

LEGAL PROTECTION OF BANK CUSTOMERS IN VIOLATION OF CUSTOMER DATA CONFIDENTIALITY

Benny Bambang Irawan

ABSTRACT

Trust relationship is the main foundation that underlies the relationship between a bank and bank customers. Banks will be able to work using funds from customers deposited in the bank on the basis of trust. For this reason, every bank needs to continue to maintain its health while maintaining and keeping public trust in it. Legal protection for customers is realized through the customer complaint service mechanism with the issuance of Bank Indonesia Regulation Number 7/7 / PBI / 2005 concerning Resolution of Customer Complaints as amended by Bank Indonesia Regulation Number 10/10 / PBI / 2008 and the Regulation of the Financial Services Authority (POJK) Number 1 / POJK.07 / 2013 of 2013 concerning Consumer Protection in Financial Services Sector. The bank is responsible for breaches of the confidentiality of customer personal data committed by its employees. However, in practice it is found that the bank cannot automatically share responsibility for the violations of customer data confidentiality committed by its employees. This becomes the personal responsibility of the bank employee concerned and has no connection with the bank if there are no facts indicating that there is an instruction from the bank to the employee to open data from customers for unauthorized parties.

Keywords: Legal protection, confidentiality, customer data.

A. INTRODUCTION

The relationship between the customer and the bank is not only trustworthy but also confidential because basically the bank also applies the principle of the secret of the bank¹ (*the secret of the bank principle*). This is often referred to as bank secrets. Provisions regarding the secret of the bank are a very important matter for depositors and their savings as well as for the interests of the bank itself,² because public trust in banking institutions will be maintained and will continue to increase influenced by one factor, namely bank compliance with bank confidential obligations.³

The definition of bank secrets can be found in the provisions of the Banking Act, namely as follows: "*Bank secrets are anything related to information regarding depositing customers and their deposits.*"⁴ Banks have an obligation to keep confidential information about depositors and their deposits,⁵ except for certain matters which will be discussed further. Banking law aligns customer trust with the principles of confidentiality that are applied in the banking system in Indonesia. The relationship between the bank and its customers is confidential, which relates to the interaction between the bank and its customers.⁶ The secret of the bank is stipulated in the regulation, apart from explaining the nature of the relationship between the customer and the bank, and it is also a form of protection for the rights of bank customers guaranteed by the Banking Law.

The relationship that arises between a bank and a customer is related to the secret of the bank, that is, there is an obligation on the bank not to disclose the confidentiality of data from its customers to third parties or to other parties unless stipulated otherwise by law. In accordance with Article 40 paragraph (1) of the Banking Law which states that "*Banks are required to keep confidential information regarding their depositing customers and their deposits, except in the cases referred to in Article 41, Article 41 A, Article 42, Article 43, Article 44, and Article 44 A.*"

The bank's obligation to keep data regarding depositors and their deposits confidential shows that the Banking Law provides protection to customers based on the principle of confidentiality, therefore the protection provided to depositors is confidential.⁷

The provisions regarding the obligation to maintain the confidentiality of customer information also apply to parties affiliated⁸ with the bank as stipulated in Article 40 paragraph (2) of the Banking Law. Information regarding depositing customers and their deposits is not only limited to the customer's financial condition or account number owned by the customer, but also includes all the customer's personal identities such as name, telephone number, personal address, *e-mail* and even the amount of the customer's income. The definition of bank secrets contained in the Banking Law has not been clearly regulated, because the meaning of "information" in Article 1 number 28 and Article 40 paragraph (1) seems unclear. Elucidation of Article by Article of the Banking Law also does not explain the meaning of "information" referred to in Article 1 point 28 and Article 40 paragraph (1).

¹ The Principle of the Secret of Bank is regulated in Article 40 through Article 47 of the Banking Law.

² Hermansyah, *Hukum Perbankan Nasional Indonesia (Indonesian National Bank Laws)*, first edition I, Kencana, Jakarta, 2005., p.131.

³ Djoni S. Ghazali, Rachmadi Usman, *Op.cit*, p. 485.

⁴ Article 1 number 28 of Law No. 10 of 1998 concerning amendments to Law Number 7 of 1992 concerning Banking..

⁵ Article 40 paragraph (1) of Law No. 10 of 1998 concerning amendments to Law Number 7 of 1992 concerning Banking..

⁶ Zainal Asikin, *Pengantar Hukum Perbankan Indonesia, (Introduction to Indonesian Banking Law)* first edition, PT Raja Grafindo Persada, Jakarta, 2015, p. 169.

⁷ Sutan Remy Sjahdeni, *Kebebasan Berkontrak (Freedom in Contract)*, *Op.Cit*, p. 173.

