

# THE NATURE OF LEGAL PROTECTION OF BANK CUSTOMERS IN REPORTING FINANCIAL INFORMATION FOR TAXATION PURPOSES

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THE NATURE OF LEGAL PROTECTION OF BANK CUSTOMERS IN REPORTING  
FINANCIAL INFORMATION FOR TAXATION PURPOSES

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### Abstract

This research is motivated by the existence of automatic financial information reports regulations as part of bank secrecy, which causes disharmony between laws and regulations of banking, automatic financial information reports and taxation sectors. This research is aimed at discovering and analyzing bank customer legal protection of financial Information Reporting for Taxation sector. The research applies normative juridical research with various approaches, namely the statutory approach, case approach, conceptual approach, and historical approach. The sources of legal materials used consist of primary legal materials, secondary legal materials and non-legal legal materials. This study found that the essence of legal protection in reporting financial information in the field of taxation is the existence of legal protection related to the security of financial information as the bank secret contrary to the principle of legal protection for bank customers, there is no legal certainty about the limits of bank secrecy which should essentially be kept secret without exception. The nature of the legal protection of bank customers should be able to provide guarantees of certainty, justice and benefits for bank customers. The implementation of financial information reporting is not in accordance with the principle of legal protection of bank customer.

Keywords: bank customers, bank secrecy, financial information reporting, the nature of legal protection

### 1. Introduction

<sup>6</sup> Indonesia as a state of law owns a constitution implemented as the source of all sources of law made by the founding fathers of the nation. According to Jimly Asshiddiqie, the implementation of the constitution as a holder of power in a rule of law concept means that a state of law requires the

supremacy of the constitution.<sup>1</sup> The values in the constitution are made as the basis for making laws and regulations in Indonesia, including those concerning the protection of human rights. Human rights, which are basically owned by everyone, are also regulated in the Indonesian constitution, namely in the 1945 Constitution of the Republic of Indonesia. The term constitutional, conveyed by Mudakir Iskandar Syah<sup>26</sup> relates to all activities based on the constitution called constitutional activities, meaning that activities which are in accordance with the basic law, while activities that are not in accordance with the constitution refers to unconstitutional or activities that are not in accordance with the basic law.<sup>2</sup> One form of constitutional right is the right to obtain legal protection for every citizen, as stipulated in Article 28 Letter D number 1 of the 1945 Constitution of the Republic of Indonesia. The constitutional basis for guaranteeing human rights before the law is based on Article 28 Letter D Number (1) The 1945 Constitution of the Republic of Indonesia states:

"Everyone has the right to recognition, guarantee, protection and fair legal certainty and equal treatment before the law."

Legal protection includes the legal protection of property owned by every citizen, as has also been mentioned in Article 28 Letter G number (1) of the 1945 Constitution of the Republic of Indonesia, which states:

"Everyone has the right to personal protection, family, honor, dignity and property under his control, and has the right to a sense of security and protection from the threat of fear to do or not do something which belongs to human rights."

The continuity of the constitutional rights of citizens gives the state an obligation to realize the sustainability of these constitutional rights. The implementation of the guarantee of constitutional rights to protect property under its control can be in the form of savings or deposits in banking financial services institutions, namely the obligation of banking financial services institutions to guarantee bank secrecy, in the form of everything relates to customers and their deposits.

On the other hand, from the existence of constitutional rights, there are constitutional obligations of the government as an organ of the state, including securing the implementation of constitutional rights, including their implementation in the lower order of legislation under the 1945 Constitution. In addition to guaranteeing the implementation of the protection of constitutional rights, the State is also obliged to run the wheels of the national economy, as mandated by Article 33 paragraph (4) of the 1945 Constitution of the Republic of Indonesia states:

"The national economy is organized based on economic democracy with the principles of togetherness, efficiency, justice, sustainability, environmental insight, independence, and by maintaining a balance of progress and national economic unity."

