



## Development of The Default Concept Against Losses Due to Standard Agreements for Opening Banking Accounts

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### Abstract

*Bank's as commercial service providers aim, among others, to generate profits. In terms of providing their services they make agreements with consumers. Therefore the basis of the bank's legal responsibility with customers is contractual responsibility and the legal basis for the customer's lawsuit against the bank is a violation of the agreement or default. A detailed distinction of responsibility is not found in the Consumer Protection Law, as is known from the relatively large number of decisions of the Consumer Dispute Settlement Body throughout Indonesia that were canceled by the Supreme Court for various reasons. In that regard, one of the reasons is that the Consumer Protection Law does not regulate the legal basis for lawsuits other than tort. This research uses a normative method that refers to Law Number 8 Year 1999 on Consumer Protection and principles as the basis for enforcing the law. The conceptual method is used by connecting and interpreting legal principles concerning consumer protection against unlawful acts on the principle of bank responsibility. The results of this research indicate that there is a need for a legal conception of the development of risk-based bank responsibility principles for losses due to standard agreements in opening banking accounts as a form of consumer protection. It is also an embodiment of the Consumer Protection Law which aims to create a balance of protection of consumer interests and business actors as an effort to create a healthy economy.*

## A. Introduction

Law is power, namely power that aspires to justice. Aspiring to justice, because true justice cannot be achieved by law. Because law is forced to sacrifice just justice for its purposes, law is a compromise and because humans (laws are man-made) are not endowed with God knowing what is just and what is unjust in an absolute sense. Our view of what is fair, what belongs to others, is determined by history, so it varies according to place and time.<sup>1</sup>

The facts above show that the existence of law is formed by and in history as well as historical processes forming an open and dynamic system of unity, so that the style of a country's law is determined by legal awareness that lives in society and legal politics. Consumer protection law exists as an open and dynamic system as well. This can also be seen from the development of positive legal regulations in the field of consumer protection, as it is known that before the enactment of Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection (hereinafter referred to as UUPK) there were several laws whose material was to protect the interests of consumers, even in the future it is possible to form laws that essentially contain provisions that protect consumers.<sup>2</sup>

One of the possibilities for a new law that contains comprehensive legal provisions to protect consumers today is regarding bank responsibility for losses resulting from standard agreements for opening banking accounts based on a new legal paradigm as an alternative effort to protect consumers. The responsibilities of banks in Indonesia are not commonly implemented, although there are several laws that explicitly apply, such as those regarding environmental management and the exclusive economic zone.<sup>3</sup>

As for the existence of an alternative concept of consumer protection through the application of bank responsibility based on a new legal paradigm as a form of responsibility that can provide justice for consumers and for banks from losses due to standard agreements in opening banking accounts in Indonesia, it is already an urgent problem in the field of consumer protection.<sup>4</sup>

The basis of legal responsibility in civil law consists of contractual liability and tort liability. In a civil law suit for damages, it consists of breach of agreement or breach of contract and violation of law or unlawful

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<sup>1</sup> Ristalia Rigantika, "Perlindungan Hukum Terhadap Keamanan Kerahasiaan Nasabah Bank Dihubungkan Dengan Hukum Positif Di Indonesia" (Universitas Pasundan, 2022).

<sup>2</sup> General Explanation I Paragraph 13 of the Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection.

<sup>3</sup> Putra Ilham Mohammad, "Perlindungan Konsumen Nasabah Bank Atau Debitur Dalam Perjanjian Kredit Bank Yang Memuat Klausula Baku," *Lex Crimen* 10, no. 8 (2021).

