



# UNCOVERING THE RESPONSIBILITY OF SUPERIORS (*ONDERGESCHIKT*) FOR THE ACTS OF EMPLOYEES IN THE CONSTRUCTION OF CIVIL LAWSUITS: "A SILVER BULLET"

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## Abstract

This article explores the legal framework surrounding the civil liability of superiors for unlawful acts committed by employees, particularly within the context of Article 1367 of the Indonesian Civil Code which has not regulated about a criteria that the superior cannot be liable for unlawful acts committed by the employee. The problem formulations in this article are *first*, what are the characteristics of superior civil liability for unlawful acts committed by employees? *Second*, what is the *ratio decedendi* of the panel of judges related to the superior's civil liability for unlawful acts committed by the employee. This article is a legal research with statute, conceptual, case, and comparative approach. The results of this article are *first*, there are four key criteria which a superior may not be held liable for the employee's unlawful actions. *Second*, regarding the application of superior liability for unlawful acts committed by employees, it is proven that there are instances where the superior may not be held civilly liable for the actions of employees.

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## I. INTRODUCTION

In order to fulfil the constitutional rights of citizens as stipulated in Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which mandates the right to a decent livelihood, one of the legal ways to achieve this is by working. (Efendi & Sulubara, 2024). When carrying out work, a person does not always perform the tasks alone; at times, they may have an employee to assist them. This issue is regulated under the Indonesian Civil Code, specifically in Chapter VIIA regarding Employment Agreements, which is further regulated in specific laws (*lex specialis*), with the most recent being the Act of the Republic of Indonesia Number 13 Year 2003 on Manpower, as amended by Government Regulation in Lieu of Law (Perpu) Number 2 of 2022 on Job Creation, enacted by Law of the Republic of Indonesia Number 6 of 2023 on the Enactment of Regulation of the Government in Lieu of Law Number 2 of 2022 on Job Creation into Law (hereinafter referred to as "Law of Manpower"). (Koniardy et al., 2023).

The Law of Manpower regulates various aspects of employment, including manpower planning, job training, job placement, employment relations, and termination of employment, among others. (Ramadhan et al., 2021). However, there are certain areas that remain unregulated under the Law of Manpower. In cases where there is no specific regulation within a legal framework, the *lex generalis* principle applies, meaning that when no specific regulation exists, the general law prevails (Damayanti et al., 2021). Hence, in instances where there are gaps in the Law of Manpower, the provisions of the Indonesian Civil Code are applied (Damayanti et al., 2023).

One of the things that has not been regulated or a legal vacuum (*leemten in het recht*) in the Law of Manpower, so that it refers back to the Indonesian Civil Code is related to the civil legal liability of the work recipient, when performing work from the employer. In the Law of Manpower, it is not regulated, when there is an unlawful act (*onrechtmatige daad*) committed by the employee, then it is the responsibility of who. Is it the responsibility of: 1) the employee; 2) the employer; or 3) the employee and the employer jointly and severally liable.

In the Indonesian Civil Code related to the responsibility of workers who perform their work, it is regulated in Article 1367 of the Indonesian Civil Code. Based on this provision, it can be understood that superiors and those who have appointed others to manage their affairs are responsible for the damage caused by their servants and subordinates in the course of the duties assigned to them. (Surahman, 2021). The *ratio legis* of this is, because it is considered that the employee commits the act on behalf of the superior, so it is certainly logical when the superior is held legally responsible in the event that the employee commits an unlawful act. In legal doctrine, this is known as vicarious liability. (Glavaničová & Pascucci, 2022)..

In common law countries, superior civil law liability for unlawful acts committed by employees is also known. In common law countries, this is known as the doctrine of *respondeat superior* (Shenoy et al., 2021). The doctrine of *respondeat superior*, which if freely translated "let the master answer" (Krebs, 2021). This legal doctrine holds a superior or principal legally responsible for the wrongful acts of an employee or agent, provided those acts occur within the scope of employment or agency. (Kim, 2021). An example of the application of the *respondeat superior* doctrine can be seen in *Faragher v. City of Boca Raton* (1998), which is a landmark case regarding the application of the *respondeat superior* doctrine. (Long, 2021). In that case, Beth Ann Faragher, a lifeguard for the City of Boca Raton, sued the city for sexual harassment by her supervisors. The U.S. Supreme Court held that a superior could be liable for the actions of its employees if the superior had failed to exercise reasonable care to prevent and promptly correct any sexually harassing behaviour. (Long, 2021).

