

Reconstructing Civil Liability for Banking Data Breaches: A Comparative Study of Indonesia, France, and Germany

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Abstract

Despite the constitutional mandate of the Indonesian state of law and the strict requirement for bank secrecy under Law No. 10 of 1998, a significant legal paradox has emerged as highlighted by the Surabaya District Court Decision Number 615/Pdt.G/2023/PN Sby, where banking personnel leaked sensitive customer information – including names, addresses, and customer information file (CIF) numbers – into a public messaging group. This institutional failure reveals a critical disregard for the principle of prudence and exposes a substantial legal vacuum concerning the formulation of comprehensive civil liability for banking institutions to restore the material and immaterial losses suffered by victims of personal data breaches. This study uses a normative legal research method that focuses on the study of legal documents to find the truth of the coherence between legal norms and the legal reality related to personal data protection. The results of the study indicate the need for new legal formulations through changes to the Banking Law that include a special civil law regime to bridge the gap between substantive law and conventional formal law. In addition, it was found that there is an urgent need to strengthen the judicial and evidentiary processes through amendments to the Banking Law for banking institutions regarding data leaks committed by internal employees in order to provide fair compensation for customers and the continuity of banking law in Indonesia.

INTRODUCTION

The Indonesian legal system fundamentally aligns with the Continental European legal tradition, emphasizing written codification as the primary pillar of state administration.¹ This orientation affirms Indonesia's identity as a constitutional state (*rechtstaat*), where power must be subordinate to objectively applicable legal norms.² The constitutional affirmation of this principle is explicitly stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UDN NRI 1945), which declares, "The State of Indonesia is a state of law."³ Through this provision, every action of the authorities and citizens must possess a clear basis of legality to prevent arbitrary conduct. The organized legal structure within this civil law system aims to create a stable social order through regulatory certainty.⁴ Consequently, the entire dynamic of national and state life must always remain within formally established legal corridors.

The Indonesian state of law also adopts the concept of a welfare state, placing the protection of citizens as a fundamental government obligation.⁵ Within this framework, the state functions not only as a security guard but also as a service provider and protector of the people's basic rights.⁶ However, the emergence of various legal disputes in society indicates that negligence by state institutions in fulfilling these obligations still frequently occurs. This negligence reflects the state's failure to perform the protective role that should be inherent in every public agency. Such conditions directly imply the non-achievement of legal objectives as intended by Gustav Radbruch in his theory.⁷ The values of justice and utility become difficult for victims to perceive when their rights are ignored due to state bureaucratic dysfunction. Thus, a profound evaluation of institutional responsibility is required to ensure the state is truly present to protect its citizens.

¹ Abdur Rahim et al., "Relevansi Asas-Asas Good Governance Dalam Sistem Penyelenggaraan Hukum Administrasi Negara," *JIP-Jurnal Ilmiah Ilmu Pendidikan* 6, no. 8 (2023): 5812–18.

² D R Tri Astuti Handayani and others, "Mewujudkan Keadilan Gender Melalui Perlindungan Hukum Terhadap Perempuan," *RECHTSTAAT NIEUW* 1, no. 01 (2016).

³ Kelik Iswandi and Nanik Prasetyoningsih, "Kedudukan State Auxiliary Organ Dalam Sistem Ketatanegaraan Di Indonesia," *Jurnal Penegakan Hukum Dan Keadilan* 1, no. 2 (2020), <https://doi.org/10.18196/jphk.1208>.

⁴ Rokilah Rokilah, "Dinamika Negara Hukum Indonesia: Antara Rechtsstaat Dan Rule Of Law," *Nurani Hukum* 2, no. 1 (2020): 12–22.

⁵ Intan Sekar Arum, I Gusti Ayu Ketut Rachmi Handayani, and Fatma Ulfatun Najicha, "Pertanggungjawaban Indonesia Terhadap Pencemaran Udara Akibat Kebakaran Hutan Dalam Hukum Internasional," *Justitia Jurnal Hukum* 5, no. 1 (2021).

⁶ Rizki Ramadani, "Lembaga Negara Independen Di Indonesia Dalam Perspektif Konsep Independent Regulatory Agencies," *Jurnal Hukum Ius Quia Iustum* 27, no. 1 (2020): 169–92.

⁷ Frank Haldemann, "Gustav Radbruch vs. Hans Kelsen: A Debate on Nazi Law," *Ratio Juris* 18, no. 2 (2005): 162–78.

In the era of massive digital transformation, the issue of personal data protection has shifted into a crucial topic determining the credibility of law enforcement in Indonesia.⁸ Personal data breaches are no longer merely technical issues but have become serious threats to the privacy and financial security of every individual. Recent trends show that the labor recruitment sector has become one of the most vulnerable points for cyberattacks and data misuse.⁹ This is evidenced by a highly relevant recent case involving an alleged data breach of customers by a banking institution, as contained in the Surabaya District Court Decision Number 615/Pdt.G/2023/PN Sby. This incident tarnishes the image of banking institutions, which have a legal obligation under the Banking Law to protect data. The impact of this breach is massive as it concerns personal identities that are permanent and difficult to restore.

The dissemination of this customer's personal data occurred through the distribution of the Plaintiff's personal information by Defendant II in a WhatsApp group. The spread involved detailed information from the Plaintiff's bank account, such as the plaintiff's name, address, customer information file number, and phone number.¹⁰ The system's inability to mitigate this breach risk demonstrates a fundamental weakness in data management within the banking institution, specifically regarding the personnel working at the relevant bank. This issue presents a significant paradox, as victims seeking a livelihood end up becoming targets of data exploitation by personnel within the banking institution. Such a situation demands tangible accountability from electronic system operators for their failure to secure data, extending to the banking institution itself.¹¹ Therefore, this case in the banking institution must serve as momentum to dissect the data protection system within the banking system itself.