⁸ Affiliated Parties are: a. members of the Board of Commissioners, supervisors, Directors or their proxies, officers or employees of the bank; b. members of management, supervisors, managers or proxies, bank officers or employees, especially for banks that are in the form of a cooperative in accordance with existing regulations; c. Parties that provide services to banks, including public accountants, appraisers, legal consultants and other consultants; d. Parties that according to the decision of Bank Indonesia participate in influencing the management of the bank, including among others the shareholders and their families, the families of the commissioners, the families of supervisors, the families of the Directors. Caretaker family. (Regulated in Article 1 number 22 of Law Number 10 of 1998) concerning Banking.

The fact is that recently, customers' personal data has become something that can be easily traded. The bank's obligation to maintain the confidentiality of customer data is felt to be increasingly minimal. Third parties can easily obtain customer personal data through unscrupulous bank employees to be traded freely. This of course creates losses for depositing customers, as well as for banks in their position as financial service institutions that require public trust. One of the cases that occurred was the case of selling customer data by the customer data sales network through the website www.jawarasm.com, www.databasenorhp.org, www.layanansmsmassal.com, www.walisms.net, Facebook account with the name "Bang haji Ahmad" which was revealed on 23 August 2017. The mode carried out by the suspect based on information from investigators at the Special Economic Crime Directorate of Criminal and Criminal Investigation Police is to collect customer data from a marketing bank since 2010.⁹

The case was revealed stems from rampant public complaints that were disturbed by certain parties offering credit card products, insurance, or other products. by phone. Even though the owner of the number never felt he gave a phone number to the caller. It turned out that the callers who claimed to be personnel at *telemarketing* a company purchased bank customer data from the suspect. Customer data sold by the suspect was obtained through data exchange with employees of the bank's marketing department. Quoted from the online news page Detik News which states that "The suspect sold customer data through the website at varying prices, from IDR 350,000 to IDR 1,000,000- .. One thousand customer data is sold for IDR 350,000, while the customer data package of 100 is sold for IDR 1,000,000- ..".¹⁰ Apart from these cases, in 2015 it was also revealed the involvement of unscrupulous bank employees in a credit card fraud case. Credit card fraud syndicates get customer data by buying them from unscrupulous bank employees for IDR 20,000 for one customer data sheet.¹¹ This causes the customer to be materially disadvantaged, considering that data from customers can easily be found by the unauthorized public. Customer data that should be confidential is no longer kept confidential.

An important thing that law enforcement officers tend to ignore regarding the sale of customer personal data is processing the involvement of bank marketing personnel who are bank employees and asking for responsibility from the bank, given that the bank in this case can also be responsible for losses suffered by customers as a result of actions of the management, employees or parties working for the benefit of the financial service business actors.¹² Even though in the statutory regulations banks as financial service providers can be held accountable for losses suffered by customers, the public tends to resolve the issue of customer data breaches through the criminal realm. Law enforcers also often forget that, not only the party who gets confidential customer data information is responsible, but the bank in this case is also responsible. Contractual and non-contractual relationships that occur involve banks and customers as parties. In fact, it is an open secret that banks are not easily involved and even held responsible in such cases.

As previously explained, the obligation to keep information about a depositing customer confidential and his savings classified as a bank secret also applies to affiliated parties,¹³ namely parties related to the activities and management of service businesses provided by the bank. The relationship is through joining himself in the bank. A merger can occur, one of which is due to management or because of a normal work relationship such as an employee, or a work relationship in order to provide services to the bank.¹⁴

The marketing bank in the above case is an affiliated party that is obliged to apply the secret of the bank provisions but does not apply it by providing customer personal data to other unauthorized parties, resulting in losses to customers. This clearly contradicts the secret of the bank provisions stipulated in Article 40 paragraph (1) of the Banking Law, because only exempted parties can receive bank confidential information.¹⁵

B. PROBLEM FORMULATION

1. What is the legal protection for customers against breaches of customer data confidentiality?
2. What is the bank's responsibility for breaches of customer data confidentiality by bank employees?

C. DISCUSSION

1. Legal protection for customers for breaches of confidentiality of customer data

Between the bank and the customer has a contractual relationship in which there are rights and obligations on the basis of the engagement that arises. A deposit agreement is one of the sources of a formal contractual relationship between a bank and a customer, in which it contains the rights and obligations of each party. Regarding the deposit agreement, as previously described, there is a customer secret that must be kept confidential by the bank. This is a legal obligation for a bank based on a deposit agreement with the customer and is the secret of the bank provision required by the Banking Act in banking business activities.

Guarantee the implementation of rights and obligations is a legal protection. The essence of customer protection is to protect the interests of depositors and their deposits in a particular bank against a risk of loss as an effort to maintain and maintain public trust, especially customers.¹⁶ Protection of customer rights is in accordance with John Locke's view that all people have natural rights which must be maintained in the state structure. This is related to the philosophy of the existence of a bank's obligation

⁹ <https://news.detik.com/berita/d-3610769/bareskrim-tangkap-jaringan-penjualan-data-nasabah-bank> (accessed on 3 December 2018)

¹⁰ <https://x.detik.com/detail/investigasi/20170831/Mafia-Data-Nasabah-Bang-Haji-Ahmad-dari-Bogor/index.php> (accessed on 3 December 2018)

¹¹ <http://nasional.republika.co.id/berita/nasional/hukum/15/06/07/npeky-ada-pegawai-bank-jualdata-nasabah-ke-sindikatan-penipuan> (accessed on 3 December 2018)

¹² Read POJK Number: 1 / POJK.07 / 2013 concerning Consumer Protection in the Financial Services Sector

¹³ See Article 40 paragraph (2) of the Banking Law

¹⁴ Muhammad Djumhana, *Hukum Perbankan di Indonesia, (Indonesian Banking Laws)* fifth edition, PT.Citra Aditya Bakti, Bandung, 2006, p. 278.

