Strengthening of Bank Secrecy Regulations in Indonesia to Protect Customers' Personal Data Post-covid-19 Pandemic

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Abstract. The global Covid-19 pandemic has increased banking activities, including in Indonesia. One of them is related to the use of digital banking services and electronic banking services in various bank customer transactions. The use of information technology in banking services increases the security risk of customers' data. Customer personal data should be included in the scope of bank secrecy which must be kept confidential but can be easily used and disseminated for commercial purposes, both by banks and third parties who work with banks without clear restrictions. Therefore this study aims to examine how forms of strengthening bank secrecy provisions in Indonesia protect customer personal data. The research method used in this study is normative juridical with a statutory and conceptual approach, as well as extensive interpretation of legal material analysis techniques. The results of this study indicate that one form of embodiment of balanced legal protection for bank customers after the Covid-19 pandemic is to strengthen bank secrecy rules contained in Law number 10 of 1998, including 1). Expanding the system of legal liability on sanctions for violations of bank secrecy on civil liability; 2). Defining debtor customer information and data into two, namely data related to personal data (accounts) and data related to debtor customer loans; 3). Expand the application of bank secrecy rules to general personal data (accounts/identities) of debtor customers; 4). Restricting the use and dissemination of debtor customer data/information by banks only to information related to the loan; 5). The purpose of collecting and using personal data of debtor customers must be included in the clauses of the contract made between the debtor customer and the bank; 6). Banks in using the personal data of debtor customers must be following the purpose of collection under the contract made between the bank and the customer.

Keywords: Bank Secrecy · Personal Data Protection · Debtor Customers

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1 Introduction

1.1 Background

Strengthening bank secrecy rules after the Covid-19 pandemic is needed to provide legal protection for all customers. The Covid-19 pandemic that has occurred globally has increased electronic transactions in the banking system, one of which is indicated by the growth in account ownership, which is evenly distributed in many countries. According to the Global Findex 2021 database, By 2021, 76% of adults globally currently have an account with a bank, other financial institution, or mobile money provider, an increase from 68% in 2017 and 51% in 2011 [1]. The increase in banking activities, especially in the use of information technology during the Covid-19 pandemic, has increased cases of leakage of customer personal data [2].

Banks as financial institutions whose scope of business is to manage funds from the public based on trust must be able to protect this by implementing bank secrecy. Bank secrecy aims to protect the interests of customers related to their financial data and personal data, as well as protect the interests of the bank itself to gain the trust of customers. The application of bank secrecy rules in Indonesia is contained in Act number 10 of 1998, through the provisions of Article 1 number (28) and Article 40 paragraph (1). According to these articles, it can be seen that the application of bank secrecy is mandatory for all banks in Indonesia. However, this application is limited only to data and information regarding depositors and their deposits. This data and information other than depositors and their savings are not information that must be kept confidential by the bank, for example information about debtors and their loans. Unless a bank customer is a deposit customer who is also a debtor customer, the bank is required to keep confidential information about the customer in his position as a deposit customer. Therefore, legal protection for debtor customers is still inadequate and seems half a measure.

The Tax Amnesty implemented globally, including in Indonesia, brings to mind whether bank secrecy still needs to be implemented. Tax Enforcement in Indonesia, namely through Law number 9 of 2017 concerning the Stipulation of Regulation instead of Law Number 1 of 2017 concerning Access to Financial Information for Taxation Purposes to Become Law, gives authority to the Directorate General of Taxes to request financial information data directly without permission from the Financial Services Authority can harm the relationship between the bank and the customer. Even though a bank that provides customer data information for tax purposes does not violate the principle of bank secrecy, it is a form of deviation from the individual rights of the customer concerned [3]. This is based on the premise that taxation interests are the economic interests of the state which must take precedence over the interests of customers.