The occurrence of data breach cases from the relevant banking institutions triggers major questions from the public regarding the existence and protection of personal data within such institutions. Banking institutions, as identified in Decision Number 615/Pdt.G/2023/PN Sby, regulatorily possess a central role as protectors of customer personal data, as stated in Article 40 of Law No. 10 of 1998 concerning Banking, which

⁸ Stephany Yunita Hotnida Sitorus, "Perlindungan Hukum Data Pribadi Pengguna Layanan Pinjam Meminjam Uang Berbasis Teknologi Informasi Ditinjau Dari Undang-Undang No. 27 Tahun 2022 Tentang Perlindungan Data Pribadi" (Universitas Kristen Indonesia, 2023).

⁹ Dr Dhoni Martien Dhoni and others, *Perlindungan Hukum Data Pribadi-Dr Doni Martien* (Makassar: Mitra Ilmu Makasar, 2023).

¹⁰ Dikha Anugrah, "Strategi Pembaharuan Hukum Transaksi Jual Beli Online Dengan Metode Pembayaran Cash on Delivery," *Logika: Jurnal Penelitian Universitas Kuningan* 13, no. 01 (2022): 85–93.

¹¹ Aryadi Almau Dudy and Suheflihusaini Ashady, "Sistem Pertanggungjawaban Pidana Aparat Kepolisian Dalam Penggunaan Senjata Api Yang Mengakibatkan Peluru Nyasar Dalam Menjalankan Tugas," *Jurnal Risalah Kenotariatan* 5, no. 1 (2024): 147–56.

stipulates that "Banks are obliged to keep information concerning Depositor Customers and their Deposits secret, except in cases as referred to in Article 41, Article 41A, Article 42, Article 44, and Article 44A." This regulatory concept indirectly imposes an obligation on banks as financial institutions to protect their customers' data.¹² As institutions with supervisory authority over their customers' personal data, banks should be at the forefront of demonstrating proficient personal data protection standards and preventing all potential data breaches, both existing and future.¹³ The inability to safeguard customer data reflects a disregard for the principle of prudence in digital information management and in the management of existing banking principles.¹⁴ Thus, the existence of banks is vital in protecting their own customers' personal data.

The human right of citizens to personal data protection is a fundamental element inseparable from human dignity in the modern era.¹⁵ One of the primary principles guaranteeing this is equality before the law for every citizen without exception.¹⁶ The principle of *equality before the law* is strictly guaranteed in Article 27 paragraph (1) of the UUD NRI 1945, which states, "All citizens are equal before the law and government and are obliged to uphold the law and government without exception".¹⁷ Through this provision, citizens have an equal right to demand justice if their personal rights are violated by other parties, including the state.¹⁸ Personal data protection is part of the right to security and protection against threats of fear, which is also guaranteed by the constitution. Therefore, any form of negligence causing loss to citizens must carry

¹² Yanti Kirana, "Regulasi Yang Mengatur Secara Khusus Terkait Perlindungan Data Pribadi Di Indonesia Tentang Hoaks Dan Kerawanan Media Sosial (Undang-Undang No. 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik (ITE)," *Jurnal Ilmiah Hukum Dan Keadilan* 10, no. 1 (2023): 101-14.

¹³ Mega Lugina, Indartik Indartik, and Mirna Aulia Pribadi, "Economic Valuation of Mangrove Ecosystems and Their Contribution to Household Income: Case Studies at Pemogan, Tuban, and Kutawaru Villages," *Jurnal Penelitian Sosial Dan Ekonomi Kehutanan* 16, no. 3 (2019): 197-210.

¹⁴ Maulina Ulfa, "Deretan Kebocoran Data E-Commerce Dan Sektor Perbankan, Seberapa Bahaya?," IDX Channel, 2022, <https://www.idxchannel.com/economics/deretan-kebocoran-data-e-commerce-dan-sektor-perbankan-seberapa-bahaya>.

¹⁵ Nur Azizah Qurrotuaini, "Hak Privasi Sebagai Hak Konstitusional Di Era Digital: Kajian Yuridis Dalam Perspektif Hukum Siber," *Staatsrecht: Jurnal Hukum Kenegaraan Dan Politik Islam* 4, no. 2 (2024): 235-54.

¹⁶ Julita Melissa Walukow, "Perwujudan Prinsip Equality Before The Law Bagi Narapidana Di Dalam Lembaga Pemasyarakatan Di Indonesia," *Lex et Societatis* 1, no. 1 (2013).

¹⁷ Zulkarnain Zulkarnain et al., "Penerapan Asas Equality Before the Law Dalam Penegakan Hukum Tindak Pidana Narkotika Terhadap Pengguna Narkotika Di Kalangan Publik Figur," *Locus Journal of Academic Literature Review*, 2023, 390-407.

¹⁸ Nadya Thamariska, Suzanalisa Suzanalisa, and Sarbaini Sarbaini, "Penerapan Asas Persamaan Dihadapan Hukum (Equality Before The Law) Terhadap Pelaku Tindak Pidana Umum Suku Anak Dalam (SAD) Di Wilayah Hukum Polres Sarolangun," *Legalitas: Jurnal Hukum* 15, no. 1 (2023): 110-23.

balanced legal consequences.¹⁹ The enforcement of this right becomes a primary benchmark for the quality of democracy and the continuity of the state of law in Indonesia.

Personal data breaches occurring in banks serve as a strong potential basis for victims to file civil lawsuits.²⁰ This lawsuit is a legal mechanism to demand institutional accountability for material and immaterial losses suffered by the victims.²¹ From a civil law perspective, the failure to protect data can be categorized as a tort or an unlawful act.²² However, legal actions against banks often face complex procedural and technical obstacles within the judicial system. Further study is required regarding how to construct a bank's civil liability so that it does not merely end with administrative sanctions.²³ The right of victims to obtain compensation or data recovery must be a priority in the development of jurisprudence in Indonesia.²⁴ Consequently, the court must be able to provide decisions reflecting a sense of justice for citizens aggrieved by banks as banking actors. This is important to ensure that the position of citizens is truly equal to that of banks during legal disputes.