¹⁵ Read Bank Indonesia Regulation Number: 2/19 / PBI / 2000 concerning Requirements and Procedures for Issuance of Orders or Written Permits to Open Bank Secrets.

¹⁶ Hermansyah, *Op.Cit.*, p. 124.

to hold bank secrets based on the reason that the right of every person or entity not to be meddled with due to the issues of *personal privacy*. The bank's obligation to keep customer personal data confidential, which is included in bank secrets, is a manifestation of the customer's right so that personal data is not exposed to the public.

Violation of bank confidential obligations by disclosing customer data to unauthorized parties is a violation of customer rights. The customer's right to confidentiality of personal data is a right protected by law based on the fund deposit agreement with the bank and the Banking Law. Potential disputes between the bank and the customer will occur if there is a violation of the customer's rights. Legal protection for customers is very necessary considering the position of the bank is in a higher bargaining position compared to customers. According to Theresia Anita Christiani, legal protection which guarantees the fulfillment of the rights and obligations of customers must be embodied in the form of concrete legal regulations that contain the principle of a balance of interests in it.

The establishment of the Financial Services Authority Institution is a bridge for protecting customer rights. The Financial Services Authority Institution was formed based on Act Number 23 of 1999 concerning Bank Indonesia as amended several times, most recently by Act Number 6 of 2009 concerning Stipulation of Government Regulations in Lieu of Law Number 2 of 2008 concerning the Second Amendment to Law Number 23 of 1999 concerning Bank Indonesia Becoming a Law (BI Law). The formation of the Financial Services Authority Institution was based on many cross-sectoral problems in the financial services sector, one of which is the inadequate protection of financial service consumers.¹⁷

The Banking Act regulates bank secrets with a general definition. Based on the understanding of the principle of the secret of the bank, the personal data of customers can be categorized within the scope of understanding of the secret of the bank related to everything regarding the depositor. The provisions on the implementation of bank secrets in the Banking Law, to protect the confidentiality and security of personal data of customers, the Financial Services Authority Institute issued a Financial Services Authority Regulation (POJK) Number 1 / POJK.07 / 2013 of 2013 concerning Consumer Protection in the Financial Services Sector. This POJK regulation, in Article 31 paragraph (1) and (2) stipulates that financial service business actors are prohibited from providing data and / or information about their consumers to third parties in any way. The prohibition is excluded if the consumer gives written consent; and / or required by laws and regulations.

Leaking of customer data by bank employees is a violation of secrets bank. Violation of bank secrets, although committed by bank employees, can also be held accountable to the bank as the party that is obliged to maintain the confidentiality of customer data. Banks as financial service actors may be subject to sanctions in Article 53 POJK No. 1 / POJK.07 / 2013 concerning Consumer Protection in the Financial Services Sector. Sanctions that can be given to banks as financial service actors who violate the provisions of the Financial Services Authority Regulation are subject to administrative sanctions, including among others: written warnings; Fines, namely the obligation to pay a certain amount of money; Restrictions on business activities; Suspension of business; and revocation of business activity license.

Customer protection can occur before a dispute occurs or protection after a dispute occurs. The bank itself can seek legal protection for customers before a dispute occurs in the form of how the bank conducts its business with the principle of prudence protection Customer after a dispute means that this protection can be provided to customers after a dispute occurs. Customers are said to have legal protection in the event of a dispute between the customer and a banking institution, then there is a certain mechanism provided for the customer to get their rights.¹⁸

Regarding the mechanism provided for customers who experience data confidentiality violations, customer complaint facilities are provided by Bank Indonesia for customers whose rights have been violated by the Bank with the issuance of Bank Indonesia Regulation Number 7/7 / PBI / 2005 concerning Resolution of Complaints Customer as amended by Regulation Bank Indonesia Number 10/10 / PBI / 2008. A customer who is aggrieved can make a complaint verbally or in writing to any bank office other than the bank office where the customer opens the account or the bank office where the customer conducts financial transactions. Complaints in writing must be accompanied by a photocopy of identity and other supporting documents and can be submitted by *e-mail*, facsimile or other electronic advice. Customers can make verbal complaints by telephone, including *call-center* the available 24-hour.

