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Abstract

Credit cards offer significant convenience in making payments. However, many customers in Indonesia are currently delinquent on their credit card payments. Bank Indonesia regulations permit the use of debt collection services, but they must be legally accountable if a debt collector commits an unlawful act. This research addresses two main issues: the legal relationship between banks and debt collectors in resolving bad credit card debts and the bank's liability for the debt collector's unlawful actions in resolving bad credit cards. This study employed normative research as its research methodology. This seeks to determine the truth about the bank's obligation to consumers for the illegal acts of debt collectors in settling faulty credit cards, based on the normative side of legal logic. In order to resolve bad credit cards, banks and debt collectors have a legal connection based on a power of attorney agreement. Additionally, the bank is liable for the illegal activities carried out by the debt collector in order to resolve faulty credit cards. This is because the bank and the debt collector have a legal relationship.

Keywords: Law, Monopoly, Unfair Business Competition, Debt Collector.

1. Introduction

The world of banking is now familiar to people from all walks of life. Bank Indonesia regulations permit the use of debt collection services, but all actions must be legally accountable if a debt collector commits unlawful acts. Banks offer various ways to facilitate business development, including providing loans to obtain capital and expand businesses. Obtaining such credit requires meeting administrative requirements and providing collateral. Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking stated in Article 1, number 11: "Credit is a claim based on a loan agreement or contract between a bank and another party, requiring the borrower to repay the debt after a specified period with interest." The credit phenomenon in today's banking world shows significant growth, particularly in the use of credit cards as a modern payment instrument. The convenience, practicality, and flexibility offered by credit cards encourage people to increasingly rely on credit facilities to meet both consumer and productive needs. According to Bank Indonesia regulations, the use of debt collection/collector services is permitted, but everything must be legally accountable if a debt collector commits an unlawful act in carrying out their work.

In the fourth industrial revolution, various developments at every level of life are increasing day by day. One example is Indonesia, a country rich in natural resources, which faces various needs to improve the welfare and prosperity of its citizens. Therefore, to support these needs, people are starting businesses in the business and service sectors. Indonesia is currently a developing nation. It is important to note that currently, to meet their needs, whether for personal needs or to start a business, people often resort to borrowing to obtain capital (Pujiyono, 2021). Credit cards are known to be very practical and safe, but credit card users are

involved in life activities that are controlled by debt. This is because credit card users are consumptive users, such as the existence of various discounts, very attractive offers that cause monthly credit card bills to swell so that credit card holders are unable to pay these bills and cause bad debt. A significant responsibility arises when experiencing bad debt because the impact is felt deeply by the bank, resulting in the bank being threatened with bankruptcy. The symptoms of bad debt that banks give to credit recipients include late payments due to their declining financial condition and becoming less cooperative due to untimely payments and arrears.

According to Article 1 paragraph 4 of Bank Indonesia Regulation Number 14/2/PBI/2012 concerning Amendments to Bank Indonesia Regulation Number 11/11/PBI/2009 concerning the Implementation of APMK Activities, credit cards are used as a card-based payment instrument (APMK) for making payments for economic activities, such as shopping transactions and then making cash withdrawals and payment obligations from cardholders by being fulfilled first by the issuer, and the cardholder is required to make payments on time, either in full or in installments (Salim, 2021). A credit card is a payment method that uses a card to make payments for economic activities, like shopping and cash withdrawals. The issuer must first fulfill the cardholder's payment obligations, and the cardholder must make payments at the scheduled time, either in full at once or in installments.

A debt collector is a third party authorized by the creditor, the bank, to collect bad credit card debt. Article 1792 of the Civil Code states: "A power of attorney is an agreement by one person to grant power to another person to carry out certain matters on his behalf." A debt collector/collector service provider, if they act arbitrarily towards a customer, can cause losses in civil law aspects suffered by the customer, such as material losses and immaterial losses. Material losses are real losses suffered and the benefits that should have been obtained, while immaterial losses are losses such as fear, pain, and the loss of pleasure in living experienced by the customer (Kelly, 2014). In this case, for example, a debt collector/collector service provider takes a customer's goods as collateral for fulfilling his credit card, where the goods, after being taken back by the customer, have experienced a decrease in value due to being dried in the sun, this occurs due to the excessive actions of the debt collector.