Restrictions on bank secrecy in tax control, including aspects of information, taxes, and banking law also occur in Russia. According to the results of research conducted by Elena Vycheslavovna Pokachalova which was published in the Journal of Financial Law Review, "*The value of bank secrecy should ensure the spiritual needs of individuals not to disclose their personal information*" [4]. That bank secrecy must have value to guarantee the spiritual needs of individuals not to reveal personal information from customers.

The fact is that the majority of the public in Indonesia has not made personal data part of their property and human rights [5]. Therefore personal data protection for all

customers is a must. Bank secrecy rules are a form of legal protection for customers, therefore they must still exist. The application of bank secrecy should be able to provide balanced legal protection, namely protecting the interests of customers, the interests of the bank, and the interests of the nation and state. This is also in line with the opinion in Sandalova V's research, namely: "*There is a growing need to form an adequate legal regulation of the institution of banking secrecy, given the need to level out the conflict of interests in the client-bank- state system*" [6]. Whereas there is a growing need to establish an adequate legal arrangement regarding banking secret institutions, bearing in mind the need to reduce conflicts of interest in the system between customers-bank-state.

Based on this premise, this study aims to examine how forms of strengthening bank secrecy rule in Indonesia in realizing legal protection for debtor customer personal data.

2 Research Methods

This type of research is normative juridical research because it examines and analyses primary, secondary, and tertiary legal materials. The primary legal materials used in this study consist of the 1945 Constitution of the Republic of Indonesia, Law number 10 of 1998 concerning Banking, and Law Number 27 of 2022 concerning the Protection of Personal Data, as well as other regulations relevant to the focus study. Therefore, the type of legal approach used in this study is a statutory approach and a conceptual approach. The technique of collecting all legal materials was carried out by document study and literature study, then analysed using descriptive analysis using extensive interpretation, and then deductive conclusions were drawn [7].

3 Research Results and Discussion

Strengthening bank secrecy rules after the Covid-19 pandemic is needed to provide legal protection for debtor customers. The strengthening is referring to "*to make something stronger or more effective, or to become stronger*" [8]. Thus, the strengthening of bank secrecy rules is to make stronger and more effective bank secrecy rules. In this case, it strengthens the bank secrecy rules contained in Law number 10 of 1998 concerning Banking. Bank secrecy rules are a form of legal protection for customers, especially regarding their data. Based on the Banking Law in Indonesia number 10 of 1998, through the provisions of Article 1 number (28) it defines that "*bank secrecy is everything related to information regarding depositors and their deposits*". Furthermore, Article 40 paragraph (1) stipulates that "*banks are required to keep confidential information regarding Depositing Customers and their deposits, except in cases referred to in Article 41, Article 41A, Article 42, Article 44, and Article 44A*". The application of bank secrecy applies to banks and affiliated parties. Penalties given to the Board of Directors, Board of Commissioners, and bank-affiliated parties who deliberately provide information that must be kept confidential without written permission from the Financial Services Authority are criminal sanctions and fines.

Indonesia is a country that applies the principle of bank secrecy relatively and applies criminal sanctions to violations of bank secrecy. The application of bank secrecy rules in Indonesia is also limited not to debtor customers, but only to depositors and their savings.

Except in the case of a bank customer who is a depository customer who is also a debtor customer, the bank is required to keep confidential information about the customer in his position as a depository customer. The juridical consequence of limiting the application of bank secrecy is that banks in Indonesia can use debtor customer data and information without clear restrictions. Banking law in Indonesia also does not regulate what data from debtor customers can be used by banks and for what purposes. Therefore, if the use of this data is carried out without the wisdom and discretion of the bank, there will be the potential for misuse so debtor customers will be harmed.

Article 1 number (18) of the Banking Act number 10 of 1998, emphasizes that the relationship between a bank and a debtor customer is a contractual one, therefore both are bound and subject to the agreement they have made. Agreements that have been made legally between the bank and the debtor customer apply according to the law, this is according to the legal principle of pacta sunt servanda. Therefore, the use of the personal data of debtor customers that is not wise and exceeds the limit by the bank is a violation of the law. This is as stipulated in the provisions of Article 1339 of the Indonesian Civil Code, which states "*Agreements are not only binding for things expressly stated in them, but also for everything that according to the nature of the agreement is required by custom, decency or law*".