When compared to common law countries that have applied the doctrine of *respondeat superior*, the existence of Article 1367 Indonesian Civil Code in Indonesia seems to apply the same thing. However, there is one significant difference, namely in Indonesia, the existence of Article 1367 of the Indonesian Civil Code seems to be an absolute legal basis, so that when there is an unlawful act

committed by the employee, the superior must be held civilly responsible, regardless of the legal reasons. As if, when an employee commits an unlawful act, then absolutely, the superior has a civil legal obligation. This can even be seen from the existence of several fixed precedents in Indonesia (*fasten jurisprudentie*), namely the Supreme Court Decision Number 558 K / Sip / 1971 dated 4 June 1973 whose legal rules: "The employer is responsible for the negligence of his employees" (Faza & Yunus, 2021).

That, indeed in law there is a legal adage: "*lex succurrit ignorant*" (free translation: "the law helps the weak") which has a depth of meaning, that existing legal policies are formed to provide protection to weak parties. (Santiag & Asnawai, 2024).. However, in law there is also the principle of proportionality, which basically means that the legal policy must be appropriate must be proportionate to the aim pursued. It requires that laws and legal measures should not be excessive and must balance the interests of the society. Therefore, when the law absolutely only provides civil liability (*aansprakelijkheid*) to the superior for unlawful acts committed by employees, without looking at the existing legal arguments, it is certainly not right.

There needs to be clear parameters regarding when a superior is held civilly liable for unlawful acts committed by an employee and parameters regarding when a superior cannot be held civilly liable for unlawful acts committed by an employee. This is to ensure that a proportional legal policy is created. Precisely when there is no parameter setting regarding when the superior is held civil law liable for unlawful acts committed by the employee and the parameters regarding the inability of the superior to be held civil law liable for unlawful acts committed by the employee, it is as if the law is created, namely the superior must be absolutely civil law responsible for the actions of the employee and this will make the superior afraid to hire employees and of course will make the business sector also become disrupted and potentially disrupt the ease of doing business in Indonesia (Amal et al., 2023).

Based on the background description above, the problem formulation in this article is *first*, what are the characteristics of superior civil liability for unlawful acts committed by employees? *Second*, what is the *ratio decedendi* of the panel of judges regarding superior civil liability for unlawful acts committed by employees? The objectives of this article are *first*, to analyse the characteristics of superior civil liability for unlawful acts committed by employees. *Second*, to analyse the *ratio decedendi* of the panel of judges in relation to superior civil liability for unlawful acts committed by employees.

To ensure the novelty of this article, several similar articles and their differences with this article will be described. *First*, an article by Dewi Harmoni, Fahmi Fahmi, Yetti entitled: "Tanggung Jawab Rumah Sakit Atas Kelalaian Tenaga Medis Dalam Pelayanan Kesehatan" yang diterbitkan di Journal Of Science And Social Research published in the Journal Of Science And Social Research Volume 5, Number 2, in 2022. In the article, the focus of the discussion is related to finding out how the hospitals legal responsibility for negligence of medical personnel in health services and the legal responsibility

of medical personnel for negligence in hospital health services is associated with Article 1367 of the Indonesian Civil Code (Harmoni et al., 2022). The difference is that the article does not elaborate on the parameters of when the superior is held civilly liable for unlawful acts committed by the employee and the parameters regarding the inability of the superior to be held civilly liable for unlawful acts committed by the employee. In addition, the article only focuses on the legal responsibility of medical personnel, while this article discusses the legal responsibility of employees in general. *Second*, an article by Annisaa Azzahra, Bima Satriojati, Jasmine Putri Sabillah, Tazkia Nanini titled: "Tanggung Gugat Perusahaan Atas Hubungan Jual Beli Pihak Ketiga yang Menjanjikan Harga di Bawah Harga Resmi kepada Pembeli (Studi Kasus PT ANTAM Melawan Budi Said)" published in *Rawang Rencang: Lex Generalis Law Journal* Volume 4 Number 2, in 2021. In the article, the focus of the discussion is the civil liability of employees in the sale and purchase agreement who sell below the market price. The difference is that the article does not elaborate on the parameters of when the superior is held civilly liable for unlawful acts committed by the employee and the parameters regarding the inability of the superior to be held civilly liable for unlawful acts committed by the employee. In addition, the article only focuses on the duties of employees in the sale and purchase agreement, while this article discusses the legal responsibility of employees in general.

## II. RESEARCH METHODS

This research is legal research which is research that focuses on the study of legal norms contained in laws and regulations and legal literature to answer existing legal issues. (Falisa Putri et al., 2024). This legal research is conducted to answer legal issues related to legal lacunae, especially regarding the parameters regarding the inability of superior to be held civil law liable for unlawful acts committed by employees. The approaches used in this research are statute, conceptual, case, and comparative approach. The statutory approach is carried out by examining all laws and regulations relating to the legal issues being addressed, especially those related to the parameters regarding the inability of a superior to be held civilly liable for unlawful acts committed by an employee. Meanwhile, the conceptual approach is used to understand related legal concepts, which will be used in the analysis to answer existing legal issues, such as vicarious liability, the doctrine of *respondeat superior*, unlawful acts, and so on. The case approach is used to analyse cases, particularly the legal considerations to answer the legal issues, such as Supreme Court Decision No. 2647 K/Pdt/2013 and Supreme Court Decision No. 2501 K/Pdt/2003. A comparative approach is used to analyse the regulation and application of law in several countries related to superior civil law liability for unlawful acts committed by employees, such as a comparison of English law in the case of *Joel v. Morison* (1834) and a comparison of American law in the case of *Hoffman v. Board of Education of the City of New York* (1971).

