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Legal Liability of Former Bank Employees for Leakage of Bank Secrets

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Abstract : *Banks as essential institutions in the national financial system are very dependent on public trust in running their business entities. The public has trusted banks as intermediary institutions in managing and channeling customer finances through loans or credit. Thus, to maintain customer trust, a banking business entity has an obligation to maintain bank secrecy from unauthorized parties to avoid misuse. The problem in this study is the ambiguity of the obligation to maintain bank secrecy for former banking employees. The purpose of this study is to examine the liability of former banking employees in the event of a violation of the obligation to maintain bank secrecy. This study uses a normative research method with a statutory and conceptual approach. The results of the study show that former banking employees in Indoensia have no obligation to maintain bank secrecy because there are no regulations governing the obligation. Therefore, it is necessary to have regulations governing the obligation to maintain bank secrecy by former employees of banking business entities.*

Keywords : *System Bank secrets, liability, banks, employees, customers, leaks*

1. Introduction

A. Background

The financial system and payment system of a country has become common knowledge that banks are institutions that are capable and trusted to carry out these affairs. As economic activities cross national borders (cross borders), banks have transformed as actors in the world's financial and payment systems. Given the enormous and impactful tasks and functions, the implementation of banking requires a permit by the monetary authority of a country in order to guarantee economic stability and progress, therefore banks have become "property" of the community whose existence is not only obliged to be maintained by the owners of the banks themselves and other organs in the bank, more than that requires the attention of the national and global community.[1]

The development of banks, both directly and indirectly, will affect various sectors of the economy, such as food, housing, transportation to daily needs. The main task of a bank based on Article 1 point 2 of Law Number 10 of 1998 concerning Banking is a business entity that collects funds from the public in the form of savings and distributes them to the public in the form of credit and or other forms in order to increase the living standards of many people. From the definition of positive law, it is implied that the bank has several functions, such as agent of

[1] Sutan Remy Sjahdeini, "Islamic Banking and Its Position in Indonesian Banking Law", (Jakarta: Graffiti, 1999), p. 7-8.

development, agent of services and agent of trust.[2]

The function of the agent of development in a bank is an institution that participates in national development efforts, with the vision of increasing people's living standards, all banking transactions are expected to be able to improve people's economic conditions. On the other hand, banks as public servants (agents of service), the products offered by the banking industry to the public are services including deposits, savings, credit, payments, and so on in accordance with the progress of the times. Finally, the bank acts as an agent of trust, that is, the bank must pay attention to public trust in banking activities.[3]

The trust of a bank on the one hand is because banking activities require permission from the monetary authority to collect funds from the public, because both individuals and legal entities cannot carry out banking activities arbitrarily so that violations against this can lead to punishment.[4] A bank is an institution whose existence depends on the trust of its customers, the trust of its customers who entrust their savings to the bank. Therefore, banks are very concerned that the level of public trust, which has or will save their funds, is well maintained at a high level. Considering that banks are part of the financial system and payment system, the general public has an interest in the health of these systems, while public trust in banks is the most basic element of the existence of a bank, maintaining public trust in banks is also in the public interest.[5]

According to him, there are several factors that significantly influence the level of public trust in a bank. Some of them are: First, the integrity of the management, Second, the soundness of the bank concerned, Third, Knowledge and Capability of the management both in the form of managerial skills and banking technical knowledge and abilities, Fourth, Bank compliance with bank secrecy obligations.[6]

The element of trust in a bank in the form of a bank's compliance with the obligation to maintain confidentiality is interpreted as the ability to carry out banking activities so that customers who save their funds at the bank are trusted by customers in matters of avoiding disclosing customer deposit information and the customer's identity to other parties without the customer's approval. Therefore, it is necessary to have regulations related to bank secrecy through public legal instruments which are considered to guarantee the confidentiality of customer information rather than just using contractual instruments (private law) so that

[2] Sigit Triandaru and Totok Budisantoso, "Banks and Other Financial Institutions", (Jakarta: Salemba Empat, 2006), h. 12.

[3] Rifka Regar, et al. "Analysis of Microcredit Provision of Customer Increase: Studies at PT. Bank Sulutgo Manado Branch", Journal of Business Administration, Vol. 4 No. 4 (2016),h. 4.

[4] Alvi Syarin, et al, "Criminal Responsibility in Banking Crimes", USU Law Journal, Vol. 2 No. 3 (2014), p. 226.

[5] Andi Persada Putera, "The Principle of Trust as the Main Foundation of Banking Activities", Journal of Business Law Bonum Commune, Vol. 3 No. 1 (2020), p. 132.

