tort liability, vicarious liability, consumer protection, and operational risk. The legal materials are analyzed through grammatical interpretation, systematic interpretation, teleological interpretation, and doctrinal comparison. The analysis proceeds by identifying the normative rule, clarifying its purpose, testing its coherence with related rules, and assessing whether its application produces a fair allocation of liability between banks and customers.

RESULTS AND DISCUSSION

1. Bank Liability for Customer Losses Caused by Employee Error or Misconduct

Banks, as legal entities operating in the financial services sector, bear legal responsibility for the conduct of their organs and employees when such conduct is connected to bank operations. This responsibility is grounded in both private law and regulatory law. Under Articles 1365 and 1366 of the Indonesian Civil Code, liability arises where an unlawful act, fault, negligence, or imprudence causes loss to another person. Under Article 1367, responsibility extends to acts committed by persons under one's supervision. In the banking context, this provision supports the argument that a bank may be liable for employee acts committed within the scope of bank functions, especially where the employee uses bank authority, documents, systems, or customer trust.

Article 10(1) of Financial Services Authority Regulation Number 22 of 2023 makes this responsibility explicit. It requires a PUJK to be responsible for consumer losses caused by fault, negligence, unlawful conduct, or breach of agreement committed by directors, commissioners, employees, or third parties representing or working for the PUJK. This provision prevents banks from simply characterizing employee misconduct as a purely personal act. Where the loss is connected to the employee's role, access, position, or representation as bank personnel, the bank remains prima facie responsible.

This does not mean that the employee bears no personal liability. The legal consequences of employee misconduct may operate on two levels. First, the bank may bear civil and regulatory responsibility toward the customer because the employee acted within the bank's operational sphere. Second, the employee may bear personal civil, administrative, disciplinary, or criminal responsibility depending on the nature of the misconduct, such as fraud, embezzlement, extortion, falsification, or abuse of authority. The two forms of responsibility are not mutually exclusive. A bank's compensation to the customer may be followed by internal recovery action against the employee where legally justified.

The stronger justification for bank liability lies in the bank's control over operational risk. A customer generally cannot observe the internal authorization process, segregation of duties, maker-checker mechanisms, audit trail, document custody, employee access rights, or supervisory controls. These are internal systems controlled by the bank.

Therefore, where employee negligence or misconduct causes loss, the bank's responsibility should be evaluated not only through the employee's individual act but also through the adequacy of the bank's internal control and risk-management framework.

2. Available Remedies: Internal Dispute Resolution, LAPS, and Court Proceedings

Indonesian financial consumer protection regulation provides a tiered dispute-resolution framework. The first mechanism is internal dispute resolution (IDR). Article 68 of Financial Services Authority Regulation Number 22 of 2023 requires PUJKs to have and implement a mechanism for handling consumer complaints. This mechanism is important because it gives the bank an opportunity to investigate the complaint, secure evidence, trace the transaction, identify responsible officers, and provide an initial resolution.

Article 75 further requires a PUJK to follow up and provide written resolution of a complaint within ten working days after complete documents are received. This period may be extended for a further ten working days under specified conditions, and the extension must be notified to the consumer. In handling complaints, the bank should issue proof of complaint receipt, classify the complaint, examine supporting documents, analyze whether the complaint is substantiated, and communicate the outcome to the customer. The complaint process should not be treated as a mere administrative formality; it is part of the bank's accountability structure and evidence-preservation mechanism.

If no agreement is reached after complaint handling, Article 82(1) allows the consumer to submit a complaint to the Financial Services Authority, file a dispute before an Alternative Dispute Resolution Institution in the Financial Services Sector (LAPS SJK) approved by the Financial Services Authority, or bring the matter before a court. Financial Services Authority Regulation Number 61/POJK.07/2020 defines LAPS SJK as an institution that resolves financial-services disputes outside the courts. It is designed to provide independent, fair, effective, efficient, and accessible dispute resolution. Depending on the parties' agreement and the applicable rules, LAPS may provide mediation, adjudication, or arbitration.

