

Legal Sanctions Against Bank Parties That Perform Bank Confidential Violations

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Abstract. One of the factors in being able to maintain and increase the level of public trust in a bank and banking, in general, is the bank's compliance with bank secrecy obligations. The intent is whether the bank can be trusted by customers who save their funds or use other services from the bank not to disclose the financial condition and customer transactions and other conditions of the customer concerned to other parties. In other words, it depends on the bank's ability to uphold and adhere strictly to bank secrecy. The problem in this writing is how to sanction the bank for violating bank secrecy provisions, and how the bank's efforts are to maintain the security of bank secrets. The research method used by the author is a normative juridical research method with a statutory approach. Based on the research results, it can be concluded that first, sanctions against banks who commit violations by Law Number 10 of 1998 concerning Banking for banks who violate bank secrets can be subject to three sanctions, namely, criminal sanctions in the form of criminal threats and cumulative fines, administrative sanctions in the form of revoking the business license of the bank concerned as well as civil sanctions in the form of compensation.

Keywords: Bank, Bank secrecy, Customer.

1. Introduction

The relationship of trust is the principal establishment that underlies the connection between the bank and the bank's client local area. Banks will actually want to work utilizing assets from the public that are put away in banks in view of trust. Therefore, every bank needs to keep on keeping up with its wellbeing by endlessly keeping up with public confidence in it. [1] Aside from being trustful in nature, the connection between the client and the bank is additionally private on the grounds that the bank likewise executes the standard of bank mystery (bank mystery rule). This is often called a bank secret. Arrangements in regards to bank mysteries are vital for contributors and their reserve funds as well concerning the interests of the actual bank, [2] since public confidence in financial establishments will be kept up with and will keep on expanding, impacted by factors, one of which is bank consistence with bank mystery commitments. The meaning of bank mystery can be found in the arrangements of the Financial Demonstration, to be specific as follows: "Bank secrecy is everything related to information about depositors and their deposits." According to customs, what the bank has to hide is all information and data on everything related to finance, the customer himself, and other entities known to the bank in its business activities. [3] Banks should keep data about

contributors and their stores private, aside from specific matters which will be examined further in the conversation. Banking regulation adjusts client entrust with the secrecy rule applied in the financial framework in Indonesia. The connection between the bank and the client is classified, which connects with the cooperation between the bank and its clients. [4] Bank mystery is specified in guidelines other than making sense of the idea of the connection among clients and banks, it is likewise a type of security of the privileges of bank clients ensured by the Financial Demonstration.

The commitment of banks to keep information about contributors and their investment funds private demonstrates that the Financial Regulation safeguards clients in view of the standard of secrecy since to that end the security gave to investors has the idea of classification. The arrangements in regards to the commitment to keep up with the classification of client data likewise apply to parties affiliated¹⁰ with a bank as specified in Article 40 passage (2) of the Financial Regulation. Data about contributors and their investment funds isn't simply restricted to the client's monetary condition or the record number claimed by the client yet in addition incorporates every one of the client's characters, for example, name, phone number, street number, email, and, surprisingly, the client's absolute pay. As to commitment to keep data about contributors and their stores delegated bank mystery, this likewise applies to subsidiary gatherings, in particular gatherings who have a relationship with the business exercises and the executives of administrations given by the bank. The relationship is through joining himself in the bank. The consolidation can happen either due to the board or due to conventional working connections like representatives, or working connections to offer types of assistance to the bank. [5] Bank mystery is one of the fundamental mainstays of public trust that the bank should keep up with constantly. Different mainstays of conviction are reasonability, wellbeing, and sureness. [6] Bank mystery arrangements, among others, are focused on the interests of clients so their privacy is secured. The mystery concerns what is happening. Aside from that, bank mystery arrangements are likewise expected for the interests of banks, so they can be relied upon and their endurance is kept up with. [2]

Bank mystery arrangements, among others, are focused on the interests of clients with the goal that their privacy is secured. The mystery concerns what is going on. Aside from that, bank mystery arrangements are additionally planned for the interests of banks, so they can be relied upon and their endurance is kept up with. In light of these arrangements, banks in Indonesia are expected to apply bank mystery, where bank mystery is restricted to and restricted to data about contributors and their stores, with the goal that data other than connected with investors and their stores isn't bank mystery, for instance, data about debt holders and the advance. [8]

