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## **Board of Directors' Responsibility in the Implementation of Know Your Customer (KYC) in the Case of Default by Debtors (Case Study No. 266/PDT.G/2012/PN. SBY)**

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### *Abstract*

*This study examines the legal responsibility of a bank's Board of Directors for the suboptimal implementation of the Know Your Customer (KYC) principle, which contributes to the increase in non-performing loans (NPLs). Using normative legal research, this paper analyzes the integration of KYC within creditworthiness assessment (5C) and its role in the directors' duty of care. The findings indicate that KYC has evolved into a fundamental instrument for validating the Condition and Collateral criteria in credit analysis. A case study of Decision No. 266/Pdt.G/2012/PN. SBY demonstrates that failure to implement KYC constitutes a breach of fiduciary duty and has a causal relationship with the bank's financial losses. Such negligence exposes directors to multidimensional liability, including administrative sanctions, civil claims under Article 1365 of the Indonesian Civil Code, and potential criminal charges under anti-money laundering laws (TPPU). The Board of Directors bears full responsibility to ensure the effectiveness of KYC as a cornerstone of Good Corporate Governance (GCG) in mitigating credit and legal risks.*

**Keywords:** *Directors' Accountability, Default, Know Your Customer (KYC), Prudential Principle, Fiduciary Duty*

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## **INTRODUCTION**

The Know Your Customer (KYC) principle is a fundamental instrument that must be applied by every financial institution in the practice of banking and consumer financing, including banks, to recognize the identity and profile of its customers as a whole, as a manifestation of the implementation of good corporate governance (GCG) (Siregar & Sari, 2016). The application of this principle is not only aimed at preventing money laundering and terrorism financing crimes but also serves as part of risk management in providing financial facilities so that they are not channeled to unsuitable parties or those with the potential to pose a risk of default in the future (Alfin, 2019; Nasution & Sutanto, 2020). Thus, the KYC principle has a strategic function as a form of ethical and legal responsibility of financial institutions in maintaining the stability of the national banking system (Suryanto, 2018; Santosa & Anindita, 2021).

The normative application of KYC principles has been regulated in various regulations, including the Financial Services Authority (OJK) Regulation and Bank Indonesia provisions that require each financial institution to identify, verify, and monitor customer transactions (Pratama & Sari, 2021). This principle is part of the managerial obligations that must be carried out by the bank's board of directors as the party who holds the main responsibility in managing operational risks and ensuring compliance with laws and regulations (Simamora & Siregar, 2019; Rahmawati, 2020). Failure to implement the KYC principle can have implications for the emergence of legal, reputational, and financial risks that can harm the

institution and cause losses to third parties, including customers (Widjaja & Yuliana, 2017; Kurniawan & Fauzi, 2022).

The application of KYC principles has not been carried out optimally by the bank's board of directors in practice, as many cases demonstrate (Saragih & Pasaribu, 2019). This can be seen from the increase in the number of non-performing loans (NPLs) caused by providing credit to debtors without adequate feasibility analysis (Haris & Setiawan, 2021). Failure to assess the debtor's profile and ability shows the weak implementation of KYC principles, which should be the main tool in credit risk mitigation (Amalia & Siregar, 2018; Putra & Pradipta, 2020). When the debtor fails to meet payment obligations, a new problem arises in the form of repressive collection actions by third parties or debt collectors who act outside the legal corridor (Kusnadi & Agustina, 2022).

This condition reflects the negligence of banks, especially the board of directors, in carrying out internal supervisory functions as mandated in Law Number 40 of 2007 concerning Limited Liability Companies and Law Number 10 of 1998 concerning Banking. The board of directors has legal responsibility to ensure that all operational activities of the bank, including the application of KYC principles, are carried out in accordance with legal provisions and prudential principles. If the directors are negligent in carrying out these responsibilities, they can be held legally liable for losses arising from default by debtors or illegal actions committed by third parties in the collection process (Githaiga, 2023).

