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PROBEMATICS BETWEEN DISCLOSURE OF BANK SECRETS FOR TAX PURPOSES AND CUSTOMER PROTECTION BASED ON ACT NUMBER 10 OF 1998 CONCERNING AMENDMENT TO LAW NUMBER 7 OF 1992 CONCERNING BANKING

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ABSTRACT

The objectives of this research are to analyze (1) the definition and scope of bank secrecy; (2) the implementation bank secrecy as a form of legal protection to customers; (3) problematic disclosure of bank secrecy between for tax reports and protection to customers; (4) bank refusal rights to open bank secrecy. The method used is the normative legal research with the statute and conceptual approaches. The research result indicated (1) the definition of bank secrecy is everything related to information about depositors and their deposits. The scope of bank secrecy relates to information about the depositors and their deposits; (2) the implementation bank secrecy as a form of legal protection to customers consists of preventive and repressive legal protection; and (4) bank refusal rights to open bank secrecy indicates that the bank has the right to refuse to open bank secrets based on the contractual relationship between the bank and its customers. According to Article 1338 of the Civil Code the agreement is binding on the parties who make it, but it is not binding on third parties in this case including the state as a third party.

Keywords: *Bank Secrecy; Customer Protection; Disclosure, Tax Reports.*

INTRODUCTION

Banks are unique and attractive business institutions, these institutions are intermediary institutions that work based on trust. As an institution that has an intermediation function, bank activities include raising funds from the public (creditor customers) then converting the funds into products or business of the bank and then distributing it to the people who

need it (debtor customers). In addition, the bank works on the basis of trust, when the community does not trust a particular bank, the community immediately withdraws the funds deposited in the bank, so a 'bank rush' occurs. As an intermediary, no bank is able to hold the 'bank rush'. In an effort to maintain public trust, banks must maintain bank secrets because the public will feel safe and comfortable if the secret of their savings funds is guaranteed by the bank. Bank secrets is one of the main pillars of public trust in banks that must be maintained continuously. The other pillars of trust are prudence, health, and certainty.[1]

Bank secrets in Indonesia, regulated in Article 40 of Act Number 10 of 1998 concerning Amendment to Law Number 7 of 1992 concerning Banking (hereinafter referred to as Banking Law) which states:

> *"Banks must keep confidential information about depositors and their deposits, except in the case referred to in Article 41, Article 41 A, Article 42, Article 43, Article 44 and Article 44 A."*

Furthermore, based on Bank Indonesia Regulation number: 2/19 / PBI / 2000 Regarding The Requirements And Procedures For Giving Order Or Writing Permit Open The Secret Of The Bank (hereinafter refer as "**Bank Indonesia Regulation number: 2/19 / PBI / 2000**") stated that banks must keep everything related to information regarding depositing customers and customer deposits.

Based on these provisions, it can be seen that banks in Indonesia are required to apply bank secrets, where bank secrets are limited and limited to information about depositors and deposits, so that information other than depositors and deposits is not bank secrets, such as information about debtors and the loan.[2]

Bank secrets are very important. In addition to competing in the eyes of the world, banking secrets are also the key to the success and trust of a bank in the eyes of customers. Therefore, the banking secrets must be protected by the bank in order to maintain its customers' trust. For example, everyone can see and compare the banking secret rules governed by the Swiss State with the State of Indonesia. The country of Switzerland is known for the strict banking secret system for deposit customers at the bank. Therefore, the Swiss State is very favored by many customers, because it is guaranteed and kept secret and data itself.[3]

The principle of bank secrecy was born and developed in the beginning was for the reason of the bank's own business interests, which needed public trust to save money in the bank. The community will only entrust the money to the bank or use bank services if

[1] Tarsisius Murwadji, "Transformasi Jaminan Kebendaan Menjadi Jaminan Tunai dalam Penjaminan Kredit Sindikasi Internasional", *Jurnal Hukum Ius Quia Iustum*, Vol. 20, No. 1, 2013, hlm. 233.
[2] John Bert Christian, Bismar Nasution, Suhaidi, dan Mahmul Siregar, "Analisis Hukum Atas Penerapan Rahasia Bank di Indonesia Terkait dengan Perlindungan Data Nasabah Berdasarkan Prinsip Kepercayaan Kepada Bank", *USU Law Journal*, Vol. 4, No. 4, 2016, hlm. 132.
[3] Tumpak Hasiholan Manurung, Maryati Bachtiar dan Dasrol, "Analisis Yuridis Mengenai Bentuk Perlindungan Rahasia Bank dan Sanksi terhadap Pelanggaran Rahasia Bank", *JOM Fakultas Hukum*, Vol. 2, No. 2, 2015, hlm. 2.