<sup>4</sup> Andi Nova Bukit, "Pertanggungjawaban Bank Terhadap Hak Nasabah Yang Dirugikan Dalam Pembobolan Rekening Nasabah (Studi Di Pt. Bank Rakyat Indonesia Tbk, Kantor Cabang Medan Gatot Subroto)," *Jurnal Ius Constituendum* 4, no. 2 (2019).

act. Violation of the agreement or default, must meet 2 (two) conditions, namely:

1. There is an agreement;
2. The rights and obligations stipulated in the agreement can be measured or measurable.<sup>5</sup>

In general, between service providers, in this case the bank and the customer, there is always an agreement. Commercial service providers which are service providers who provide services aimed at making profits such as banks, in providing their services, enter into agreements with consumers, so that the basis for legal responsibility of banks and customers is contractual liability and the legal basis for customer lawsuits against banks constitutes a breach of agreement or default. In breaking the law or acting against the law, 4 (four) conditions must be met, namely:

1. There has been an unlawful act (before January 31, 1919 interpreted as an act against the law);
2. The perpetrator of the unlawful act made a mistake;
3. Losses occur, both material and immaterial losses;
4. Causal relationship between losses incurred and unlawful acts.

The detailed division of responsibilities as described above is not found in the UUPK, even the Supreme Court Justices have agreed that all violations of the UUPK must be qualified as unlawful acts. This is evident from the relatively many decisions of the Consumer Dispute Settlement Body (hereinafter referred to as BPSK) throughout Indonesia which were canceled by the Supreme Court for various reasons, one of the reasons among the various decisions is that the UUPK does not regulate the legal basis for lawsuits other than acts against the law.

This research uses a normative method that refers to Law Number 8 of 1999 concerning Consumer Protection and principles as the basis for the application of law accompanied by literature in the form of books, journals, and so on. Then also refers to the conceptual research method by connecting and interpreting legal principles relating to consumer protection against unlawful acts on the principle of bank responsibility. Data processing is carried out by analytical descriptive method by focusing on the problem of applying the law that has occurred so that the group phenomenon can be revealed clearly and accurately. The results of the research are then processed and analyzed to draw conclusions.<sup>6</sup>

The novelty's research refers to the concept of reorienting consumer protection law towards a standard agreement for opening a banking account, as it should already be part of consumer rights, the regulation of which is

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<sup>5</sup> Muhammad Arif Maulana et al., "Klausula Baku Dalam Perjanjian Kredit Bank Perkreditan Rakyat," *USM Law Review* 4, no. 1 (2021).

<sup>6</sup> M. W. Hamin, "Perlindungan Hukum Bagi Nasabah (Debitur) Bank Sebagai Konsumen Pengguna Jasa Bank Terhadap Risiko Dalam Perjanjian Kredit Bank," *Lex Crimen* 6, no. 1 (2017).

contained in the UUPK. This is based on thoughts from the background of the birth of the UUPK which aims to create a balance of protecting the interests of consumers and business actors as an effort to create a healthy economy. In the future it is hoped that there will be a development of the principle of bank responsibility for losses due to standard agreements in opening banking accounts as a form of consumer protection, which in this study is a development of the Unlawful Acts Doctrine of Article 1365 of the Civil Code which strengthens the risk responsibility of business actors.

## B. Discussion

### 1. The Concept of Unlawful Acts in Bank Subjective Responsive Asceticism Against Losses in Banking Account Opening Agreement

Theoretically, for Indonesia, the legal concept of unlawful acts must also be subjectively responsive *asceticism* as a concept of the principle of bank responsibility for losses due to standard agreements in opening banking accounts in the future which uses the concept of the Unlawful Acts Doctrine and the Concept of Unlawful Acts. The risks for business actors, with qualifications, are unlawful acts that harm consumers as stipulated in the Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection, in the form of:

- a. Violation of business actors against consumer rights and/or;
- b. Does not carry out the obligations of business actors and/or violates decency or;
- c. Has committed an act that is contrary to propriety and;
- d. Violating business ethics, namely the habits that apply in the business world in terms of producing goods and distributing goods on the market.<sup>7</sup>

*Asceticism* is usually associated with sacrifice, obedience, discipline and so on.<sup>8</sup> *Asceticism* generally states that man must deny all his will or desires. In the early period of the church, a person who practiced (strict) self-discipline observed many taboos and lived a simple life was called *an ascetic*. This label of religious perfection for ascetic self-cultivation is found in Jainism and some groups in Buddhism and Hinduism.<sup>9</sup>

The antinomy of *asceticism* is hedonism according to *Aristippus* that the goal of life should be to pursue physical pleasure without considering the

<sup>7</sup> Rigantika, "Perlindungan Hukum Terhadap Keamanan Kerahasiaan Nasabah Bank Dihubungkan Dengan Hukum Positif Di Indonesia."