The author found that one of the cases of failure to implement KYC in the banking world is contained in Decision No. 266/Pdt.G/2012/PN. SBY. This case began when Octavianus Indaheng (Plaintiff) placed deposit funds in PT Bank Internasional Indonesia (BII, now Maybank) through a bank employee named Demy Tridiono Prayitno (Defendant II), who worked as a Sales Executive at the BII Kertajaya branch office, Surabaya. On August 19, 2010, the plaintiff opened a deposit of Rp100,000,000 and then on March 1, 2011, again deposited funds of Rp30,000,000. All transactions were carried out in the name of the plaintiff, but the money was transferred to Defendant II's personal account, not to the bank's official account.

Demy Tridiono promised a deposit interest of 7% and an additional cashback of 2%, so the plaintiff believed and placed the funds. However, it was later discovered that the money was not recorded in the BII banking system and had been embezzled by Defendant II. As a result, the plaintiff suffered a total loss of Rp130,000,000. This case was then reported to the police and led to criminal case No. 2237/Pid.B/2011/PN. SBY, where Demy Tridiono Prayitno was found guilty of embezzlement and forgery of letters. Even though the perpetrator was criminally convicted, the plaintiff still sued the bank civilly on the grounds of negligence of the banking institution (BII) for failing to implement the principles of Know Your Customer (KYC), Customer Due Diligence (CDD), and banking risk management. He also sued Bank Indonesia (Co-Defendant I) and PPATK (Co-Defendant II) as the bank's supervisors to investigate the violation.

BII stated that Demy Tridiono's actions were carried out outside the bank's official authority and procedures, so it became a personal responsibility. Meanwhile, BI and PPATK argued that they could not be sued because they only function as supervisors and regulators. After going through the evidentiary process in the form of documents, witnesses, and the results of the criminal verdict that had become final (*inkracht*), the Panel of Judges of the Surabaya District Court decided on January 31, 2013, and pronounced on February 7, 2013, with the following orders:

1. Reject the exclusion of the defendants and co-defendants.
2. Grant the plaintiff's lawsuit in part.

3. Declare that Defendant I (BII) and Defendant II (Demy Tridiono Prayitno) have committed an unlawful act.
4. Order Defendant I and Defendant II jointly and severally to pay:
  - a) IDR 100,000,000 with an interest rate of 7% per annum from March 19 to May 19, 2011,
  - b) IDR 30,000,000 with 7% interest per annum from April 1 to July 1, 2011,
  - c) plus 6% interest per annum from the time the lawsuit was filed until payment is complete,
  - d) Case costs of Rp 536,000.
5. Reject the remaining claims of the plaintiff.

Thus, the court concluded that even if the embezzlement was committed by the employee personally, the bank was still legally liable for its negligence in internal oversight and the application of banking prudential principles.

The case at the Surabaya District Court reflects weaknesses in a bank's system regarding the implementation of KYC. The issue of default by debtors is not solely the customer's responsibility but also closely related to how properly and responsibly the bank's board of directors applies the KYC principle. Therefore, it is important to research and analyze the form of accountability of the board of directors in implementing the KYC principle, as well as the application of the Know Your Customer (KYC) principle by banks in analyzing and providing credit to debtors to prevent the risk of default.

Previous research has comprehensively discussed the application of the Know Your Customer (KYC) principle in the Indonesian banking sector. Ginanjar Hasanudin, Jajang Nurjaman, and Dadang Husen Sobana (2025) emphasized in their research that implementing KYC is a strategic step in preventing money laundering crimes in the banking sector. The KYC principle includes the process of identifying and verifying customers, monitoring transactions, and evaluating customer risk profiles. Their research shows that KYC implementation effectively detects illegal financial activities and strengthens the integrity of financial institutions. The novelty of their research lies in the integrative approach combining the application of KYC principles and efforts to reduce banks' dependence on debt collector services. So far, studies on KYC have focused more on preventing money laundering and terrorism financing, while its relationship with preventing bad credit and external collection services has rarely been studied in depth.

