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Legal Breakthrough on Bank Secrets in Banking to Prevent and Rate the Crime of Money Laundry

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A B S T R A C T

In the banking world, the term bank secrecy is often an interesting topic for debate among academics, practice owners, and politicians. This is due to the curiosity of the public whether the bank is healthy or not, problematic or not, but on the other hand, the bank is unlikely to want to provide information to the public because it collides with bank secrecy as regulated in article 1 (paragraph) 28 of Law Number 10 of 1998 concerning the prevention and eradication of money laundering, which reads bank secrecy is everything related to information regarding depositors and their deposits. And Article 40 (paragraph) 1 Law Number of 1998 concerning banking. This research was conducted by examining library materials which is also known as library research.

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INTRODUCTION

In the world of banking, the term bank secrecy is often an interesting topic for debate by various groups, both academics and practitioners and politicians. Interestingly, this problem is caused by curiosity from the public, especially interested parties regarding the financial condition of customers who are kept in a particular bank, healthy or not, problematic or not. On the other hand, a bank can't provide a customer's information to the public because it conflicts with bank confidentiality provisions.

The principle of bank secrecy originates from the aim of protecting the interests of bank customers so that confidentiality regarding their financial situation and the customer's data is protected, besides that, bank secrecy is also intended for the interests of the bank itself, because the bank can be trusted by customers to manage their money. Therefore, the principle of bank secrecy is the soul of the banking system. The existence of bank secrecy provisions then gives the public the impression that banks are deliberately hiding unhealthy financial conditions from debtor customers, whether individuals or companies that are in the spotlight of society, in other words, all this time there has been an impression that the banking world is hiding behind bank secrecy provisions. to protect the interests of its customers which are not necessarily true. A bank is a financial institution that runs its business based on the trust of its customers, so banks are required to maintain the confidentiality of all data and information related to their customers, including information on financial transactions carried out by their customers.

According to Article 1 paragraph (28) of Law number 10 of 1998, bank secrecy is everything related to information regarding depositors and their savings due to the high commitment held by banks to maintain customer confidentiality. This principle is often used as a shield for perpetrators of money laundering crimes to hide the origin of the funds obtained from the proceeds of crime. With the proposition of banking secrecy, the impression arises as if the bank is hiding the financial depravity of a company (the debtor) that happens to be in the public spotlight, or other words, the impression often arises as if banking circles are deliberately hiding behind the rules of banking secrecy to protect their customers who are not necessarily Correct

The lack of regulations in the banking sector and strict bank secrecy in a country can make it possible for money launderers to freely use banking facilities to conceal the proceeds of crime. The rigid and closed nature of bank secrecy principles is one of the factors that can cause the spread of money laundering practices in a country and is also a factor in the success or failure of preventing and eradicating money laundering crimes.

Provisions regarding bank secrecy are very important for saving customers and their savings as well as for the interests of the bank itself, because if a saving customer does not trust the bank where he keeps his savings, of course, he will not want to become a customer. Therefore, for a financial institution whose function is to collect funds from the public in the form of deposits, it is appropriate for the bank to implement the bank secrecy provisions consistently and responsibly.

THEORETICAL REVIEW

Legal Understanding

The crime of money laundering (Money laundering Crime) in recent years has become the center of attention of the wider community because it is considered that this case also concerns State finances which are also public money. This case is a criminal case, where a person or group commits a criminal act against the law. The nature of being against the law in criminal law is the main thing that must be present/absolute in every formulation of a criminal act. The nature of being against the law is one of the elements of a criminal act. The position of the nature of being against the law as one of the elements of a criminal act is so very important, that it is said to be the main concern of the law. Criminal acts are acts that are against the law only, because these acts are prohibited and punishable by crime. 26 The following is the meaning of the law itself: Law is a regulation in the form of norms and sanctions created to regulate human behavior, maintaining order, and justice, and preventing chaos. The definition above explains that all actions that can be done can cause problems or chaos that violate norms and be subject to sanctions under applicable regulations. However, people in Indonesia often ignore the regulations that apply in Indonesian life, written rules and norms. Habit This can cause chaos in social life and Country.