<sup>8</sup> *Asceticism* comes from the Greek word *asketikos* which means the party that does., Purnadi Purbacaraka and Soerjono Soekanto, 1985, *Ibid*.

<sup>9</sup> *Ascetic* in Greek, means hermit or athlete., Simon Blackburn, *Dictionary of Philosophy*, Translated from The Oxford Dictionary of Philosophy, (Yogyakarta: Student Library, nd), p. 62.

consequences.<sup>10</sup> However, the enjoyment of life is only achieved when there is peace of mind (*ataraxia*), so humans must limit their desires in life. In the teachings of Buddhism, humans who have too many desires (*trishna*), will no longer know the truth (*awidya*).<sup>11</sup>

The ascetic concept focuses more on worship, does a lot of charity for matters related to the afterlife. Based on the nature of *asceticism*, what is desired is that humans should be able to control themselves not to seek too much pleasure by eliminating the pleasures of other parties. This asceticism developed from religious understanding. Religion teaches to serve God who governs all human life. This means that in all human activities, humans are required to do good to themselves, other individuals, other living things and the universe as a form of human devotion to God.

Based on Islamic history, *asceticism* is known as the *zuhd school* which was born before the tasawuf school. Sufism as a further development of a group of zahid in the foyer of the Medina Mosque who have *asceti piety*. The *ascetic* concept in Islam is known as *zuhud*. Its attention is more focused on the reality of Islamic practice in practice which emphasizes more on commendable behavior. Popular figures are Al-Bashri and Rabi'ah Al-Adawiyah.<sup>12</sup>

*Zuhd*, emerged in the first century at the beginning of the 3rd century Hijri which was present as a reaction to the luxurious life of the caliph and his family and state officials as a result of the wealth obtained after Islam spread to Syria, Egypt, Mesopotamia and Persia. *Zuhd* followers who are called zahid see Allah not as a God who must be feared for his torment, but as a place to find peace of mind by avoiding oneself from sins.<sup>13</sup>

The deepest intention of this *asceticism* is how human morality can return to the essential nature of humanity from the human being himself to be able to serve God sincerely by avoiding actions that cause harm to other humans as a form of devotion to God. The importance of the principle of *asceticism* in consumer protection, especially consumers in opening a banking account, is needed to foster self-awareness from business actors to have the morals to be responsible for standard agreements made unilaterally by banks so that they can then be used as motivation for the realization of complete Indonesian human development.<sup>14</sup>

The concept of *asceticism* that develops from values in religious concepts is needed to foster a moral attitude in business activities in the economic field of business actors, to bring benefits from the absence of a

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<sup>10</sup>Epicurus, stated that the best life is without pain and eliminating pain or disturbance as a result of pleasure., *Ibid*.

<sup>11</sup>*Ibid*.

<sup>12</sup> Amen, p. 124.

<sup>13</sup>*Ibid*., p. 57.

<sup>14</sup> Alifin Nurahmana Wanda, "Pertanggungjawaban Tindak Pidana Perbankan Terkait Dengan Informasi Kerahasiaan Bank," *Indonesian Journal of Criminal Law* 2, no. 1 (2020).

standard agreement in opening a bank account. The existence of the value of *asceticism* must be balanced with the value of hedonism, this means that humans in achieving the pleasures of life must be achieved by not eliminating the pleasures of others.<sup>15</sup>

The need for *asceticism* in consumer protection against standard agreements in opening a banking account, is also intended to have a legal and moral relationship, which allows:

- a. There is a view which states that law and morals must be related to one another, because moral law orders actual man-made laws (positive law) which can take the form of:
  - 1) Positive laws that do not contain morality are considered to have no binding force;
  - 2) Obedience to applicable laws is seen as synonymous with moral actions, positive laws that do not contain morality are considered unfair laws.
- b. Moral law and positive law are not related to each other;
- c. Law and morality each have positive scope autonomy.<sup>16</sup>

The theologians and philosophers to legitimize morals (ethics)<sup>17</sup> by devoting themselves to transcendental thinking as a means of demonstrating truth.<sup>18</sup> Humans in general want harmony in personal and interpersonal life as well as spiritual and physical aspects which become values that will become concepts about what is desired. According to Nurcholis Madjid, morality (ethics) is not only a matter of decency, but a comprehensive concept that forms the basis of a good and bad view of life. Ethical teachings include a world view and a view of life.<sup>19</sup>

The position of the concept of *asceticism* should be emphasized as behavior that becomes business morality, functioned to shape the character of business actors who will have a good mental attitude and behavior towards themselves, others, God and even the environment, so that it becomes the morality of business actors (banks) in Indonesia.<sup>20</sup> This means that in their business activities, business actors have the freedom to get the maximum financial profit, but may not produce and implement things that

<sup>15</sup> Ifa Latifa Fitriani, "Jaminan Dan Agunan Dalam Pembiayaan Bank Syariah Dan Kredit Bank Konvensional," *Jurnal Hukum & Pembangunan* 47, no. 1 (2017).

<sup>16</sup> Anthon F. Susuanto, *Hukum: Dari Consilience Menuju Paradigma Hukum Konstruktif-Transgrif* (Jakarta: PT. Refika Aditama, 2007), hlm. 66-67.

<sup>17</sup> Ethics, studying human behavior and actions that are carried out consciously, speech, and human conscience seen from the perspective of good and bad. Ethics teaches about morals or decency, Rita Hanafie Soetrisono and Rita Hanafie, "Philosophy of Science and Research Methodology," *Yogyakarta: Andi Offset*, 2007, p. 56.

<sup>18</sup> *Ibid.*, p. 69.

<sup>19</sup> Nurcholis Madjid, *Islamic Doctrine and Civilization* (Jakarta: Paramadina, 1992), p. 466.

<sup>20</sup> Rizky Fahrurrozi, Tarsisius Murwadji, and Mien Rukmini, "Problematika Pengungkapan Rahasia Bank Antara Kepentingan Negara Dan Perlindungan Kepada Nasabah," *Jurnal Esensi Hukum* 2, no. 1 (2020).

can be detrimental to consumers, because this will eliminate the pleasure or enjoyment of users or those who get them. This is intended, because at this time, humans are trying to conquer the world without limit. Nature is seen as nothing more than objects and resources that need to be utilized and exploited as much as possible, enjoying and exploiting for self-interest without having any sense of obligation and responsibility.<sup>21</sup>

With *asceticism* in the principle of bank responsibility from losses resulting from standard agreements in opening banking accounts, this is meant to show that business actors as parties that produce and/or market standard agreements in opening banking accounts are fully responsible for consumers regardless of whether or not there is an actor's fault. Business as long as the standard agreement in opening banking accounts has caused losses to consumers. The bank's responsibility for losses due to standard agreements in opening a banking account is also a form of bank sacrifice to provide satisfaction to consumers which is at the same time based on compliance not only with responsibilities towards fellow human beings, but also as a form of obedience as God's creatures to provide good for humans, others in this universe.

*Asceticism* means that without eliminating the opportunity for business actors to get the maximum profit in their business activities, these profits are obtained in the right way without having to harm consumers with the existence of standard clauses in agreements for opening banking accounts that are detrimental to consumers. The bank as the party most likely to cause the consumer's loss, the bank must fulfill/comply to bear the consequences of this loss and comply with applicable legal rules, ethics in doing business in producing and implementing an action.