One of the national economic synergies is the equitable distribution of development in all areas of life and throughout Indonesia. Equitable national development and national economic progress require a large amount of funds. The state tax revenue is one of the sources of income in realizing this

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<sup>1</sup> Dedi Supriyadi, 2013, *Hukum Internasional (dari Konsepsi sampai Aplikasi)*, Pustaka Setia, Bandung, P.223.

<sup>2</sup> Mudakir Iskandar Syah, 2008, *Pengantar Ilmu Hukum dan Tata Hukum Indonesia*, Sagung Seto, Jakarta, P.

development. Limitations on taxes are contained in the 1945 Constitution of the Republic of Indonesia in Article 23 letter (A) stating

"Taxes and other levies that are coercive for the purposes of the state are regulated by law."

To carry out national development, the state revenue consists of three sources, namely tax, non-tax and grant income. Article 1 point (2) of the Law concerning the State Revenue and Expenditure Budget for the 2019 Fiscal Year states:

"State revenue is the right of the central government recognized as an addition to net assets consisting of tax revenues, non-tax state revenues, and grant receipts."

Taxes are state revenues playing important role in providing the largest contribution in financing all state expenditures, including national development expenditures for the creation of a just and prosperous society. Taxes can be used as a tool to achieve better economic goals.<sup>3</sup> As part of the national economy, the bank<sup>6</sup> has provided enthusiasm for changes in the economy. The banking world is expected to be a means for the prosperity of the people in accordance with the ideals of the 1945 Constitution of the Republic of Indonesia as the Indonesian constitution.<sup>4</sup> On the other hand, as an effort to increase state taxes, Indonesia<sup>11</sup> has ratified one of the international conventions on taxation, the Convention held in France, the Convention on Mutual administrative assistance in tax matters as amended by the Protocol amending the Convention on Mutual administrative Assistance in tax matters. This convention was held at Cannes France on 3 November 2011 which was ratified on 17 October 2014 by Presidential Regulation Number 159/2014 concerning the ratification of the Convention on Mutual Administrative Assistance in tax Matters, which is a Convention on mutual<sup>8</sup> administrative assistance in the taxation sector. The continuation of the Convention is the implementation of the Automatic Exchange of Information (referred to as AEOI) commitment or automatic information exchange, as an automatic disclosure of information in the field of exchanging financial information including bank secrecy which aims to provide space for information disclosure to increase tax revenues between countries. AEOI is an agreement in the OECD Tax Law which is followed by Indonesia as a member of the G20 group. Based on the pressure of relations between countries that are<sup>8</sup> subject to the joint administrative cooperation convention, the Government of Indonesia issued a Government Regulation in Lieu of Law (Perppu) of the Republic of Indonesia Number 1 of 2017 concerning Access to Financial Information for Tax Purposes, which was then promulgated<sup>13</sup> into a State Law. Republic of Indonesia Number 9 of 2017 concerning Stipulation of Perppu Number 1 of 2017 concerning Access to Financial Information for Tax Purposes. The implementation of the automatic exchange of financial information policy as mentioned above is an ineffective and inefficient strategy to increase tax revenue.<sup>5</sup>

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<sup>3</sup>Arifin Soeriatmadja, *Kompedium Bidang Hukum Keuangan Negara (Sumber Sumber Keuangan Negara)*, (Jakarta, Final Report of National Legal Development Agency of the Ministry of Law and Human Rights, 2010), P. 4.

<sup>4</sup>Muhammad Djumhana, 2012, *Hukum Perbankan di Indonesia*, Citra Aditya Bakti, Bandung, P.55.

<sup>5</sup> Resi Pranacitra, 2019, *Seri Hukum Perbankan Rahasia Bank As Tool Of Economic Engineering*, Loutan Pustaka, Yogyakarta, P 304.