Apart from the Bank Indonesia Regulation, Financial Services Authority Regulation No. 1 / POJK.07 / 2013 concerning Consumer Protection in the Financial Services Sector, requires banks as financial service actors to have and implement services and complaint resolution for consumers or customers. A customer who has been aggrieved can also file a complaint. Complaints made by customers are regulated in Article 38 POJK No. 1 / POJK.07 / 2013 that financial services business actors are required to carry out:

- a. internal examination of complaints in a competent, correct and objective manner;
- b. conducting analysis to ensure the truth of the complaint;
- c. conveying an apology and offer compensation or repair of products and or services, if the Consumer complaint is true.

Based on the provisions of the Financial Services Authority Regulation above, if the breach of the secret of the bank is proven, the bank customer is entitled to compensation from the bank. However, if later in the event that a customer has filed a complaint against the bank, it does not reach a common ground, the customer whose rights have been impaired can resolve the violation outside or through the court. Settlement outside the court can be done through alternative dispute resolution institutions, or can submit a request to the Financial Services Authority to facilitate the resolution of consumer complaints that have been harmed by actors in the Financial Service Business Actors.¹⁹ Settlement in court can be taken by the customer by filing a civil suit with the bank.

¹⁷ Elucidation of Law Number 21 of 2011 concerning the Financial Services Authority

¹⁸ Theresia Anita Christiani (2), *Dinamika Asas Keseimbangan dalam Perkembangan Pengaturan Perlindungan Nasabah Bank Indonesia (Dynamics of the Principle of Balance in the Development of Bank Indonesia Customer Protection Regulations)*, Penerbit Universitas Atma Jaya, Yogyakarta, 2012, p. 140.

¹⁹ Article 39 paragraph (1) Financial Services Authority Regulation (POJK) Number 1 / POJK.07 / 2013 of 2013 concerning Consumer Protection in the Financial Services Sector

2. Bank Accountability for Breaches of Confidentiality Violation of Customer Data The

Bank is a business entity in which in carrying out its business activities it requires funds to finance its business activities. Funds for these business activities are obtained from various sources, namely from the bank's own source of capital, namely capital deposits from the bank owner or the bank issuing or selling bank shares to new owners, or it can be obtained from loan capital from the wider community or other financial institutions.

One of the sources of funds obtained by banks is the main source of funds for banks, namely funds originating from the wider community. This source of funds from the public is the most important source of funds for bank operations which is a measure of the success of a bank if it is able to finance its operations from this source of funds.²⁰ Banks can obtain sources of funds from the public through bank business activities. In Article 6 of Law Number 7 of 1992 concerning Banking as amended by Act Number 10 of 1998 it is stated that the businesses that can be carried out by banks, especially commercial banks include:

- a. collecting funds from the public in the form of deposits in the form of demand deposits, time deposits, certificate of deposit, savings, and / or other equivalent forms;
- b. giving credit;
- c. issuing a debt acknowledgment;
- d. buying, selling or guaranteeing at his own risk or for the benefit of and on the orders of his customers:
 - 1) bills including bank drafts accepted by the bank whose validity period is no longer than the custom in the trading of said documents;
 - 2) acknowledgment of debt and other trading papers whose validity period is no longer than the trading practice for said securities;
 - 3) state treasury bills and government guarantee;
 - 4) Bank Indonesia Certificates (SBI);
 - 5) bond;
 - 6) commercial papers with a maturity of up to 1 (one) year;
 - 7) other securities instruments with a maturity of up to 1 (one) year;
- e. transferring money either for own interest or for the benefit of customers;
- f. placing funds in, borrowing funds from, or lending funds to other banks, either by letter, telecommunications means or by display draft, check or other means;
- g. receiving payment of invoices for securities and perform calculations with or between third parties;
- h. providing a place to store securities and securities;
- i. carrying out custodial activities for the benefit of other parties based on a contract;
- j. placing funds from one customer to another in the form of securities that are not listed on the stock exchange;
- k. carrying out factoring, credit card business and trustee activities;
- l. providing financing and or carry out other activities based on Sharia Principles, in accordance with the provisions stipulated by Bank Indonesia;
- m. carrying out other activities normally carried out by banks as long as they do not conflict with this law and the prevailing laws and regulations.

Based on these provisions, collecting funds from the public in the form of deposits of demand deposits, time deposits, certificates of deposit, savings, and / or other equivalent forms is one of the bank's business activities. According to Muhammad Djumhana, funds from the public that are collected by banks from the community are the backbone (*basic*) of funds managed by banks for profit.