[6] Muhammad Djumhana, "Banking Law in Indonesia", (Bandung: PT. Citra Aditya Bakti, 2006), p. 168.

compliance with maintaining bank secrecy is carried out consistently.[7]

Confidentiality of information is one of the central points in banking activities that connects the bank and the customer. In this context, a logical consequence arises where the customer will only entrust his money to a bank that is trusted to guarantee his personal interests,[8] so that the customer will try to switch to a bank that has a condition that there is a guarantee that the information on savings, deposits and other related information will not be misused by the bank itself or other parties.[9]

The role and growth of banks in Indonesia has a very vital impact on the economic needs of society.[10] We can see this from the large number of bank funding sources in Indonesia until July 2021 as reported by the OJK,[11] namely Commercial Banks (common banks) have funds of 7,593,091,000,000,000,00, -(seven quadrillion five hundred ninety three trillion ninety one billion rupiah); and People's Credit Banks (Rural Banks) have funds of 132,513,000,000,000.00,- (one hundred thirty-two trillion five hundred and thirteen billion rupiah), in which the majority of the bank's funding sources come from the public, both accounts and current accounts.[12] These funds are in line with the high number of banks in Indonesia as of July 2021, namely 107 Commercial Banks and 1,457 People's Credit Banks. The massive number of banks and the high deposit of funds shows that banks are one of the factors for economic growth in Indonesia whose existence must be regulated systematically. Good.

Unfortunately, the development and growth of banks in Indonesia is not always without problems. It is evident that there were findings of the practice of selling bank customer data carried out by former financial service employees occurring in the last two years, the involvement of parties mainly came from those who had access to the database, based on evidence at the OJK investigation stage it was found that sales of customer data were carried out both offline and offline. on line.[13]

These sociological facts show that there is potential for economic damage through banking institutions that are not carried out properly, especially considering the massive development and growth of banks in Indonesia, this can result in a decrease in the level of public trust in banks in Indonesia. Therefore, it is a moral and legal obligation for all banking organs and affiliated parties to maintain

[7] Fika Nofi, et al. "Bank Efforts in Maintaining Bank Secrets as a Form of Legal Protection for Customers", Diponogoro Law Review, Vol. 5 No. 2 (2016), p. 4-5.

[8] Fitria Dewi Nafisa "The Meaning of Insurable Interest in Insurance Agreements", (Malang: Thesis of the Islamic University of Malang, 2020), h. 2.

[9] Muhammad Djumhana, "Bank Secrets", (Bandung: Citra Aditya Bakti, 1996), p.111-112.

[10] Nafisa, *op. cit*, h. 3.

[11] Financial Services Authority, "Indonesian Banking Statistics", Financial Services Authority Department of Banking Licensing and Information, Vol. 19 No. 8 (2021), p. 2.

[12] Faisal Afif, "bank strategy and operations", (Bandung: Eresco, 2006), h. 25.

[13] Putri Adityowati,"Sales of Customer Data, OJK Finds Involvement of Former BankEmployees"https://business.tempo.co/read/903010/penjualan-data-nasabah-ojk temukan-keterlibatan-eks -employee-bank/full&view=ok

bank secrecy.[14]

However, until now, arrangements regarding the obligation to maintain bank secrecy by former bank employees have not been regulated by the positive legal system. In fact, based on the previous description, the existence of banks depends on public trust, so that the crisis of trust will eventually affect other banking institutions, and the national financial and payment system. This happened in the period 1929-1933 when approximately 9,000 banks in the United States or approximately half of the banks at that time went out of business due to the crisis of confidence.[15]

The phenomenon of disseminating bank secrets by former employees can certainly be interpreted as a violation of the principle of banking trust. Even though trust is the main essence of the implementation of financial institutions such as banks, in which the bank's activities are supported by customers who have given their trust to carry out various transactions. Seeing the high development and growth of banks in Indonesia, this phenomenon could potentially undermine national development. It is in this context that the state should be present so that data and information are properly maintained by banks and other parties towards customers, thereby maintaining the loyal attitude of the community towards banking institutions.

B. Problem Formulation

a) What are the legal rights and obligations in the relationship between the bank and the customer?
b) What is the position of a former employee of a banking business entity in the obligation to maintain bank secrecy?
c) What is the urgency of setting obligations for former bank employees in maintaining confidentiality?

C. Research Objectives

a) To know the legal rights and obligations in the relationship between the bank and the customer.
b) To understand the position of former employees of banking business entities in the obligation to maintain bank secrecy.
c) To find out the urgency of setting obligations for former bank employees in maintaining confidentiality.

2. Method

The legal research method used in this research is a normative legal research method with a statutory and conceptual approach. Taking into account the background of the problem and the research objectives of this study, namely reforming the substance of banking law in Indonesia, it can be emphasized that this study is based on exploratory research. This exploratory research is intended as a study that deepens ideas in the context of banking law in Indonesia. This study uses

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[14] Reviyansyah J. Dien, "Bank Secrets in Sharia Bank Business Activities (UU No.21 of 2008", Lex Privatum, Vol. 5 No. 8 (2018), p. 132.