Court proceedings remain available where internal and alternative mechanisms do not resolve the dispute or where the customer seeks judicial relief. A customer may file a civil claim based on breach of contract if the bank fails to perform obligations under the banking relationship, or based on unlawful act where the loss arises from negligence, misconduct, or violation of legal duties. In such proceedings, the evidentiary question becomes central: did the bank employee's conduct cause the loss, and did the customer's conduct constitute a legally relevant contributing cause?

3. Selected Indonesian Court Decisions and the Limits of Customer-Negligence Defenses

The first relevant decision is Central Jakarta District Court Decision Number 568/Pdt.G/2014/PN.Jkt.Pst, dated 2 February 2016. The case involved the Pension Fund of Bank Mandiri and BNI Tebet Branch. The dispute arose from the misuse of a time deposit certificate in the amount of IDR 10,000,000,000 as collateral for a cash-collateral credit facility granted in another party's name without the knowledge and consent of the

Pension Fund of Bank Mandiri. When the credit became non-performing, BNI liquidated the time deposit to settle the outstanding credit obligation. BNI resisted compensation by arguing that the customer had been negligent and imprudent in entrusting the certificate to a bank official. Nevertheless, the court set aside the contributory negligence argument and ordered BNI and related parties to pay damages amounting to IDR 17,200,000,000.

The second decision is Surabaya District Court Decision Number 316/Pdt.G/2012/PN.Sby, dated 23 January 2013. In that case, Mr. Tan Wan Lan, a customer of Bank Internasional Indonesia, suffered losses of IDR 250,000,000 due to a fictitious time deposit created by a bank employee. The bank refused compensation on the ground that the customer had transferred the funds to the employee's personal account, which should not have been used to open a time deposit product. The bank therefore characterized the customer's conduct as negligent. The Surabaya District Court nonetheless rejected the bank's defense and ordered the bank to compensate the customer.

These decisions are significant for two reasons. First, they show that customer conduct may be considered in evidentiary analysis, but it does not automatically eliminate bank liability. Second, they show judicial sensitivity to the institutional dimension of banking misconduct. The employee's position, the bank's representation, and the customer's reliance on bank personnel are legally relevant. Where the customer's loss would not have occurred without the employee's access, authority, or misuse of bank-related trust, a court may still impose liability on the bank despite allegations of customer imprudence.

The decisions also indicate that the bank's customer-negligence defense should be examined strictly. A bank should not be able to rely on Article 10(2) merely by identifying any imperfect conduct by the customer. It must prove a direct causal relationship between the customer's fault and the loss, and it must show that the customer's conduct was sufficiently serious to justify limiting liability. Ordinary reliance on bank employees should not be equated with culpable negligence when that reliance is induced by the bank's institutional position.

4. Reassessing Article 10(2): From Absolute Exclusion to Proportional Liability

Article 10(2) of Financial Services Authority Regulation Number 22 of 2023 is normatively important because it prevents consumers from abusing the protection regime. A consumer who intentionally participates in wrongdoing, violates financial-sector law, falsifies instructions, knowingly collaborates with an employee, or causes loss through serious negligence should not automatically receive full compensation from the bank. Therefore, the provision has a legitimate function in preventing moral hazard and preserving fairness for financial services providers.

However, the problem lies in interpreting Article 10(2) as an absolute exclusion of liability. Such an interpretation would reproduce the harshest form of contributory negligence and would be inconsistent with the protective purpose of financial consumer regulation. If even minor or ordinary customer negligence could extinguish the bank's responsibility, banks would have excessive incentive to shift responsibility onto customers despite deficiencies in internal control, employee supervision, customer education, or complaint handling.

A more coherent interpretation is to treat Article 10(2) as a burden-of-proof and causation provision rather than as an automatic liability bar. Under this interpretation, the bank must prove four elements before liability can be excluded or reduced: (1) the customer committed a legally relevant fault, negligence, involvement, or unlawful act; (2) the conduct was causally connected to the loss; (3) the causal contribution was substantial rather than trivial; and (4) the bank had fulfilled its own duties of care, disclosure, supervision, verification, and internal control. Where these elements are not proven, Article 10(1) should remain the primary basis for bank liability.