The sources of legal materials used in this research consist of primary, secondary, and tertiary legal materials. Primary legal materials include relevant laws and regulations, such as the Constitution of the Republic of Indonesia, Indonesian Civil Code, Law of Manpower, etc. Secondary legal materials include legal textbooks, legal journals, scientific articles, and relevant legal research results. Tertiary legal materials used include legal dictionaries and legal encyclopaedias to help understand the legal terms used in the research. The data collection technique used is library research. Researchers will collect, study, and analyse various legal literature, laws and regulations, and other legal documents related to the research topic. In addition, researchers will also search for legal materials via the internet to obtain the latest information regarding superior civil law liability for unlawful acts committed by employees.

### III. RESEARCH RESULTS AND DISCUSSION

#### Characteristics of Superior Civil Liability for Unlawful Acts Committed by Employees

Before describing the characteristics of superior civil liability for unlawful acts committed by employees, we will first describe the general arrangements regarding civil liability for unlawful acts in the Indonesian Civil Code. In relation to this unlawful act, it is generally regulated in Articles 1365 and 1366 of the Indonesian Civil Code, which are set out in full as follows:

1. Article 1365 of the Indonesian Civil Code: "Every unlawful act that causes damage to another person obliges the wrongdoer to compensate such damage."
2. Article 1366 Indonesian Civil Code: "A person is responsible, not only for the damage which he has caused by his act, but also for that caused by his negligence or recklessness."

The elements of tort include (Timothy Runtunuwu et al., 2022):

1. there must be an action (positive or negative);
2. the act must be unlawful;
3. there is a loss;
4. there is a causal relationship between the unlawful act and the loss; and
5. there is an error.

In the past, the element of "against the law" was only interpreted as an act contrary to the laws and regulations. However, after the 1919 Hoge Raad decision in the Lindenbaum vs. Cohen case, the element of "against the law" was not only interpreted as an act contrary to statutory regulations, but was interpreted more broadly (extensive interpretation) to be (Sari, 2021):

1. Contrary to the perpetrator's legal obligations
2. Violating the subjective rights of others
3. Contrary to decency
4. Contrary to propriety, rigour and prudence

As for an example of the application of this, it can be seen in one of the precedents in Indonesia, namely the Supreme Court Decision Number 3191K/Pdt/1984 whose rule of law is: "That by not fulfilling the original defendant's promise to marry the original plaintiff, the original defendant has violated the norms of decency and propriety in the community, and the original defendant's actions constitute an unlawful act that has caused damage to the original plaintiff, so the original defendant is obliged to pay damages." (Laraswati et al., 2023).

In the event that there is an unlawful act, then the party who feels aggrieved, can file a lawsuit for unlawful acts against the parties that are violated. Of course, the plaintiff in arguing the existence of a claim for unlawful acts against the defendant, as in Article 1365 jo. 1366 Indonesian Civil Code in general must be able to prove their arguments with valid evidence (*wettig bewijsmiddel*), as Article 1865 Indonesian Civil Code stipulates: "Anyone who claims to have any right or who refers to a fact to support such right, or who objects to another party's right, must prove the existence of such right, or such fact" jo. Article 163 Regulations of Civil Procedure for the Courts of Java and Madura or Article 283 Regulations of Civil Procedure for the Outer Islands which basically regulates: "Whoever claims to have a right, or presents an event to establish his right, or to deny the right of another, then that person must prove the existence of the right or event." (Alfirridho & Warka, 2024). This is also in accordance with the legal principle: "*actori incumbit probatio*" which basically means: "the burden of proof lies with the plaintiff" (Murzea, 2020). The existence of this, has even become a permanent precedent, as the Supreme Court Decision Number 985 K / Sip / 1971, dated 12 April 1972, whose legal rules are: "The party who submits a proposition, he must be able to prove his argument to nullify the opposing party's argument" (Zalukhu et al., 2024).