[15] Windy Arista, "Bank Confidentiality in Civil Cases between Banks and Non-Customer Third Parties Concerning Customer Deposits", Discipline Vol. 21 No. 08 (2015), p. 19.

secondary data consisting of primary, secondary, and tertiary legal materials. The primary legal materials used in this study are the 1945 Constitution of the Republic of Indonesia, Law Number 1 of 1946 concerning the Civil Code, Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking and Law Number 13 of 2003 concerning Manpower. The secondary legal materials used in this research are legal journals, as well as papers related to banking and employment law. Tertiary legal materials are used to complement and provide further explanation of primary and secondary legal materials such as legal dictionaries, English/Indonesian dictionaries and encyclopedias. The data in this study were collected through the library research method.

3. Main Heading Of The First Analysis Or Discussion

1. Legal Rights and Obligations in the Relationship between the Bank and the Customer.

   There is an opinion regarding the events that initiated the need for the obligation to safeguard customer secrets, where the bank secrecy provisions were initiated by the good intentions of banks in Switzerland to protect Jews against persecution by the German Nazi regime in power in the 1930s and 1940s. at that time the bank secrecy provisions were implemented absolutely, so that communities that previously had concerns about their identity information were lost.[16] However, there is another view, which states that the Swiss provisions in the Federal Law on Banks and Savings banks of 1934 are an attempt by banks to maintain foreign customers and even grow Swiss banking and at the same time seek to reduce government intervention because it is considered to be damaging. swiss economy.[17]

   In the context of the common law legal tradition, when the relationship between the banker (banker) and the customer is built through an agreed contract, the bank is immediately implicitly charged with maintaining the confidentiality of various customer banking affairs based on provisions stipulated by laws and regulations. If there is a violation of bank secrecy, the customer has the right to sue for breach of contract and defamation.[18] The first case regarding the disclosure of customer secrets by a bank occurred in Tournier v. The National Provincial and Union Bank of England, the judge and jury at first instance ignored the actions taken by the bank. However, the Court of Appeal ordered a re-examination, in its consideration the court stated that the matter of protecting information about customers is a legal obligation, this obligation was born based on a legal relationship between the customer and the bank.[19]

[16] Dennis Campbell, "International Bank Secrecy", (London: Sweet & Maxwell, 1992), p. 663.

[17] Robert U. Vogler, "Swiss Banking Secrecy: Origin, Significance, Myth", Association for Financial History", Vol. 7 (2006), p. 9-10.

[18] Francis Neate and Roger McCormick, "Bank Confidentiality", (London: International Bar Association, 1990), p. 88.

[19] Sarabdeen Jawahitha, "Banking Confidentiality: A Comparative Analysis of Malaysian Banking Statutes", Arab Law Review, Vol. 17, No. 3 (2002), p. 260.

Regulations in the law regarding bank secrecy in Indonesia were first introduced through Article 40 of Law no. 7 of 1992 concerning which states:

"*Banks are prohibited from providing information recorded at the bank regarding the financial condition and other matters of their customers, which must be kept confidential by the bank according to the prevalence in the banking world, except in matters referred to in Article 41, Article 42, Article 43 and Article 44. "*

Based on the sound and authentic explanation of Article a quo, information and data objects that must be protected have a very broad scope, namely all aspects related to banking, so that it is understood not only the condition of bank funds originating from customers through depository services (bank liabilities), but also other services outside of depositing funds used by bank customers.[20] As a result, bank secrecy arrangements also cover debtor or bank credit customers (bank assets) as well as customers who use other bank services, such as bank guarantees, money transfers, opening L/Cs, and so on.

The public feels that the formulation is too broad, because the regulation includes bank asset services provided to customers. Many people from the public have proposed limiting the scope of bank secrecy which only covers bank liabilities, namely customer deposit funds and information regarding depositary funds. The limitation of information regarding bank assets by the Article a quo is considered to have undermined and derogated the public's right to know the health condition of the bank itself.[21] In line with these dynamics, it has implications for changes in the formulation of the norms of Article 40 paragraph (1) of Law no. 7 of 1992 through Article 40 paragraph (1) of Law no. 10 of 1998 which states:

"Banks are required to keep confidential information regarding depositors and their deposits, except in the cases referred to in Article 41, Article 41A, Article 42, Article 44, and Article 44A."

The implication of the existence of this norm implies that currently the object that bears the obligation to keep confidential is only the bank's liabilities.

The scope of bank secrecy is closely related to customer data, this data is information contained in the bank and is personal in nature so that it is not appropriate for other parties to know, except for parties and reasons that have been excluded and regulated in law.[22] Examples include: name, date of birth and age, address, personal access such as telephone number and e-mail, family name and so on that are personal in nature. Therefore, if a bank is unable to maintain bank secrets, it will be detrimental to customers which will cause the level of public trust in the bank to be damaged which will impact on the conduct of business and the existence of the bank.

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[20] Sutan Remy Sjahdeini, "Sharia Banking: Products and Legal Aspects", (Jakarta: Kencana, 2015), h. 23.