Oftentimes law enforcement officials force banks to submit documents and customer information related to bank secrets without going through the procedures for opening bank secrets by Law Number 10 of 1998 threats from banks that obstruct investigations can be subject to criminal sanctions bleb because of that smoothness and the security and 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. Violation of bank secrecy is a form of crime. The problem is not only the existence of secret leaks but the bank secrets are sometimes used as a shelter for administrative abuse and collusion in banking. [3]

2. Research Method

Legal research in the preparation of this journal uses a normative method with a statutory approach (Statute Approach). In this study, an assessment was made of the statutory regulations, especially concerning bank secrecy. The legal source used is the primary legal material, the Banking Law is used. [4]

3. Problem Formulation

The problems raised in this study are, first, what are the sanctions against banks that violate bank secrecy provisions? Second, how are the bank's efforts to maintain the security of bank secrets?

4. Discussion

4.1 Sanctions Against Bank Parties Violating Bank Confidential Provisions

Bank mystery is everything connected with finance and different issues from bank clients which, as indicated by the custom of the financial world, may not be unveiled straightforwardly to people in general. In this connection, according to custom, the bank must keep secret, all information and data in regards to everything connected with finance, and different issues from individuals and elements that are known to the bank in view of its business exercises. [11] If there is an agreement between the bank and the customer, then bank secrecy is contractual. So that assuming the bank gives data about the monetary state of its clients, the bank can be sued by its clients in light of reasons of default (default). Conversely, even though there is no agreement between the bank and the customer, the bank is still obliged to maintain bank secrecy based on laws and regulations or other concepts, such as the concept of "unlawful acts" meaning that in the case of a bank providing information about its customer that is detrimental to the customer, the bank can be sued by its customers on grounds of unlawful acts. In this case, the customer must be able to prove that the loss he experienced was the result of leaking bank secrets. [12]

Provisions against violations against parties disclosing bank secrets in the Banking Law are punishable by criminal sanctions (criminal and cumulative fines), administrative sanctions, and civil sanctions. The three types of sanctions for those who do not comply with the principle of bank secrecy are described as follows:

4.1.1 Criminal sanctions

Based on the provisions of Article 47 of the Banking Act, there are 2 (two) types of criminal acts related to bank secrecy, namely:

A criminal offense is for an individual who purposefully powers a bank or partnered party to give data without deliberately compelling the bank or subsidiary party to give data or has a license from the Administration of Bank Indonesia. The wrongdoer is undermined with detainment for at least 2 years and a limit of 4 years. There is a minimal threat and a maximum threat. In addition to imprisonment, some fines provide limits on minimum fines and maximum fines.

A criminal offense for a party who deliberately provides information that must be kept confidential. These parties include members of the Board of Commissioners, Directors, Bank

employees, or other affiliated parties. Perpetrators are threatened with imprisonment for at least 2 years, while for fines there are minimum fines and maximum fines.

4.1.2 Administrative Sanctions

Notwithstanding criminal assents for individuals who disregard bank mystery arrangements, there are additionally authoritative authorizations. In view of Article 52 section (1) of the Financial Regulation, notwithstanding detainment, Bank Indonesia can force authoritative assents on banks that don't do their commitments to keep data or states of clients and their assets secret.

Article 52 paragraph (2) provides an explanation of the types of administrative sanctions, namely as follows:

- a. Money fine
- b. Written reprimand
- c. Decreasing the level of soundness of the bank
- d. Prohibition to participate in the clearing
- e. Freezing certain business activities or the whole
- f. Management termination
- g. Inclusion in the list of people
- h. despicable in banking.

Administrative sanctions are given to two parties, namely the banking institution itself and employees or management of the banking institution.

4.1.3 Civil Sanctions

Parties who do not carry out bank secrecy can be subject to civil sanctions. Civil sanctions refer to the provisions of Article 1365 of the Civil Code (KUHPerdata) or Burgerlijk Wetboek (BW), namely "Any act that violates the law, which causes harm to other people, requires the person who, due to the mistake of issuing the loss, compensates for the loss." The actions of parties who reveal bank secrets are in the category of unlawful acts. It shows that the claim filed is the right of the victim who suffered a loss as a result that violated the law.

