

## **Legal Aspects of Implementing Confidentiality Protection of Customer Fund Deposits at BUMD Bank Lampung**

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### **Abstract**

Bank secrecy is important because banks as trusted institutions are required to keep everything related to depositors and their deposits confidential. As for the legal protection process for the secrecy of customer funds depositing funds at BUMD Bank Lampung, namely the prevalence of bank operations involving the collection of public funds such as through current accounts, savings, deposits, and so on. Meanwhile, after collecting these funds, the bank needs to distribute these funds to the public, namely through the provision of credit. Other efforts, namely adequate recording of bank operations or transactions conducted by banks is a must. Suggestions for bank management, it is best to be careful in applying the principle of bank prudence, especially in receiving funds to be deposited by customers by asking customers for sources of funds, especially for large deposits, so that the bank can avoid attempts at banking crime. such as money laundering.

**Keywords:** Protection of Confidentiality, Safekeeping of Funds, Customers at BUMD Bank Lampung.



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### **INTRODUCTION**

The banking sector is the heart of a country's economic system and as a tool in implementing monetary policy. According to Law Number 7 of 1992 in conjunction with Law Number 10 of 1998 concerning Banking, a bank is defined as 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 improve the standard of living of the community.

Based on its basic function as a collector of funds as well as a distributor of funds, the Bank will always have an interest in parties who have excess funds and also parties who lack or need funds, who are often called creditors. In its activities, the Bank will be faced with various problems regarding the basic banking functions. Problems in the financial services sector are the most dominant cases of public complaints. In the future, the problems could become more numerous and varied in line with the increase in linear trade transaction activities with users of financial services.

In carrying out its activities, banking is based on 4 (four) principles or principles which include the principle of economic democracy, the principle of trust (fiduciary principle), the principle of confidentiality (confidentiality), and the principle of prudence (prudential principle). As for the four principles mentioned above, the author is interested in studying the principle of bank secrecy which in English is called Bank Secrecy or in the United States it is called Financial Privacy, it is considered that regulations regarding banking secrecy provisions in Indonesia as human rights must be protected from interference by the state and other parties. another because financial instability is closely related to one's personal freedom must be protected by a democratic system.

Banks are financial institutions whose existence depends absolutely on the trust of their customers who entrust their savings to the bank. Therefore, the Bank is 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 wider community 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 banking is also in the public interest. The banking industry in Indonesia, which is growing, still faces many problems which, when observed, are caused by weakness and the lack of implementation of good corporate governance (GCG).

There are several actual problems related to Bank Secrecy that have occurred in Indonesia, including: The Century Bank case which confiscated a large portion of State Energy to resolve it. In the framework of disclosing facts, the Special Committee (Pansus) on the inquiry rights of the House of Representatives (DPR) has requested data/information about a large number of former Bank Century customers from Bank Mutiara, Bank Century's new name after being taken over by the Deposit Insurance Corporation (LPS). Unfortunately, Bank Mutiara cannot serve this request from the DPR because the bank does not want to violate the provisions regarding bank secrecy. The accusation was very serious, namely that the Board of Directors of Bank Century was considered to have obstructed the task of the Special Committee which was mandated by the constitution.

The implementation of bank secrecy provisions often results in different interpretations of the provisions in Law Number 10 of 1998 among banking stakeholders, both from banking practitioners, banking customers, auditors, law enforcement officials (police, prosecutors, Corruption Eradication Commission), the government and members DPR. Although in Law Number 7 of 1992 concerning Banking as amended by Act Number 10 of 1998 concerning Banking and Bank Indonesia Regulations. Number 2/19/PBI/2000 of 2000 Concerning Requirements and Procedures for Granting Written Orders or Permits to Open Bank Secrets, it has clearly contained details of procedures for opening bank secrets, but in practice many parties try to circumvent these provisions based on laws and regulations. other contradictory.

In fact, law enforcement officers often force banking parties to submit documents and customer information related to bank secrets without going through the procedure for opening bank secrets in accordance with Law Number 10 of 1998 with threats from banks that obstruct investigations and can be subject to criminal sanctions, therefore smooth operation and security and the security of banking activities must receive serious attention from all law enforcement officials, because if a crime occurs in the banking sector it will cause enormous losses to the state. Therefore, all preventive and repressive efforts must be mobilized to tackle this banking crime.