[21] Ibid p. 25

[22] Rachmadi Usman, "Legal Aspects of Indonesian Banking", (Jakarta: Gramedia Pustaka Utama, 2003), h. 53.

The party that has the obligation to maintain bank secrecy is a person or organ related to banking management such as company organs, employees and other affiliated parties, this is explained in the provisions of Article 1 Number 22 jo. Article 40 paragraph (2) which essentially stipulates that banks and affiliated parties are prohibited from disclosing bank secrets regarding depositors and their deposits, regarding the affiliated parties themselves are:

a) Commissioners, supervisors, directors or their proxies;
b) Managers, managers or bank employees;
c) Parties providing services to banks, such as public accountants, legal consultants and other parties;
d) Parties who, according to Bank Indonesia's assessment, participate in influencing the management of the bank, such as shareholders and their families and other parties.

Referring to the definition of the law, the meaning of employee can be understood very broadly, meaning that anyone who works as a bank employee, even though they do not have direct access to bank confidential information, is still charged with the obligation to keep bank secrets, even though this norm is considered too excessive because it requires workers in the areas of logistics, cleaning, transportation and security to be responsible for bank secrecy matters.[23]

Regulations related to bank secrecy must be related to the context of secrecy law, where secrecy law is defined as principles and legal rules in determining norms for the protection of secrets, such as regulation of trade secrets, individual personal secrets and state secrets. Customer data and information at the bank is part of bank secrecy, so bank secrecy is included in the legal aspect of confidentiality. The legal ratio behind the secrecy law is that the law is used as an instrument to be able to prevent someone from opening or divulging the information given to him, and at the same time being able to avoid misuse of the information he knows.[24]

Any action that is contrary to the obligation to maintain bank secrecy will result in losses for the customer and the bank.[25] The obligation to maintain and comply with bank secrecy must be carried out by all affiliated parties, one of which is a bank employee. Bank employees do not always remain employees of the bank in time bank employees will stop either due to retirement, being laid off by the bank, or quitting of their own free will.[26]

One example of a country that imposes the obligation to maintain bank secrecy on former employees is Malaysia, in article 133 of the Financial Services Act 2013 it is stated explicitly:

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[23] Juli Asril, "Bank Secrecy and Its Regulatory Development in Positive Law", MEA Scientific Journal (Management, Economics, & Accounting), Vol. 2 No. 1 (2018), p. 238-239.

[24] Muhammad Djumhana, "Bank Secrets", (Bandung: Citra Aditya Bakti, 1996), p. 17.

[25] Yunus Husein, "Bank Secrecy and Law Enforcement", (Jakarta: Pustaka Juanda Tiga Lima, 2010), h. 31.

[26] Meilida Hijriyani and I Wayan Windia, "Obligations of Former Bank Employees in Maintaining Bank Secrets", Kertha Semaya, Vol. 6 No. 9 (2018), p. 4.

"No person who has access to any document or information relating to the affairs or account of any customer of a bank, including— (a) the bank; or (b) any person who is or has been a director, officer or agent of the financial institution shall disclose to another person any document or information relating to the affairs or accounts of any customer of the financial institution".

These provisions indicate that directors, officers or other workers in the financial sector, whether they are still working or no longer working at a bank, must still maintain data and information about bank customers where they used to work.

There are 2 (two) types of regulations for violating bank secrecy provisions. First, making the normative provisions related to bank secrecy as part of the civil or private legal system, various countries that adhere to this system provide that bank secrecy and all other related provisions are obligations and rights born on the basis of a contract,[27] the contractual relationship can be deviated by the state. if there are matters relating to the public interest and expressly excluded by the provisions of the Act. We can see this for example in the bank secrecy provisions according to the laws of the United Kingdom, the United States, Canada, Australia, the Netherlands, Belgium, The Bahamas, The Cayman Islands and several other countries. The second determines bank secrecy violations as criminal violations, for example Switzerland, Austria, South Korea, France, Luxembourg, and Indonesia itself, and several other countries.[28]

2. Obligation to Safeguard Bank Secrets by Employees and Former Banking Employees

The conception of the running of the company cannot be separated from the relationship between the company and the employees who work in it.[29] Companies as performance organizations necessitate the relationship between human resources and companies as one of the main factors in the development of the banking business. The quality of performance which consists of ability, effort, and company management is the main key to the quality and profit obtained by a business entity.[30]

The transition from a feudal society to an industrial, evolutionary society that fights for individual rights necessitates a transformation of the relationship between workers and employers. The implications of such changes in the history of common law law lead to industrial employment relations based on contract

[27] Adrian Sutedi, "Banking Law: An Overview of Money Laundering, Mergers, Liquidation and Bankruptcy", (Jakarta: Sinar Graphic, 2010), h. 14.

[28] Francis Neate and Roger McCormick, "Bank Confidentiality", London: International Bar Association, 1990) h. 72.

[29] Nur Ahmad and Didik Hermawan, "Analysis of the Effect of Employee Relations on Employee Job Satisfaction at PT Menara Kartika Buana in Karanganyar", BENEFIT Journal of Management and Business, Vol. 16 No. 2, (2012), p. 107.