The regulations on the opening of access to automatic customer financial information among countries for tax purposes contain a conflict of norms between laws and regulations. According to Philipus Hadjon, a conflict of norms requires resolution of the conflict of norms.<sup>6</sup> Norm conflicts between guarantees of legal protection for citizens in the 1945 Constitution of the Republic of Indonesia, especially legal protection for citizens. This provision is contrary to Article 28 G of the 1945 Constitution of the Republic of Indonesia. The confidentiality of bank deposits as property owned by customers must be protected, bank secret security which includes financial information must be guaranteed by the State in its implementation as a form of *Das Sollen* or what it should be. The legal protection of bank secrecy guarantees as a manifestation of the rights of citizens that should be protected by the state as a constitutional mandate cannot be achieved and is ruled out by the state on the basis of implementing the state's rights in increasing income from taxation. The non-fulfillment of the constitutional rights of legal protection for citizens, in its implementation as bank customers related to the disclosure of financial information which is a bank secret for their deposited funds become Problems that must be resolved.<sup>16</sup>

The general part of Act Number 9 of 2017 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2017 concerning access to financial information for tax purposes becomes law, stating that the birth of the law was motivated by the insistence of Indonesia's commitment to international agreements related to the automatic exchange of financial information as a form of *Das Sein* that occurred in its promulgation. State sovereignty in the form of legal protection for its citizens, one of which is the protection of assets that have been guaranteed by the constitution and laws and regulations, especially the protection of bank secrecy guarantees are set aside in order to comply with the commitments of international agreements that are followed. The international agreement requires the making of domestic rules governing the authority of tax authorities to access financial information, obligations for financial service institutions, other financial service institutions, and/or other entities to automatically report financial information to tax authorities, perform procedures for identifying financial accounts for reporting interests, as well as the application of sanctions for non-compliance with these obligations. Article 46 of the Vienna Convention states that a country is not allowed to claim an international agreement as an invalid agreement that must be cancelled, since being bound by an international agreement is a violation of the provisions of its national law. Exceptions to article 46 of the Vienna Convention can be made if the agreement to be bound by a treaty is contrary to fundamental national interests.<sup>7</sup>

The exception to bank secrecy in the field of taxation previously regulated, namely Article 41 paragraph (1) was amended, so that Article 41 paragraph (1) of Act Number 10 of 1998 concerning Banking stated:

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<sup>6</sup> Philipus M.Hadjon, 2016, Tatiek Sri Djatmiati, *Argumentasi Hukum*, Gadjah Mada University Press, Yogyakarta, P. 31.

<sup>7</sup> Sefriani, 2016, *Peran Hukum Internasional Dalam Hubungan Internasional Kontemporer*, Rajagrafindo, Depok, P.105.

"For tax purposes, the leadership of Bank Indonesia at the request of the Minister of Finance is authorized to issue a written order to the bank to disclose information and provide written evidence and letters regarding the financial condition of certain depositing customers to tax officials."

Bank secrecy is no longer valid due to the implementation of automatic exchange of information, while a Bank Secret which includes customer information and their deposits must still be guaranteed as the implementation of the Prudential Principles in the banking process. The implication of applying the exception to bank secrecy in reporting financial information in the field of taxation is that the public, both Indonesian citizens and foreign nationals, are reluctant to deposit their funds in Indonesian banking institutions. Apart from the high tax levy regulations, there is also no guarantee of legal certainty for citizens to get legal protection. Protection is intended to protect bank secrecy guarantees for depositors and their deposits held by customers in Indonesia. Development funds are reduced, foreign debt is increasingly soaring with the inability of Indonesian banks to provide credit for domestic development needs. In the end, the state's aim, based on the constitution, to prosper its people was hampered and not optimal. Regarding the analysis of these matters, the authors are interested in reviewing and analyzing them comprehensively as a research, which relates to the constitutional rights of legal protection for customers related to bank secrecy, reports on customer financial information, and financial information reporting obligations in the field of taxation. This legal research is entitled "Legal Protection Nature of Bank Customers in Reporting Financial Information for Taxation Purposes."

Based on the above description by referring to Act Number 9 of 2017 concerning the Stipulation of Perpu Number 1 of 2017 concerning Access to Financial Information for Tax Purposes, there are several legal issues to study, namely:

1. What is the nature of legal protection for bank customers in reporting financial information for taxation purposes?
2. Does not the regulation on reporting financial information of bank customers for taxation purposes conflict with the principle of legal protection?

This research was conducted with the aim of discovering the meaning of legal protection of bank customers in reporting financial information in the field of taxation and its regulation in terms of the principle of legal protection.