Banks may also be subject to lawsuits for unlawful acts if the use and disclosure of debtor customer data and information in the eyes of the debtor customer can harm them. This is as stipulated in Article 1365 of the Indonesian Civil Code, namely: "*Any unlawful act that causes harm to other people obliges the person who because of the mistake of issuing the loss must compensate for the loss it causes*".

Referring to the opinion of M. Sholehudin, the obligation for banks to uphold bank secrecy is the implementation of the relationship between banks and their customers which is based on the principle of confidentiality. Therefore customer relationships (both depositors and debtors) are confidential relationships. Thus, the current bank secrecy regulations in Indonesia need to be strengthened by reformulating lawsuits regarding violations of bank secrecy, which not only can be subject to criminal prosecution but can also be subject to civil lawsuits. This is based on the premise that the obligation to keep information about a debtor's customer confidential is a civil obligation based on a contractual relationship.

The system for regulating civil bank secrecy and the imposition of fines for violations of bank secrecy is adhered to in Singapore, namely through Article 47 Paragraph (4) of the Singapore Banking Act. The law strictly divides bank secrecy, which includes all information about money or everything about customer accounts (personal data). A bank in Singapore has a contractual obligation to guarantee confidentiality as agreed in the agreement between the bank and the customer. Based on the results of the latest research, the banking system in Singapore has begun to shift from closed banking to open banking. Open banking allows sharing of customer data with third parties as directed and initiated by the customer. This profit-sharing assumes that the customer owns the rights to their banking data, and therefore should benefit from that ownership [9]. Thus, customers not only have to protect their data but also make it possible for profit sharing from the management of this data by the bank.

Apart from Singapore, the system of civil bank secrecy arrangements is also adopted in Ukraine. Based on Article 61 of the Law of Ukraine On Banks and Banking Activity, banks must guarantee that any customer data disclosed to banks during service transactions, including personal or third-party relationships, will not be disclosed and used for the benefit of bank employees. The law also stipulates that bank employees must sign a bank secrecy commitment while in office. Contracts and agreements between banks and customers must stipulate banking secrecy and accountability for disclosure. In addition, banks must limit the number of people who have access to confidential data, provide special sensitive documents for keeping records, and technically prevent unauthorized access to electronic and other media [10].

Legal protection of everyone's data (including bank customers) is a human right that has been guaranteed in the Indonesian state constitution. Legal protection is refers to an effort to protect every community by using the legal institutions that apply in that community. In the Personal Data Protection Law in Indonesia number 27 of 2022, Article 1 number (1) defines that "*personal data is data about individuals who are identified or can be identified separately or combined with other information either directly or indirectly through the system electronic or non-electronic*". Personal data that obtain legal protection is divided into two, namely general personal data and specific personal data. Personal data that is generally consists of full name, gender, nationality, religion; marital status, and/or Personal Data combined to identify a person [11]. Personal Data that is specific is Personal Data which, if processed, can result in a greater impact on the Data Subject Personal, including acts of discrimination and greater loss of Personal Data Subjects [12]. Specific personal data includes health data and information; biometric data; genetic data; crime records; child data; personal financial data; and/or other data under the provisions of laws and regulations [13]. Thus the data of bank customers who receive legal protection include general data in the form of personal identity and specific data which includes financial data.