The primary remaining issue is the fact that administrative actions do not automatically restore the losses regarding personal data already exposed by unscrupulous individuals. Once personal data is leaked into the public sphere, its negative impact can haunt victims for years without a definite time limit. Direct institutional responsibility toward victims in the form of rights restoration or compensation has yet to show a clear pattern. Without a comprehensive accountability scheme for banks and their personnel, the protective function of the state of law will remain a hollow slogan for victims. This research will ultimately focus on searching for the most appropriate and equitable model of bank liability for data breach victims within

¹⁹ Duta Agung Rohmansyah, Kevin Mandela Saputra, and Badrus Sholih, "Urgensi Perlindungan Hak Asasi Anak Atas Data Pribadi Di Era Digitilisasi Berdasarkan Prinsip Negara Hukum," *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 5, no. 2 (2023): 1099-1110.

²⁰ Indah Sari, "Perbuatan Melawan Hukum (PMH) Dalam Hukum Pidana Dan Hukum Perdata," *Jurnal Ilmiah Hukum Dirgantara* 11, no. 1 (2021).

²¹ Rai Mantili, "Tanggung Jawab Renteng Ganti Kerugian Immateriil Atas Perbuatan Melawan Dihubungkan Dengan Asas Kepastian Hukum," *Jurnal Bina Mulia Hukum* 4, no. 1 (2019): 88-111.

²² Shandi Patria Airlangga, "Hakikat Penguasa Dalam Negara Hukum Demokratis," *Cepalo* 3, no. 1 (2019): 1-10.

²³ Wicipto Setiadi and Ali Imran Nasution, "Sanksi Administratif Terhadap Kepala Daerah Yang Tidak Melaksanakan Program Strategis Nasional," *Jurnal Penelitian Hukum De Jure* 20, no. 4 (2020): 473-86, <http://dx.doi.org/10.30641/dejure.2020.V20.473-486>.

²⁴ W P Tamba and F Suriyanto, "Tindakan Salah Tangkap Kepolisian: Tanggung Jawab Negara Dalam Memberikan Kompensasi Police Wrongful Arrest: State Responsibility In Providing Compensation," *Jurnal Hukum (Journal of Law)*, 2024.

the civil law scope, opening opportunities for victims to sue for damages against the bank or personnel within the bank as perpetrators of personal data dissemination. This is crucial for closing legal loopholes in the enforcement of personal data protection by government institutions in Indonesia.

Based on a search of the literature review conducted in this study, at least 3 (three) studies concerning Personal Data Breaches were found. The first study by Muhamad Naufal Aulia Azmi et al., titled “Analisa Kasus Kebocoran Data pada Bank Indonesia dalam Sistem Perbankan”. aims to discuss factors driving cybercrime, government efforts in handling data breaches, and the role of the Personal Data Protection (PDP) Bill in providing legal guarantees. This study found and emphasized the importance of collaboration between the government, community, and private sector to prevent cybercrime and build a secure digital environment. This approach is expected to provide strategic solutions for enhancing personal data protection in the digital age.²⁵

The second study by Zandra Azelia Savitri et al., titled “Urgensi Sertifikan Keandalan Privasi dalam Menghadapi Kebocoran Data Pribadi”. aims to examine the urgency of privacy reliability certificates in addressing increasing data breaches alongside ICT developments. According to this research, data breach cases in Indonesia have significantly increased, with nearly 160 million items of personal data exposed since 2004. This impacts individuals and businesses, including identity theft risks and declining public trust. Although Law No. 27 of 2022 on Personal Data Protection has been enacted, implementation remains suboptimal. The study found that such certificates are not yet mandatory for non-strategic operators in Indonesia, unlike in developed countries. Accelerated adoption of privacy reliability certificates as a national standard (SNI) is required to ensure stronger protection, transparency, and legal certainty for operators and users.²⁶

The third study by Andrew Ardiyanto Dachlan et al., titled “Pertanggungjawaban Hukum Pemerintah dalam Kebocoran Data Pribadi pada Penyelenggaraan Pusat Data Nasional”. addresses the recent hacking incident of the National Data Center (PDN). This study aims to analyze the government's legal accountability regarding data breaches in PDN management and identify solutions. It found the government has a legal obligation to notify of data breaches in writing within three days. Furthermore, individuals have the right to file lawsuits and receive compensation for data processing violations. As a

²⁵ Muhamad Naufal Aulia Azmi et al., “Analisa Kasus Kebocoran Data Pada Bank Indonesia Dalam Sistem Perbankan: Indonesia,” *Jurnal Multidisiplin Ilmu Akademik* 1, no. 6 (2024): 448–58.

²⁶ Zandra Azelia Savitri, Muhamad Amirulloh, and Mei Susanto, “Urgensi Sertifikat Keandalan Privasi Dalam Menghadapi Kebocoran Data Pribadi,” *Jurnal USM Law Review* 8, no. 1 (2025): 235–53.

solution, the study recommends accelerating the Cyber Security Bill and increasing human resource capacity in cyber security.²⁷

A striking difference between the three studies above and this research is that the case presented significantly differs from the aforementioned studies. This research will focus on a comprehensive analysis of institutional liability from the banking sector toward data breach victims caused by said banks. Additionally, this study will utilize a comparative method with banks that already possess settlement schemes between citizens and banking institutions, particularly within the civil law framework. Furthermore, the novelty to be found in this research is a clear scheme regarding citizen losses caused by banks that can be clearly proven through formulation pathways, specifically addressing original citizen losses that can be analyzed within the scope of civil law. Thus, this study will further examine these matters in a comprehensive and holistic manner.