## 2. Research methods

The normative juridical method is applied in this research. Meaning that it emphasizes on normative legal science; the research uses normative research with various approaches, namely the statutory approach, case approach, conceptual approach, and historical approach. The sources of legal materials used consist of primary legal materials, secondary legal materials and non-legal materials. Every scientific study activity always has an approach, namely how to see physical reality from a certain point of view.<sup>8</sup> The problem approach method based on the type of normative juridical research

<sup>8</sup> Musa Asy'arie, 2016, *Filsafat Ilmu Inegrasi dan Transendensi*, LESFI, Yogyakarta, P. 6.

used is the statutory approach, i.e., an approach carried out by examining a law (statutory regulations), or regulations related to the legal issues under investigation. For practical purposes, this approach directs researchers to study the consistency and suitability of laws and regulations with one another, the results of this study are arguments to resolve the problems studied. The problem approach used in addition to the legal approach is the Conceptual Approach, which moves on the views and doctrines that develop in legal science, so that researchers will find ideas or thoughts which become the basis for researchers in building a legal argument in solving a legal problem.<sup>9</sup> In addition to using the Statutory and Conceptual Approaches, the Historical Approach and the Comparative Approach are also applied. The historical approach is carried out with the aim of finding out the previous law in order to understand the reasons behind the existing law and the course of evolution. The historical approach aims to find the rule of law from time to time in order to understand its philosophy, and to study the development of the rule of law.<sup>10</sup>

Comparative approach is also used in this legal research. This comparative approach is a comparative legal approach. This approach is carried out with the aim of "Finding out what the law is in other countries and considering whether it can be adapted, with or without modifications lead to law reforms or development law".<sup>11</sup> The comparative law approach is useful for disclosing the background of the occurrence of certain legal provisions for the same problem from two or more countries. This disclosure can be used as a recommendation for drafters or amendment to legislation.<sup>12</sup>

The comparative law method is a means for understanding legal regulations that will be increasingly useful for modern and current legal practitioners.<sup>13</sup> A case approach is also applied in this research. This approach is based on the researcher's understanding of the *ratio decidendi* of legal reasons used by the panel of judges to make a decision. The *ratio decidendi* is found in the presence of material facts, which can be in the form people, places, times and all the things that accompany and are not proven otherwise in the formulation. Facts are needed to determine legal rules which are in accordance with the existing facts. Based on the findings of the rule of law on the facts that occurred, it shows that legal science is a prescriptive science, while the decision or dictum is a descriptive one.<sup>14</sup>

### 3. Results and Discussion

#### 3.1 The nature of the legal protection of bank customers in reporting financial information for taxation purposes.

The history of Indonesian taxation cannot be separated from the past history in the era of the kingdom of the Indonesian Archipelago, which then developed in the colonial era to today's modern era.

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<sup>9</sup> Fendy Setyawan, 2010, *Metodologi Pendekatan dalam Penelitian Hukum, Bahan ajar makalah disampaikan dalam Pelatihan Metodologi Penelitian dan Penulisan Hukum*, Organized by the Civil Law Program of the Faculty of Law, Jember University on 6 to 7 of November, 2010. P. 9.

<sup>10</sup> Dyah Ochterina Susanti, A'an Efendi, 2018, *Penelitian Hukum (Legal Research)*, Sinar Grafika, Jakarta, P. 126.

<sup>11</sup> Ibid., P. 131.

<sup>12</sup> Peter Mahmud Marzuki, 2008, *Penelitian Hukum*, Prenada Media Group, Jakarta, P. 133.

<sup>13</sup> Peter De Cruz, 2016, *Perbandingan Sistem Hukum Common Law, Civil Law and Socialist Law*, diterjemahkan dari karya Peter De Cruz, *Comparative Law in a Changing World, London-Sydney: Covendish Publishing Limited, 1999*, Nusa Media, Bandung, P. 32.

<sup>14</sup> Peter Mahmud Marzuki, Op.Cit, P. 133.