The evidence that can be used by the Plaintiff is qualified into 2 (two), namely evidence that is regulated in the regulation of civil law in Indonesia or can also be called autonomous evidence and evidence that is regulated outside the regulation of civil law in Indonesia or can also be called heterenom evidence. This autonomous evidence is evidence that is regulated *expressis verbis* in Article 1866 Indonesia Civi Code jo. Article 164 Regulations of Civil Procedure for the Courts of Java and Madura (Hukum et al., 2024).:

1. written evidence;
2. evidence presented by witnesses;
3. Inference;
4. confession;
5. oath;

The heterenom evidence, for example: electronic information and / or electronic documents and / or their printouts, as Article 5 of Law Number 11 of 2008 concerning Electronic Information and Transactions, as amended by Law Number 19 of 2016. (Communication et al., 2023).

When the Plaintiff cannot prove his arguments with the available evidence, then in general, the Plaintiff's claim should be rejected. (Fachriza & Wardhana, 2024). This is in line with the legal principle: "actori in cumbit onus probante, actore non probante reus absolvitor" which basically means: "The party with the burden of proof first is the Plaintiff. When the Plaintiff does not submit evidence that is valid according to the law, it can be legally concluded that the Plaintiff cannot prove the arguments of his claim, so the Defendant must be released from his claim.". Therefore, when the plaintiff alleges that the defendant has committed an unlawful act, but cannot prove the argument of the claim with existing evidence, then generally the claim should be rejected by law.

If the plaintiff can prove that there was an unlawful act committed by the defendant, it opens the possibility of filing a related lawsuit:

1. Compensation;

It is usually given in the form of a sum of money, but unlike compensation for default, the possibility of compensation in other forms is open to the debtor. Claims for damages due to unlawful acts can be in the form of material damages (damages that have actually been suffered) or immaterial damages (damages due to loss of profits that will be obtained in the future). However, the Supreme Court of the Republic of Indonesia provides a guideline in fulfilling the claim for immaterial damages, for example in Judgment of Judicial Review Number 650/PK/Pdt/1994, dated 26 October 1994, which basically states that based on Articles 1370, 1371, 1372 BW, immaterial damages can only be awarded in certain cases such as death, serious injury and humiliation (Mubdi & Trikusray, 2024). According to the author, the demand for immaterial damages must remain rational (not just determining the amount), measurable and provable.

2. Statement of law (*verklaring voor recht*);

A plaintiff may seek a declaration that a particular act is unlawful. In this case, it is not required that there has been an unlawful act and that the defendant is at fault or that loss has been suffered but what is required is that the plaintiff has an interest in the declaration of law and there is a real threat that the defendant will commit an unlawful act.

3. Judge's order or prohibition

At the request of the plaintiff, the judge may order the defendant to end the unlawful state or prohibit the threat of unlawfulness. In this case, the order is aimed at the breach of the duty to act, while the prohibition is aimed at the breach of the duty not to act. This also requires that the plaintiff has an interest in the order or prohibition and that there is a real threat that the defendant will commit an unlawful act.

In relation to this tort claim, the Indonesian Civil Code also specifically regulates the qualification of a request for compensation due to a tort:

1. Indemnification for acts committed by others and for goods under their control (Article 1367 Indonesian Civil Code);
2. Compensation for animal owners (Article 1368 Indonesian Civil Code);
3. Compensation for owners of collapsed buildings (Article 1369 B Indonesian Civil Code);
4. Compensation for the family left behind by the person killed (Article 1370 Indonesian Civil Code);
5. Compensation for injury or disfigurement of limbs (Article 1371 Indonesian Civil Code);
6. Damages for defamation (Articles 1372 to 1380 of the Indonesian Civil Code).

As the focus of this article is on superior civil law liability for unlawful acts committed by employees, it is analysed that this is regulated in Article 1367 of the Indonesian Civil Code (Hutagaol et al., 2024).

Article 1367 of the Indonesian Civil Code provides:

A person is responsible for the damage which was caused by his own act, as well as for that which was caused by the acts of the individuals for whom he is responsible, or caused by matters which are under his supervision.

Parents and guardians are responsible for the damage caused by minor children who live with them and over whom they exercise parental authority or guardianship. Employers and those who have appointed others to manage their affairs are responsible for the damage caused by their servants and subordinates in the course of the duties assigned to them.

Teachers and craftsmen are responsible for the damage caused by their students and apprentices, during the period the latter are under the former's supervision.

The abovementioned responsibilities cease, if the parents, guardians, school teachers and work supervisors can prove that they could have been unable to prevent the act, for which they would be liable.

From Article 1367, it can be seen that there are 3 (three) groups of people who must be responsible for the actions of others that cause harm to others (Darma & Helvis, 2023):

1. The class of parents and guardians who are liable for damages caused by the actions of children who have not exercised parental or guardian authority over them. adults, who live with the parents, while the parents
2. the class of employers and those who appoint others to represent their affairs, which class shall be liable for damages incurred by their servants and subordinates in the performance of their respective works for which they were appointed.
3. The class of schoolteachers and master masons who should be held liable for damages caused by their pupils and masons during the time they are under their supervision.