Based on the background elaborated above, the problem formulation of this research is as follows: 1) how is the formulation of civil liability by banking institutions regarding the breach of customer personal data; and 2) how is the risk mitigation toward customer personal data breaches within banking institutions in Indonesia.

METHODS

This research utilizes a normative juridical research method that emphasizes the study of legal documents to find the truth of coherence between legal norms and legal reality regarding personal data protection.²⁸ Through a statute approach, this study deeply examines the hierarchy of regulations serving as the legal basis in Indonesia, starting from the UUD NRI 1945 as the basic norm, the Civil Code (KUHPerdata) to review compensation aspects, Law Number 10 of 1998 concerning Banking, and Law Number 27 of 2022 concerning Personal Data Protection as the primary rules (*lex specialis*). To broaden the perspective, a comparative approach is applied by comparing national data protection legal instruments against global standards or other established state jurisdictions. The countries selected for this study are France and Germany. Both countries have banking systems—particularly regarding the security of their banking systems for customers—that are regulated by the *Code Monétaire et Financier* in France and by the *KapMuG* in Germany.. Meanwhile, a conceptual approach is used to dissect the doctrine of the state of law, Gustav Radbruch's theory of legal objectives, and the concept

²⁷ Andrew Ardiyanto Dachlan et al., "PERTANGGUNGJAWABAN HUKUM PEMERINTAH DALAM KEBOCORAN DATA PRIBADI PADA PENYELENGGARAAN PUSAT DATA NASIONAL," *Jurnal Hukum Samudra Keadilan* 20, no. 1 (2025): 109–24.

²⁸ Peter Mahmud Marzuki, *Penelitian Hukum: Edisi Revisi* (Prenada Media, 2017).

of unlawful acts by banks. All data used are secondary data obtained through library research techniques, encompassing primary, secondary, and tertiary legal materials relevant to digital privacy issues. Finally, all collected information is processed using descriptive-prescriptive data analysis techniques with a deductive framework.²⁹

RESULTS AND DISCUSSION

1. Formulation of Civil Liability by Banking Institutions Regarding Customer Personal Data Breaches

The banking legal system in Indonesia is fundamentally positioned as *lex specialis* through the enactment of Law Number 7 of 1992, as amended by Law Number 10 of 1998 concerning Banking.³⁰ This regulation establishes an independent legal regime that is binding for the entire banking industry, including State-Owned Enterprises (BUMN) and national private banks. Its operational execution must rely on specific legal guidelines to safeguard the integrity of the national financial system from systemic risks. Nonetheless, a legal ambivalence exists where the civil losses of customers must still be resolved through District Courts using *lex generalis* instruments.³¹ This refers to the provisions of the Indonesian Civil Code (KUHPERDATA), particularly concerning breach of contract (*wanprestasi*) claims involving bank agreements. Furthermore, the procedure for unlawful acts (*perbuatan melawan hukum* or PMH) is frequently utilized to demand compensation for banking negligence in protecting public funds. This distinction demonstrates that despite the specific nature of banking substance, civil right recovery mechanisms remain entangled in general legal procedures.³² Consequently, the record of banking law enforcement in Indonesia is often considered incapable of providing civil protection equivalent to the rigor of its criminal sanctions.

In the realm of public law, the Banking Law provides a highly specific enforcement framework through a series of criminal articles to ensure industry compliance. This criminal law enforcement is intended to provide a deterrent effect against deviations that could damage public trust in banking institutions. Article 46 regulates sanctions for parties collecting public funds without a business license from Bank Indonesia or relevant

²⁹ Bahder Johan Nasution, *Metode Penelitian Ilmu Hukum* (Bandung: Bandar Maju, 2008).

³⁰ Risal Fadhil Rahardiansyah et al., "Indikasi Moral Hazard Dan Strategi Mitigasi Risiko Dalam Pembiayaan Mudharabah Pada Perbankan Syariah Di Indonesia," *Al-Muhasib: Journal of Islamic Accounting and Finance* 2, no. 1 (2022).

³¹ Anja Lindroos, "Addressing Norm Conflicts in A Fragmented Legal System: The Doctrine of *Lex Specialis*," *Nordic Journal of International Law* 74, no. 1 (2005): 27–66, <https://doi.org/10.1163/1571810054301022>.

³² Dewi Haryanti, "Konstruksi Hukum Lembaga Penyelenggara Pemilihan Umum Di Indonesia Ditinjau Dari Teori Stufenbau," *Jurnal Pembaharuan Hukum* 2, no. 2 (2015): 270–78.

authorities. Violations of bank secrecy and the unlawful obligation to provide information are strictly regulated in Article 47 and Article 47A. Meanwhile, Article 48 provides criminal threats for bank managers who fail to meet certain administrative obligations mandated by law.³³ Internal crimes involving recording manipulation, data forgery, or embezzlement of funds are regulated in detail in Article 49. Article 50 targets affiliated parties who intentionally fail to comply with provisions mandatory for banks according to regulations. Protection of customer interests is strengthened by Article 50A, which threatens controlling shareholders who order illegal actions. Based on research findings, the criminal specialization in Articles 46 to 50A demonstrates the supremacy of banking law in public aspects, yet simultaneously confirms the imbalance in protecting customer civil rights.³⁴

Principles of banking law serve as the primary pillars providing guarantees of certainty and legal protection for every customer within the Indonesian banking system. Pursuant to Article 2 of the Banking Law, Indonesian banking is based on economic democracy using the prudential principle in every business step. Additionally, banks are subject to the fiduciary principle, which demands high integrity in managing funds entrusted by the public.³⁵ The confidentiality principle requires banks to safeguard customer data, except in specific cases limitatively permitted by law. There is also the know your customer (KYC) principle, which aims to prevent money laundering practices and maintain banking transaction security holistically.³⁶ Theoretically, the submission of banks to these principles should create a secure and accountable banking ecosystem for stakeholders. However, the implementation of these principles is often viewed merely as an operational administrative standard rather than a substantive right that can be easily litigated. These provisions function as a fence for banks so they do not abuse their authority in managing highly sensitive public assets.