The comparative negligence model offers a better normative solution. Instead of eliminating recovery, it allows responsibility to be apportioned according to the respective degree of fault. If the bank's employee misconduct constitutes the dominant cause of loss, the bank should bear the larger share of liability. If the customer's serious negligence materially contributed to the loss, compensation may be reduced proportionally. This approach preserves consumer protection while preventing unfair full recovery where the customer has substantially contributed to the harm.

This proportional reading is consistent with Mochtar Kusumaatmadja's Development Law Theory, which views law not only as a mechanism for maintaining order but also as an instrument for guiding social change (Yudha et al., 2024). Banking law must maintain trust in financial institutions while adapting to increasingly complex financial products, digital transactions, and evolving patterns of fraud and employee misconduct. A rigid all-or-nothing approach is less capable of responding to these developments than a proportional model that evaluates causation, fault, and institutional control in an integrated manner.

Accordingly, Article 10(2) should be operationalized through regulatory guidance. The Financial Services Authority could clarify that consumer fault must be proven by the PUJK, must be causally significant, and must be assessed together with the PUJK's compliance with internal-control and consumer-protection duties. Guidance could also require banks to document complaint-handling steps, transaction-verification records, employee-access logs, risk alerts, customer warnings, and supervisory measures. Such documentation would make liability analysis more transparent and reduce the risk that Article 10(2) is used merely as a defensive formula.

CONCLUSION

Banks bear legal responsibility for customer losses arising from errors, negligence, or misconduct committed by bank employees when the conduct is connected to bank operations, authority, systems, or institutional representation. This conclusion is supported by Articles 1365, 1366, and 1367 of the Indonesian Civil Code, Article 29 paragraph (4) of the Banking Law, and Article 10(1) of Financial Services Authority Regulation Number 22 of 2023. Although employees may also bear personal liability, the bank cannot avoid responsibility merely by describing the act as individual misconduct when the employee acted within the bank's operational sphere.

Article 10(2) of Financial Services Authority Regulation Number 22 of 2023 functionally resembles the doctrine of contributory negligence because it allows a PUJK to avoid liability where consumer involvement, fault, negligence, or unlawful conduct can

be proven. However, a rigid all-or-nothing application of this provision risks undermining substantive justice and financial consumer protection. In banking disputes, customers are structurally weaker than banks because they do not control internal systems, employee supervision, document custody, or transaction verification mechanisms. Therefore, minor or ordinary customer negligence should not automatically extinguish bank liability.

Indonesian judicial practice, as reflected in selected decisions concerning time-deposit misuse and fictitious deposit products, indicates that courts may reject customer-negligence defenses where bank employee misconduct remains a substantial cause of loss. The better approach is to interpret Article 10(2) proportionally, closer to comparative negligence. Under this model, customer fault may reduce compensation where it is causally significant, but it should not automatically release the bank from liability when employee negligence or misconduct is the dominant cause of the loss.

Regulatory And Practical Implications

This article recommends that the Financial Services Authority issue interpretive guidance on Article 10(2) to prevent its use as an automatic exclusion of bank liability. The guidance should clarify the burden of proof, the required degree of customer fault, the standard of causal contribution, and the relevance of the bank's internal-control compliance. Banks should be required to demonstrate not only that the customer made an error, but also that the bank had implemented adequate preventive, supervisory, and complaint-handling measures.

For banking institutions, the practical implication is that liability prevention should not rely primarily on contractual disclaimers or customer-negligence allegations. Banks should strengthen employee supervision, access control, document custody, transaction verification, customer communication, audit trails, whistleblowing mechanisms, and complaint handling. For customers, the implication is that legal protection remains available, but customers must still exercise reasonable care, maintain confidentiality of personal banking data, verify transaction documents, and use formal bank channels.

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