there is a guarantee that the bank's knowledge of customers' deposits and financial condition will not be misused[4]. Because of that reason, the bank must uphold the bank's secret principles. If customer deposits are guaranteed confidentiality, it will further increase public trust in the bank chosen, so that it will also have an effect on increasing the number of customers in the bank concerned.

The bank runs business activities based on public trust, with that belief, the community will save their funds in the bank and use the services of a bank. One of the people's trust in banks is because banks are able to maintain the confidentiality of their customers and their financial condition, which is a common practice for banks against their customers (customary law). The intended prevalence is, if the contract between the bank and the customer is not included in the duty of confidentiality, it is considered implicitly listed, so the bank is still obliged to keep information about its customers confidential, even this applies to former customers.

Provisions regarding bank secrets in Indonesia become a problem, especially if it is associated with the interests of the State. On the one hand, banks that have to maintain public trust have the right task and should protect and keep secrets related to customer and deposit data if the customer is honest and clean. But on the other hand, the bank must also be obliged to support the interests of the State if the customer data is needed by the State to disclose violations and / or crimes / crimes against the State.

Article 40 of the Banking Law confirms that banks are required to keep information about depositors and their deposits confidential. On the other hand, in Article 40 of the Banking Law it is also affirmed regarding the exclusion of confidentiality obligations for the interests of the state as stipulated in Article 41 of the Banking Law (for tax purposes), Article 41A of the Banking Law (settlement of bank receivables that have been submitted to the State Receivables and Auction Agency) , Article 42 of the Banking Law (court approval in criminal cases), Article 43 of the Banking Act (bank civil case with customers), Article 44 of the Banking Law (exchange of information between banks), and Article 44A of the Banking Law (banks must provide information to the power of the Depository Customer). The aforementioned provisions constitute a basis for regulation regarding bank secrets with exceptions can be disclosed when it concerns the interests of the state.

According to the theory of relative or relative bank secrets, it actually provides space for banks to disclose information or information about their customers if indeed there is a situation that urgently demands for it, among others, in the interests of the state[5]. This can be found in the provisions of Article 40 paragraph (1) of the Banking Law which states that the secret decree of the application of the bank is excluded in the case of Article 41, 41 A, 42, 43, Article 44 and Article 44A of the Banking Law. Base in the provisions, the obligation to maintain bank secrets can be ruled out if the public interest requires the

[4] Yunus Husein, *Rahasia Bank dan Penegakan Hukum*, Jakarta: Pustaka Juanda Tigalima, 2010, hlm. 30.
[5] Ghina Rossana, "Penafsiran Pasal 40 Undang-Undang Nomor 10 Tahun 1998 Mengenai Kerahasiaan Bank", *LamLaj*, Vol. 1, No. 2, 2016, hlm. 121.

need to open the bank secret. The theory of the securities of the relative bank provides space for the breakthrough of bank customers' secrets both data and information for the benefit of the state and other public interests. So to what extent the public interest (in this case is taxreport) can set aside the bank secret or what are the limits of bank secrets that can be compromised or opened for the tax report. Based on the concept of public interest in this case for tax purposes that can override bank secrets, then this article intends to discuss the problem of disclosure of bank secrets between state interests and protection to customers.

The formulation of the problem in this article is as follows: first, how is the definition and scope of bank secrets? second, how is the application of bank secrets a form of legal protection to customers? third, how is the problem of disclosure of bank secrets for tax purposes and protection to customers? and fourth, how is the bank's right to open bank secrets?

DISCUSSION

Bank secrets according to Article 1 number 28 of the Banking Law are "everything related to information about depositors and their deposits". The definition of bank secrets in the Banking Law looks very general and narrows the understanding of bank secrets listed in the previous Banking Law, namely Law No. 7 of 1992 as referred to in Article 1 number 16 states that "Bank secrets are all things related to finance and other matters of customers which according to the custom of the banking world must be kept confidential".