Fund deposit service is one of the banking activities related to the functions of banking institutions in accordance with the provisions of Article 3 of the Banking Law, namely as a financial intermediary institution that collects and distributes public funds. There are various types of fund deposits offered by banks to the public to collect funds from the public, including:²¹

a. Current Accounts or Current Accounts

The definition of current accounts or checking accounts is stated in Article 1 number 6 of Law Number 10 of 1998 the amendment of Law Number 7 of 1992 concerning Banking, whereas demand deposits are deposits which can be withdrawn at any time by means of checks, checking deposit, other means of payment orders, or by transfer. Demand deposits can be used as a means of payment of demand deposits, which can be withdrawn at any time using letters, drafts, or payment orders, either in cash or by overbooking.

b. Deposits

Time Deposits Time deposits are deposits that can only be withdrawn at a certain time based on the agreement between the depositing customer and the bank. Deposits can also be used as credit collateral.

c. Certificates of Deposit Deposits

Are deposits in the form of deposits whose certificates of deposit are transferable? Certificates of deposit are securities issued by the name of the buyer in rupiah, which is an acknowledgment of debt from a bank and can be traded on the money market.

d. Savings

Savings are depositing whose withdrawals can only be made according to certain agreed terms, but cannot be withdrawn by check, checking deposits, and / or other equivalent means. Storage service products in the collection and distribution of any funds offered by the bank to the public are certain. there is a legal relationship that accompanies the banking service product. The legal law between the customer and the bank is divided into contractual relationships and non-contractual relationships. The contractual relationship between the bank and the customer regulates the rights and obligations between

²⁰ Kasmir, *Dasar-Dasar Perbankan (Banking Basics)*, edition 12, Rajawali Pers, Jakarta, 2014, pp. 69-71.

²¹ Rachmadi Usman, *Op.Cit.*, pp. 222-235

the bank and the customer as well as the procedures for resolving disputes that arise. Similar to the activity of raising funds through deposits in the form of demand deposits, time deposits, certificates of deposit, savings and or other equivalent forms based on a fund deposit agreement²² between the bank and the customer. With regard to bank obligations, as quoted by Sentosa Sembiring, they are:²³

- 1) Ensuring the confidentiality of the customer's identity along with the funds deposited in the bank, unless the laws and regulations specify otherwise;
- 2) Delivering funds to customers in accordance with the agreed agreement;
- 3) Paying interest on deposits according to the agreement;
- 4) Changing the position of the debtor if the customer is unable to carry out his obligations to a third party;
- 5) Making payments to exporters in the event that L / C facilities are used, as long as the requirements for this have been met;
- 6) Providing reports to customers on the development of their deposits in the bank; and
- 7) Returning collateral in case the credit is fully paid.

In addition, there is a non-contractual relationship between the bank and the customer which is not written into an agreement but always animates and will always exist in every relationship between the bank and the customer. Non-relationships contractual between banks and customers include a relationship of trust, a relationship of prudence and a relationship of confidentiality.

The basis for the legal relationship between a bank and a customer in raising funds through depository services comes from the fund deposit agreement. The manifestation of the legal relationship between customer banks is usually found in provisions scattered in several documents or forms, which generally consist of the following four groups of documents or forms:²⁴

- a. Customer identification file.
- b. Fund field form (public fund savings collection).
- c. Forms in the credit sector (distributed back to the community).
- d. Forms in the field of banking services.

The form for raising funds is an agreement between a bank and a prospective depositing customer that is tailored to the bank product required by the customer. Savings products at banks generally require an account opening. The provisions that apply to opening an account, namely: the provisions contained in the application, the provisions contained in the general terms of opening an account, the provisions contained in the products used by the customer and the applicable regulations.

Further provisions for opening an account are specified in the General Terms of Account Opening (SUPR). SUPR is a master regulation relating to the function of a bank as a fund collector which contains generally accepted regulations in every banking transaction. The function of SUPR in a legal relationship between a bank and a customer is as follows:²⁵

- a. Regulating the rights and obligations of the parties, namely between the bank and the customer which is generally accepted for all accounts.
- b. Clarifying the application of the provisions or the compliance with the related provisions.
- c. As an educative effort for the bank to customers, by reinforcing several prevailing laws and regulations that are deemed important.

The deposit product form at the bank contains the customer's personal identity as a condition that the prospective customer must submit to the bank before the form is signed. Filling in data on individual prospective customer information determined by the bank contains at least information regarding:²⁶

- a. Name, place and date of birth, address, and nationality as evidenced by ID card, driver's license or passport and completed with information regarding permanent residential address if different from what is stated in the document. Especially for foreign citizens other than passports proven by a Temporary Mnetep Permit Card (KIMS / KITAS) or a Permanent Stay Permit Card (KITAP);
- b. Address and telephone number of the place of work, complete with information regarding the business activities of the company / agency where they work;
- c. Information regarding the job / position and income of the prospective customer. In the event that a candidate for *nasabh* does not have a job, the data required is a source of income;
- d. Information regarding the source and purpose of the use of funds;
- e. Signature specimen.

According to the general provisions of the Financial Services Authority Circular Letter Number 14 / SEOJK.07 / 2014 concerning the Confidentiality and Security of Data and / or Consumer Personal Information, personal data includes: name; address; date of birth and / or age; telephone number and / or name of biological mother.