In Article 1 number (2) of the Financial Services Authority Regulation (POJK) Number: 6/POJK.07/2022 dated 18 May 2022 concerning Consumer Protection in the Financial Services Sector, it is explained that: Consumers are parties who place their funds and/or utilize services provided available in Financial Services Institutions, including customers in Banking, investors in the Capital Market, policyholders in Insurance, and participants in Pension Funds, based on laws and regulations in the financial services sector. Article 1 point (3) Financial Services Authority Regulation Number: 6/POJK.07/2022 concerning Consumer Protection in the Financial Services Sector: Consumer Protection is protection for Consumers with the scope of behavior of Financial Services Business Actors. whereas in Article 2 of the Financial Services Authority Regulation Number: 6/POJK.07/2022 concerning Consumer Protection in the Financial Services Sector, it states that consumer protection applies the principles of:

1. Transparency;
2. Fair treatment;
3. Reliability;
4. Confidentiality and security of Consumer data/information; and

5. Handling of complaints and settlement of consumer disputes in a simple, fast and affordable way.

Violation of Bank Secrets is a form of Crime. The problem is not only the existence of secret leaks, but the fact that bank secrets are sometimes used as a shelter for administrative abuse and collusion in banking.

## **RESEARCH METHODS**

This research uses a type of normative juridical legal research, namely conducting it by examining various literatures that are not limited by time and place, as well as reviewing various literature both in the form of books, the results of previous research as well as laws and regulations both print and online relating to the problems being researched. To answer the existing problems, this research uses 3 (three) research approaches namely, the statutory approach -statute approach, conceptual approach (conceptual approach), and comparative approach (comparative approach).

The types and sources of legal materials used in this study consist of primary, secondary and tertiary legal materials. Collection of legal materials is carried out by identifying and inventorying positive law rules, researching library materials (books, scientific journals, research reports), and other sources of legal materials that are relevant to the legal issues being studied. Legal materials that have been collected are then classified, selected and ensured that they do not conflict with each other, to make it easier to analyze and construct them.

## **RESEARCH RESULTS AND DISCUSSION**

### **The Process of Legal Protection of the Confidentiality of Customer Funds Depositing Funds at BUMD Bank Lampung**

Bank secrecy is important because banks as trusted institutions are required to keep everything related to depositors and their deposits secret. Therefore, both the bank as an entity and affiliated parties, including employees and management of the bank concerned, must know about this bank secret regulation, to avoid criminal or administrative sanctions as well as social sanctions from the public. Implementing confidential matters (information), especially at banks, is very difficult because there is no uniformity in determining what matters (information) can be categorized as confidential by the bank from the information and data of a customer.

The bank's obligation to keep confidential regarding depositors and their savings can be explicit and implicit. In general, the agreement between the bank and the customer does not include it explicitly. The obligation to secrecy is seen, for example, in agreements to open checking accounts for savings and time deposits between banks and customers. Thus, even though the agreement is not explicitly stipulated but based on the principle of good faith in carrying out the agreement, the agreement between the bank and its customer is considered to include secretly the obligation to keep confidential about the depositor and his savings.

This is in line with Article 7 letter (a) of Law Number 8 of 1999 concerning Consumer Protection which states that one of the obligations of business actors is to have good faith in carrying out their business activities. Thus, even though the agreement between the customer and the bank is not explicitly regulated but based on the principle of good faith in carrying out the agreement, the agreement between the bank and its customer is deemed to include secretly the obligation to keep confidential about the depositor and his savings. In relation to the issue of bank secrecy, even though the bank secrecy has been regulated in the agreement between

the bank and the customer or the bank secrecy issue has been regulated in the law, the public interest must still take precedence in accordance with the provisions of the applicable law.

It is possible for a debtor customer to be sued by the debtor for committing an unlawful act by the debtor customer if the disclosure of information about the debtor customer is deemed by the debtor customer to be detrimental to him/her. This lawsuit was made possible based on Article 1365 of the Civil Code which expressly stipulates that any unlawful act that causes harm to another person obliges the person who, due to the mistake of issuing the loss, compensates for the loss.

Bank secrecy is solely placed on the public interest. The principle of bank secrecy which aims to protect the individual interests of a customer is sacrificed in order to balance it with the public interest in the case of settlement of criminal cases. In Indonesia, exceptions to bank secrets on the grounds of public interest still need to be perfected, because there are many other public interests that can be used as reasons for disclosing bank secrets that have not been listed in the Banking Law, for example the interests of the People's Representative Council, the State Administrative Court, the Religious Courts, Military Courts, Foreign Authorities, Arbitral Bodies and Shareholders.