Understanding Money Laundering

Money laundering is often referred to as money laundering which comes from English, namely Money, which means money, and Laundering which means washing. So, Money Laundering means money laundering or bleaching money resulting from crime. The general definition of money laundering is a process or act to hide or disguise the origin of the money or assets obtained from the proceeds of a subsequent criminal act converted into assets that appear to originate from valid activities. Money laundering activities have serious impacts on the stability of the financial system and the economy as a whole overall. The crime of money laundering is a multi-crime crime dimension and is transnational which often involves large amounts of money which is quite big.

METHODOLOGY

The research entitled "Legal Breakthrough on Bank Secrets in Banking to Prevent and Rate the Crime of Money Laundering" will involve a series of rigorous research methods to gain an in-depth understanding of the issues. First, this research will begin with a literature study that investigates legal and policy theories related to bank secrecy, money laundering prevention, and evaluation of these crimes. Next, document study methods will be used to analyze in depth existing laws, regulations and policies, including relevant court decisions. Interviews will be an important method in this research, involving dialogue with legal experts, regulatory officials, and legal practitioners who have practical experience in handling related cases. In

addition, this research will utilize case studies to understand the context of legal implementation in real cases, which will provide a better understanding of the challenges and opportunities that may arise. In addition, a comparative analysis of laws between countries will be carried out to identify successful legal models in addressing issues of bank secrecy and money laundering. Surveys will be conducted to obtain the views of the general public and other stakeholders regarding the effectiveness of existing laws and whether there is support for reform. Finally, a focus group discussion (FGD) will be held to facilitate dialogue and exchange of ideas between the various parties involved. These methods will be used in an integrated manner, ensuring that the research covers multiple perspectives and produces a holistic understanding of how to achieve effective legal breakthroughs in addressing issues of bank secrecy and money laundering prevention.

RESEARCH RESULTS

Understanding Bank Secrets Bank secrets are anything related to finances and other things from bank customers which according to banking world customs should not be openly disclosed to the public. According to custom, what banks must keep confidential is all data and information regarding everything related to finances, and other things from people and entities that are known to the bank in its business activities. According to Article 1 point 28 of Law number 10 of 1998 concerning banking, what is meant by bank secrecy is everything related to information regarding depositors and their savings. Information regarding deposit customers includes the customer's identity, namely name, customer's financial situation, etc. Meanwhile, secrets regarding customer deposits are funds entrusted by the public to banks based on fund deposit agreements in the form of demand deposits, deposits, certificates of deposit, savings, and/or other equivalent forms.

Referring to the provisions of Article 1 paragraph (16) and other articles of Law Number 10 of 1998 concerning banking, the elements of bank secrecy can be drawn as follows:

1. Bank secrecy relates to information regarding depositors and their savings.
2. This matter is "required" to be kept confidential by the bank unless it is included in the exception category based on the procedures and regulations in force.

Parties who are prohibited from disclosing bank secrets are the bank itself and/or affiliated parties. Meanwhile, what is meant by affiliated parties is as follows:

a. Members of the board of commissioners, supervisors, directors or their proxies, and officers or employees of the bank concerned.

b. Members of the management, supervisors, managers, and/or proxies are bank officials or employees, especially for banks that are cooperative legal entities following applicable laws and regulations.

c. Those providing services to the bank in question include but are not limited to public accountants, appraisers, legal consultants, and other consultants.
d. Parties who, according to the assessment of Bank Indonesia (BI), also influence bank management, include but are not limited to shareholders and their families, commissioners' families, supervisors' families, directors' families, and management's families.