From this provision, it can be understood that one of the classifications that can be held civilly liable is superior and those who have appointed others to manage their affairs are responsible for the



damage caused by their servants and subordinates in the course of the duties assigned to them (Surahman, 2021). The provisions contained in Article 1367 of the Civil Code, in other countries can also be found similar arrangements, among others:

1. Article 831 chapter 2 of the German Civil Code (Bürgerliches Gesetzbuch) (Zhang, 2023): "A person who uses another person to perform a task is liable to make compensation for the damage that the other unlawfully inflicts on a third party when carrying out the task. Liability in damages does not apply if the principal exercises reasonable care when selecting the person deployed and, to the extent that he is to procure devices or equipment or to manage the business activity, in the procurement or management, or if the damage would have occurred even if this care had been exercised."
2. Article 1242 of the French Civil Code (Lee, 2024): "One is liable not only for the harm which one causes by one's own action, but also for that which is caused by the action of persons for whom one is responsible, or of things which one has in one's keeping... Masters and employers, for harm caused by their servants and employees within the functions for which they employed them..."

Related to the civil liability of superior and those who have appointed others to manage their affairs based on Article 1367 of the Civil Code, there are 2 (two) views. *First*, the view that only the superior is held liable. *Second*, the view that the person held liable is both the superior and the employee (*in casu: joint liability*).

According to the author, related to the civil liability of superior and those who have appointed others to manage their affairs based on Article 1367 of the Civil Code is conditional, depending on the case at hand and is not absolute. It cannot necessarily be that when an employee commits an unlawful act, only the superior is held civilly liable or the superior and employee are held jointly liable. In fact, according to the author, it does not rule out the possibility that the employee alone is held liable and the superior is exempted from existing civil law liability.

As for the basis for determining whether employees can be held civilly liable when they commit unlawful acts, then: 1) the superior is held liable; 2) the superior and employee are held jointly liable; or 3) the employee alone is personally liable based on the following parameters: *First*, the act is within the scope of employment. The unlawful act must occur in the course of performing the duties or functions assigned by the superior. When the employee commits an act outside the duties within the scope of his work, the superior cannot be held civilly liable for the unlawful act committed by the employee. This is in line with Soebekti's opinion: "Furthermore, according to Article 1367 of the Civil Code (BW), a person is also held accountable for the actions of others under their supervision or who work for them. This article is commonly interpreted restrictively (*limitatief*), meaning that a person can only be held liable for the actions of others in the following circumstances: a. ... b. An employer for their employees, in the performance of tasks assigned to them." (Soebekti, 1994).

For example, a food server suddenly cooks food that is not her job. Then, the restaurant offence who ate the food, suddenly got sick from consuming the food, because there was a wrong ingredient in the food. It cannot necessarily be on the basis of Article 1367 of the Indonesian Civil Code that the consumer holds the restaurant owner responsible, because the waiter who cooked the food cannot be considered in the context of representing his superiors, so the loss suffered by the consumer is due to the fault of the waiter who committed acts outside his duties.

*Second*, the time of the incident. The act must occur during working or official hours, or based on a clear order from the superior. A person is considered to represent his superior, so that his superior can be held accountable, when indeed the employee commits an act that is outside his duties, then of course it is not logical when the superior is held accountable for the employee's mistake. For example, a driver uses his superior's car outside of working hours, then the driver hits someone. In such a case, the victim who was hit cannot under Article 1367 of the Indonesian Civil Code hold the superior of the driver liable, because the driver was driving outside the working hours that the driver was supposed to be on duty.

*Third*, the existence of bad faith (*mala fide*) from the employee that is not known by the superior. In the event that an employee performs his work in bad faith that is unknown to the superior, then it cannot necessarily be the superior who is held accountable for the actions of the employee in bad faith. In fact, when the law provides protection to the bad faith employee by shifting responsibility to his superior, this means that the law provides protection to the party in good faith and this is certainly contrary to the nature of the law which provides protection to the party in good faith (*bona fide*). For example, a chef in a restaurant deliberately puts shrimp, even though the consumer has said he does not want shrimp in his food, because he has a shrimp allergy. This is done by the chef in the restaurant with the aim that the restaurant owner gets into trouble from the consumer. In the event that the consumer files a lawsuit, due to consuming food that the consumer is allergic to, it is not legally justified on the basis of Article 1367 of the Indonesian Civil Code that the restaurant owner is held civilly liable, because of the actions of the restaurant chef who does have bad faith.