Reflecting on this incident in resolving bad credit card debts made by debtors, the bank can use debt collection/debt collector services based on the provisions stated in Bank Indonesia Regulation Number 14/2/PBI/2012 concerning Amendments to Bank Indonesia Regulation Number 11/11/PBI/2009 concerning the Implementation of Payment Instrument Activities Using Cards, Article 17B, paragraph (2) which states that: "Credit Card Issuers are required to guarantee that Credit Card debt collection, whether carried out by the Credit Card Issuer itself or using a debt collection service provider, is carried out in accordance with Bank Indonesia provisions and applicable laws and regulations." In the meantime, the Fourth Amendment to Bank Indonesia Circular Letter (SEBI) Number 11/10/DASP of 2009 Concerning the Implementation of Payment Instrument Activities Using Cards regarding the use of debt collector/collector service providers in Roman VII Letter D Number 4C, it is stated that: "The Issuer and other parties to collect credit card transactions must include a clause regarding the Issuer's responsibility for all legal consequences arising from cooperation with other parties."

Based on a review of previous research and applicable legal regulations, research has identified a gap in the legal framework regarding banks' responsibilities for unlawful debt collectors. Although Bank Indonesia regulations govern the use of debt collectors, they have not clarified the forms, limitations, and mechanisms of bank accountability to customers. Furthermore, conceptually, there has been no comprehensive study of the construction of bank responsibilities, whether direct or indirect, in their legal relationships with debt collectors.

Furthermore, practice in the field demonstrates the existence of arbitrary debt collector actions that harm customers, creating a discrepancy between legal norms and reality. Therefore, this study aims to fill this gap by analyzing the legal relationship and bank responsibilities in greater depth to ensure legal certainty and protection for customers.

In practice, as in recent cases, customers experience bad faith actions by debt collectors in credit card debt collection transactions. However, these regulations do not clearly define the bank's responsibility to customers for the debt collector's involvement in resolving delinquent credit card debts. So from the regulations that have been issued, namely Regulation Number 14/2/PBI/2012 of Bank Indonesia Regarding Bank Indonesia Amendments Regulation 11/11/PBI/2009 Regarding the Use of Cards and Bank Indonesia in the Implementation of Payment Instrument Activities SEBI Circular Letter Number 18/33/DKSP of 2016 Bank Indonesia's Fourth Amendment SEBI Circular Letter No. 11/10/DASP of 2009 Regarding the Execution of Activities Using Payment Instruments There is still a lack of standards, which in the future calls for legal certainty, because using cards does not explicitly govern the kind of bank obligation to consumers for the engagement of collection service providers/debt collectors in resolving problematic credit cards. From the background that has been explained, the author is interested in conducting research entitled " Bank Responsibility to Customers Due to Unauthorized Actions by Debt Collectors in Resolving Bad Credit Cards".

2. Method

This study uses a normative legal research method because the focus of the study is the legal relationship between banks and debt collectors in resolving delinquent credit card cases. Unclear formulation of norms will impact the bank's liability for unlawful actions by debt collectors in resolving delinquent credit card cases. This implies that the bank is liable for the illegal activities of the debt collector. Both a legal conceptual analytical approach (Analytical & Conceptual Approach) and a statutory approach (Statute Approach) are used in this work. In order to resolve delinquent credit card cases, the bank's liability to clients for illegal conduct perpetrated by debt collectors is first examined and analyzed using the statutory approach. Second, in order to find concepts that will lead to legal definitions, legal concepts, and legal principles pertinent to the topics covered and investigated in this study, the legal conceptual analysis approach looks at changing perspectives and doctrines within the legal sciences. Primary and secondary legal materials gathered through literature study techniques are among the legal sources utilized; these are then examined and evaluated alongside pertinent legal information. (Diantha et al., 2023). The legal sources referred to are as follows:

- 1) The Republic of Indonesia's 1945 Constitution
- 2) Law Number 10 of 1998, which amends Law Number 7 of 1992, which deals with banking
- 3) The Civil Code
- 4) Bank Indonesia Regulation Number 14/2/PBI/2012 on Modifications to Bank Indonesia Regulation Number 11/11/PBI/2009 about APMK Activity Implementation
- 5) Financial Services Authority Regulation Number 9/POJK.03/2016, which addresses prudential guidelines for commercial banks that outsource a portion of their operations to third parties
- 6) The Fourth Amendment to Bank Indonesia Regulation Number 11/10/DASP of 2009 on the Execution of APMK Activities is Bank Indonesia Regulation Number 18/33/DKSP of 2016.