Similar research by Yedi Kusnadi and Sakticakra Salimin Afamery (2023) explained that applying KYC principles plays an important role in preventing misuse of banking institutions for money laundering activities. By identifying, verifying, and monitoring customer financial activities, KYC strengthens the bank's internal supervision system and reduces the risk of involvement in illegal activities. Interestingly, this study highlights that optimizing KYC is important not only for compliance with anti-money laundering regulations but also for strengthening credit risk management. Hence, applying KYC principles is part of the bank's preventive strategy to avoid problematic collection practices by debt collectors, shifting from a corrective approach to a preventive approach in risk management.

Indra Saputra Samosir and Leni Husna (2023) revealed that the use of debt collector services by banks often stems from weak debtor selection during the initial credit granting process. Ideally, this process should be supported by strict implementation of KYC principles so banks can objectively assess prospective debtors' feasibility. Failure to implement KYC initially results in increased non-performing loans, eventually forcing banks to use third-party collection services. The novelty of this research lies in linking KYC implementation with efforts to reduce banks' reliance on debt collectors. The study shows that KYC serves not only

as a compliance instrument for anti-money laundering regulations but also as a preventive measure against default risk and irregularities in external debt collection practices.

The three studies share the common view that applying KYC principles plays a crucial role in fostering sound and integrity-based banking governance. However, the novelty of this research lies in analyzing directors' accountability in KYC implementation, especially when default cases occur. Therefore, this study aims to analyze the legal accountability of the bank's board of directors for failure to implement the KYC principle resulting in debtor default, as well as examining the integration of KYC principles in the credit analysis process (5Cs of Credit) as an effort to prevent credit risk. This research is expected to contribute new insights to banking law literature, especially linking managerial responsibility of directors with prudential principles application through KYC as a tool to prevent legal and reputational risks for banking institutions.

## **RESEARCH METHOD**

This research used a normative juridical method, which is legal research that focused on literature studies by examining legal materials such as relevant laws and regulations, doctrines, and court decisions. The approach used included a statutory approach by examining the legal provisions that governed the principle of KYC and the accountability of directors in its application, as well as a conceptual approach to explore the views of legal and economic experts on the application of prudential principles in the financial sector.

The data used in this study were sourced from secondary data consisting of primary, secondary, and tertiary legal materials. Primary legal materials included Law Number 10 of 1998 concerning Banking, Law Number 8 of 1999 concerning Consumer Protection, Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector, as well as various OJK regulations and Bank Indonesia Circular Letters related to the implementation of KYC and debt collection. Secondary legal materials comprised books, scientific journals, and relevant legal articles, while tertiary legal materials included legal dictionaries and encyclopedias. Data collection was carried out through library research by browsing literature relevant to the research issue. Data analysis was conducted in a normative qualitative manner by interpreting legal norms to find the relationship between the failure to implement the KYC principle and the form of accountability of the bank's board of directors for its implementation.

## **RESULTS AND DISCUSSION**

### **Accountability of the Bank's Board of Directors in the Implementation of KYC Principles in Cases of Default by Debtors**

In the company's organizational structure, there are important organs that have positions that are in accordance with their functions and authorities. The Board of Directors has an important role in fulfilling responsibility for the management and management related to the running of a company. Referring to Article 1 number 5 of Law Number 40/2007 concerning Limited Liability Companies which reads:

"The Board of Directors is an organ of the Company that is authorized and fully responsible for the management of the Company for the benefit of the Company, in accordance with the Company's intentions and objectives and represents the Company, both in and out of court in accordance with the provisions of the articles of association."

The Board of Directors has a position under the General Meeting of Stock Companies (GMS) and has an operational relationship with the Board of Directors, in accordance with

the provisions of Article 1 number 4 of Law No. 40 of 2007 which states that the GMS is an organ that has authority that cannot be given to the Board of Directors or the Board of Commissioners. Thus, the position of the GMS with the Board of Directors is a relationship where the board of directors has a requirement to report and account for performance to shareholders through the General Meeting of Shareholders. In addition to its obligation to report to shareholders, the Board of Directors has an authority that is born due to the existence of a relationship of trust, in this case called a fiduciary relationship which is required to carry it out in accordance with fiduciary duty, which is an obligation that arises when a person has a capacity as a fiduciary or a capacity.