Regarding the personal identity of the customer, the financial service business actor in this case is a bank, it is prohibited in any way, to provide data and / or personal information about the consumer to a third party. This provision is a derivation of bank secrets as regulated in Article 40 of Law Number 10 of 1998 concerning Banking, which states that banks are required to keep confidential information regarding their Depositors and their deposits, except in the following cases:

- a. For Taxation Purposes,
bank secrets can be disclosed if it involves taxation purposes. . In Article 41 paragraph (2) of the Banking Law, it is stated that bank secrets can be disclosed through a written order from Bank Indonesia at the request of the Minister.

²² Article 1 point 5 of the Banking Law..

²³ Mauritz Pray Takasenseran, "Perjanjian Antara Bank Dan Nasabah menurut Undang-Undang Nomor 10 Tahun 1998" (Agreement between a Bank and a Customer according to Law Number 10 of 1998), *Lex et Societas*, Vol. IV/No.7, Faculty of Law, Unsrat, 2016, p. 46

²⁴ Try Widiyono, *Aspek Hukum Operasional Transaksi Produk Perbankan Di Indonesia (Operational Legal Aspects of Banking Product Transactions in Indonesia)*, Ghalia Indonesia, Bogor, 2006, p. 31.

²⁵ *Ibid*, p. 37.

²⁶ Djoni S. Gazali and Rachmadi Usman, *Op.Cit*, pp. 255-256

- b. For Settlement of Bank Receivables,
This provision is stipulated in Article 41 A of the Banking Act. The leadership of Bank Indonesia may grant permission to the State Receivables and Auction Affairs Committee / State Receivables Committee to obtain information from the bank regarding deposits from debtor customers.
- c. For the purposes of the Criminal Court or Civil Court
The leadership of Bank Indonesia can give permission to the police, prosecutors or judges to obtain information from the bank regarding deposits of the suspect or defendant in the bank, preceded by a written request from the Chief of Police of the Republic of Indonesia, Attorney General or Chief Justice of the Supreme Court. . This is regulated in Article 42 of the Banking Act. Meanwhile, for the purposes of civil justice it is regulated in Article 43 which states that, in a civil case between a bank and its customer, the board of directors of the bank concerned can inform the court about the financial condition of the customer concerned and provide other information relevant to the case.
- d. The need to exchange information between banks.
This provision is regulated in Article 44 paragraph (1) of the Banking Act. The elucidation of this Article states that "The exchange of information between banks is intended to facilitate and secure bank business activities, among others, to prevent double credit and to find out the condition and status of other banks.
- e. Upon request for approval, or attorney from a customer or an heir, depositing this provision is regulated in Article 44 A of Act Number 10 of 1998, amendments to Act Number 7 of 1992 concerning Banking.
As previously described, the secret of the bank is everything related to information about depositing customers and their deposits. The personal identity of the customer is a matter that is directly related to the depositing customer as well as part of the bank's secret which must be kept confidential by the bank and its affiliated parties, unless justified by laws and regulations to disclose it. Parties included in affiliated parties include:
- Members of the board of commissioners, supervisors, directors or their proxies, bank officers or employees.
 - Members of management, supervisors, managers, or their proxies, bank officers or employees, especially for banks in the form of cooperative legal entities in accordance with the prevailing laws and regulations.
 - Service providers to the bank concerned, including but not limited to public accountants, appraisers, legal consultants and other consultants.
 - Parties who according to Bank Indonesia's assessment participate in influencing the management of the bank, including but not limited to shareholders and their families, families of commissioners, families of supervisors, families of directors and families of managers.²⁷

The sale of customer data by a network of customer data sellers on internet sites that involves the role of bank employees, namely the bank's marketing as a source of customer data information, is a violation of bank secrets. Bank employees, as described above, are among the affiliated parties who are required to apply bank secrecy provisions.²⁸ The sale of customer personal data will result in the publication of the data classified as private to the wider community and can be used by unauthorized parties for personal gain. Without prior approval of the disclosure of bank secrets from the injured customer, it will be able to eliminate bank confidentiality obligations.²⁹

A bank employee who leaks a customer's personal data to unauthorized third parties without written consent from the customer is a violation of bank secrets. In the science of law, the concept of legal obligation related to legal responsibility is known, namely that a person is said to be legally responsible for a certain action, which is that he can be subject to a sanction in the case of the opposite act.³⁰ In accordance with the concept of responsibility, the actions of bank employees who leak personal data of their customers are a manifestation of violations of bank secrecy provisions which should be kept confidential, for which such acts can be held accountable to them.³¹ Personal liability through criminal channels can be borne by the bank employee for violating bank secrets in accordance with the provisions of Article 47 paragraph (2) of the Banking Law, namely, Members of the Board of Commissioners, Directors, bank employees or other Affiliated Parties who deliberately provide information that is must be kept confidential according to Article 40, punishable by imprisonment of at least 2 (two) years and a maximum of 4 (four) years and a fine of at least IDR.4,000,000,000.00 (four 77 billion rupiah) and a maximum of IDR.8,000,000,000.00 (eight billion rupiah).

Personal data becomes part of the depositing customer and their savings, it is contained in the form that becomes the agreement between the customer and the bank. The deposit agreement is the basis of a contractual relationship in which there are rights and obligations of both parties. In general, the savings product form for opening an account does not explicitly stipulate the bank's obligation to keep personal customer data confidential.