On the other hand, the possibility of losses due to standard agreements in opening banking accounts will still exist, so consumers must also have good faith towards business actors to claim compensation for losses suffered. The good faith of consumers towards business actors in demanding compensation is adjusted to the losses that consumers have actually experienced by providing opportunities for business actors to prove that these losses were not caused by the actions of the consumers themselves.

## **2. The Concept of Default as the Principle of Liability for Losses in Banking Account Opening Agreements**

The implication of the bank's responsibility for losses due to standard agreements in opening a banking account is based on default and unlawful acts by the bank. Then it becomes a business actor's risk to bear consumer losses as a form of compliance with the existence of a standard agreement in

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<sup>21</sup> Budi Munawar Rachman, "Nasr Traditionalism: Exposition and Reflection on Sayyed Husain Nasr Seminar Report," *Ulumul Qur'an Journal*, no. No. V/4/1993 (1993): p. 107.

opening a bank account as an effort to avoid potential risks from banking business activities.

Business actors still have the opportunity to prove that the losses suffered by consumers are due to the actions of the consumers themselves and there is still *force majeure* for the bank as a bank's self-defense, so that there are strict limitations regarding compensation, namely losses that have actually been experienced by consumers or in other words subjective consumer losses in accordance with the conditions of the Indonesian economy which is heading towards the industrialization stage. In other words, the most important thing is that consumers have suffered losses as a result of standard agreements in opening banking accounts and the problem of the form of loss from consumers is not an important issue in consumer protection.

In fact, the alternative to reforming the law on bank responsibility for losses due to standard agreements in opening banking accounts is also in line with the objectives of the establishment of POJK Number 6/POJK.07/2022 concerning Consumer and Community Protection in the Financial Services Sector. The issuance of Financial Services Authority Regulation (POJK) Number 6/POJK.07/2022 concerning Consumer and Community Protection in the Financial Services Sector has shifted the philosophy of the Financial Services Authority (OJK) in strengthening efforts to protect consumers in the financial services sector. The provisions that update POJK No. 1/POJK.07/2013 regulate, among other things, the application of consumer protection by the financial services industry from product planning, service and dispute resolution. In addition, this POJK clarifies the principle obligations of disclosure and transparency of information on products and services and increases the protection of consumer data and information. Strengthening consumer and public protection in the financial services sector is urgently needed to adapt to the rapid and dynamic development of innovation and technology in the financial services sector as well as efforts to improve the implementation of consumer protection by financial service businesses (PUJK).

This philosophical shift is also supported by the fact that there has been a shift from the purpose of law which was originally only on the elements of justice (justice) and legal certainty (*rechtzekerheid*), to the purpose of law which also includes elements of social justice (*social justice*) in general and specifically includes the existence of element of *need*. In the case concerned,<sup>22</sup> a legal concept of bank responsibility for losses resulting from a standard agreement in opening a banking account is required in accordance with its application in Indonesia. This effort was carried out in preparing the legal concept of bank responsibility which was based on deductive reasoning

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<sup>22</sup> Fuady, *Unlawful Actions: A Contemporary Approach*, p. 177.



in the normative structure and inductive reasoning from the underlying empirical elements.<sup>23</sup>

In addition to a shift in the philosophy of consumer protection and the development of the law's objectives, there is also a desire for the purpose of implementing the principle of bank responsibility, including bank responsibility, from the existence of a standard agreement in opening a banking account, not only to obtain justice and legal certainty, but more so in the framework of create justice with the concept of social justice. Regarding social justice, according to Notohamidjojo, "social justice requires that humans live properly in society. Each must be given an opportunity according to human decency (*menselijke waardigheid*)". Appropriately, the losses experienced by consumers are caused by using the rules made by the bank.

Banks are the most likely party to be held accountable for consumer losses, because business actors are both producers and those who apply the standard agreement have already benefited from this, so when consumers suffer losses from the standard agreement, consumers should receive compensation as a whole. according to applicable regulations as a form of balance between the bank and the consumer (customer).