This capacity refers to a situation in which a person manages a business or wealth not for personal gain, but for the benefit of others. In essence, fiduciary duty requires one party to act in the interests of the other, even at the expense of his or her personal interests. In Law No. 40 of 2007, the authority of the board of directors includes:

- a) In accordance with Article 92 Paragraph (1) it is stated that: "The Board of Directors carries out the management of the Company for the benefit of the Company and in accordance with the Company's intentions and objectives." Thus, one of the authorities of the Board of Directors is to carry out the management of a Company with the Company's intentions and objectives.
- b) As stated in Article 92 Paragraph (2) which reads: "The Board of Directors is authorized to carry out the management as intended in paragraph (1) in accordance with the policy deemed appropriate, within the limits specified in this Law and/or the articles of association." Thus, the next authority of the Director is to carry out the purposes and objectives of the Company based on the Limited Liability Company Law and/or based on the Company's Articles of Association.
- c) UPS first provides its determination or decision, for the Board of Directors to carry out its duties and authority as stipulated in Article 92 Paragraph (5) which states that: "In the event that the Board of Directors consists of 2 (two) or more members of the Board of Directors, the division of duties and management authority among the members of the Board of Directors is determined based on the decision of the GMS."
- d) The Board of Directors runs the Company and is responsible for it, as explained in Article 92 Paragraph (1) and Article 97 Paragraph (1).
- e) The Board of Directors is authorized to represent the Company in court and outside the court as explained in Article 98 Paragraph (1) which is explained that: "The Board of Directors represents the Company both in and out of court."
- f) In accordance with Article 98 Paragraph (2) which states that: "In the event that the members of the Board of Directors consist of more than 1 (one) person, the authority to represent the Company is each member of the Board of Directors, unless otherwise specified in the articles of association," then in the condition that the members of the Board of Directors are more than 1, then these members can also represent the Company. However, it is necessary to look again if there is a Articles of Association of the Company that further regulate these conditions.
- g) Article 98 Paragraph (3) of Law 40/2007 stipulates that the responsibility of the Board of Directors is unlimited and cannot be denied. This principle can only be set aside if there are other provisions that are specifically regulated in laws and regulations, the Company's Articles of Association, or through the GMS.

The exercise of the authority of the Board of Directors is limited by the application of the principle of prudence or duty of care which requires the Board of Directors to consider all information properly and reasonably before making any decision or policy for the

company. This principle is a derivative of the concept of fiduciary duty which contains several factors in it, one of which is duty of care. The standard of care is measured based on what ordinary people in similar positions and conditions would reasonably do. Although, there is no rigid standard, this principle is based on several general standards, namely actions must be based on bona fides, have a proper purpose, be carried out with unfettered discretion, and do not contain a conflict of duty and interest.

Duty of care also refers to the skill and attitude of prudence and care, which is obtained in every act carried out by the Board of Directors. This principle is proof of the implementation of good faith and responsibility of the Board of Directors. This standard of care is realized by managing the company carefully, as if it is taking care of personal interests. This attitude must be the guideline of the Board of Directors. Violation of the standard of care is automatically a violation of duty of care. To test the fulfillment of duty of care, the following questions can be used:

1. Is the action of the Board of Directors based on good faith?
2. Is this action carried out for the benefit of the company or for personal interests?
3. Was the action taken in the belief that it was in the best interest of the company?

By paying attention to the description of the legal basis, authority, and responsibilities of the Board of Directors in managing and representing the Company, it can be seen that the role of the Board of Directors is not only administrative, but also has a strong ethical and juridical dimension. The Board of Directors is required to be able to balance between business interests and compliance with the company's legal principles. Then, legal science teaches that if there is negligence, it cannot be said to be negligence if it does not meet the following main elements:

1. The existence of an action taken by a person or even negligence to do something that should be done;
2. There is an obligation for a person to act carefully or have a responsibility in safeguarding the interests of others (duty of care);
3. The duty to be careful is not carried out as it should;
4. The consequences of such negligence or acts cause losses to other parties;
5. There is a direct relationship between the actions or omissions committed and the losses suffered by the aggrieved party.