Despite basic principles being explicitly established, the Indonesian legal system experiences a legal vacuum regarding specific civil procedural laws for banking. The current Banking Law contains no technical provisions concerning the procedures for resolving civil disputes between customers and banks in court. This causes customers

³³ Adrian Sutedi and others, *Hukum Perbankan: Suatu Tinjauan Pencucian Uang, Merger, Likuidasi, Dan Kepailitan* (Sinar Grafika, 2023).

³⁴ Muhammad Urfi Amrillah, "Urgensi Pembentukan Undang-Undang Digital Banking Bagi Perbankan Syariah Di Indonesia," *Lex Renaissance* 5, no. 4 (2020): 928–45.

³⁵ Rati Maryani Palilati, "Perlindungan Hukum Konsumen Perbankan Oleh Otoritas Jasa Keuangan," *Jurnal Ius Kajian Hukum Dan Keadilan* 5, no. 1 (2017): 49–67.

³⁶ Khusnul Abidatul Adawiyah, "Perlindungan Hukum Atas Ketidakamanan Data Nasabah Financial Technology Pada Sektor Peer to Peer Lending" (Universitas Islam Negeri Maulana Malik Ibrahim, 2020).

who suffer losses to be subject to general civil court procedures, which are inherently slow and highly formalistic. The absence of specific articles regarding the customer's executive right to sue within the Banking Law often makes the burden of proof heavy for the consumer.³⁷ This legal vacuum forces judges to revert to obsolete provisions in the Civil Code that do not recognize the complexities of modern banking products. In fact, the characteristics of banking disputes require swift handling and a deep understanding of internal bank standard operating procedures.³⁸ Without civil procedural law of a *lex specialis* nature, the protection of customer economic rights tends to be weak and lacks temporal certainty.

France, as a proponent of the civil law system, possesses highly systematic banking regulations integrated both preventively and repressively. The primary instrument of banking law in France is regulated in the *Code Monétaire et Financier* (CMF), which serves as a special legal code for the financial sector.³⁹ The CMF provides a clear framework ranging from financial institution licensing to independent banking crisis handling procedures. Contrary to claims of a separate judiciary, France uses an integrated judicial system but with specific procedures under supervisory authorities. *L'Autorité de contrôle prudentiel et de résolution* (ACPR) plays a central role in conducting administrative supervision while imposing sanctions in cases of regulatory violations.⁴⁰ In the preventive aspect, French law requires every bank to provide an internal mediation mechanism before a dispute can be brought to formal judicial realms. This approach aims to minimize the court's burden while providing a more efficient solution for aggrieved customers. Therefore, French law views the banking industry as a vital instrument requiring strict oversight through comprehensive legal provisions.

In civil dispute resolution, French law through CMF Article L311-1 and its derivative articles regulates the contractual relationship between banks and customers in detail. If an error occurs on the part of the banking institution, customers can file claims through mediation procedures (*Médiateur*) specifically regulated in French banking law.⁴¹ If

³⁷ Palilati, "Perlindungan Hukum Konsumen Perbankan Oleh Otoritas Jasa Keuangan."

³⁸ Renita Renita, Iriansyah Iriansyah, and Indra Afrita, "Perlindungan Hukum Terhadap Hak-Hak Pekerja Akibat Pemutusan Hubungan Kerja Berdasarkan Perjanjian Kerja Bersama Pada Bank Swasta Di Kota Pekanbaru," *Mizan: Jurnal Ilmu Hukum* 10, no. 2 (2021): 232–50.

³⁹ Marine Julien, "La Confiance Numérique Dans Le Domaine Bancaire" (Université de La Rochelle, 2022).

⁴⁰ Nathalie Beaudemoulin, Didier Warzée, and Thierry Bedoin, "Les Enjeux de La Blockchain Pour La Banque de France et l'Autorité de Contrôle Prudentiel et de Résolution (ACPR)," in *Annales Des Mines-Réalités Industrielles*, vol. 2017, 2017, 29–33.

⁴¹ Muh. Iksan Putra Kai et al., "Asas Pemaafan Hakim Dalam Pembaharuan Hukum Pidana Di Indonesia," *Doktrin: Jurnal Dunia Ilmu Hukum Dan Politik* 2, no. 1 (2023): 162–74, <https://doi.org/10.59581/doktrin.v2i1.1936>.

mediation fails, civil disputes will be resolved in civil courts by referring to the higher standards of professional bank liability. For violations of a criminal nature, France has a prosecution mechanism through the *Parquet National Financier* (PNF) if the crime impacts national economic stability. These provisions provide legal certainty for customers regarding the boundaries of bank liability for administrative errors or operational system failures.⁴² Conversely, customers also bear legal responsibility if proven to have abused banking facilities or provided false data in transactions.

Germany, representing an advanced civil law state, implements highly rigid banking regulations through the *Kreditwesengesetz* (KWG) or the Banking Act and the German Electronic Securities Act.⁴³ This law functions as a special law regulating banking supervision under the authority of the *Bundesanstalt für Finanzdienstleistungsaufsicht* (BaFin). Besides the KWG, civil relations between banks and customers are also covered by the *Bürgerliches Gesetzbuch* (BGB) but with specific interpretations for financial transactions.⁴⁴ Germany emphasizes consumer protection through more specific procedures to ensure that citizen rights remain protected when facing large corporations. One important innovation in Germany is the use of the Banking Ombudsman mechanism, which possesses the legal power to decide disputes within a certain value. This mechanism provides cheaper and faster access to justice for citizens experiencing civil losses due to the actions of banking institutions.⁴⁵ This provision reflects the state's recognition that customers are in a lower bargaining position compared to financial institutions. Therefore, Germany integrates consumer protection directly into its national banking supervisory structure holistically.