The legal material analysis technique in this study uses the legal interpretation method. Legal interpretation is used to interpret the provisions of laws and regulations relating to bank liability to customers due to the unlawful actions of debt collectors. The types of interpretation used include grammatical interpretation, systematic interpretation, and teleological interpretation. Grammatical interpretation is used to understand the meaning of the language in the regulations, systematic interpretation is used by linking one regulatory provision to another, while teleological interpretation is used to understand the purpose of the legal norm. Through this technique, it is hoped that the precise legal meaning can be found and legal certainty can be provided regarding the problem being studied.

3. Results and Discussion

1) Legal Relationship Between Banks and Debt Collectors in Settling Bad Credit Cards

A bank is a commercial organization that gathers and disburses savings from the general population. This is based on Law Number 10 of 1998's Article 1 paragraph (2), which was modified by Law Number 7 of 1992 on Banking. (Dewi et al., 2022). Meanwhile, a debt collector is a third party authorized by the creditor, the bank, to collect bad credit card debt. In the banking world, debt collectors play a significant role, which is needed by banks when their customers experience bad credit cards. Debt collectors can be defined as "the process of pursuing payments of debtsowed by individuals or businesses. An organization that specializes in debt collection is known as a collection agency or debt collector." (In the process, an individual or legal entity must pay the debt they owe, and this is done by a debt collector service provider) (Astuti, 2017). In an agreement, there will be legal consequences that occur between two or more people so that there is a concept of rights and obligations in fulfilling achievements that can be linked to assets (Baadrulzaman, 2020).

As is known, the main rights and obligations are human (natural persons). According to the law in force in Indonesia, every human being is recognized as a personal human being, which means that humans are recognized as people or persons, so that every human being is recognized as a legal subject (*Recht Persoonelijkheid*), namely as a supporter of rights and obligations. Humans (natural persons) are legal subjects from birth to death. However, there is an exception in Article 2 paragraph (1) of the Civil Code, namely: "a child in a woman's womb is considered to have been born and dies at birth, so it is considered that he never existed."

In addition, a Legal Entity (*Recht Persoon*) as a legal subject is a group of people or organizational objects to whom the characteristics of a legal entity are explicitly given. It can also be said that a legal entity is "a body/organ regulated by law that has rights and carries out legal actions like a human being who has his own wealth, participates in legal traffic through his management, can be sued and also sue before a judge" (Subekti, 2023).

So based on the concept of rights and obligations of the legal relationship between the bank and the debt collector, namely absolute rights or absolute rights which are the rights to authorize someone to do an act. So the obligation of the debt collector is to collect debts from the debtor where the debt collector carries out absolute obligations, namely by not committing acts of killing, stealing, and not disturbing other individuals, therefore, any legal relationship established by law always consists of two components: rights and obligations that must be balanced. If a person in this case commits an unlawful act and can be held responsible, then conversely a legal entity can also be held responsible if it commits an unlawful act. However, the legal entity's responsibility is represented by someone who is authorized on behalf of the legal entity, this is adjusted to its articles of association. If an unlawful act occurs by someone

who is incompetent and the perpetrator cannot be held responsible, then it can be held responsible to another person, seeing that the unlawful act has caused losses in society, especially the victim who has been harmed. A power of attorney agreement serves as the foundation for the legal connection between the bank and the debt collection service provider/debt collector. This agreement gives the bank the authority to recover arrears on a bad credit card directly from the debtor or customer. The Civil Code's Articles 1792–1819 regulate the existence of power of attorney agreements. According to Article 1792 of the Civil Code, "a power of attorney is an agreement involving the transfer of power to another person who gets it to carry out an affair on his behalf." Additionally, the duties of the grantee of a power of attorney are governed by Article 1807 of the Civil Code, which includes:

- 1) The principal is obligated to fulfill the obligations made by the principal according to the authority granted to him.
- 2) He is not bound by any action taken or committed beyond that, unless he has expressly or tacitly agreed to it.

The parties to a business transaction enter into an agreement when they use a credit card to make a payment. A principal agreement that offers financial facilities is one of the different agreements. The terms and conditions of Article 1320 of the Civil Code, which deals with the validity of agreements, and Article 1338 of the Civil Code, which deals with the principles of agreements, must be followed by the parties. Each agreement is mutually binding and constitutes law for the parties making it. Credit card issuance and usage involve multiple parties directly, including the cardholder, the bank or other organization that issues the credit card (issuer), and the business owner or trader (merchant). If the agreement satisfies the conditions outlined in Article 1320 of the Civil Code, which are as follows, the legal relationship between the bank and the debt collector might be considered a valid agreement.