According to Munir Fuady, "the relationship between banks and their customers is not an ordinary contractual relationship, but in that relationship there is an obligation for banks not to disclose secrets from their customers to any other party unless otherwise determined by the applicable legislation". Bank secrets (bank secrecy, financial privacy) are considered as human rights that must be protected from interference by the state and others. The existence of bank secrecy provisions is aimed at the interests of customers so that confidentiality is protected concerning the financial situation and also the interests of the bank itself so that the bank can be trusted and its survival is maintained.[6]

The definition of bank secrets in Law Number. 7 of 1992 is a very broad limitation and tends to be less clear about bank secrets. Restrictions are based on the term "according to the prevalence of the banking world" so that the limits depend on the interpretation of the "prevalence". In general, these limits can also be interpreted that bank secrets include data belonging to depositors or depositors and debtor customers. The rules regarding bank secrets are then amended by the Banking Act which limits bank secrets only to depositors. Explanation of Article 40 of the Banking Law in the explanation states that "if a bank customer is a depositary customer who is also a debtor customer, the bank must keep confidential information about the customer in his position as a depositary customer.

[6] Yunus Husein, *op.cit*, hlm. 133-145.

Information about customers other than as depositors is not a statement that must be kept secret by the bank ".

Based on the understanding of bank secrets provided by the provisions of the Banking Law, it can be stated that the scope of bank secrets includes:[7]

1. The bank's secrets are related to information about depositors and their deposits.
2. It is "mandatory" to be kept confidential by the bank, except as included in the exception category based on applicable procedures and legislation.
3. Parties that are prohibited from opening bank secrets are the bank itself and / or affiliated parties. Affiliated parties are defined as follows:
    a. Members of the board of commissioners, supervisors, directors or their proxies, officials or employees of the bank concerned;
    b. Management members, supervisors, managers, or their proxies, bank officials or employees, specifically for banks in the form of cooperative legal entities in accordance with applicable laws and regulations;
    c. The service provider to the bank concerned, including but not limited to public accountants, appraisers, legal consultants, and other consultants.
    d. Parties who, according to Bank Indonesia, participate in influencing bank management, including but not limited to shareholders and their families, the family of the commissioner, the family of the supervisor, the family of the board of directors and the family of the board (Article 1 number 2 of the Banking Law).

Application of Bank Secrets as a Form of Legal Protection to Customers

The bank's secret provisions are aimed at the interests of customers, so that confidentiality is protected. Confidentiality concerns its financial situation. In addition, the secret provisions of the bank are also intended for the interests of the bank, so that they can be trusted and their survival is maintained. In Indonesia, the bank's secret arrangement is more focused on reasons for the interests of the bank, as seen in the explanation of Article 40 of the Banking Law which states that this confidentiality is needed for the interests of the bank itself which requires the trust of the people who keep their money in the bank.

There are five reasons that underlie the bank's obligation to keep everything about customers and their savings confidential, namely:

1. Personal Privacy;
2. Rights arising from the engagement relationship between the bank and the customer;
3. The applicable laws and regulations;
4. Habits or prevalence in the world of banking;

[7] *Ibid*, hlm. 90.

5. Characteristics of bank business activities as a "trust institution" that must hold firm to the trust of customers who keep their money in the bank.[8]

Legal relations between depositors and banks are based on an agreement. For this reason, it is only natural that the interests of the customer concerned are protected by law, as well as the protection provided by law to the bank. There has been a political will from the government to protect the interests of customers of depository banks and their deposits, this is regulated in Article 1 Figures 28, 40, 47 and 47A of the Banking Law.[9]

The application of bank secrets as a form of legal protection to customers is divided into 2 (two), namely preventive legal protection and repressive legal protection described as follows:

1. Preventive Legal Protection

   Internal banks indirectly provide legal protection to customers against all risks of losses arising from bank business activities related to the principle of prudence, especially in terms of the use of personal data of customers. Preventive legal protection carried out by banks related to the personal data of this customer must be in accordance with applicable regulations. Specific regulations relating to this include Article 9-11 Bank Indonesia Regulation Number 7/6 / PBI / 2005 concerning Transparency of Bank Product Information and Use of Customer's Personal Data (hereinafter refer as “Bank Indonesia Regulation Number 7/6 / PBI / 2005”). In addition, Article 40 paragraph (1) of the Banking Law states that banks are required to keep confidential information about depositors and their deposits, except in the case referred to in Article 41, 41 A, Article 42, Article 43, Article 44, and Article 44 A of the Banking Law .