Taxation in Indonesia has undergone several periodizations, including the following:

a. History of taxation before the colonial age

In the era of the kingdom until the colonial era, there was a term, namely levies or tributes that were treated and forced. The levies were taken as people's offerings to the royal leaders who were considered God's representatives. There was a form of compensation, namely reciprocity between the people and the authorities who receive the tribute or levy. The history of these levies is found in several kingdoms, and also adheres to the existence of tax exemptions for some people, especially on *perdikan land*.<sup>15</sup> For residents who cannot deposit in kind, they are required to carry out work activities aimed at the public interest of the community for a period of time within a year. When a person is unable to carry out social work activities, then he can pay someone else to replace the work.<sup>16</sup>

b. History of Taxation in the Colonial Age

In the historical era of taxation of Indonesia, the Dutch colonial era made a big enough contribution. Various tax policies were applied for colonial interests at that time. There are several rules made by the Dutch colonial, one of which is the household ordinance (Stbl 1908 number 13), the stamp duty rule (Stbl 1921 number 498), the transfer of name tax ordinance (Stbl 1924 number 291), the wealth tax ordinance (Stbl 1932 number 405 ), the motor vehicle tax ordinance (Stbl 1934 number 718), the wage tax ordinance (Stbl 1934 number 611), the withholding tax Ordinance (Stbl 1936 number 671), the income tax ordinance (Stbl 1944 number 17).<sup>17</sup>

c. The history of taxation after the Independence era.

This taxation rule which is a legacy of the Dutch greatly affects the legislation, general provisions and taxation procedures in Indonesia. The definition of tax, since the independence era has been regulated and has become part of the body of the 1945 Constitution of the Republic of Indonesia, namely Article 23 paragraph 2 of the 1945 Constitution which stipulates that "every tax collected must be based on the law. Through amendments to the 1945 Constitution of the Republic of Indonesia, it is regulated that taxes and other levies that are coercive for the purposes of the state are regulated by law." This limitation of rights obtained by the state is a guarantee of the state's right to collect taxes on its people, so that it has a juridical basis and has legal certainty.

History of financial information Reporting in the field of taxation is closely related to bank secrecy rules. There are several types of financial information reports, including Exchange of Financial information reports on Request (referred to as EOIR), spontaneous Exchange of financial information reports (referred to as Spontaneous EOI), and automatic Exchange of financial information reports (referred to as AEOI).<sup>18</sup> Arrangements on financial information reports between countries are the result of a consensus or agreement from the leaders of the G20 group of countries. This agreement initiates the exchange of financial information for tax purposes or is called the Exchange of Information (EOI).<sup>19</sup> The implementation of the exchange of financial information can be carried out by Indonesia by having several international agreements including tax treaties, including the following:

1. Tax Information Exchange Agreements (TIEA),
2. Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAC).

<sup>15</sup> Ari Welianto, "Sejarah Pajak Indonesia, Dimulai Zaman Kerajaan", Kompas.com, February 22, 2020, P. 1.

<sup>16</sup> Erly Suandy, *Hukum Pajak.7 Edition*, (Jakarta; Salemba 4, 2016), P.1.

<sup>17</sup> Wirawan B Ilyas dan Richard Burton, 2013, *Hukum Pajak Teori Analisis dan Perkembangannya*, Salemba 4, Jakarta, P. 2.

<sup>18</sup> RR.Ariyani, Yakti Widyastuti, *Ditjen Pajak Tanggapi Laporan OECD soal Pertukaran Data Otomatis*, *Tempo.co*, June 10, 2019, P1.

<sup>19</sup> Edy Suwignyo, "Pertukaran Informasi Pajak, Indonesia punya 144 Yuridiksi Mitra, ini Penjelasannya", *Bisnis.com*, accessed on September 23, 2020, P 1.