Bank secrecy arrangements are more focused on reasons for the interests of the bank, as seen in the elucidation of Article 40 of Law Number 7 of 1992 concerning Banking Principles as amended by Law Number 10 of 1998 concerning Banking, which states that this secrecy is necessary for the interest of the bank itself requires the trust of the people who keep their money in the bank. Such considerations are because Indonesia has cultural values that prioritize collectivity or togetherness. In this case, the interests of banks are considered the same as public interests because of the importance of the role of banks in a country's economy, in which case banks function as financial intermediaries (financial intermediaries), means of transmitting monetary policy and main actors in the national payment system.

Article 43 of Law Number 10 of 1998 concerning Banking has a narrow application, because it is considered detrimental to the interests of the wider community, especially for the interests of the business world. The article seems to contain discrimination because it only protects the activities of banking companies and does not protect the interests of other types of companies in a broad sense. If the bank is concerned, the principle of bank secrecy may be violated and other than that it may not. This is clearly unfair, as if the law does not care about the misery experienced by the wider community. In fact, many companies deliberately do not pay their obligations (debt) to their business partners in the distribution sector, agents or contractors, even though these companies eventually become current assets in various banks.

Bank secrecy only concerns depositors and their savings, so bad credit often occurs in credit cases. Bank secrecy is too partial to protect debtors. This causes unruly debtors to be protected which can threaten the public interest and the development of national development. It is clear that bad credit is directly or indirectly detrimental to the interests of the state and society. So it's not just a problem between bad debtors and banks, but also concerns the interests of the economy and increasing the distribution of welfare for the wider people. So, it's not worth it to let pamper and protect naughty and bad-faith debtors. Therefore, if there are debtors like that, the wider community has the right to know about it openly.

Bank Lampung has always adhered to the principle of bank secrecy. As for one form of effort that can be carried out by the Lampung bank in maintaining the security of bank customer secrets, if someone asks the identity of the customer, or his activities at the bank other than the three authorized parties, namely the Attorney, Police and Court, the bank will not provide any information. . The bank will keep it secret. By making efforts to maintain the security of bank secrets, it also means indirectly maintaining the financial security of customers because bank

secrets cover the protection of customers and their deposits. If there is an agreement between the bank and the customer, then bank secrecy is contractual. So that if Bank Lampung provides information about the financial condition of its customers, Bank Lampung can be sued by its customers based on reasons of default (default). Conversely, even though there is no agreement between Bank Lampung and the customer, Bank Lampung is still obliged to maintain bank secrecy based on statutory regulations or other legal concepts, such as the concept of "tort against the law". This means that in the event that Bank Lampung provides information about its customers on the grounds of an act against the law. For this matter the customer must be able to prove that the loss he experienced was as a result of leaking the secrets of Bank Lampung.

Based on the descriptions above, the author can analyze that the process of legal protection for the confidentiality of customer funds depositing funds at BUMD Bank Lampung, namely the prevalence of bank operations related to raising public funds such as through current accounts, savings, deposits, and so on. Meanwhile, after collecting these funds, the bank needs to distribute these funds to the public, namely through the provision of credit. Other efforts, namely adequate recording of bank operations or transactions conducted by banks is a must. The adequacy of the records is measured by their ability to fulfill various requests for information regarding each bank's activities. If banking records and administration are not good, then the smooth running of banking activities will be disrupted.

## **CONCLUSION**

Based on the results of the research and discussion in the previous chapter, it can be concluded that the process of legal protection of the confidentiality of customer funds depositing funds at BUMD Bank Lampung, namely the prevalence of bank operations related to raising public funds such as through demand deposits, savings, deposits, and so on. Meanwhile, after collecting these funds, the bank needs to distribute these funds to the public, namely through the provision of credit. Other efforts, namely adequate recording of bank operations or transactions conducted by banks is a must.

As for the suggestions that the author can convey Advice for bank management, it is best to be careful in applying the principle of bank prudence, especially in receiving funds to be deposited by customers by asking customers the source of funds to their customers, especially for large deposits, so that the bank can avoid attempts at banking crimes such as money laundering efforts.

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