[30] Eric Alamzah Limawandoyo and Augustinus Simanjuntak, "Management and Development of Human Resources at PT. Aneka Sejahtera Engineering", Petra Business Management Journal, Vol. 1 No. 2, (2013), p. 1.

law.[31] The existence of the employment relationship such as the direction, form, nature and duration of the work at that time is defined in the contract. Thus, the determination of whether or not there is an employment relationship in the eyes of the law is based on the existence of a work agreement.[32]

In addition to the implications of work agreements for work relations, laws and regulations can also play a role in influencing the authority of both parties in work agreements. This is based on the fact that when making a work contract, it must be in accordance with the subjective and objective requirements of an agreement. In making a work agreement, one must fulfill one of the objective conditions of the agreement, namely a lawful cause.[33]

Theoretically valid cause and effect arrangements are based on whether or not the contents of the achievement material in the work agreement are in accordance with the applicable laws and regulations.[34] So that in this case if the material content contained in the work agreement is not in accordance with statutory regulations, then the work agreement is null and void by law mutatis mutandis.

In the Indonesian context, arrangements related to work relations are regulated in Law Number 13 of 2013 concerning Manpower. Article 1 point 15 of the law states that:[35]

"Work relations are relations between workers and employers based on work agreements consisting of wages, work and orders."

Thus, in determining the employment relationship between employers and workers, it is obligatory to include orders, work, and wages as workers' rights and obligations to fulfill the strategic role of banking in national economic development. The logical consequence of this condition is that the obligations of bank personnel must be fulfilled, one of which is to maintain bank secrets.[36]

Referring to Article 1 number 28 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, bank secrecy is defined as "Everything related to customers that relates to information regarding deposit and savings." Such provisions aim to prevent misuse of customer financial data by irresponsible parties.

The existence of a bank as an institution of trust in managing public funds is determined through the implementation of an orderly system within a

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[31] Fathor Rohman and Arif Affandi, "Changes in Social and Economic Behavior Patterns of Farmworkers Due to Industrialization", Paradigm, Vol. 2 No. 1, (2014), p. 2.

[32] Keri Spooner and Ali Haidar, "Defining The Employment Relationship", International Journal of Employment Studies, Vol. 4 No. 2, (2006), p. 65.

[33] Tri Wahyu Surya Lestari and Lukman Santoso. "Comparison of the Terms of the Validity of "Halal Causes" in Conventional Agreements and Sharia Agreements." Yudisia: Journal of Islamic Law and Legal Thought, Vol. 8 Nno. 2, (2018), p. 283.

[34] Ayunita Nur Rohanawati, "Kesetaraan Dalam Perjanjian Kerja dan Ambiguitas Pertimbangan Hukum Mahkamah Konstitusi (Kajian Putusan Mahkamah Konstitusi Nomor 13/PUU-XV/2017)", *Jurnal Yudisial*, Vol. 11 No. 3, (2018), h. 273.

[35] Article 1 point 15 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking.

[36] Nancy Sarapi, "Bank Business Maintaining Bank Secrets in the Context of Protecting Customers.", Lex Et Societatis, Vol. 1 No. 4, (2013), p. 61.

banking business entity. The bank's intermediation function as a collector and manager of public funds places customer trust as the main pillar of its management. With the existence of bank secrecy provisions, mutatis mutandis banking business entities cannot provide customer financial information in order to protect customer personal data.[37]

The obligation of confidentiality of customer deposit and deposit data that must be upheld by banks is not only for the benefit of individual customers, but also includes the interests of banking business entities and the public interest.[38] Therefore, banks that have an essential role in the national financial system, should implement such bank secret guarantees consistently and responsibly with reference to laws and regulations.

Such a conception cannot be immediately interpreted that information related to bank secrecy is absolutely closed under any circumstances. There are exceptions to a number of conditions in accessing financial information within a bank where the bank can provide information and disclose information related to customer deposit and deposit data with reference to the applicable laws and regulations.[39]

Exceptional conditions are defined in Law Number 7 of 1992 in conjunction with Law Number 10 of 1998 concerning Banking which states that exceptions are made for the purposes of taxation, settlement of bank receivables, and justice in criminal cases. Thus, Indonesia adheres to a relative bank secrecy that still pays attention to the public interest above the protection of individual interests.[40]

In safeguarding bank secrecy, banking business entities and all the resources within them have an obligation to work hand-in-hand to protect customer trust through safeguarding bank secrecy.[41] Resources that have a working relationship according to Article 47 paragraph (2) of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking are all Bank officials and employees. Such a situation makes all officials and employees of banking business entities have the responsibility to protect the financial secrets of customers owned by the bank.