Protection of the personal data of every legal subject is a human right that is based on the basic philosophy of the state, namely the 2nd Pancasila Precepts. Protection of personal data is also guaranteed in Article 28G paragraph (1) of the 1945 Constitution 2nd Amendment which states that "*Everyone has the right to protection of himself/herself, family, honour, dignity, and property under his control, and has the right to feel safe and protected from the threat of fear to do or not do something that is a human right*". Furthermore, Article 28G paragraph (1) of the 1945 2nd Amendment Constitution also provides a guarantee that "*Every person has the right to recognition, guarantees, protection, and fair legal certainty. And equal treatment before the law*". Further confirmation of the protection of personal data is contained in Article 21 of Law Number 39 of 1999 concerning Human Rights which states that: "*Every person has the right to personal integrity, both spiritual and physical, and therefore may not become the object of research without the consent from him*". The meaning of "become an object of research" is the activity of placing a person as a party who is asked for comments, opinions or information concerning his personal life and personal data and has his pictures and voice recorded.

Through the provisions of Article 28G paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution, the 2nd Amendment, linked to Article 21 of Law Number 39

of 1999 concerning Human Rights, provides an understanding that 1). Legal protection for bank customers regarding their data is a human right or basic right, 2). The legal protection is equal and fair before the law and applies to all bank customers, and 3). The use of personal data can only be done with the consent of the data owner. When it is related to the theory of legal development put forward by Mochtar Kusumaatmadja, one of the functions of law is as a means of development and renewal in society. Thus the ideal law is not only able to create justice and legal certainty but must be able to create order and regularity. This also includes the norms contained in the Banking Law in Indonesia, which must be used as a means of development and renewal that can create justice, legal certainty, order, regularity, and balanced protection for all customers.

Based on this, to seek equal legal protection for all customers after the Covid-19 pandemic is to strengthen bank secrecy rules contained in Law Number 10 of 1998 concerning Banking. Some of the ways this can be done include:

- Expanding the system of legal responsibility for sanctions for violating bank secrets, not only criminal responsibility but also civil responsibility.
- Define debtor customer information and data into two, namely data related to personal data (accounts) and data related to the loan. Personal data in the form of accounts such as name, place, date of birth, Resident Identification Number, domicile address, telephone number, account number, and email address, while data related to loans such as loan amount, loan grace period, collateral data and status as a debtor smooth, substandard or jammed.
- Expanding the application of bank secrecy rules for general personal data (accounts/identities) of debtor customers.
- Set clear boundaries regarding debtor customer data/information that can be used and disseminated by banks only limited to information related to the loan. Thus the bank can disclose the public loan data/information from a debtor customer, without mentioning the personal data of the debtor customer concerned. This is to protect debtor customers from actions such as threats and terror from other parties.
- The relationship that occurs between the debtor customer and the bank is a contractual relationship, namely from the debt agreement. Therefore, the purpose of collecting and using the debtor customer's data must be included in the contract clause made between the debtor customer and the bank.
- The use of personal data of debtor customers by banks must be under the purposes for which they are collected following the contracts made by the customer and the bank. Thus if the bank uses the debtor's customer information outside of the purposes stated in the contract, then the bank can be deemed to have violated the contract.

4 Conclusion

The ideal law is not only able to realize justice, legal certainty, and legal protection, but must also be used as a means of change and renewal in society so that it will create order and regularity in that society. Legal protection for all bank customers related to their data is a human right that has been guaranteed in the Indonesian state constitution. One form of embodiment of balanced legal protection for all bank customers is to strengthen bank secrecy regulations in Indonesia, including 1). Expanding the system of

legal responsibility for sanctions for violating bank secrecy, namely not only criminal responsibility but also civil responsibility; 2). Defining debtor customer information and data into two, namely data related to personal data (accounts) and data related to loans; 3). Expanding the application of bank secrecy rules for general personal data (accounts/identities) of debtor customers; 4). Setting clear boundaries regarding debtor customer data/information that can be used and disseminated by banks is limited to information related to the loan; 5). The purpose of collecting and using the debtor customer's data must be included in a clause in the contract made between the debtor customer and the bank; 6). The use of personal data of debtor customers by banks must be for the purposes for which they are collected following the contracts made by the customer and the bank.

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