- 1) Competence, wherever the bank and debt collector must have the legal capacity to enter into an agreement;
- 2) Agreement, wherein the bank and debt collector agree to bind themselves or there is a mutual agreement of wills connected to the construction of an agreement;
- 3) A particular issue in which the agreement's goal is a service. In this instance, the bank utilizes a debt collection service provider to settle a credit card bill that has gone into default;
- 4) This is a valid cause, meaning that the terms of the contract between the bank and the debt collection service provider do not violate the law, public order, or morality.

According to Subekti's view, "An agreement is a legal arrangement in which two individuals or parties have the authority to make demands of one another, with the other being required to comply. (Simanjutak, 2020). So in the theory of agreement, the relationship that occurs between the bank and a debt collector begins with a standard contract that has been agreed to by each party in the agreement, as well as a power of attorney that has been given by the bank to the debt collector to carry out the work that has been ordered. In a standard contract, an agreement is determined unilaterally by the bank that has the position of contract giver where the contract is stated in the form of a form.

In his book, Munir Fuady on Modern Banking Law states that: " A standard contract is a written agreement created by one of the parties using printed forms (boilerplate). In this scenario, when the contract is signed, the parties typically only fill in specific informational details or make no changes to the clauses, giving the other party little or no chance to negotiate or modify the clauses that have been made by one of the parties and creating bias in the standard contract. The party presented with the standard contract has no opportunity to negotiate and is

in a take-it-or-leave-it position, so that the law doubts whether there is truly an agreement, which is a valid requirement of the contract, because standard contracts are neutral (Fuady, 2021).

The standard agreement/standard contract that occurs between the bank and the debt collector/collector service provider is made in written form and the bank determines it and is stated in the standard clause. So the standard clause can be interpreted as: "every rule or provision and conditions that have been prepared and determined in advance unilaterally by the bank that has been stated in the form of a document or agreement that has been binding and the agreement must be fulfilled by the debt collector/collector service provider". Furthermore, it is regulated in the provisions of Article 1792 of the Civil Code which states that: "a power of attorney agreement is an agreement by which a person can give his power to another person and accept it, to carry out an affair on his behalf". So the bank gives the delegation of authority to the debt collector/collector service provider to carry out the things that have been authorized to collect bad credit card debt.

Bank as a party that has made a standard agreement/standard contract and power of attorney agreement, then the debt collection service provider/debt collector complies with what has been stated in the standard clauses that have been promised previously and the things that have been authorized. However, the standard clauses listed in the agreement whose implementation is vulnerable to legal smuggling whose implementation does not comply with the provisions of the ethical principles of collection carried out by the debt collection service provider/debt collector in carrying out their duties which can lead to unlawful acts with bad faith carried out by the debt collection service provider/debt collector to the customer and in the future the bank's credibility will decrease. Furthermore, the bank in collecting bad credit card arrears from customers can be done in the following ways, first; by the bank's own employees; second, by other parties appointed by the bank.

So the legal relationship that occurs between the bank and the debt collection service provider/debt collector is based on a power of attorney agreement in the sense of power to collect arrears from the debtor or customer himself due to collecting arrears of bad credit cards. This is based on the provisions stated in Article 1792 of the Civil Code, namely "the granting of power of attorney is an agreement that contains the granting of power to another person who receives it to carry out an affair on his behalf".

2. Bank Responsibility Due to Unlawful Acts of Debt Collectors in Settling Bad Credit Cards

An unlawful act in the Common Law/Anglo Saxon system is called a tort, which is to protect a person's individual freedom in the sense of limiting the harm that occurs to others. The term tort itself is an error that can result in harm experienced by others due to violating rights and obligations determined by law and arises not from trust/breach of contract so that compensation can be requested for the losses caused by the act (Fuady, 2021). In addition, with the emergence of the theory of relativity or what is called the *schutznormtheori* theory which states that actions that can conflict with legal norms and therefore are against the law will cause the perpetrator to be held responsible for the losses caused by his actions if the norm is violated to protect suffering. So far the theory of relativity or what is called the *schutznormtheori* theory regarding unwritten laws such as the existence of norms of propriety, norms of morality and this theory is not only about legal norms contained in statutory regulations.