Procedurally, Germany has a special law facilitating mass compensation claims or collective actions for customers, namely the *Kapitalanleger-Musterverfahrensgesetz* (KapMuG). Although KapMuG is more specific to the capital market, its principles of evidence often become a reference in banking disputes involving many customers.⁴⁶

⁴² Shandy Primandasetio Freddy and Nor Asiah Mohamad, "Dispute in Cross-Border WAQF: Mitigation, Resolution, and the Role of WAQF Authority," *IIUMLJ* 32 (2024): 261.

⁴³ Sebastian Omlor and Derwis Dilek, "German Electronic Securities Act," *European Company Law* 19, no. 3 (2022).

⁴⁴ Marlen Thaten, "Liability of Bank Directors in Germany: A Call for Public Enforcement," *European Business Organization Law Review* 19, no. 2 (2018): 275–300.

⁴⁵ Riffat Hasan and Oliver Kruse, "The Impact of Regulatory Requirements on German Financial Institutions' Outsourcing Arrangements," *Journal of Financial Regulation and Compliance* 32, no. 1 (2024): 1–17.

⁴⁶ Axel Halfmeier, "Litigation without End? The Deutsche Telekom Case and the German Approach to Private Enforcement of Securities Law," in *Class Actions in Context* (Edward Elgar Publishing, 2016), 279–98.

Citizens experiencing civil losses have the constitutional right to bring their cases to German civil courts with simplified procedures.⁴⁷ Specific legal bases in German law require banks to prove that they have correctly carried out information and advisory obligations to customers. If a bank fails to prove compliance with these prudential standards, the burden of compensation is automatically placed upon the banking institution. This represents a form of *lex specialis* in procedural law not found in conventional general civil law in many developing countries. Every citizen is guaranteed the right to obtain compensation without being trapped in complicated and convoluted PMH evidentiary requirements. Research findings affirm that Germany has successfully transformed customer protection from mere regulatory promises into concrete and responsive procedural law.

Table 1. Comparison of Banking Dispute Legal Provisions in Indonesia, France, and Germany

Country	Primary Legal Basis	Dispute Resolution Regime	Special Provisions (Lex Specialis)
Indonesia	Law No. 10/1998 (Banking)	General (HIR/RBg) Courts	Focused on Criminal; Civil still relies on the Civil Code (KUHPerduta).
France	Code Monétaire et Financier (CMF)	Mandatory Mediation (Médiateur) & Specific Civil Courts	Complete material and formal banking codification in one legal code.
Germany	Kreditwesengesetz (KWG) & BGB	Banking Ombudsman & KapMuG	Reverse burden of proof regarding customer information obligations.

Indonesian law is currently in a sub-optimal condition because it only provides general material provisions through the Civil Code in handling banking cases. Article 1243 on breach of contract and Article 1365 on unlawful acts remain the only gateways for customers to seek civil justice. The absence of specific banking civil procedural law results in prolonged legal uncertainty for citizens who fall victim to the financial system.⁴⁸

⁴⁷ Hanno Merkt, "Managing Investor Mass Claims in Germany: Group Litigation under the New Investor-Sampel-Proceeding-Law (KapMuG)," *Journal of Interdisciplinary Economics* 17, no. 1-2 (2006): 117-28.

⁴⁸ Muhammad Nasrullah Shohabatussa'adah, "Pengaruh Kompetensi Sumber Daya Manusia, Pemanfaatan Teknologi Informasi Dan Sistem Pengendalian Intern Terhadap Kualitas Laporan Keuangan Pemerintah Daerah Kota Pekalongan," *Jurnal Akuntansi Publik* 1, no. 1 (2021).

Conventional judicial procedures based on the HIR and RBg are considered no longer relevant for handling banking disputes involving complex digital transactions. Without specific rules, banking litigation processes often take years without satisfactory results for small customers. This creates a structural imbalance where banks with vast resources can easily dismantle customer arguments in general procedures. Therefore, a legal breakthrough is needed to bridge the gap between material banking law and its formal law.⁴⁹ This condition strengthens the argument that Indonesia is experiencing a legal procedural crisis in protecting the economic rights of its citizens in the banking sector.

To overcome these issues, a new legal formulation is required through amendments to the Banking Law that explicitly include a specific civil legal regime. These changes must be directed toward creating lawsuit procedures that are shorter, simpler, and less burdensome for aggrieved customers. This formulation would align with Gustav Radbruch's legal objectives, which emphasize the balance between legal certainty (*Rechtssicherheit*), justice (*Gerechtigkeit*), and utility (*Zweckmäßigkeit*).⁵⁰ From the perspective of Lawrence Friedman's legal system theory, this renewal touches upon the structure component of law enforcement so that judicial institutions have specific guidelines in deciding banking cases.⁵¹ Besides structure, the legal substance in the form of specific procedural articles will strengthen the bargaining power of customers before hegemonic financial institutions. The legal culture of society will also improve alongside the belief that the legal system is capable of providing real protection for their assets. This step represents the fulfillment of the state's obligation to provide comprehensive and sustainable legal protection guarantees for its people. Based on research findings, the adoption of *lex specialis* procedures in banking civil procedural law is the primary key to realizing distributive justice in Indonesia's financial industry sector.