The concept of bank responsibility for losses due to standard agreements in opening banking accounts is in line with Salmond and Fitzgerald's Legal Protection Theory which understands that law protects the interests of certain parties by integrating, coordinating and limiting the interests of other parties, especially requiring that the law provide benefits to groups of people<sup>24</sup> who most disadvantaged as justice according to the socio-economic balance in society.<sup>25</sup> Then with the existence of bank responsibility it is also intended that banks be careful and responsible for their products, this attitude is in line with the function of law as a means of changing society, namely changing the behavior of actors as a theory of Roscou Pound legal protection which was introduced by Mochtar Kusumaatmadja, "law is a *tool of social engineering*",<sup>26</sup> making law a means to change society in a better direction.<sup>27</sup>

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<sup>23</sup>The preparation of legal concepts in legal studies relies not only on deductive reasoning in normative structures, but also on inductive reasoning which cannot be separated from the underlying empirical elements., Muhammad Syaifuddin, 2008, Op . Cit ., p. 261. While the concept is a knowledge that aims to inform something that has an empirical basis. Perception of reality which is the basis for the preparation of a concept is fundamental in science and is a test of the truth of the concept., Satjipto Rahardjo, *Law Studies* (Bandung: PT. Citra Aditya Bakti, 2000), p. 306.

<sup>24</sup> Rahardjo, Fitzgerald In Satjipto Rahardjo, *Law Science* , p. 110.

<sup>25</sup> Syaifuddin, "Legal Protection of Underprivileged and Incapable People's Rights for Health Services in Private Hospitals Legal Entities Limited Liability Companies," 2008, p. 267.

<sup>26</sup> Roscoe Pound in Bernard L Tanya, et al., *Legal Theory: Human Order Strategies across Space and Generations* (Jakarta: Genta Publishing, 2010), p. 155.

<sup>27</sup> Kristiane Paendong, "Kajian Yuridis Wanprestasi Dalam Perikatan Dan Perjanjian Ditinjau Dari Hukum Perdata," *Lex Privatum* 10, no. 3 (2022).

The legal function for better changes in bank responsibility can be seen from the basis of compensation payments (liability without fault) responsibility without fault) is by not having to prove fault by the plaintiff.<sup>28</sup> Although there is an opinion that the terms of wrongdoing other than the three conditions for violating the law as a stand-alone condition have been released, due to the development of industrialization which results in greater risk and more complicated cause-and-effect relationships.<sup>29</sup> These conditions are (1) the existence of an unlawful act; (2) there is a loss; (2) there is a causal relationship. However, there is also an opinion that the word mistake in an unlawful act does not mean it is omitted, but its use is synonymous with an unlawful act,<sup>30</sup> so it can be concluded that bank responsibility is *a lex specialis* in lawsuits about unlawful acts in general based on Article 1365 of the Civil Code,<sup>31</sup> so that there is liability the responsibility borne by the bank, in the form of responsibility for the application of legal norms, propriety, and upholding business ethics, namely the prevailing habits in the business world.<sup>32</sup>

Paying attention to the basis for demands for accountability as a result of losses suffered by bank customers which was developed from the Unlawful Acts Doctrine as a qualification is an unlawful act of the Republic of Indonesia Law Number 8 of 1999 concerning Consumer Protection which harms consumers is by a violation of the provisions in the Law Republic of Indonesia Number 8 of 1999 concerning Consumer Protection. It is also supported by a system of proof in the responsibility of the bank that applies a reverse proof system, even though this is not explicitly recognized in civil law, because the evidentiary system generally lies with the plaintiff. However, the provisions on the burden of proof principle are not always appropriate to be imposed on every case, because apart from this principle there are stricter specific provisions such as Article 533 of the Civil Code,

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<sup>28</sup> Subekti, Contract Law .

<sup>29</sup> I Wayan Bandem, Wayan Wisadnya, and Timoteus Mordan, “Akibat Hukum Perbuatan Wanprestasi Dalam Perjanjian Hutang-Piutang,” *Jurnal Ilmiah Raad Kertha* 3, no. 1 (2020).