According to Article 47 paragraph (2) of Law number 10 of 1998 concerning banking, those who are obliged to uphold bank secrets are: (a) members of the bank's board of commissioners, (b) members of the bank's directors, (c) bank employees, (d) affiliated parties others from the bank. In the banking law, what is meant by bank employees is "all bank officials and employees". Referring to the provisions of Article 47 paragraph (2) of the banking law, anyone who works as a bank employee, even if they do not have access to confidential data (regarding customer depositors and their deposits), is still obliged to uphold the provisions regarding bank secrecy. This article is a bit excessive because typists who handle logistics, cleaning services, drivers, and security guards who work at banks are among those affected by bank secrecy provisions. Bank secrecy provisions do not yet cover former bank employees, so the revision of the banking law should stipulate that bank secrecy must also be strictly adhered to by former bank employees for ten years from the time they no longer work at the bank.

In daily banking practice, a customer can change or move from one bank to another, or become a customer at several banks at the same time. Faced with facts like this, is the bank still bound by an obligation of secrecy if a customer is no longer a customer of the bank? This issue is not regulated in the banking law. Therefore, in future revisions to the banking law, it should be stipulated in the banking law that banks are still bound by the obligation to keep the information of their former customers confidential for a certain period, for example, 3 years

Forms of Legal Breakthroughs in Money Laundering Crimes

Legal Breakthroughs in Money Laundering Crimes

Talking about legal breakthroughs in the crime of money laundering is certainly impossible without understanding the philosophy and for what purpose the anti-money laundering provisions were created. The emergence of an anti-money laundering regime was not born from the enthusiasm of one country alone but emerged from the initiative of various countries through the birth of an international convention. Money laundering is simply defined as a process of making proceeds of crimes or what is known as illicit money or dirty money which is converted or changed into a legal form so that it can be used safely.

Article 1 point 1 of the Law on the Prevention and Eradication of Money Laundering regulates that money laundering is any act that fulfills the elements of a money laundering crime. What form the criminal offense of money

laundering takes is often debated, because in the trial there are two crimes, namely predicate crime (offensive crime) and follow-up crime. However, the main crime/predicate crime and the crime of money laundering are separate crimes (as separate crimes).

For the purposes of the crime of money laundering, law enforcement against bank secrets can be carried out. The legal breach in the crime of money laundering can be seen in article 2 of Law number 8 of 2010 concerning the crime of money laundering which states that the reporting obligation by the reporting party is excluded for the reporting party concerned. Thus, what is meant by the provisions contained in article 28 is that every person who, based on Law number 8 of 2010, is obliged to submit a report to the Financial Analysis and Transaction Making Officer (PPATK), even though in fact according to the applicable legislation, that is reported to PPATK must be kept secret.

Legal breaches of bank secrets are also regulated in Article 72 of Law Number 8 of 2010 concerning the crime of money laundering, namely:

Paragraph (1): For examination in money laundering criminal cases, investigators, public prosecutors, or judges have the authority to ask the reporter to provide written information regarding the assets of: a. person reported by PPATK to investigators, b. suspect, or c. defendant

Paragraph (2): When requesting information as intended in paragraph (1) from investigators, public prosecutors, or judges, the provisions of the laws and regulations governing bank secrecy do not apply.

DISCUSSION

In Article 72 paragraph (2) of Law number 8 of 2010 concerning the crime of money laundering which essentially states that for examination in cases of criminal acts of money laundering, investigators, public prosecutors, or judges are treated in the same way as or excluded from the provisions of the laws and regulations governing banking secrets and other financial transactions. Therefore, efforts to prevent banks from being used as a means of money laundering are very possible to reveal bank secrets. Apart from that, banks must apply the principle of getting to know their customers by conducting Customer Duo Diligence (CDD) with each customer. CDD is an activity in the form of identifying, verifying, and monitoring the conformity of transactions with customer profiles. Therefore, it is possible that banks can prevent criminal acts of money laundering that use banking facilities.

Normatively, the crime of money laundering is regulated in articles 3, 4, and 5 of Law number 8 of 2010, articles 3 and 4 can be categorized as active perpetrators. This means that the perpetrator's evil intention is to channel the proceeds of crime, such as transferring, spending, sending, changing the form, exchanging or any other action regarding assets originating from a crime and the

person knows and at least reasonably suspects that the assets originate from a crime as regulated in article 3 and article 4.