   Article 9 paragraph (1) Bank Indonesia Regulation Number 7/6 / PBI / 2005 regulates the bank's obligation to request written approval from the customer, when the bank will provide and / or disseminate the customer's data to other parties for commercial purposes, except for other matters in accordance with the laws and regulations. Of course, in the request for approval, the bank is obliged to explain the purpose and consequences of giving and or disseminating the customer's personal data to other parties in accordance with Article 9 (2) Bank Indonesia Regulation Number 7/6 / PBI / 2005.

   The form of implementation of Article 9 of this Bank Indonesia Regulation Number 7/6 / PBI / 2005 is set out in a sentence that reads: By signing this form:

   a. The bank will only use my personal data as the customer contained on this application form for the bank's internal interests and the customer's

[8] *Ibid.,* hlm. 146-147.

[9] Hendrik Agus Sutiawan, Etty Mulyati dan Ijud Tajudin, “Perlindungan Nasabah Terkait Praktik Pembukaan Rahasia Bank oleh Pegawai Bank dalam Proses Penegakan Hukum Tindak Pidana Pencucian Uang Dihubungkan dengan Asas Kepastian Hukum”, *Jurnal Hukum & Pembangunan*, Vol. 48, No.3, 2018, hlm. 633.

personal data. Will not be given and or distributed to lauin outside the bank's legal entity, except as provided for in the applicable legal provisions.

b. If in the future the bank will provide and disseminate my personal data as a customer to other parties outside the bank's legal entity for commercial purposes, the bank will ask for written approval from me (a statement document I will make later).

The bank, in this case Customer Service, is obliged to direct prospective customers to complete customer data forms including providing an explanation of the agreement to use the customer's personal data that has been included in the customer's data form. Approval of the use of the customer's personal data is optout, where by not giving a check mark to the clause means the customer gives approval and power to the bank to use all data, information and information obtained by the bank regarding customers for all other purposes as long as it is permitted and permitted by law applicable, including those aimed at marketing bank products or other party products that work with banks.

In accordance with Article 10 of the Bank Indonesia Regulation Number 7/6 / PBI / 2005, the bank requests the approval of the personal data of the bank's customers, both before and after the customer conducts transactions related to bank products. The use of the policy of granting customer personal data is used for internal bank needs and / or in particular cases using the customer's personal data for the needs of other parties outside the bank's legal entity for commercial purposes. Use of the customer's personal data for commercial purposes by other parties outside of this legal entity, the bank is obliged to have written guarantees from other parties in accordance with those stated in Article 11 Bank Indonesia Regulation Number 7/6 / PBI / 2005,.

2. Repressive Legal Protection

Repressive legal protection, namely legal protection made to resolve a dispute that can cause a loss. This protection is classified as direct protection provided to depositors for the possibility of the risk of loss arising from business activities carried out by the bank. The bank has direct responsibility if there are complaints submitted by its customers who feel less satisfied or feel disadvantaged over banking services.

Basically, the bank has a customer complaints service system, including regarding customer complaints services related to the use of customers' personal data. In a banking system, each field has responsibility regarding the use of the customer's personal data. The form of accountability is:

a. Designing or compiling, maintaining continuity of inventory and updating customer data forms in the context of utilizing bank products or services

that meet the principle of transportation utilizing the personal data of customers.

b. Head of the Corporate Secretary unit
   Coordinate the accuracy and suitability of information
c. Branch office officer or officer
   Communicate about transparency in the use of personal data
   1) Branch leader
      The principle of transparency in the use of the customer's personal data is running and is responsible for avoiding the potential for misunderstanding of information carried out by officers who are under the ranks
   2) All front office officers at the branch office
      Have the responsibility to explain the use of the customer's personal data and request the signature of the customer who will use the bank's product or service, on the form provided as a sign of his understanding and agreement.