3. Multilateral Competent Authority Agreement (MCAA) or double taxation avoidance agreement (P3B).
4. Bilateral Competent Authority Agreement (BCAA)<sup>20</sup>

As a continuation of its participation in the Global Forum, Indonesia has created a domestic policy institution to make efforts to exchange information, especially those that are carried out automatically. The regulations that are owned by Indonesia in the context of implementing international commitments related to the financial information report are as follows:

1. Government Regulation in Lieu of Law (Perpu) Number 1 of 2017.
2. Act Number 9 of 2017 concerning Stipulation of Perppu Number 1 of 2017 concerning Access to Financial Information for Tax Purposes.
3. Regulation of the Minister of Finance Number 70/PMK.03/2017 concerning Technical Guidelines regarding Access to Financial Information for Tax Purposes as last amended by Regulation of the Minister of Finance number 19/PMK.3/2018.

Indonesia has two component items carried out, namely Exchange of Information request (EOIR) with 144 partner members and Automatic Exchange of Information (AEOI) with 103 partner members in 2020.<sup>21</sup> Information exchange is a form of information exchange related to taxation arrangements based on rules in the perspective of international agreements. An international agreement has certain form and name, which is regulated in international law made in written form, and gives rise to rights and obligations in the field of public law.<sup>22</sup>

History The regulation of bank secrecy initially began with the Dutch colonial era which brought the modern banking system in Indonesia. The history of the regulation of bank secrecy in the laws and regulations was originally in Act Number 7 of 1992 concerning Banking as amended by Act Number 10 of 1998 except in certain cases which are explicitly stated in the law. Related to the rules of Law Number 10 of 1998, a limitation is given that violation of the provisions of bank secrecy may lead to criminal acts and parties who do not maintain the implementation of secrecy as well, and then the person can be subject to sanctions in the form of criminal sanctions. This has been regulated by the Act.<sup>23</sup>

In Indonesia, the implementation of bank secrecy regulation has various dynamics. The regulation of bank secrecy is closely related to various kinds of developments in domestic political conditions, social conditions, especially those concerning the emergence of crimes in the field of money laundering, and the need for economic stability, especially monetary stability. The various needs and dynamics in society have created the need for relaxation of the absolute obligation of bank secrecy. Thus, if the state, nation and the general public must take precedence over the interests of individual customers, then the bank is obliged to protect the interests of individual customers. For the sake of interests of the state, nation and state, it is imperative not to disclose the customer's financial condition.

### 3.1.1 Bank Customer Rights

Rights of customers, apart from being regulated in the Banking Law, are also regulated in Financial Services Authority Regulation number 1 of 2013 concerning consumer protection in the financial services sector (POJK Consumer Protection). The POJK regulates a number of rights that can be obtained by each customer of financial services institutions, including the following:

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<sup>20</sup> Fredie Linggadajaja, Pino Sidharta, *Tahun Depan, Pertukaran Data Pajak ke 102 Negara*, Harian Kontan, accessed on September 14, 2018, P 1.

<sup>21</sup> Edy Suwignyo, "Pertukaran Informasi Pajak, Indonesia punya 144 Yuridiksi Mitra, ini Penjelasannya, Bisnis.com, accessed on September 23, 2020, P 1.

<sup>22</sup> See Article 1 Number 1 Law of the Republic of Indonesia Number 20 of 2000 concerning International Agreements.

<sup>23</sup> Miftah Idris, *Kerahasiaan Bank Suatu Tinjauan Dalam Aturan Hukum Perbankan Syariah Di Indonesia*, Al-Amwal : Journal of Islamic Economic Law September 2016, Vol. 1, No. 1, P. 4.

1. The right to obtain as clear-cut information as possible from financial service providers,
  2. The right to get fair treatment from financial service providers,
  3. The right to obtain reliable services from financial service institutions,
  4. The right to obtain data security protection from financial service institutions,
  5. The right to file a complaint due problem of a financial service institution.
- The customers' right as consumers is protected by the law, including those protected by the Consumer Protection Law number 8 of 1999. There are several consumer rights that must be fulfilled by business actors, including the following:
1. The right to comfort, security, and safety in consuming goods and/or services,
  2. The right to get advocacy, protection and efforts to resolve consumer protection disputes properly,
  3. The right to receive consumer guidance and education,
  4. The right to be treated and served correctly and honestly without discrimination,
  5. The right to choose goods and/or services and to obtain such goods and/or services, in accordance with the exchange rate and the promised conditions and guarantees,
  6. The right to correct, clear and honest information regarding the conditions and guarantees of goods and/or services,
  7. The right to have their opinions and complaints being heard on the goods and/or services used.<sup>24</sup>