The type of active perpetrator is also divided into 2 (two) criteria, the first is called the principle violator (main perpetrator), namely the perpetrator who commits the original crime and then diverts the money or assets resulting from the crime by transferring, spending, and doing whatever. For active principal violators, this is the real form of money laundering, namely that they will be subject to 2 (two) provisions of the law, namely that they commit a predicate crime (offensive crime) and money laundering (follow-up crime) as regulated in Article 3 and Article 4.

Principle violators must be charged cumulatively or as concursus realis perpetrators. This is where the application of the TPPU Law is useful so that perpetrators who enjoy the proceeds of crime will also be subject to the provisions of the TPPU Law and the threat of criminal punishment becomes serious because they are seen as perpetrators of a combination of crimes (concursus realis).

The second type of perpetrator is also called an aider, namely active actions such as transferring, spending, exchanging, or any other action as stated in articles 3 and 4, but these perpetrators are only charged with the crime of money laundering because they are not involved in the original crime, but they know or at least reasonably suspect that the assets being channeled originate from crime. The perpetrator of this aider is only subject to one charge, namely the provisions of article 3 or article 4 and is not subject to the provisions of the predicate crime.9

Meanwhile, Article 5 of Law Number 8 of 2010 can be categorized as a passive actor (abbetor), namely an actor who receives transfers, receives payments, receives gifts, etc. where he knows, or suspects, or should suspect what he receives, etc. These come from the proceeds of crime. Passive perpetrators, are only subject to a single or single threat of crime, namely anti-money laundering provisions without predicate crime, but the person concerned knows or should reasonably suspect that what they receive or act in question is assets from the proceeds of crime. Abbetor perpetrators are perpetrators under article 5 of Law Number 8 of 2010 concerning the crime of money laundering.

In line with the importance of implementing anti-money laundering which is related to the legal process of original criminal cases, namely to trace the flow of funds resulting from the main crime, confiscate them, and imprison the perpetrators, both the perpetrators of the main crime and anyone who enjoys the proceeds of the crime, of course in this context it must be understood that there is no laundering crime if there is no main crime. 10 Because the money or assets being laundered must come from a crime, this is related to the provisions of article 69 of the TPPU Law. With this understanding, it can be understood that all perpetrators of predicate crimes, for example, corruption, of course the corrupt person will enjoy the results of the corruption, both the person concerned and other people who also enjoy the results of the corruption. So apart from corrupt people, they should be charged with anti-corruption, they should also be charged with anti-money laundering, and all those who enjoy the

proceeds of corruption should be charged with anti-money laundering provisions.

Seeing that there are so many corruption crimes that reach court, it turns out that very few are linked to anti-money laundering, meaning that law enforcement against anti-money laundering is far from successful. However, whether there is a failure in law enforcement or whether there are problems in its enforcement

CONCLUSIONS AND RECOMMENDATIONS

Based on the discussion described in the previous chapters, several conclusions can be obtained as follows:

1. Bank secrecy in banking is needed to protect the interests of bank customers so that confidentiality regarding their financial situation and the customer's data is protected. Apart from that, bank secrecy is also intended for the interests of the bank itself because the bank can be trusted by customers to manage their money. The obligation to keep confidential information regarding depositors and their deposits is classified as bank secrecy and can apply to affiliated parties, namely parties who are related to the activities and management of business services provided by the bank.
2. So that law enforcement officials such as investigators, prosecutors, and judges can make legal breakthroughs to block fat accounts, confiscate or seize the assets of someone suspicious or reasonably suspected based on sufficient initial evidence that the person's assets come from the proceeds of crime, so that the investigation process, prosecution and examination in court can run smoothly without experiencing obstacles.
3. Penetration of bank secrets in the process of investigating criminal acts of money laundering can be carried out for the sake of law enforcement and can obtain accurate data information and can take other legal actions such as blocking accounts, confiscating and confiscating someone's assets which are reasonably suspected to be derived from the proceeds of crime. Bank secrecy breakthroughs in money laundering crimes are regulated in Article 28, article 72 of Law No. 8 of 2010 concerning the prevention and eradication of money laundering crimes.

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