Based on the description above, according to the author, the application of bank secrets as a form of legal protection to customers in Indonesia is more likely to lead to preventive legal protection. This can be seen in several provisions including, Article 4 Bank Indonesia Regulation number: 2/19 / PBI / 2000 which states that in submitting an application to open a bank secret, it must be filed with the clear reason. In addition based on Article 9 paragraph (1) Bank Indonesia Regulation Number 7/6 / PBI / 2005 regulates the bank's obligation to request written approval from the customer, when the bank will provide and / or disseminate the customer's data to other parties for commercial purposes, except for other matters in accordance with the laws and regulations. Of course, in the request for approval, the bank is obliged to explain the purpose and consequences of giving and or disseminating the customer's personal data to other parties in accordance with Article 9 (2) Bank Indonesia Regulation Number 7/6 / PBI / 2005.

In the end, the bank must assess and be responsible for the secrets of the bank it manages. So in this case the bank must really apply the principle of prudence in managing and providing bank secrets to any party, including the tax office

Problems of Disclosure of Bank Secrets For Purposes Of Taxation and The Protection to Customers

Basically, the bank's obligation to keep bank secrets has been bound in civil and criminal law. Civil liability due to the first reason, that the relationship between the customer and the bank is a fiduciary relation and confidential relation, so that the trust and confidentiality of their relationship is a moral obligation. Whereas the second is seen in the provisions of Article 1 point 18 of the Banking Law which essentially the relationship

of bank confidentiality is the contractual relationship between the bank and the debtor customer containing implied terms that the bank has an obligation to keep information about the debtor's customers confidential. This is reinforced by the principle of the agreement stipulated in Article 1339 of the Civil Code (hereinafter referred to as the Civil Code) which basically says that the agreement is not only binding on matters expressly stated in it, but also for everything according to the nature of the agreement required by the embassy, customs, or law. While the obligation to maintain bank confidentiality is regulated in Article 40.

Bank secrets in Indonesia are not absolute. According to the theory of relative or relative bank secrets, it actually provides space for banks to disclose information or information about their customers if indeed there is a situation that urgently demands for it, among others, in the interests of the state[10]. This can be found in the provisions of Article 40 paragraph (1) of the Banking Law which states that the secret decree of the application of the bank is excluded in the case of Article 41, 41 A, 42, 43, Article 44 and Article 44A of the Banking Law. The provisions of Article 40 paragraph (1) of the Banking Law, there are exceptions to the enforcement of bank secrets. The word "except" is defined as limiting the validity of bank secrets. Based on the provisions of Article 40 paragraph (1), the bank may not keep it confidential (may disclose it) and one of them is for tax purposes[11]

Base on Law Number 9 Year 2017 Regarding Stipulation Of Government Regulation In Lieu Of Law Number 1 Year 2017 Regarding Access To Financial Information For Taxation Purposes To Become A Law (Here and after referred as **Law Number 9 Year 2017**"). In addition, as a supporting regulation, the government has issued Minister of Finance Regulation No. 73 / PMK.03 / 2017 concerning Amendments to Regulation of the Minister of Finance Number 70 / PMK.03 / 20 17 Regarding Technical Instructions Regarding Access to Financial Information for Tax Purposes–Article 1 and Article 2 paragraph (1) Law Number 9 Year 2017 stipulated that:

> *Article 1*
> *"Access to financial information for tax purposes shall include access to receive and obtain financial information in the context of implementing the provisions of tax laws and regulations and implementing of international tax treaties.:*
>
> Article 2 (1)
> *"The Director General of Taxation shall be authorized to obtain access to financial information for tax purposes as referred to in Article 1 from financial services institutions carrying out activities in the banking, capital markets, insurance sector, as well as other financial services institutions and/or other entities categorized as financial institutions in accordance with the financial information exchange standards based on international tax treaties."*

[10] Ghina Rossana, "Penafsiran Pasal 40 Undang-Undang Nomor 10 Tahun 1998 Mengenai Kerahasiaan Bank", *LamLaj*, Vol. 1, No. 2, 2016, hlm. 121.
[11] Neni Sri Imaniyati dan Panji Adam Agus Putra, *Pengantar Hukum Perbankan Indonesia*, Bandung: PT Refika Aditama, 2016, hlm. 210-212.