*Fourth*, when employees commit criminal acts unrelated to their job duties. This is actually similar to the first and third reasons above, but the difference is that there is a criminal act committed by the employee that is not related to their job duties. For example, in relation to the example above, a food server suddenly cooks food that is not his or her job. Then, the restaurant offenders who ate the food, suddenly suffered food poisoning and died. Then, the waiter is convicted of a criminal offence on the basis of Article 359 of Law Number 1 of 1946 on the Criminal Code which regulates negligent homicide. The heirs of the consumer could not necessarily hold the restaurant owner liable on the basis of Article 1367 of the Indonesian Civil Code.

In the event that one of the 4 (four) indicators is fulfilled, the superior cannot be held civilly liable under Article 1367 of the Indonesian Civil Code. In the event that one of the 4 (four) indicators

is fulfilled, if the Plaintiff wishes to file a lawsuit, the party being sued is the employee himself. To facilitate understanding related to the 4 (four) aging parameters, the superior cannot be held civilly liable under Article 1367 of the Indonesian Civil Code, it will be described in the flowchart below:

**Table 1** The criteria that illustrate when a superior may or may not be held liable under Article 1367 of the Indonesian Civil Code.

Number	Criteria	Explanation	Example
1.	Acts within the scope of employment	The unlawful act must occur while performing duties assigned by the superior. If the act is outside the employee's duties, the superior cannot be held liable.	A waiter cooks food (outside their job description). A patron becomes ill after consuming the food. The restaurant owner is not liable as the waiter acted outside their duties.
2.	Time of occurrence	The act must occur during working hours or under a directive from the superior. If the act is outside working hours or not directed by the superior, the superior is not liable.	A driver uses the employer's car outside working hours and causes an accident. The injured party cannot hold the employer liable as the driver was not acting within working hours.
3.	Bad faith ( <i>mala fide</i> ) by employee	If the employee acts with bad faith unknown to the superior, the superior cannot be held liable. Transferring liability to the superior would protect the party acting in bad faith.	A chef deliberately adds shrimp to a dish against a customer's request to cause trouble for the restaurant owner. The owner is not liable as the chef acted with malicious intent.
4.	Criminal acts unrelated to job duties	If the employee commits a criminal act unrelated to their job duties, the superior is not liable.	A waiter cooks food (outside their job duties), causing food poisoning and death. The waiter is found guilty of negligent homicide. The restaurant owner is not liable.

Source: Authors' analysis

The existence of these 4 (four) criteria is expected to be a "silver bullet" in solving problems regarding the absolutism of the responsibility of superiors (*ondergeschikt*) for the act of employees in the construction of civil lawsuits based on article 1367 of the Indonesian Civil Code. In the perspective of legal policy, one of the theories that can be used as an indicator of whether or not the interpretation of

a rule is wrong is *schutznorm theorie*, which is a theory that ensures that the essence of the violated norm is intended to protect the sufferer of the violated interest, whether or not it is maintained. (Setiawati, 2020). The existence of these 4 (four) criteria certainly does not eliminate the essence or essence of the existence of article 1367 of the Indonesian Civil Code which provides protection to employees and third parties who are harmed, even the existence of these criteria will create proportional law and provide certainty of legal protection for employees, superiors, and third parties.

### **Ratio Decedendi of Judges Regarding Superior Civil Liability for Unlawful Acts Committed by Employees**

It has been described above regarding the criteria regarding superior civil liability for unlawful acts committed by employees. Furthermore, it will be analysed the legal application of decisions that have permanent legal force regarding superior civil liability for unlawful acts committed by employees. This is in order to obtain a comprehensive analysis, not only of existing legal rules and concepts, but also of court decisions which are a manifestation of the application of the law itself. This is in accordance with the legal adage *cursus curiae est lex curiae* which means: "court practice is the application of the law itself" (Ardana & Zukriadi, 2024)..

In this case analysis, the author classifies into 2 (two), namely the application of superior civil liability law to unlawful acts committed by employees that do not occur in Indonesia and those that occur in Indonesia. This is done to obtain a comprehensive analysis related to superior civil liability for unlawful acts committed by existing employees. In addition, the author also classifies the case into 2 (two), namely when the superior is held liable for the unlawful acts committed by the employee and the superior is not held liable for the unlawful acts committed by the employee.

1. Superior Civil Liability for Unlawful Acts Committed by Employees That Did Not Occur in Indonesia.
  - A. Superior is Held Liable for Unlawful Acts Committed by Employees

An example of a case regarding this is *Joel v. Morison* (1834). The summary of legal facts is that a carriage driver employed by the defendant, Morison, a coach proprietor, was involved in a collision with the plaintiff's carriage while on his employer's business. The collision resulted in damage to the plaintiff's carriage, and the plaintiff sued Morison, seeking compensation for the damages. The key legal fact is that the servant was on a "frolic of his own", meaning he had temporarily deviated from his master's business when the accident occurred. The summary of the judge's reasoning is that the court found that while the servant had deviated from his direct route for personal reasons, he was still acting within the course of employment. The judge emphasised the principle that if a servant, while engaged in their master's business, makes a small deviation for personal reasons (a "detour" rather than a "frolic"), the master can still be liable. The reasoning was that the deviation was not substantial enough to absolve the employer

of responsibility, and the servant remained engaged in the master's business, thus bringing the doctrine of vicarious liability into play. The decision of the judge is that the court held that Mr Morison, as the employer, was liable for the negligent acts of his servant, even though the servant had deviated slightly from his duties. (Xuan & Yiu, 2021). From this decision, it can be analysed that, a minor deviation (detour) cannot be a reason for the superior not to be held liable for the employee's fault. The superior is still liable for the employee's misconduct.