<sup>30</sup> Burght, Unlawful Actions , pp.107-108.

<sup>31</sup> In the old formulation regarding the elements of an unlawful act, the terms of guilt stand alone, whereas in the new formulation in 1919 it did not, because anyone who acts against good morality by violating prudence must be guilty, or in other words, if he is not guilty he does not commit an offense. decency or prudence. In other words, the word error is not omitted, but its use is synonymous with unlawful acts., JM van Dunne and van der Burght, 1998, Unlawful Acts, KPH Hapsoro Jayaningprang Translation .

<sup>32</sup> Dewi Oktoviana Ustien, “Dasar Hukum Dan Upaya Penyelesaian Wanprestasi Perjanjian Kredit Pada Bank Dengan Jaminan SK PNS,” *Ganaya: Jurnal Ilmu Sosial Dan Humaniora* 2, no. 1 (2019).

Article 535 of the Civil Code<sup>33</sup> and<sup>34</sup> Article 1244 of the Civil Code.<sup>35</sup> The special provisions in the aforementioned articles indicate that reverse proof is possible in the civil field, if there is a theoretical basis for justification. The reverse burden of proof is used in proving for cases which are difficult to prove in the civil field, and of course it can also be applied in the field of consumer protection which is difficult to prove because it is also included in the field of civil law.<sup>36</sup>

The theoretical basis is to use the *res doctrine ipsa loquitur* (doctrine on the side of the victim).<sup>37</sup> Doctrine *res ipsa the loquitur* is used as the basis for the reverse burden of proof, because the consumer is a victim and as a victim of course the business actor is more able (presumably) to prove and as a party responsible for the existence of an unlawful act or not committed by the bank on the guarantee of agreeing to a standard agreement in opening the banking account.

Suspicion to the bank as a form of obligation to prove the alleged unlawful act which can be sourced from the law and the judge's conclusions from important facts that correspond to the existence of the unlawful act.<sup>38</sup> This shows that if the provisions of the material law have determined for themselves which party is obliged to provide the burden of proof, then it fully refers to the article of the law which determines that the obligation of proof must be applied in certain cases.<sup>39</sup> This means that after the enactment of Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection, the burden of proof is reversed as stipulated in the material law on consumer protection, namely Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection.<sup>40</sup>

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<sup>33</sup>Article 533 of the Civil Code reads that good faith must always be considered by every position holder; whoever accuses him of bad faith must prove the accusation., R. Subekti and R. Tjitrosudibio, *Indonesian Civil Code* (Jakarta: PT. Pradnya Paramita, 2009), p. 164.

<sup>34</sup>Article 535 of the Civil Code reads, Each position holder who has started holding it for another person, as long as it is not proven otherwise, must be considered to continue that position on the basis and with rights., R. Subekti and R. Tjitrosudibio, 2009, *Ibid*.

<sup>35</sup>Article 1244 of the Civil Code reads, "If there is a reason for that, the debtor must be punished with compensation for costs, losses and interest if he cannot prove that the matter was not or was not carried out at the right time, due to something unexpected, and cannot be accounted for." to him, all of that even if bad faith is not on his part., *Ibid.* , p. 324.

<sup>36</sup>Ni Made Trisna Dewi, "Perlindungan Hukum Terhadap Nasabah Mobile Banking Dalam Transaksi Perbankan," *Jurnal Komunikasi Hukum (JKH)* 7, no. 1 (2021).

<sup>37</sup>Munir Fuady, 2005, *Op. Cit.*, p. 99.

<sup>38</sup>Rani Apriani, Grasia Kurniawati, and Devi Siti Hamzah Marpaung, "Perlindungan Hukum Nasabah Bank Dalam Hal Terjadinya Kesalahan Sistem Yang Mengakibatkan Perubahan Saldo Nasabah," *Syiar Hukum Jurnal Ilmu Hukum* 18, no. 2 (2020).