The Board of Directors who carry out their duties as representatives and drivers of a company with the principle of prudence are also responsible if the company experiences losses or negligence in its dynamics. The manifestation of the prudential principle not only includes business decision-making, but also includes compliance with regulations, where negligence in the implementation of Know Your Customer (KYC) can be the basis for the responsibility of the Board of Directors. Referring to the Consultative Document Customer Due Diligence for Banks, an effective KYC program requires adequate management supervision, internal controls, and suspicious transaction reporting. So, if the KYC does not run effectively due to acts of carelessness on the part of the Board of Directors, it can lead to a fulfillment of accountability for its negligence. Practically, such accountability can be enforced through several interrelated legal channels and supervisory mechanisms.

The author analyzes that if there are conditions where KYC is not fully implemented properly and detrimental to the company and related parties, then the Board of Directors can be held accountable. However, Article 50 paragraph (4) of Bank Indonesia Regulation Number 11/28/PBI/2009 concerning the Implementation of the Anti-Money Laundering and Terrorism Financing Prevention Program for Commercial Banks has established a strict administrative accountability mechanism for violations that stem from the wrong stage.

However, although the PBI regulates sanctions if the bank does not do the act that should be done, this does not eliminate civil rights for the party who suffers losses due to the negligence. Aggrieved parties such as customers or investors can still demand liability, for example through a lawsuit for Unlawful Acts (PMH) based on Article 1365 of the Civil Code. In addition, if there are debtors who abuse KYC for money laundering or terrorism financing, then criminal liability must be fulfilled by the Board of Directors.

### **Application of KYC Principles by Banks in the Process of Analysis and Lending to Debtors**

Know Your Customer is a process when a bank wants to provide credit to its customers. So, this stage is a crucial stage so it needs to be implemented firmly and regulated in a clear regulation in order to mitigate the crime of money laundering. The implementation of the KYC principle gained a more imperative legal basis with the promulgation of Law Number 8 of 2010 concerning the Prevention and Eradication of Anti-Trafficking. This regulation transforms KYC from a mere preventive measure to a legal obligation with firm consequences.

Article 18 paragraph (1) specifically requires financial institutions to identify, verify, and monitor service user transactions. This obligation is strengthened by Article 23 paragraph (1) which requires the reporting of suspicious financial transactions to PPATK. The current regulatory framework is regulated in POJK No. 8 of 2023, which includes the AML, PPT, and PPPSPM programs. The implementation of this program must adopt a risk-based approach. This regulation explicitly emphasizes that the responsibility for implementing the program lies with the leadership of the board of directors and the board of commissioners as stated in Article 3. These responsibilities are realized through the obligation to establish internal policies, operational procedures, and effective compliance oversight systems.

This comprehensive regulation is designed to achieve the fundamental goal of implementing the KYC principles themselves. Essentially, the goal of implementing KYC is to create a robust compliance framework to prevent and mitigate the risks of financial crimes, especially money laundering and terrorism financing. Through procedures that include identification, verification, risk evaluation, and transaction monitoring, financial institutions can avoid facilitating problematic customers. This not only reduces potential operational, legal, and reputational losses, but also serves as vital to maintain financial system stability and strengthen public trust through integrity and transparency. .

The implementation of KYC in the banking world is closely related to the principle of prudence. To assess a debtor's eligibility, there are specific criteria that must be met, known as The Five C's of Credit Analysis. The five criteria are as follows:

1. **Character** This assessment focuses on the debtor's disposition, personality, morality, and honesty. This aspect is fundamental because trust is the main basis for providing credit, so debtors who are considered to have bad character cannot be trusted.
2. **Capacity** This assessment measures the debtor's ability to manage and master his business field, as well as his leadership vision. The goal is to ensure that the credit-financed business has good and profitable prospects, so that the debtor is able to repay the loan.
3. **Capital** This criterion requires that the credit applicant already has their own capital before applying for a loan. Credit from banks is positioned only as a complement or addition, not as a source of principal funding.
4. **Economic Condition** This assessment analyzes the applicant's economic condition when applying for credit. The goal is to ensure that the debtor's current financial situation allows for the ability to repay the loan in the future.