If this is violated by employees, then the act of giving or handing over bank secrets to other parties is categorized as a crime and can be subject to criminal

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[37] Teuku Muttaqin Mansur, et al. "Protection of Customer Personal Data in Offering Insurance Transactions by Pt Bank Negara Indonesia (Persero)", Shia Kuala Law Journal, Vol. 3 No. 1, (2019), p. 24.

[38] Dinda Anna Zatika, "Opening the Principle of Bank Confidentiality as an Unlawful Act", Sasi Journal, Vol. 26 No. 4, (2020), p. 510.

[39] Ibid., p. 511.

[40] John Bert Christian Bismar Nasution, et al., "Legal Analysis of the Implementation of Bank Secrets in Indonesia Related to Customer Data Protection Based on the Principle of Trust in Banks (Study on PT. Bank Cimb Niaga Tbk Medan Branch)", USU Law Journal, Vol. 4 No.4, (2016), p. 134.

[41] Ahmad Jailani,"Legal Protection for Customers Related to Bank Secrets." Dynamics: Scientific Journal of Law, Vol. 25 No. 2, (2019), p. 5.

sanctions.[42] Article 47 paragraph (2) of Law Number 7 of 1992 in conjunction with Law Number 10 of 1998 concerning banking stipulates that:

"Members of the Board of Commissioners, Directors, bank employees or other Affiliated Parties who deliberately provide information that must be kept confidential according to Article 40, are subject to imprisonment for a minimum of 2 (two) years and a maximum of 4 (four) years and a fine of not less than a minimum of IDR 4,000,000,000.00 (four billion rupiahs) and a maximum of IDR 8,000,000,000.00 (eight billion rupiahs)."

The concept of imprisonment for a minimum of 2 (two) years and a maximum of 4 (four) years, as well as a fine which specifically prohibits banking employees from disseminating information on a customer's financial condition to unauthorized parties raises further questions, what if the employment relationship ends and former bank employees provide information that must be kept confidential according to laws and regulations.

This is because access to information owned by former bank employees is a separate loophole in maintaining the confidentiality of customer deposit and deposit information. Analyzing the existing laws and regulations, there are no sanctions provisions for parties other than all officials, employees, and parties affiliated with a working relationship with banks who leak bank secrets. This is based on the employee is no longer part of the banking business entity which has the obligation to protect bank secrets in the form of customer financial information.[43]

Unavoidable termination of employment contracts between employees and banking business entities requires termination of employment between the two parties. Termination of employment according to Article 1 number 25 of Law Number 13 of 2013 concerning Manpower is:

"Termination of employment due to a matter that results in the end of the rights and obligations between the worker/laborer and the entrepreneur."

The consequence of terminating the employment relationship is the end of the contractual relationship between the banking business entity and its former employees. Thus, the employee's obligation stated in the work agreement to maintain the confidentiality of customer deposits or deposits (bank secrets) no longer applies to former employees of banking business entities.

3. The urgency of regulating sanctions for leaking bank secrets by former employees of banking business entities

In order to fulfill the mandate of the 4th paragraph of the preambule of the 1945 Constitution of the Republic of Indonesia. Development of the financial sector, which in this case is realized through banking institutions, has an

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[42] Indra Mooduto, "Settlement of Violation of Bank Secrets." Lex Et Societatis, Vol. 1 No. 3, (2013), p. 63.

[43] Shinta Adhania Sumaningrum and Mahendra Wardhana. "Juridical Review of Bank Confidential Violations Related to Customer Data Deposits and Their Savings Made by Former Bank Employees." Novum: Journal of Law, Vol. 1 No. 1, (2021), p.5-6.

essential role in achieving economic development goals. The role of banking business entities as the wheels of the national economy, necessitates comprehensive regulation regarding the guarantee of confidentiality of the customer's financial information in their possession.

However, there are deficiencies in protecting bank secrecy, such as the termination of the contractual relationship between former bank employees and banking business entities, which creates a separate dilemma for banking business entities and customers in guaranteeing bank secrecy. Access to information held by former bank employees for depositors and customer deposits is a weak point in protecting banking financial information from unauthorized parties.

Dissemination of financial data (bank secrets) carried out by various parties causes losses for customers. The losses suffered range from knowing personal data such as identity, address, and the amount of money owned by a customer in an account held by a banking business entity for the purpose of offering insurance products or other financial services to misusing this personal data to conduct banking transactions.[44]

The negative impact of the dissemination of financial information that will cause losses to customers in the form of misuse of information and losses suffered by banks due to loss of customer trust as the main pillar of their business makes protection of bank secrets must be comprehensively regulated in laws and regulations as guidelines for legal relations between business entities banks, customers, and employees of the business entity.[45]

Therefore, responsive improvement is needed in the form of adjustments and changes to various legal instruments and laws and regulations that regulate banking secrecy. According to the researcher's analysis, this can adopt the concept of bank secrecy guarantees in various countries such as Switzerland and Singapore.