Furthermore, based on the Decree of the Minister of Finance Number 12 / KMK.03 / 2017 concerning application determination, the procedure for submitting proposals through application in a manner electronics, electronic service manuscripts, and special codes for proposed service manuscripts disclosure of bank secrets. Where in this regulation stipulates the Opening Proposal Application Bank Secrets as an application used in the context of submitting a proposal requesting the opening of bank secrets electronically for the benefit taxation called AKASIA.[12] After publication Law Number 9 of 2017, the authority of the Director General of Taxes can access financial information, especially bank secrets without going through the written request of the Minister of Finance but through an online application called AKASIA.

Law Number 9 of 2017 is in line with Banking Act, which can be found in the provisions of Article 41 paragraph (1) of the Banking Act as follows:

> "*For tax purposes, Bank Indonesia Chairperson at the request of the Minister has the authority to issue a written order to the Bank to provide information and show written evidence to the Bank to provide information and show written evidence and letters regarding the financial status of certain depositors to tax officials*".

The written order mentioned above according to Article 41 paragraph (1) of the Banking Law must include or write down the name of the tax official and the customer of the taxpayer whose information is needed. For the opening of disclosures of bank secrets, Article 41 paragraph (1) of the Banking Law stipulates the elements that must be fulfilled, namely as follows:

a. Opening of bank secrets for tax purposes;
b. Opening of bank secrets at written request of the Minister of Finance;
c. Opening of bank secrets at the written order of the Head of Bank Indonesia;
d. The opening of bank secrets is carried out by the bank by giving information and showing written evidence and letters regarding the financial condition of the depositing customer whose name is mentioned in the request of the finance minister;
e. Information with written evidence regarding the financial condition of the depositing customer is given to the tax official whose name is mentioned in the written order of the leadership of Bank Indonesia.

Exceptions for tax purposes for bank secrecy regulated in Article 41 paragraph (1) of the Banking Law are legal coercion in the public interest, namely the interests of the state and the interests of the public.[13]

[12] Dictum I Decree of the Minister of Finance of the Republic of Indonesia Number 12 / KMK.03 / 2017 concerning the application determination, the procedure for submitting proposals through electronic application, the manuscript electronic services, and special codes for official documents on proposals to disclose bank secrets.
[13] *Ibid*, hlm. 131-132.

Furthermore, based on Article 2 paragraph (1) and (4) latter a and Article 3 paragraph (1) of Bank Indonesia Regulation Number: 2/19 / PBI / 2000 stated that:

Article 2 paragraph (1)

"Banks are required to keep everything related to information regarding the Customer Deposit and Customer Deposit."

Article 2 paragraph (4) latter a

"The provisions referred to in paragraph (1) do not apply to taxation interests."

Article 3 paragraph (1)

"Implementation of the provisions referred to in Article 2 paragraph (4) letter a, letter b, and letter c, must first obtain an order or written permission to open Bank Secrets from the Management of Bank Indonesia"

However, after the promulgation of Law Number 21 Year 2011 regarding the Financial Services Authority (OJK), then all procedures exist in the environment Bank Indonesia switches to the Financial Services Authority on 31 December 2013. So that the agreement to disclose bank secrets is addressed to the Financial Services Authority (OJK).

Disclosure of bank secrets for the benefit of the State including for tax purposes as stated above raises public opinion that as if the secrets of the bank are no longer relevant. On one side, the opening of bank secrets aims to prevent tax evasion and evasion, but on the other hand the Financial Services Authority (OJK) must protect the confidentiality of customer data that is part of customer rights must be protected.

According to OJK, the concern of crashing into the Article of bank secrecy is actually unwarranted because when the customer is willing to give the power to open his account, the bank secrecy article becomes invalid. Likewise, the fear of a flight of funds to foreign countries is no longer relevant because most of the destination countries for these funds have also committed themselves to providing banking information to each other automatically. Regarding the breach of bank secrets as a result of AEOI, that the implementation of AEOI will indeed bring consequences to the absence of bank secrecy for tax purposes.[14]