5. Collateral (Collateral) This criterion refers to the assets or assets belonging to the debtor that can be tied up as collateral. This guarantee serves to provide certainty of repayment for the bank if the debtor is unable to pay off his debt (default).

The application of KYC principles is inseparably related to the assessment of Condition (economic condition) and Collateral (collateral) criteria. Functionally, KYC is an instrument for banks to validate the suitability between the debtor's economic profile and the proposed credit ceiling. Furthermore, KYC is also used to ensure the legality and validity of the collateral submitted. This is in line with the purpose of KYC as affirmed in Article 2 paragraph (2) of Bank Indonesia Regulation No. 11/28/PBI/2009, which states that this program aims to maintain the integrity of the banking system through effective risk management, including credit risk mitigation arising from inadequate understanding of customers.

Thus, KYC is an integral part of the prudential principle in banking. Through an ongoing process of customer identification, verification, and monitoring, banks can ensure that the five aspects in The Five C's of Credit Analysis are properly met. This not only protects the interests of banks from the risk of non-performing loans, but also strengthens the integrity of the financial system as a whole.

Surabaya District Court Decision No. 266/Pdt.G/2012/PN. SBY is a concrete example of a civil dispute arising from a default in a credit agreement between the debtor and the bank. In the context of banking law, a default case like this not only reflects the debtor's negligence in fulfilling its obligations, but can also indicate a potential failure of the bank to implement the KYC principle before credit is disbursed. The KYC principle is an integral part of the prudential principle, which is normatively required for banks through the Banking Law and the provisions of the Financial Services Authority and Bank Indonesia to ensure that prospective debtors have adequate credit capacity and reputation.

The case in this decision needs to be analyzed to the extent to which the bank, especially the Board of Directors as the highest policy-making organ in credit approval, has carried out the supervisory and risk management function as mandated in Article 29 Paragraph (2) and Paragraph (3) of Law No. 10 of 1998 concerning Banking. Negligence in the implementation of KYC can be qualified as a form of violation of the fiduciary duty obligations of the directors, thus opening up space for the responsibility of the board of directors both civil and administrative. Thus, this ruling study can confirm that the implementation of KYC is not only a tool for verifying debtors' identities, but also a legal protection mechanism for banks to avoid being trapped in providing high-risk credit.

The facts of the case and the legal considerations of this decision can show a causal relationship between the failure of the implementation of KYC by banks and the occurrence of non-performing loans. This also strengthens the argument that the board of directors holds a central position in ensuring compliance with prudential banking provisions, so that if there is a default due to an error in the debtor's risk assessment, the board of directors can be held accountable according to the principles of good corporate governance. Therefore, Decision No. 266/Pdt.G/2012/PN. SBY is a relevant reference to analyze the role and responsibility of the board of directors in preventing default incidents through the effective implementation of KYC principles.

## **CONCLUSION**

The bank's board of directors plays a vital role in ensuring effective implementation of the Know Your Customer (KYC) principle as part of their legal and ethical responsibilities. Beyond a mere administrative task, KYC serves as a strategic tool to prevent credit risk and

financial crimes, with POJK No. 8 of 2023 reinforcing the board's accountability through stricter supervision requirements. Failure to comply can breach fiduciary duties and lead to civil liability under Article 1365 of the Civil Code, or even criminal charges if money laundering (TPPU) is involved, as exemplified by Decision No. 266/Pdt.G/2012/PN. SBY. To mitigate risks, the board must cultivate a culture of compliance permeating the organization, supported by continuous internal oversight and audits. Strong KYC adherence enhances public trust and demonstrates commitment to Good Corporate Governance (GCG) principles, making it a crucial indicator of sound and responsible bank management. Future research could explore the effectiveness of specific compliance strategies implemented by boards across different banking institutions to identify best practices that strengthen KYC enforcement and reduce default risks.

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