Rosa Agustina's view regarding unlawful acts is "acts that violate the (subjective) rights of others or acts (or not acts) so that these acts can conflict with obligations according to statutory regulations or unwritten laws that are carried out in interactions with members of

society, considering that there is a justification for this law" (Agustina, 2023). According to Munir Fuady in his book *Contract Law (from a business law perspective)*, other definitions of unlawful acts include:

- 1) Failure to fulfill obligations other than contractual obligations, or what is known as a quasi-contractual obligation, which can give rise to a right to claim compensation.
- 2) Actions or omissions that can result in harm to another person without a prior legal relationship, such actions or omissions, which can be seen from ordinary actions or accidents.
- 3) Failure to fulfill obligations required by law, where such obligations apply to everyone, unless fulfillment of these obligations can result in compensation.
- 4) Civil wrongs, or what is known as a civil wrong, where compensation can be claimed for non-breach of contract or trust and equity obligations.
- 5) Losses not arising from breach of contract are actions that may cause harm to the rights of others that have been created by law and are not issued from a contractual relationship.
- 6) An action or doing something that may be contrary to law and violate the rights of others that have been created by law itself and compensation can be claimed by the party who has been harmed by their actions.

According to Article 1367 of the Civil Code, an individual is accountable for the behavior of those in their care and items under their control: "a person is not only responsible for losses caused by his/her own actions but also for losses caused by actions that are his or her responsibility or caused by items that are under his/her supervision" (Boris, 2017). Furthermore, unlawful acts according to Munir Fuady's view in his book regarding *Unlawful Acts (Contemporary Approach)* regarding the difference between unlawful acts in the context of Civil Law is by emphasizing the difference in the nature of Civil Law which is private or individual interest while from Criminal Law which is public or general interest. According to Rosa Agustina, in her book *Unlawful Acts* published by the Postgraduate Program of the Indonesian Faculty of Law, what is called an unlawful act is an act or omission that is contrary to or violates, so that the criteria for an unlawful act are:

- a) Contrary to the Legal Obligations of the Actor

Legal obligations (*rechtsplicht*) are obligations based on law and encompass all norms, both written and unwritten (Setiawan, 2020). In this case, the criteria for an unlawful act can be seen from the perpetrator himself. An unlawful act occurs when the act violates the perpetrator's legal obligations (Prodjodikoro, 2021). Therefore, it can be interpreted that violating the perpetrator's legal obligations is "an act that violates written law and the rights of others according to statutory regulations."

- b) Conflicting with the Subjective Rights of Others

This criterion views the problem from the victim's perspective, namely, "An action or (inaction) constitutes an unlawful act if it violates a person's subjective rights." 131 Meijers' definition of subjective rights is: "A particular authority provided to a person by law; this authority is granted to him to defend his interests." The special authority conferred by law is violated when subjective rights are violated. Thus, personal rights (*persoonlijkheidsrechten*), which include the right to freedom, honor, and a good reputation, and property rights (*vermogensrecht*), which include property rights and absolute rights (rights to property), are the two categories of subjective rights recognized by jurisprudence. This is because personal property rights specifically, the legally

protected right to sue have been violated. Any action that directly infringes upon another person's subjective rights is considered illegal. This happens when someone violates written or unwritten laws in a way that they should not or for which there is no legal basis.

c) Contrary to Morality

The norms currently in force in society regarding moral norms relating to humans as individuals are moral norms. The supporter of moral norms is the individual's own conscience, which encourages good morals and prohibits humans from committing evil acts. Moral norms are considered to be acceptable as long as they are socially acceptable and acceptable. written legal regulations. According to Utrecht, moral norms are norms that exist in society, such as customs. Furthermore, the Hoge Raad's ruling regarding the Lindebum and Cohen cases cited unlawful acts. In this case, Cohen committed an unlawful act by violating moral norms and persuading employees to leaking Lindebum's company secrets. Seeing this, the judge followed his conscience in deciding whether the unlawful act violated moral norms.

d) Contrary to propriety, accuracy, and caution

Under unwritten law, if an act violates propriety, accuracy, and caution, it is respected in social interactions, even if it is not included in written law. The norm of non-compliance can be defined as anything that violates socially accepted propriety regarding others, so that the act can harm the interests of others or pose a danger to them. Actions that violate the perpetrator's legal obligations, the subjective rights of others, and morality are considered to be contrary to propriety and must be respected in social interactions.

Unlawful acts have occurred recently so that they can occur anywhere and at any time. Indonesia has also experienced this, one of which is when a debt collection service provider/debt collector carries out his duties not free from unlawful acts. Based on the concept of unlawful acts, the elements of the act are said to be unlawful if they have fulfilled the provisions contained in Article 1365 of the Civil Code which states: "every act that violates "A law that causes loss to a person requires the person whose fault it is to regulate the loss and compensate for the loss." The elements of this unlawful act are:

1) The existence of an act

The acts referred to in Article 1365 of the Civil Code are positive or active acts and negative or passive acts. Therefore, a good act can be defined as both active and passive acts, namely doing something or not doing something. However, these acts do not always have to be positive or intentional, and negligence or omission can result in harm. (Harahap, 2023). Like someone who deliberately carries out an act that can cause loss by stealing someone else's trade secrets.