The regulation of bank secrecy in Article 47 of the Swiss Federal Act on Banks and Saving Banks requires that the obligation to maintain confidentiality will remain attached to a person even though that person has terminated his employment relationship with a banking business entity or has retired from professional duties which necessitate access to customer financial information in a bank. With this provision, bank employees and other professions related to confidential deposits and customer deposits are obliged to maintain these secrets for the rest of their lives. If these provisions are violated, a former bank employee who leaks bank secrets is threatened with imprisonment for a maximum of 5 (five) years and a fine of 250,000 Swiss francs.[46]

Such provisions are also reflected in Section 47 of the Singapore Banking Act which requires that even though the work relationship and duties of the

[44] Fika Nofi Nofita, et al., "Bank Efforts to Maintain Bank Secrets as a Form of Legal Protection for Customers.", Diponegoro Law Journal, Vol. 5 No. 2, (2016), p. 4..

[45] Muhammad Noor, "Application of the Principles of Contract Law in Making Contracts", Mazahib, Vo. 14 No. 1, (2015), p. 91.

[46] Article 47th of Swiss Federal Act on Banks and Saving Banks.

related parties have been completed, the responsibility for maintaining bank secrecy remains in force for life. From the provisions in the two different countries, it can be concluded that in order to protect bank secrecy effectively, it is necessary to regulate bank secrecy obligations by former employees and related parties in order to protect the interests of customers, banking business entities and the public interest. Criminal sanctions are also reflected in this provision by imposing a maximum fine of 125,000 Singapore dollars to convicts who leak bank secrets.[47]

The two regulations above should be implemented in order to maintain the function of banks as essential institutions that play a role in national economic development. According to the author's analysis, the legal substance of Law Number 10 of 1998 in conjunction with Law Number 7 of 1992 concerning Banking should have been revised to accommodate provisions for criminal sanctions for former bank employees and other parties affiliated with bank secrecy even though there was termination of employment between employees and banking business entities or the duties of parties affiliated with bank secrecy have expired.

Based on the design and framework of such laws and regulations, it is hoped that this can be a progressive legal step to root out the problem of misuse or dissemination of bank secrets by former employees of banking business entities in Indonesia to its roots. So that later, the ideals of an Indonesian legal state that prioritizes the needs of the community can be realized in accordance with its mission. This is in line with the opinion of Mochtar Kusumaatmadja, that law is formed and intended to be able to answer every problem that exists in society.

4. Conclution

1. Arrangements related to bank secrecy under the common law system were first introduced in the Tournier v. National Provincial and Union Bank of England, where the court acknowledged that data and information about customers are documents that must be considered based on the contractual relationship that binds the bank and the customer. This relationship is based on the principle of trust so that when a violation occurs it will erode and damage the banking industry at a macro level. The object that must be kept secret is regarding bank liabilities, namely information on depositors and their savings, and if there is a violation of fulfilling these obligations, there are practices of two kinds of sanctions, namely sanctions by the public legal system and the private legal system.
2. Employment agreements for employment relations, laws and regulations also play a role in influencing the authority of both parties in the employment agreement, thus, in determining the employment relationship between employers and workers, it is mandatory to include orders, work, and wages as workers' rights and obligations to fulfill the strategic role of banking in national

[47] Section 47 of Singapore Banking Act.

economic development. So that then arises the obligation of bank workers, one of which is to maintain bank secrets.

3. At present there is a shortage in safeguarding bank secrecy in the context of the end of the contractual relationship between former bank employees and banking business entities. Such conditions will certainly create various losses. Therefore, it is necessary to regulate bank secrecy obligations by former employees and related parties in order to protect the interests of customers, banking business entities and the public interest, as are provisions for maintaining bank secrecy by former bank employees in Switzerland. and singapore.

5. References

Books

Afif, F. (2006). Bank Strategy and Operations. Bandung: Ersco.

Djumhana, M. (1996). Bank Secret. Bandung: Citra Aditya Bakti.

Djumhana, M. (2006). Banking Law in Indonesia. Bandung: PT. Image Aditya Bakti.

Husein, Y. (2010). Bank Secrets And Law Enforcement. Jakarta: Juanda Tiga Lima.

Neate, F., & McCormick, R. (1990). Bank Confidentiality. London: International Bar Association.

Sjahdeini, S. R. (1999). Islamic Banking and Its Position in Indonesian Banking Law. Jakarta: Graffiti.

Sjahdeini, S. R. (2015). Islamic Banking: Products and Legal Aspects. Jakarta: Kencana.

Sutedi, A. (2010). Banking Law: An Overview of Money Laundering, Mergers, Liquidations, and Bankruptcies. Jakarta: Sinar Graphics.

Triandaru, S., & Santoso, B. (2006). Banks and Other Financial Institutions. Jakarta: Salemba Empat.

Usman, R. (2003). Legal Aspects of Indonesian Banking. Jakarta: Gramedia Pustaka Utama.

Journals

Ahmad, Nur, and Didik Hermawan. 2012. "Analysis of the Effect of Employee Relations on Employee Job Satisfaction at PT. Menara Kartika Buana in Karanganyar." BENEFIT Journal of Management and Business 107.