Based on the explanation above, that which is an obstacle in the implementation of AEOI with the issuance of OJK Regulation Number 25 / POJK.03 / 2015 concerning Submission of Foreign Customer Information related to Taxation to Partner Countries or Partner Jurisdiction is related to bank confidential arrangements. In this case whether the bank's secret provisions must be abolished so that it is not legitimate or there are no more provisions regarding bank secrets, or whether the bank's secret provisions remain

[14] Marnia Rani, "Perlindungan Otoritas Jasa Keuangan terhadap Kerahasiaan dan Keamanan Data Pribadi Nasabah Bank", *Jurnal Selat,* Vol. 2, No. 1, 2014, hlm. 31.

legitimate but special arrangements need to be arranged so that the automatic exchange of information (AEOI) will actually ready to be implemented in 2018 and has clear legal legitimacy.

In order to overcome the legitimacy constraints of banking secrets after the entry into force of OJK Regulation Number 25 / POJK.03 / 2015 to carry out automatic information exchange in the taxation sector (AEOI), the OJK made progressive steps to overcome these legal constraints. OJK has prepared a number of regulations in the financial services sector to support the implementation of AEOI which will begin to be implemented in September 2018. One manifestation of this support is by preparing regulations for financial service institutions to submit customer data to be exchanged for tax information with partner countries or jurisdictions partners. In connection with the provisions in the Banking Law which regulate bank confidentiality, the OJK intends to resolve these obstacles. In this case, there will be a revision of the provisions in the Banking Law which are currently included in one of the legislative programs in the DPR.

OJK and the Director General of Taxes signed a Memorandum of Understanding on Cooperation in the Field of Regulation, Supervision and Law Enforcement as well as Consumer Protection in the Financial Services Sector whose scope includes the Application of Bank Customer Secret Opening. As one form of implementation of the Memorandum of Understanding, the joint launch of the permit system for the secret opening of depository customers was launched. This system consists of two applications, namely Application for Proposal to Open Bank Secrets (AKASIA) for internal Ministry of Finance and Application for Open Bank Secrets (AKRAB) for internal OJK.

Bank Refuse Rights to Open Bank Secrets

Legal relations between customers and banks are based on two legal sources, namely the deposit agreement (placement) of funds and banking regulations. Legal relations originating from the fund saving agreement are pure civil aspects based on the principle of freedom of contract as stipulated in book III of the Civil Code. The principle of bank secrecy is a principle that requires or requires banks to keep everything related to depositors confidential which is a common practice in the banking world (mandatory) withheld.[15]

The duty of confidentiality is considered implicitly in the contractual relationship between the bank and the customer, so that the bank is still obliged to keep information about its customers confidential, even this applies to former customers. This duty of confidentiality consists of:

1. The obligation not to provide information about its customers to third parties.
2. The obligation not to use confidential information obtained from its customers for their interests, to avoid a conflict of interest for the bank.[16]

[15] Djoni S. Gazali dan Rachmadi Usman, *Hukum Perbankan*, Jakarta: Sinar Grafika, 2010, hlm. 30.
[16] Yunus Husein, *op. cit*., hlm. 60.

The obligation of banks to keep secret about depositors and their deposits can be stated explicitly or implicitly in contracts made by parties and customers. This means, even though the confidentiality obligation is not explicitly stated in the contract, it does not make the bank apart from the secret provisions, because in implementing an agreement, it must be based on the principle of good faith between the parties.

According to Bambang Setioprodjo, philosophically, the bank's obligation holds the customer's financial secrets or protects the customer's financial confidentiality based on:

1. The right of each person or body not to be interfered with on personal matters;
2. Rights arising from the engagement between the bank and its customers, in this connection the bank functions as the power of the customer and in good faith must protect the interests of the customer;
3. On the basis of the applicable legal provisions, namely the Banking Law, which confirms that based on the function of the bank's principal in collecting funds from the public, it works based on public trust, the bank's knowledge of the customer's financial condition is not misused and must be kept confidential by each bank;
4. Habits and prevalence in the world of banking;
5. Characteristics of bank business activities.[17]

The principle of bank secrecy requires banks to keep everything about depositors and their savings confidential, aiming to protect the interests of customers individually. Bank secrets in this case are needed because of the belief that with bank secrets, the bank can be trusted by the people who will save their money in the bank. This bank secret is the reason why banks can become trust institutions. For people who want a non-disclosure atmosphere, the need to hold bank secrets is to make the debtor feel confident that the funds deposited in the bank will be safe to avoid misuse of certain parties who want to find information about the customer's financial condition by not being justified by the rules which exists.[18]