2) The act is unlawful

The act committed is unlawful. In 1919, the term "unlawful act" was broadly defined as an act that violates statutory regulations and unwritten laws, such as acts that violate the perpetrator's legal obligations, violate the subjective rights of others, and acts that violate social decency.

3) Losses for the victim

Losses in unlawful acts include financial losses, including losses suffered by the victim, and immaterial losses, including losses not only in terms of loss of assets but also in terms of fear and loss of enjoyment of life. If an unlawful act is committed by several individuals, the perpetrators will be jointly responsible for providing compensation.

4) A causal relationship between the act and the loss

A causal relationship is a cause-and-effect relationship that occurs in an unlawful act that can result in a loss, and the perpetrator can be held accountable for the act. A causal relationship, also known as a cause-and-effect relationship, can be used to determine whether or not there is a connection between a legal act and a loss.

5) The existence of an error

The most important thing in determining an unlawful act is the existence of an element of error (*schuld*) so that the error has two meanings, namely: first, in the sense The first is in a narrow sense and the second is in a broad sense. Article 1365 of the Civil Code states that the perpetrator is liable for the losses incurred if the perpetrator can be blamed for the actions and losses. The element of wrongdoing in an unlawful act is negligence or carelessness, emphasizing both the outward attitude and the actions. Wrongdoing does not contain an element of justification/excuse. Wrongdoing is seen as unlawful, on the other hand, intentional, which occurs when someone has knowledge but commits an act and neglects their obligations, or has knowledge of the consequences but still neglects their obligations.

Any act committed against the law and contrary to statutory regulations will give rise to responsibility. As a result, the law also governs liability, which is the responsibility of an individual for the illegal actions of another. Liability for illegal activities against losses suffered by another party is governed by Article 1367 of the Civil Code. Accordingly, if a person under his supervision has performed an illegal conduct, he may be held accountable under this article. This obligation is predicated on the basic civil law concept of fault (sometimes known as fault liability or liability based on fault). The Civil Code's Articles 1365, 1366, and 1367 support this idea. If using Article 1365 of the Civil Code (Unlawful Acts) as a basis, customers who have been harmed by the bank and have used a debt collection service provider must adhere to the principle of responsibility based on the element of fault (fault liability or liability based on fault), and the credit card holder can prove the element of fault from the defendant.

Based on Article 1367 paragraph (3) of the Civil Code, it is interpreted that: "the employer's responsibility does not only concern responsibility within the employment contract, but also includes someone who, outside of the employment contract, has been ordered by another person to do a certain job, provided that the person he ordered does the job independently, either under his own leadership or has done the job under his own instructions" (Djojodirdjo, 2024). So in the concept of responsibility stated in the Civil Code Article 1365 of the Civil Code is a direct responsibility where the collection is carried out by bank employees, the bank is responsible for the unlawful acts committed by the employee because of the relationship that arises between the act and the work environment of the organ itself. That in Article 1365 of the Civil Code where the legal entity is directly responsible if the legal entity itself commits an unlawful act. While Article 1367 of the Civil Code is the bank's responsibility due to the unlawful acts of debt collectors where the responsibility for unlawful acts is carried out by a subordinate, the legal entity must also be responsible.

If vicarious liability occurs, the actions of the other person are still within the scope of employment. When a debt collector commits an unlawful act in carrying out their work to collect credit card debt arrears from customers, the bank can be held liable under vicarious liability because the debt collector is carrying out their work on the bank's orders. There are no exceptions from the law regarding the relationship between employers and their subordinates. The relationship that occurs between an employer and subordinate is a relationship of "trust" between an employer and his subordinate, where the employer is considered responsible for his subordinate as long as the mistakes made by his subordinate can be charged to him. In the sense that mistakes can be attributed to his subordinate, an employer will be responsible, unless the

employer is released from his responsibility because his subordinate is not subject to responsibility, such as being in a state of overmacht (force majeure). The existence of an error made by the debt collector, a connection between the error and the work of the subordinate for whom he was employed, the presence of superior authority in the error, the likelihood of the unlawful act occurring increasing with the existence of duties from the bank, and the bank's carelessness in appointing the debt collector/collector are all prerequisites for the bank to be held accountable for unlawful acts committed by debt collectors. (Albabana, 2020).