The internal practice of a bank showing the obligation to keep confidential information about its customers is not regulated in the contract for depositing funds at the bank, but in general it is stated in company regulations regarding the obligation of bank employees to maintain the confidentiality of the customer's financial condition as instructed by Law Number 7 of 1992 concerning Banking, as amended by Law Number 10 of 1998.³² As seen in the general terms and conditions for opening an account at Bank Panin, the bank's obligation to keep confidential customer data is not regulated explicitly. There is a provision in Article 16 paragraph (4) which states that the customer gives full authority to the bank to use customer information or information for any purpose as long as it does not conflict with the provisions of the prevailing laws and regulations.³³

²⁷ Article 1 number 22 of the Banking Law

²⁸ Article 1 number 22 of the Banking Law.

²⁹ See Article 44A paragraph (1) of the Banking Law and Financial Services Authority Circular Letter Number 14 / SEOJK.07 / 2014 concerning Confidentiality and Security of Consumer Data and / or Personal Information.

³⁰ Jimly Asshiddiqie dan Ali Safa'at, *Teori Hans Kelsen Tentang Hukum, (Hans Kelsen Theory on Law)*, First Edition, Sedcretary General and Secretariat of the Indonesian Constitutional Assembly, Jakarta, 2006, p. 61

³¹ See article 40 paragraph (2) of Banking Laws.

³² Marnia Rani, "Perlindungan Otoritas Jasa Keuangan Terhadap Kerahasiaan dan Keamanan Data Pribadi Nasabah Bank" (Perlindungan Otoritas Jasa Keuangan Terhadap Kerahasiaan dan Keamanan Data Pribadi Nasabah Bank), *Jurnal Selat*, Edition No. 1 Vol. 2, 2014, p. 174.

³³ http://www.panin.co.id/doc/cmsupload/documents/formulir_pembukaan_29051363505994743498_8751.pdf (accessed on 3 December 2018)

The obligation to keep personal customer data confidential as part of bank secrets, even though it is not explicitly stipulated in the fund deposit agreement does not allow the bank to be released from this obligation. This is because the bank's obligation to safeguard bank secrets is a custom and common practice in the banking world, as a customer right arising from the relationship between the customer and the customer in relation to the bank's function as a proxy for its customer who in good faith is obliged to protect the interests of the customer.³⁴ In addition, although the obligation to keep customers' personal data confidential is not regulated explicitly, this provision is part of the non-contractual relationship between the bank and the customer which will always inspire any contractual relationship that is made. The existence of a relationship of trust and a relationship of confidentiality in it that causes the bank's obligation to keep the personal data of customers confidential, which is provided on the basis of customer trust in the bank

The legal relationship between the bank and the customer is embodied in the deposit agreement where the implementation of the agreement must be based on good faith. The principle of good faith in an agreement can serve to add to the provisions of an agreement if any rights and obligations that arise between the parties are not expressly stated in the agreement.³⁵ This means that although it does not explicitly state the obligation of banks to keep customer data confidential, on the basis of good faith, the implementation of the obligation agreement remains with the bank. In addition, the obligation to keep personal customer data confidential is a provision required by the Banking Act as a bank secret that must be safeguarded by banks and the implementation of the confidential principle contained in the provisions of Article 40 paragraph (1) of Law Number 10 of 1998. concerning Banking, that banks are obliged to keep confidential information regarding Depositors and their deposits, except in the cases as referred to in Article 41, Article 41A. Article 42, Article 43, Article 44, and Article 44A.

Starting from the description above, the responsibility for any breaches of confidentiality of bank customer data committed by bank employees cannot only be borne by bank employees personally. The bank is also responsible for any breach of customer data confidentiality which is classified as a violation of bank secrecy provisions. Given the legal relationship between a bank and a customer that contains bank secrets, placing the bank and the customer as parties who each have rights and obligations as well as compliance with bank secrets required by the Banking Law for banks as banking institutions.

Banks as one of the financial services business actors and payment system service providers, as stipulated in the Financial Services Authority Regulation Number: 1 /POJK.07/ 2013 concerning Consumer Protection in the Financial Services Sector and Bank Indonesia Regulation Number: 16/1 / PBI / 2014 Concerning Consumer Protection Payment System Services emphasizes that banks must implement consumer protection with the principle of confidentiality and security of consumer personal data³⁶. Consumers are parties who place their funds and / or take advantage of services available in Financial Services Institutions including, among others, customers in Banks, investors in the Capital Market, policyholders in insurance, and participants in Pension Funds, based on laws and regulations Article 29 Service Authority Regulations Finance Number: 1 /POJK.07/ 2013 concerning Consumer Protection in the Financial Services Sector, it is stipulated that, Financial Services Business Actors, in this case are banks, are obliged to be responsible for consumer losses arising from errors and / or negligence, management, employees of Service Businesses Finance and / or third parties working for the interests of Financial Service Business Actors. "

Based on the aforementioned provisions, a bank as a financial service actor can be held accountable in the event of an error committed by a bank employee that harms consumers or bank customers. It also relates to the principle of substitute liability or vicarious liability. A corporation, in this case is a bank, is responsible for actions committed by its employees or parties that are responsible for and have ties to the bank. The error of the employee is attributed and borne by the bank.