2. Risk Mitigation Against Customer Personal Data Breaches in Indonesian Banking Institutions

The position of risk mitigation in managing customer data within banking institutions has currently transformed into a fundamental pillar of national financial system stability.⁵² Customer data is no longer merely an administrative entity but a digital asset

⁴⁹ Andrea Dubber, Constant Van Graan, and Andre Groenewald, "The Abuse of the Beneficial Ownership of Trusts to Conceal Assets in Insolvency and Divorce Proceedings: A South African Study," *Journal of Financial Crime* 31, no. 1 (2024): 76–87, <https://doi.org/10.1108/JFC-02-2023-0026>.

⁵⁰ Gustav Radbruch, "Statutory Lawlessness and Supra-Statutory Law (1946)," *Oxford Journal of Legal Studies* 26, no. 1 (2006): 1–11.

⁵¹ Lawrence M Friedman, *Sistem Hukum Perspektif Ilmu Sosial* (Bandung: Nusa Media, 2009).

⁵² Rahardiansyah et al., "Indikasi Moral Hazard Dan Strategi Mitigasi Risiko Dalam Pembiayaan Mudharabah Pada Perbankan Syariah Di Indonesia."

that determines the survival of a banking institution in the modern era. The enactment of Law No. 27 of 2022 concerning Personal Data Protection (UU PDP) automatically tightens standard operating procedures for all data controllers.⁵³ The implementation of comprehensive risk mitigation is directly proportional to the fulfillment of the principle of confidentiality that has long been upheld by the banking industry. Customer trust will grow organically if banks are able to provide data security guarantees that are not only technical but also legal in nature.⁵⁴ Without a holistic mitigation strategy, banking institutions risk facing reputational threats that are extremely difficult to recover. The UU PDP positions data protection as part of human rights that must be respected in every financial transaction.⁵⁵ The synergy between risk mitigation and legal compliance creates a healthy banking ecosystem that is resilient against external shocks. This central position demands that banks constantly update their security instruments to adapt to the latest regulatory dynamics.

Systematic risk management allows banks to identify potential data breaches long before actual losses occur to the customer. The UU PDP provides a clear framework regarding the responsibility of banks as data controllers in maintaining individual privacy. Every mitigation step taken must align with the fiduciary principle that forms the basis of the legal relationship between the bank and the customer. Violations of personal data protection can trigger serious legal consequences, ranging from administrative sanctions to civil lawsuits for damages.⁵⁶ Effective risk mitigation encompasses the continuous integration of people, processes, and technology across all organizational levels. Awareness of the importance of personal data protection must become a deeply ingrained work culture for every bank employee. Periodic evaluation of data security protocols is a tangible form of applying the prudential principle within the Indonesian banking industry.⁵⁷ Unpreparedness in mitigating data risks can lead to the degradation of public trust in the banking system as a whole.

⁵³ Hikmal Yusuf Argiansyah and M Rizki Yudha Prawira, "Analisis Hukum Hak Atas Privasi Dan Perlindungan Data Pribadi Berdasarkan Perspektif Hak Asasi Manusia," *Jurnal Hukum Pelita* 5, no. 1 (2024): 61–75.

⁵⁴ Rahardiansyah et al., "Indikasi Moral Hazard Dan Strategi Mitigasi Risiko Dalam Pembiayaan Mudharabah Pada Perbankan Syariah Di Indonesia."

⁵⁵ Sitorus, "Perlindungan Hukum Data Pribadi Pengguna Layanan Pinjam Meminjam Uang Berbasis Teknologi Informasi Ditinjau Dari Undang-Undang No. 27 Tahun 2022 Tentang Perlindungan Data Pribadi."

⁵⁶ Endi Suhandi and Ahmad Arif Fadilah, "Penyelesaian Ganti Rugi Akibat Wanprestasi Perjanjian Jual Beli Online Dikaitkan Dengan Pasal 19 Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen," *Jurnal Inovasi Penelitian* 2, no. 7 (2021): 1967–77.

⁵⁷ Azmi et al., "Analisa Kasus Kebocoran Data Pada Bank Indonesia Dalam Sistem Perbankan: Indonesia."

Bank secrecy is not a new concept in Indonesian jurisdiction, yet its presence remains the lifeblood of banking operations worldwide. The enactment of the UU PDP essentially functions as a structural reinforcement of the data protection ecosystem that previously existed within sectoral regulations. The construction of bank secrecy is specifically regulated in Chapter VIII of the Banking Law as a form of protection for the public's financial privacy. Article 40 paragraph (1) of the Banking Law provides a strict mandate for banks not to disclose customer data to unauthorized parties. This prohibition includes information regarding financial status and other privacy aspects officially recorded in the bank's system. Custom in the banking world requires such secrets to be maintained with very high standards of integrity by all levels of management. The article places exceptions only on urgent matters such as tax interests, criminal justice, or state receivables. The status of bank secrecy is fundamental as it relates directly to the constitutional right to individual privacy before the public. The synergy between the Banking Law and the UU PDP creates layered protection that should close the gap for information leakage.

The construction of data breach risk mitigation in Indonesia is currently sheltered by a regulatory framework that is comprehensive and multidimensional. The UU PDP serves as an umbrella provision that sets general personal data protection standards for all sectors. PBI No. 18/40/PBI/2016 complements these standards with a deep focus on the technical aspects of information security and banking transactions. Meanwhile, POJK No. 22/2023 exists as a more specific consumer protection instrument in regulating the conduct of financial service business actors. The combination of these three regulations creates a legal ecosystem aimed at systematically minimizing the potential for customer data misuse.⁵⁸ Risk mitigation must be carried out from the stages of acquisition and processing to measurable and accountable data erasure. These regulations require banks to possess security systems resilient to various forms of illegal intrusion from external parties. Protecting customer data is now no longer just a business policy choice but a non-negotiable legal obligation. This entire set of regulations serves as the primary shield for customers in facing increasingly massive and complex digital risks.