B. Superior is not liable for unlawful acts committed by employees

An example of a case regarding this is *Hoffman v. Board of Education of the City of New York* (1971). The summary of legal facts are, William Hoffman, a minor, by his father and guardian, filed a lawsuit against the Board of Education of the City of New York. William Hoffman was injured during a school activity, allegedly due to the negligence of a teacher employed by the Board of Education. The plaintiffs argued that the Board of Education should be held liable for the injuries sustained by Hoffman under the doctrine of *respondeat superior*. The plaintiffs claimed that the Board of Education, as the employer of the teacher, should be held responsible for the teacher's negligent actions that led to the injury. The summary of the judge's reasoning is that the court examined the fundamental principle of *respondeat superior*, focusing on the criterion of whether the teacher was acting within the scope of employment at the time of the accident. The analysis centred on the nature of the detour taken by the teacher. The judge articulated that simply being an employee of the Board of Education did not render the school system liable for actions taken outside the context of work duties. The decision of the judge is completing the dismissal of the claims against it with respect to *respondeat superior*. This ruling emphasised that the Board could not be held liable for the actions of the teacher that were disconnected from any duty to the school system. (Young, 2020). From this decision, it can be analysed that the principle that a superior is only liable for the negligent acts of an employee if those acts are executed within the framework of their employment duties. When not within their duties and responsibilities, the superior cannot be held liable for the employee's actions.

2. Superior Civil Liability for Unlawful Acts Committed by Employees Occurring in Indonesia.

A. Superior is Held Liable for Unlawful Acts Committed by Employees

An example of a case regarding this is Supreme Court Decision Number 2647 K/Pdt/2013. The summary of legal facts are that the plaintiffs are Hotba Marjuang Simanjuntak, and SURIANTY ASTINI DJURANDA and the defendant is PT WANABHAKTI TRI AGUNG and the Government of the Republic of Indonesia cq Ministry of Finance of the Republic of Indonesia cq Directorate General of Budgeting of the Ministry of Finance of the Republic of Indonesia cq Yayasan Kesejahteraan Pegawai Direktorat Jenderal Anggraini Bhakti cq Yayasan Likuidasi Yayasan Anggaraini Bhakti. The plaintiffs had purchased plots of land from the defendant through a marketing staff member, Sri Rochmayati alias Yanti. Payments for the land were made to Yanti,

but the certificates of ownership were never delivered, and later, a document with falsified signatures appeared, allegedly voiding the purchase. The plaintiffs filed a lawsuit against the defendant for failing to provide the promised certificates and committing unlawful acts, seeking compensation for material and immaterial damages. The summary of the judge's reasoning is based on article 1367 of the Indonesian Civil Code, which holds employers liable for the actions of their employees. In this case, although the fraudulent acts were committed by Yanti (the staff member), the court ruled that PT Wanabhakti Tri Agung (the employer) is still civilly liable for the damages caused by Yanti's actions. Even if there was a criminal offence, for example the marketing staff embezzled the payment, according to the cassation panel, 'it does not remove the employer's liability *in the case* of the defendant civilly for the actions of its employees for and on behalf of the employer'. The decision of the judge is that the court found PT Wanabhakti Tri Agung responsible for the actions of its employee, Yanti, and the defendant was ordered to compensate the plaintiffs. (Yasin, 2024). From this decision, it can be analysed that although the criminal *act* was committed by a subordinate, it does not remove the employer's civil liability for the actions of its employee for and on behalf of the employer.