Banks are responsible for unlawful acts committed by debt collectors, according to Roscoe Pound's theory, which states that law represents certain interests (certain interests) that society believes must be protected by law. These interests are the personal interests of the customer themselves because there is an interest that the customer must fight for to achieve justice, benefit, and legal certainty. In this case, there is responsibility for unlawful acts by debt collectors in resolving bad credit card debts due to the theory of three basic legal ideas.

According to Gustav Radbruch's Theory of Justice, Utility, and Legal Certainty, there are three fundamental values in law: justice (Gerechtigkeit), utility (Zweckmassigkeit), and legal certainty (Rechtssicherheit) (Rahardjo, 2021). A person will and can achieve what is expected in specific circumstances since the law serves as a kind of protection for the just (those who seek justice) against arbitrary conduct. (Mertokusumo, 2020). In addition, the law can implement social control which aims to control internal aspects or human nature. The lack of clarity regarding the form of liability for issuers who violate these regulations does not mean that banks are simply absolving themselves of responsibility. Justice should mean providing a sense of fairness to all parties. Furthermore, if debt collectors commit unlawful acts against customers, it will undoubtedly impact the quality of the bank itself. For example, the Bank Indonesia Regulation (PBI) and the Bank Indonesia Circular Letter (SEBI) do not regulate the form of liability for unlawful acts by banks. Legal action taken by debt collectors against customers will ultimately diminish the bank's credibility. Therefore, banks can provide justice to customers affected by the unlawful actions of debt collectors due to the legal relationship between the bank and the debt collector in resolving bad credit card debts.

In terms of utility, having banks liable for unlawful acts by debt collectors in settling bad credit cards will benefit all parties, especially customers. Furthermore, judges' decisions will not appear subjective to the public. This is to ensure that laws and regulations clearly define the liability of issuers who violate these rules, preventing banks from simply abdicating their responsibilities. This ensures that banks will not be held accountable for unlawful acts by debt collectors, and the public will be free from the possibility of accusing Indonesian justice systems of arbitrary or overly subjective behavior. This ensures that customers' private interests are protected. This injustice stems, in part, from legal uncertainty surrounding Indonesian laws and regulations. Legal certainty is often considered an effort to achieve justice. Regarding the bank's responsibility to customers due to unlawful actions by debt collectors that result in losses, the bank can provide legal certainty to the customer to protect their personal interests. Without certainty, the meaning of the law itself is lost, making it unable to serve as a basis for everyone's behavior, especially debt collectors, in collecting debts from customers.

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According to Van Apeldoorn, there are two components to legal certainty: legal security and the capacity to ascertain the law in specific terms. This indicates that before filing a case and guaranteeing protection for people seeking justice, those seeking justice want to understand the law in a specific instance. This is because individuals will not know what to do in the absence of legal certainty, which will eventually produce uncertainty and, as a result of the legal system's indecision, violence (chaos). Legal certainty, then, is the application of the law in a clear, permanent, and consistent manner that is unaffected by subjective conditions. Therefore, if this legal theory is relevant to the issue under study, it can offer customers legal justice, legal benefits, and legal certainty in situations where legal events arise because of the legal relationship between the bank and debt collector, holding the bank accountable for the unlawful actions of debt collectors in settling bad credit card debts.

A debt collector/collector service provider in committing an unlawful act against a customer will be responsible for the actions he has done, but it is necessary to pay attention to who is responsible for the actions carried out by the debt collector/collector service provider, this can be seen from the legal relationship of the bank with the debt collector/collector service. The form of bank responsibility can be seen from the way it collects from customers, namely; first, the collection is carried out by the bank's own employees; second, the collection is carried out by another party appointed by the bank (Gunawan, 2017).

a) Collection by Bank Employees

As is well known, not all legal entities are responsible for the actions of an organ. A relationship exists between the actions and the work environment of the organ itself, thus declaring the organ to have acted within the formal scope of its authority. If an organ of a legal entity fulfills its assigned duties and the action results in an unlawful act, then the act is considered an unlawful act by the legal entity. If an employee collects a credit card debt from a customer but commits an unlawful act in the course of their duties, this act is considered an unlawful act by the legal entity because it is the bank's organ that is performing its function at the time. It is important to first consider whether the employee conducted the collection in accordance with the operational standards established by the bank. If the employee complies with operational standards but commits an unlawful act during the collection, they are not responsible. Therefore, the bank, as the legal entity that has established operational standards, is responsible.