Based on Article 4 Bank Indonesia Regulation Number: 2/19 / PBI / 2000 the procedure for submitting confidential information is as follows:

1. For tax purposes, the Management of Bank Indonesia has the authority issue a written order to the Bank to provide information and show written evidence and letters regarding the situation finances of certain Depositors to tax officials.
2. Written orders from the Management of Bank Indonesia is given based on written request from the Minister Finance.
3. The request must state:
   a. name of tax official;
   b. the name of the depositor for the desired taxpayer with the statement;
   c. the name of the Bank office where the Customer has Deposits;

[17] Djoni S. Gazali dan Rachmadi Usman, *op. cit*, hlm. 488.
[18] Yunus Husein, *op. cit.*, hlm. 38-49.

d. information requested; and
e. the reason for the need for information.

The important point of this provisions are about what information is needed and what is the reason for the information to be provided. So based on this provision, there are requirements that must be met to obtain bank secret and bank must be based on the principle of prudence in assessing requests from the tax office. Because it is a request and the bank gives the approval, the bank has the right to assess and reject the tax office's request if the request is out of the ordinary and beyond the limits of the information needed.

Based on the description above it can be stated that the bank has the right to refuse to open bank secrets based on the contractual relationship between the bank and its customers. According to Article 1338 of the Civil Code the agreement is binding on the parties making it, but it is not binding on third parties in this case including the tax office as a third party.

CONCLUSION

Based on the results of the research and discussion mentioned above, the following can be concluded:

1. The bank has the right to refuse to open bank secrets based on the contractual relationship between the bank and its customers. According to Banking Law and Bank Indonesia Regulation Number: 2/19 / PBI / 2000, Bank must be based on the principle of prudence in assessing requests from the third party including tax office by paying attention to any information requested along with the reasons and still referring to the agreement that has been agreed with the customer.
2. The application of bank secrets as a form of legal protection to customers consists of preventive and repressive legal protection. Preventive legal protection that is indirectly given is in the form of an explanation or verbal information from the bank regarding the use of the customer's personal data through the clause stated in the customer's data form. While repressive legal protection is carried out by following up on customer complaints. Basically the bank has direct responsibility for complaints submitted by its customers if they feel unsatisfied or feel disadvantaged over banking services, especially those related to the use of the customer's personal data.
3. The problem of disclosure of bank secrets between state interests and protection of customers must be carried out in a balanced manner so that public opinion does not arise that as if bank secrecy is no longer relevant to its existence. On one side, the opening of bank secrets aims to prevent tax evasion and evasion, but on the other hand the Financial Services Authority (OJK) must protect the confidentiality of customer data that is part of customer rights must be protected.

4. Bank refusal rights to disclose bank secrets indicate that the bank has the right to refuse to open bank secrets based on the contractual relationship between the bank and its customers. According to Article 1338 of the Civil Code the agreement is binding on the parties making it, but it is not binding on third parties in this case including the state as a third party.

Suggestion

The suggestions that can be put forward are as follows:

1. The parties relating to the opening of bank secrets even though for the benefit of the state are advised to uphold the principle of bank prudence in the implementation of opening bank secrets with the aim of maintaining public trust in the banking system.
2. It is recommended that a clearer, clearer and more detailed formulation in Bank Indonesia Regulation Number 2/19 / PBI / 2000 concerning Requirements and Procedures for Granting Written Orders to Open Bank Secrets specifically regarding requests from government / state agencies to Bank Indonesia, matters this is because as an implementing regulation the regulation should be more detailed and detailed so that the bank in carrying out the regulation has no doubts and confusion.
3. Considering bank secrecy arrangements that have existed only for deposit fund customers (creditors), so that in the future it is recommended to make a provision that protects debtor customers, because the running of a banking activity is also inseparable from the existence of debtor customers who need fresh funds to run the business. With the existence of a clear form of legal protection, in the form of a regulation that regulates legal protection for debtor customers, it is expected to open more conducive and comfortable business opportunities because it will always get guaranteed maximum protection for debtor customers, so that our banking activities can run well and smooth.

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