B. Superior is not liable for unlawful acts committed by employees

An example of a case regarding this is Supreme Court Decision Number 2501 K/Pdt/2003. The summary of legal facts are the Plaintiff is James Mononutu, the 1st Defendant is Dicky Suawan, and the 2nd Defendant is Jansen Supit and Melky Tumawomba is the Co-Defendant. The case arose from a car accident on June 16, 1999, involving a truck (owned by Dicky Suawa), but operated by his driver, Melky Tumawomba and a mikrolet (a type of public transport vehicle) owned by James Mononutu (Defendant I) but operated by his driver, Melky Tumawomba (Defendant II). The collision resulted in injuries to the passengers and the driver of the Mikrolet, as well as significant damage to the Mikrolet. The Plaintiff sued both Defendants (the superior and the employee) for damages arising from the accident. The summary of the judge's reasoning are The court found that Jansen Supit, the employee, was only authorised to act as a truck assistant (*kenek*), whose job was limited to tasks such as warming up the truck in preparation for the driver. The court noted that Supit had driven the truck without the employer's knowledge or permission and that the act of driving was beyond the scope of his job duties as a *kenek*. Therefore, the court ruled that Suawa (the superior) should not be held responsible for the actions of Supit because the employee was not acting within the scope of his employment when the accident occurred. The decision of the judge is The Supreme Court adjudicated that Suawa was not liable for the actions of his employee (Jansen Supit) since the employee acted outside the scope of his duties. From this decision, it can be analysed that according to the panel of judges, based on the formulation of Article 1367 paragraph 3 of the Indonesian Civil Code, it must be interpreted that the employer's responsibility for the loss of his subordinate's actions is

only limited to the actions that are assigned by the employer to the subordinate, so not when the subordinate in question performs actions that are not assigned by his employer.

From the various decisions above, it can be analysed that there are various legal considerations regarding superior civil liability for unlawful acts committed by employees. To facilitate understanding of the decisions mentioned above, they will be described in the table below:

**Table 2** Comparative Analysis of Civil Liability for Unlawful Acts Committed by Employees from International and Indonesian Cases

Aspect	Superior Liabile for Employee's Unlawful Acts (Outside Indonesia)	Superior Not Liabile for Employee's Unlawful Acts (Outside Indonesia)	Superior Liabile for Employee's Unlawful Acts (In Indonesia)	Superior Not Liabile for Employee's Unlawful Acts (In Indonesia)
Case Example	Joel v. Morison (1834)	Hoffman v. Board of Education of the City of New York (1971)	Supreme Court Decision No. 2647 K/Pdt/2013	Supreme Court Decision No. 2501 K/Pdt/2003
Summary of Legal Facts	The defendant's servant deviated slightly from his route while driving, causing a collision with the plaintiff's carriage.	A teacher employed by the Board of Education caused injury to a student during a school activity. The injury occurred outside the scope of the teacher's employment.	The defendant's employee committed fraud while conducting business on behalf of the employer, failing to deliver promised land certificates.	The defendant's employee, a truck assistant, drove the vehicle without permission and caused a collision. The act was beyond his job duties.
Judge's Reasoning	The court ruled that a minor deviation (detour) from an employee's work does not absolve the employer from liability, as	The court ruled that the employer cannot be held liable for actions taken by the employee outside the scope of their	The court applied Article 1367 of the Indonesian Civil Code, holding that employers are liable for their employees'	The court found that Article 1367(3) limits liability to acts performed within the scope of employment. Since the

	the employee remained engaged in the employer's business.	employment duties.	actions even if the employee committed a criminal act within the course of employment.	employee acted outside his assigned duties, the employer was not liable.
Judge's Decision	The employer, Morison, was held liable for the employee's negligent acts during the course of employment.	The Board of Education was not held liable for the teacher's actions as they were outside employment duties.	PT Wanabhakti Tri Agung was found liable for its employee's fraudulent acts and ordered to compensate the plaintiffs.	The Supreme Court ruled that Dicky Suawa was not liable for his employee's actions, as the employee acted beyond the scope of his duties.
Key Legal Analysis	A minor deviation (detour) does not exempt the superior from liability, as long as the employee remains within the course of employment.	The superior is not liable when the employee's actions are outside the framework of their duties, under the doctrine of respondeat superior.	Even if a criminal act is committed by the employee, the superior remains liable if the act was performed within the course of employment.	The employer is only liable for acts directly related to the employee's assigned duties. If the employee acts beyond this scope, the employer is not liable.

Source: Authors' analysis

#### IV. CONCLUSIONS

The four criteria under which a superior cannot be held civilly liable for the actions of an employee are: acts within the scope of employment, time of occurrence, bad faith (*mala fide*) by the employee, and criminal acts unrelated to job duties. These four criteria are expected to serve as a "silver bullet" in resolving the absolutism of superior liability for the actions of employees in civil lawsuits based on Article 1367 of the Indonesian Civil Code. Regarding the application of superior liability for unlawful acts committed by employees, it is proven that there are instances where the superior may not be held civilly liable for the actions of employees.



To clarify the concept of superior liability for unlawful acts committed by employees under Article 1367 of the Indonesian Civil Code, future legal frameworks should consider adopting the four criteria outlined above. In the long term, these criteria could be included in the explanatory provisions of the forthcoming contract law, while in the short term, the four criteria can be regulated through a Circular Letter of the Supreme Court to ensure legal certainty.

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