Leaking of customer personal data is a form of employee error as a violation of bank secrets. Against this error, the bank is also responsible for customer losses. The violation of customer data confidentiality also shows that banking operations carried out by bank employees have not applied the principles of confidentiality and security of customer personal data in consumer protection which must be applied by banks as financial services business actors.

The bank's obligation is to keep customer's personal data confidential, which is the bank's secret. The occurrence of breaches of bank secrets by bank employees shows that the bank does not carry out its obligations to customers, considering that bank employees are affiliated parties and representations of banks that are related to the bank. The facts in the practice of banking activities show that a bank cannot automatically be responsible for violations of the confidentiality of customer data by its employees. This becomes the personal responsibility of the bank employee concerned and there is no connection with the bank if there are no facts that indicate that there is an instruction from the bank to the employee to open data from customers for unauthorized parties. The bank may be liable if the injured customer then files a lawsuit on this matter to the bank through the civil channel.

Theoretically and normatively based on contractual and non-contractual relationships between banks and customers and bank responsibilities in accordance with the principle of vicarious liability Article 29 of the Financial Services Authority Regulation Number: 1 /POJK.07/ 2013 concerning Consumer Protection in the Financial Services Sector, banks are also responsible for a breach of customer data confidentiality. This is inversely proportional to banking practice, in which the bank is not simply responsible for the mistakes committed by its employees for the actions of these employees who are personally accountable to him.

The bank's civil liability for mistakes or negligence of its employees can be interpreted as the responsibility of the management or the responsibility of the bank as a company. Looking at the existing case, there are no instructions given to the employee by the bank management outside of their authority and responsibility, then the qualification of the responsibility can be categorized as the responsibility of the bank company. The bank is responsible for losses incurred for employee errors in

³⁴ Djoni S.Gazali and Rachmadi Usman, *Op.Cit*, p.488.

³⁵ Ridwan Khairandy, *Hukum Kontrak Indonesia Dalam Perspektif Perbandingan (Bagian Pertama) (Indonesian Contract Law in a Comparative Perspective (First Part))*, Second Edition, FH UII Press, Yogyakarta, 2014, p. 144.

³⁶ Consumers are parties who place their funds and / or take advantage of services available in Financial Services Institutions, including, among others, customers in Banks, investors in the Capital Market, policyholders in insurance, and participants in Pension Funds, based on laws and regulations in the financial services sector.

accordance with the provisions of Article 1365 of the Civil Code which is also in accordance with the entrepreneur's theory of imposing responsibility on the company on the basis that the loss is a cost of its business in the financial services sector³⁷

D. CONCLUSION

There is a customer complaint service mechanism with the issuance of Bank Indonesia Regulation Number 7/7 / PBI / 2005 concerning Resolution of Customer Complaints as amended by Bank Indonesia Regulation Number 10/10 / PBI / 2008. The establishment of the Financial Services Authority Institution as a bridge to protect customer rights also provides protection for customers as consumers of the financial services sector by issuing the Financial Services Authority Regulation (POJK) Number 1 / POJK.07 / 2013 of 2013 concerning Consumer Protection in the Financial Services Sector. Included in it are the implementing provisions of bank secrecy, the sanctions given to banks for violating these provisions, and complaint services as well as bank obligations for banks to offer compensation or repairs to products and or services to injured customers.

The bank is responsible for violations of the confidentiality of customers' personal data committed by employees based on the following matters: bank obligations in contractual and non-contractual relationships with customers, bank secrecy provisions required by the Banking Law and bank responsibilities based on the principle of vicarious liability in accordance with Article 29 of the Financial Services Authority Regulation Number: 1 / POJK.07 / 2013 concerning Consumer Protection in the Financial Services Sector, namely, banks are also responsible for customer losses caused by mistakes committed by their employees under the provisions of Article 29 of the Financial Services Authority Regulation Number: 1 / POJK.07/2013 concerning Consumer Protection in the Financial Services Sector, but in banking practice it is found that banks cannot automatically be held responsible for breaches of customer data confidentiality committed by their employees. This becomes the personal responsibility of the bank employee concerned and there is no connection with the bank if there are no facts that indicate that there is an instruction from the bank to the employee to open data from customers for unauthorized parties.

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³⁷ Muhamad Djumhana, *Hukum Perbankan di Indonesia (Indonesian Banking Laws)*, Edition VI, PT Citra Aditya Bakti, Bandung, 2012, p. 306.

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Benny Bambang Irawan, SH, M.Hum.
Lecturer of the Faculty of Law, UNTAG Semarang,
Email: bennybambangirawan2@gmail.com