The form of the principle of bank secrecy aims to protect customers, in theory its application consists of 2 (two) theories, namely the absolute theory and the relative or relative theory. Based on positive law in Indonesia, the principle of bank secrecy that is adhered to is a relative or relative theory. However, provisions regarding violations against parties who reveal bank secrets based on the Banking Law are punishable by criminal sanctions (criminal and cumulative fines), administrative sanctions, and civil sanctions.

4.2 Bank Efforts in the Context of Maintaining Bank Confidential Security

Bank mystery is significant on the grounds that banks as believed foundations should keep everything connected with investors and their stores private. 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 and/or administrative sanctions as well as social sanctions from the community. [13] Implementing things (information) that are confidential, especially at banks, is very difficult because no uniformity determines what things (information) can be categorized as something that is kept confidential by banks from information and data customers. [14]

In general, bank secrecy provisions are seen as often causing a conflict between the interests of customers and the bank's business interests, however, even though this is the case, banks must still adhere to bank secrecy provisions. Every bank is obliged to uphold the principle of bank secrecy, while one form of effort made by banks in maintaining bank secrecy is if someone asks about the customer's identity, or his activities at the bank other than the three

authorized parties, namely the Attorney, Police, and Court, then the bank did not provide any information. The bank will keep it secret. Making efforts to maintain the security of bank secrets, also means indirectly maintaining the financial security of customers because bank secrets cover the protection of customers and their deposits.

Besides that, other efforts made by banks to maintain the security of bank secrets are through:

4.2.1 Operational in Common

The prevalence of bank operations related to the collection of public funds such as through demand deposits, savings, time 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. In this operation, the bank keeps records and collects data and information related to its business and related to its customers, for example: with borrowers.

Recording of transactions is a bank's obligation to meet the need for basic data that must be fulfilled. Each bank must maintain records to provide data for reporting to Bank Indonesia as the Central Bank, reporting for taxes, reporting for shareholders, reporting for customers, and so on. It is from the recording that data is processed into an informative report that is easy to understand by those who receive it. The data and information belong to the bank which in general can be categorized as bank secrets.

Before a transaction is made between the bank and the customer, the bank first checks the identity of the customer. If a customer does not act for himself, then it is necessary to be accompanied by the assignment of authority to act on behalf of another person, both for legal entities and other parties. Usually identification is also done by checking the references submitted. Transactions that have been carried out will be compiled into certain documents and these documents will later be stored permanently by the bank.

4.2.2 Recording at the Bank

Accurate and adequate recording of bank operations or transactions of the bank is a must. The adequacy of the recording is measured by its 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. Thus recording and archiving all banking activities carried out by banks is an unavoidable responsibility and obligation.

In the current development of technology and information, recording of current banking activities and their storage can also be done using electronic data devices (computers). The advantage of customers with this technology is that customers can be served faster and more comfortably. While the advantage for the bank itself is to provide better service to customers and to be able to secure important documents without requiring a large place or room.

As an institution that relies on public trust, banks should try to assure the public that banks are safe and able to keep information or information about customers and their deposits confidential. Banks must have guidelines, policies, organization, and work procedures, especially regarding bank secrets and job secrets.

5. Conclusion

In light of the depictions that have been presented, the ends in this composing are as per the following: First, sanctions against banks that commit violations of Law Number 10 of 1998 concerning Banking, for banks that violate bank secrecy can be subject to three sanctions, such as criminal sanctions in the form of cumulative criminal threats and fines by Article 47 paragraphs (1) and (2), administrative sanctions in the form of revoking the business license of

the bank concerned as referred to in Article 52 paragraphs (1) and (2) as well as civil sanctions in the form of compensation by Article 1365 of the Civil Code. Second, the bank's efforts in maintaining the security of bank secrets are when someone asks the identity of a customer, or his activities at the bank other than the three authorized parties, namely the prosecutor, police, and court or parties who have been given the power or authority to request this information, the bank will keep it secret. Another effort made by the bank to maintain the security of the bank's secrets is through Operational Customs, Recording at the Bank.

6. Suggestion

From the ends that have been introduced by the creator, the first suggestions put forward are that banks as institutions trusted by the public to store their funds must have the ability to protect their customers, one of which is to uphold the principle of bank secrecy. Second, there is a need for additional sanctions in the civil field to protect customers in Law Number 10 of 1998 concerning Banking to create legal certainty that provides guarantees and trust for customers in depositing their funds in any bank.

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