Arista, W. (2015). Bank Confidentiality in Civil Cases between Banks and Non-Customer Third Parties Concerning Customer Deposits. Discipline, 19

Asril, J. (2018). Bank Secrets and Regulatory Development in Positive Law. MEA Scientific Journal (Management, Economics, & Accounting), 238-239.

Dien, R. J. (2008). Bank Secrets in Sharia Bank Business Activities (UU No. 21 of 2008. Lex Privatum, 132.

Jilani, Ahmad. 2019. "Legal Protection for Customers Related to Bank Secrets." Dynamics: Scientific Journal of Law 5.

Jawahitha, S. (2002). Banking Confidentiality: A Comparative Analysis of Malaysian Banking Statutes. Arab Law Review, 260.

Lestari, Tri Wahyu Surya, and Lukman Santoso. 2018. "Comparation of Terms of Legality of "Halal Causes" in Conventional Agreements and Sharia Agreements." Yudisia: Journal of Islamic Law and Legal Thought 283.

Limawandoyo, Eric Alamzah, and Augustinus Simanjuntak. 2013. "Management and Development of Human Resources at PT. Aneka Sejahtera Engineering." Petra Business Management Journal 1.

Mansur, Teuku Muttaqin, and et al. 2019. "Protection of Customer Personal Data in Offering Insurance Transactions by PT. Bank Negara Indonesia (Persero)." Shia Kuala Law Journal 24.

Mooduto, Indra. 2013. "Settlement of Violation of Bank Secrets." Lex Et Societas 63.

Nasution, John Bert Christian Bismar, and et al. 2016. "Legal Analysis of the Implementation of Bank Secrets in Indonesia Related to Customer Data Protection Based on the Principle of Trust in Banks (Study at PT. Bank Cimb Niaga Tbk Medan Branch)." USU Law Journal 134.

Nofita, Fika Nofi, and et al. 2016. "Bank Efforts to Maintain Bank Secrets as a Form of Legal Protection for Customers." Diponegoro Law Journal 4.

Noor, Muhammad. 2015. "Application of the Legal Principles of Engagement in Making Contracts." Mazahib 91.

Financial Services Authority (2021). Indonesian Banking Statistics. Financial Services Authority Department of Banking Licensing and Information, 2.

Putera, A. P. (2020). The Principle of Trust as the Main Foundation of Banking Activities. Bonum Commune Journal of Business Law, 132.

Regar, R., & et al. (2016). Analysis of Microcredit Provision of Customer Increase: Studies at PT. Sulutgo Bank Manado Branch. Journal of Business Administration, 4.

Rohanawati, Ayunita Nur. 2018. "Equality in Employment Agreements and Ambiguity of Legal Considerations of the Constitutional Court (Study of Constitutional Court Decisions Number 13/PUU-XV/2017)." Judicial Journal 273.

Rohman, Fathor, and Arif Affandi. 2014. "Changes in Social and Economic Behavior Patterns of Farmworkers Due to Industrialization." Paradigm 2.

Sarai, Nancy. 2013. "Bank Business Maintaining Bank Secrets in the Context of Protecting Customers." Lex Et Societas 61.

Spooner, Keri, and Ali Haidar. 2006. "Defining The Employment Relationship." International Journal of Employment Studies 65.

Sumaningrum, Shinta Adhania, and Mahendra Wardhana. 2021. "Juridical Review of Violations of Bank Confidentiality Regarding Data on Depositing Customers and Their Deposits Made by Former Bank Employees." November:

Syarin, A., & et al. (2014). Criminal Liability in Banking Crimes. USU Law Journal, 226.

Vogler, R.U. (2006). Swiss Banking Secrecy: Origin, Significance, Myth. Association for Financial History, 9-10. Journal of Law 5-6.

Windia, M. H. (2018). Obligations of Former Bank Employees in Maintaining Bank Secrets. Kerta Semaya, 4.

Zatika, Dinda Anna. 2020. "Opening the Principle of Bank Confidentiality as an Unlawful Act." Sasi Journal 510-511.

Thesis

Nafisa, Fitria Dewi. (2020). Meaning of the Principle of Interest (Insurable Interest) in the Insurance Agreement. Malang: Thesis of the Islamic University of Malang,

Legislation

The 1945 Constitution of the Republic of Indonesia.

Law Number 7 of 1992 concerning Banking.

Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking.

Law Number 3 of 2013 concerning Manpower.

Financial Services Act 2013 Laws of Malaysia

Singapore Banking Act.

Swiss Federal Action on Banks and Saving Banks 1934.

Website

Adityowati, P. (2017, August 25). Sales of Customer Data, OJK Finds Involvement of Former Bank Employees. Retrieved from Tempo: https://bisnis.tempo.co/read/903010/penjualan-data-nasabah-ojk-temukan-keterlibatan-eks-pegawai-bank/full&view=ok