The existence of an unlawful act that has been committed because the bank employee carried out the orders of his superior. When someone commits an unlawful act, the order given by the superior is only a justification and does not rule out the possibility that the order given by the government/authority is unlawful. In practice, the authority that is sued is not the employee who committed the act so that the justification is not so important. A bank employee can defend himself when being sued for an unlawful act because he followed the orders of his superior who has set operational standards in collecting credit card arrears. It can be said that the legal entity committed an unlawful act and should be responsible for its actions based on Article 1365 of the Civil Code which states that: "every unlawful act that causes loss to a person, requires the person who is at fault to regulate the loss and compensate for the loss."

Under Article 1365 of the Civil Code, a party that suffers a loss as a result of a bank employee's illegal behavior may bring a lawsuit and claim damages. Restoring both the victim's initial state and the state that could have been attained in the absence of the illegal act is the aim. Various kinds of claims under the Civil Code's Article 1365 include: (Hazizah et al., 2025)

- 1) Compensation in the form of monetary losses;
- 2) Compensation in the form of a return to the original state;
- 3) statement of having committed an unlawful act.

Therefore, when filing a lawsuit, a claim for compensation cannot be submitted simultaneously with two types of compensation, such as monetary compensation and a return to the original state. Customers may receive compensation for both material and immaterial damages (Simamora, 2024). Immaterial losses include things like anxiety, pain, and a diminished sense of enjoyment in life, whereas material losses are actual losses incurred and benefits that should have been received.

b) Collection is carried out by another party appointed by the bank.

Vicarious liability is the method used in the Civil Code. Vicarious liability in this instance is a type of strict liability, which is a legal obligation placed on the offender of an illegal conduct whether or not the offender was at fault. In this instance, even if the act was not deliberate and did not entail carelessness, negligence, or impropriety, the offender may still be held legally liable. The superior risk-bearing hypothesis, or *Respondeat Superiora*, is one type of vicarious liability. A number of parties are also listed in Article 1367 of the Civil Code as having to take responsibility for the illegal conduct of other parties, including the bank's obligation to deal with debt collectors. Article 1365 of the Civil Code makes reference to these illegal conduct indirectly as follows:

- 1) A person is not only responsible for losses caused by his own actions, but also for losses caused by due to the actions of people who are his dependents or caused by goods under his supervision
- 2) Employers and others who designate others to handle their affairs are liable for any losses that their employees or subordinates sustain while carrying out the tasks for which they are employed.

Based on Article 1367 paragraph (3) of the Civil Code, it is interpreted that: "the employer's responsibility is not only regarding responsibility within the work contract, but also includes someone who outside the work contract has been ordered by another person to do a certain job, provided that the person he ordered does the job independently, either under his own leadership or has done the job on his instructions. " In Article 1601 a of the Civil Code, the responsibility of an employer for the unlawful acts of his employees is: "An employment agreement is an agreement that the first party, the worker, binds himself to hand over his labor to another party, namely the employer, for wages for a certain period of time."

Furthermore, from the definition that has been explained above, a debt collector service provider, even though the worker is through a power of attorney agreement, the bank is still responsible as the party that has given the order to collect the credit card arrears from the customer (Budiharto et al., 2012). Where the debt collector service provider collects the credit card arrears based on the power of attorney agreement and every action that is carried out by the bank has been aware and the bank also regulates it because the bank is the party that gives the work. So the debt collector service provider is the party that receives the work, carries out what is ordered by the bank and the bank as the party that has given the work and paid for it, so that the party sued for the unlawful actions of the debt collector service provider is the bank by stating that the debt collector service provider carries out the orders of the superior, namely the bank itself. According to the provisions outlined in Article 1365 of the Civil Code, the bank should be held directly accountable for its actions if it commits an unlawful act while performing its duties to collect credit card arrears from customers. In the meantime, the bank is liable under the terms of Article 1367 paragraph (3) of the Civil Code for unlawful debt collection actions carried out by other parties by debt collection service providers/debt collectors in the course of their work of collecting credit card debt arrears from customers.

4. Conclusion

The legal relationship between the bank and the debt collector in resolving a bad credit card debt is that the bank has a legal relationship with the debt collector based on a power of attorney agreement. This agreement grants power of attorney to another person to act on its behalf in carrying out certain matters. In this case, the bank grants the debt collector power of attorney to collect the debt on its behalf.

The bank's liability for the debt collector's unlawful actions in resolving a bad credit card debt is that the bank is responsible for the debt collector's unlawful actions. This is because the bank and the debt collector have a legal relationship. As a result, the bank bears direct legal responsibility for the debt collector's acts. This is because an agreement between the bank and the client created a legal relationship.

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