The implementation of effective risk mitigation demands that banks synergize all sectoral regulations into their internal governance policies.⁵⁹ PBI No. 18/40/PBI/2016 provides technical guidance on how every banking transaction must be secured from

⁵⁸ John Bert Christian et al., "Analisis Hukum Atas Penerapan Rahasia Bank Di Indonesia Terkait Dengan Perlindungan Data Nasabah Berdasarkan Prinsip Kepercayaan Kepada Bank (Studi Pada Pt. Bank Cimb Niaga Tbk Cabang Medan)," *USU Law Journal* 4, no. 4 (2016): 164935.

⁵⁹ Syafa Widya Annafa, Hanintya Pasha Gabriel Hasa Simanjuntak, and Meira Ananda Ayudia, "Tanggung Jawab Hukum Bank Dalam Kasus Kebocoran Data Nasabah," *Jurnal Multidisiplin Ilmu Akademik* 1, no. 6 (2024): 129–35.

end-to-end. POJK No. 22/2023 demands transparency and accountability from banking parties in managing their consumers' personal data honestly. Compliance with the UU PDP ensures that the rights of data subjects, such as the right to delete or correct data, are fully respected. Data breach risks must be managed using a risk-based approach that considers the impact of losses and the probability of incident occurrence. Banks that fail to apply mitigation standards in accordance with regulations will face administrative sanctions that can paralyze their operational licenses.⁶⁰ This regulatory alignment provides legal certainty for customers that their data is managed with officially certified security standards. Strict supervision from the Financial Services Authority and Bank Indonesia is the key to the successful implementation of all these data protection regulations.

The Surabaya District Court Decision Number 615/Pdt.G/2023/PN Sby displays a rather concerning legal anomaly in the practice of banking customer data protection. Trial facts revealed that a bank employee intentionally disseminated a customer's personal data to a third party without valid authorization. This action clearly violates the obligation of bank secrecy and the principle of customer personal data protection which should be sacred and confidential. Ironically, the resolution of this case still utilizes a conventional civil law approach that often ignores the highly technical specifics of the banking industry. The argument of the bank as the defendant, stating the lawsuit lacked necessary parties, became a procedural obstacle complicating efforts for substantive justice. The plaintiff was positioned in a difficult situation to prove absolute material and immaterial losses amidst limited access to digital evidence. The absence of strong witnesses in the trial process caused the panel of judges to decide to reject the lawsuit in its entirety.

The rejection of the defendant's exception followed by the total dismissal of the lawsuit reflects an impasse in the civil proof process in Indonesia. Customers who fall victim not only lose their personal privacy but are also burdened with significant court costs. The order to pay court fees amounting to Rp1,273,000,- adds to the psychological and financial burden of the plaintiff whose position is already highly disadvantaged. Ideally, data breaches committed by internal bank parties should be the strict liability of the banking institution involved. The losses experienced by customers due to the dissemination of personal data on social media and WhatsApp groups are massive and

⁶⁰ Vicky Katiandagho, Diana Darmayanti Putong, and Isye Junita Melo, "Undang--Undang Perlindungan Data Pribadi Memperkuat Undang--Undang Perbankan Dalam Menjaga Rahasia Data Nasabah Dan Untuk Melindungi Data Pribadi Masyarakat Indonesia," *Jurnal Hukum To-Ra: Hukum Untuk Mengatur Dan Melindungi Masyarakat* 9, no. 1 (2023): 106-14.

difficult to restore. Personal data that has already spread into the digital public sphere leaves a permanent footprint and carries a high risk of being misused for crime. This incident of internal dissemination clearly exposes the failure of the bank's internal risk mitigation in supervising the digital behavior of its own employees. Bank data security that is widespread without firm legal consequences will damage the integrity of the entire national financial ecosystem. Legal protection for customers must be significantly enhanced to prevent the recurrence of similar incidents in other district courts.

Strengthening the regulations in POJK No. 22/2023 and PBI No. 18/40/PBI/2016 has become highly urgent to immediately patch internal data breach gaps. Both regulations must be capable of requiring banks to implement early detection systems against systematically suspicious employee behavior. Customer personal data security standards must be adjusted to the rapid development of digital communication platforms in society today. POJK No. 22/2023 needs to provide a firm clause regarding the bank's automatic liability for damages for every internal data breach. PBI No. 18/40/PBI/2016 is expected to regulate much stricter information security audit technical standards conducted periodically. The synergy between consumer protection and banking transaction security will create a much more solid legal shield for customer interests. This preventive effort must be balanced with strong digital literacy, both for bank employees and for the general public. Consistent law enforcement will encourage the banking industry to be more serious in investing in capable risk mitigation systems.

CONCLUSION

The Indonesian banking system is fundamentally a *lex specialis* regime through the Banking Law, yet in the civil realm, customer dispute resolution is still trapped in the formalistic *lex generalis* instrument of the Civil Code. Comparisons with advanced civil law countries such as France through the *Code Monétaire et Financier* and Germany through the *KapMuG* mechanism show that optimal customer protection requires the codification of specific civil procedural law. The absence of this specific procedure causes customers to face a slow litigation process that is often burdensome regarding technical banking evidence. Therefore, a new legal formulation is needed to bridge the gap between material and formal law to achieve a balance of certainty and justice according to Gustav Radbruch's theory. The novelty of this research lies in the critical analysis of the anomaly in the Surabaya District Court Decision Number 615/Pdt.G/2023/PN Sby, which demonstrates the failure of the conventional civil law system to reach the bank's liability for its employees' illegal actions. This study finds that although preventive regulations are comprehensive, customers still lose in court due to the heavy burden of

proof and the bank's procedural arguments, which ultimately exonerate the bank from liability for damages. Future regulatory strengthening must include early detection systems for suspicious employee behavior and a more progressive synchronization of administrative and civil sanctions. By focusing on the integrity of human resources as the critical point of data security, this research offers a mitigation formulation that is more responsive to contemporary cyber threat dynamics.

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