<sup>39</sup>Teguh Samudra, *Law of Evidence in Civil Procedures* (Bandung: Alumni, 1992), p. 24.

<sup>40</sup>Assyifa Gema Ayu Mandalika and Rahmawati Kusuma, "Pertanggungjawaban Perdata Bank NTB Syariah Terkait Hilangnya Dokumen Jaminan Kredit Nasabah," *Private Law* 2, no. 1 (2022).

Based on the basic facts of prosecution, the principle of bank responsibility for losses suffered by customers was developed from the Unlawful Acts Doctrine after 1919. This is because since 1919, the Hoge Raad began to interpret unlawful acts in a broad sense in the case of *Lindenbaum Vs. Cohen* by saying that an unlawful act must be interpreted as doing or not doing something that is contrary to the four elements of an unlawful act after 1919.<sup>41</sup> Considerations that can be used for the importance of implementing bank responsibility must be in the interests of consumers in avoiding proving elements of bank error and strengthening the position of consumers (customers) who do not know and supervise banking accounts as banks have adequate ability to protect themselves and the risk of injury from standard agreements in opening accounts banking.

Furthermore, the existence of a reverse proof system in Article 28 of the Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection is a progressive step towards establishing an accountability system in the field of consumer protection. In other words, what determines that the victim, in this case the consumer of an unlawful act and breach of contract, does not need to prove the existence of an unlawful act and breach of contract or the existence of an error.<sup>42</sup>

It is sufficient to provide the facts that occurred and draw conclusions that the business actor has committed an unlawful act or breach of contract. This means that it is enough to show that there was an event that caused harm to consumers and to business actors, the burden of proof is that they did not commit an unlawful act or made a mistake.<sup>43</sup>

Taking into account the possible potential risks of the productivity and effectiveness of bank activities in the era of globalization which are supported by the current developments in technology and information, the responsibility of this bank should also be applied in the field of consumer protection. Then, the focus on bank responsibility is on the condition of standard agreements on banking account opening forms which can cause customer losses in the future, so to initiate bank responsibility for losses due to standard agreements in opening banking accounts through the legal concept of risk-based legal responsibility.<sup>44</sup>

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<sup>41</sup> Setiawan, "Four Criteria for Unlawful Acts and Developments in Jurisprudence," no. *Varia Judicial* No. 16 Year II (1987): p.176.

<sup>42</sup> Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen (Lembaran Negara Nomor 22, Tambahan Lembaran Negara Nomor 3821).

<sup>43</sup> Abiyazer Pari Masan Duhan and Khairus Febryan Fitrhady, "Tanggung Jawab Bappebti Dalam Memberikan Perlindungan Hukum Terhadap Nasabah Perdagangan Berjangka," *Commerce Law* 2, no. 2 (2022).

<sup>44</sup> and Darminto Hartono Paulus. Tarigan, Herdian Ayu Andreana Beru, "Perlindungan Hukum Terhadap Nasabah Atas Penyelenggaraan Layanan Perbankan Digital," *Jurnal Pembangunan Hukum Indonesia* 1, no. 3 (2019).

### **C. Conclusion**

Bank responsibility is intended to protect all consumers who have experienced losses from the existence of a standard agreement in opening a bank account regardless of how consumers agree to the agreement whether forced or voluntary. This means that consumers who previously had no relationship with the bank but then suffered a loss from the standard agreement in opening the bank account also have the right to claim absolute compensation against the bank.

Based on the legal concept of unlawful acts and the risk of business actors, the theoretical idealization of law allows consumers to demand absolute compensation for unlawful acts and risks for business actors from standard agreements in opening a banking account. However, as long as the business actor cannot prove that the loss suffered by the consumer is not the result of an unlawful act by the business actor, but due to the actions of the consumer himself and receiving *force majeure* business actors as exceptions and other exceptions are recognized in the business world and which are based on statutory provisions with strict restrictions in place, as an effort to keep the economy growing in Indonesia.

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