In the provisions of Article 4 of Act Number 8 of 1999 concerning Consumer Protection, specifically mentions the rights of consumers, namely the rights to comfort, security, and safety in consuming goods and/or services; the right to choose goods and/or services and to obtain such goods and/or services in accordance with the exchange rate and the promised conditions and guarantees; the right to correct, clear and honest information regarding the condition and guarantee of goods and/or services; the right to have their opinions and complaints being heard on the goods and/or services used; the right to obtain proper advocacy, protection, and efforts to resolve consumer protection disputes; the right to receive consumer guidance and education; the right to be treated or served correctly and honestly without discrimination; the right to obtain compensation and/or replacement, if the goods and/or services received are not in accordance with the agreement; and rights regulated in the provisions of other laws and regulations.<sup>25</sup>

By providing various details of customer rights, the customer's financial information report in the form of bank secrecy, which is owned by the customer, is the customer's right that must be protected based on the principles of confidentiality and security of consumer data/information.

### **3.1.2 The Urgency of Tax Contribution for State Administration**

Components of state revenue is based on Article 11 paragraph 3 of Act Number 17 of 2003 concerning State Finances, it is stated that state revenues are all revenues originating from tax revenues, non-tax state revenues and grant receipts. The implementation of this state revenue collection is carried out based on the prevailing laws and regulations in Indonesia. The nominal provisions for state revenue receipts are determined by the Ministry of Finance with the approval of the president, which is formulated under the supervision of the House of Representatives.

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<sup>24</sup> Sobat Sikapi, "Apa saja Hak Kamu sebagai Konsumen Keuangan", diakses dari <https://sikapiuangmu.ojk.go.id/FrontEnd/CMS/Article/10436>, accessed on July 21, 2021, 6.42 a.m.

<sup>25</sup>See Article 4 of Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection

State revenue is a mandate from the preamble of the 1945 Constitution and the fifth principle of Pancasila, namely realizing social justice for all Indonesian people. The welfare of all Indonesian people is a top priority for the government of the Republic of Indonesia, thus it is important to maximize the three sources of state revenue, which are as follows:

1. tax receipts,
2. Non-tax revenue,

### **3.1.3 Receipts of grants from within the country and abroad.**

The taxes income is used as a source or fund for general expenses by the government in carrying out the government process in serving the citizens or the people.<sup>26</sup> Taxes, as the largest source of state revenue, are quite important to support the wheels of government and the state in carrying out social and state life, so that it is urgent that the taxation sector must be regulated in a systematic and structured manner. There are several components in taxation which is an inseparable unit; the same tax component is also described according to Djoko Mulyono, as follows:

1. Taxpayer's contribution to the State,
2. Owed by an individual or entity,
3. Forced by law,
4. No direct reward,
5. For the State Interest,
6. For the prosperity of the people.<sup>27</sup>

The process of state administration is known by the development of the economy in a country supported by the taxation sector. Taxes are a source of revenue for the state as funds used to finance expenditures and to finance equitable distribution of national development that can be felt by all people in all corners of the country, so that they can open up employment opportunities with the aim of increasing the distribution of people's income as a whole and evenly.<sup>28</sup> The tax function mentioned above is in accordance with efforts to achieve public welfare. The implementation of the tax function is a manifestation that taxes are a very important factor in development. The development with the largest funding comes from the tax sector as the national backbone and efforts to maintain state sovereignty.<sup>29</sup>

### **3.1.4 Main Duties and Functions of Banking in the Taxation Sector**

Based on Article 3 of the Law of the Republic of Indonesia Number 10 of 1998 concerning Banking. Banking has the main function of collecting and distributing public funds. It functions as an intermediary among parties who have excess funds (surplus of funds) and parties who need funds (Lack of

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<sup>26</sup> Dwikora Harjo, 2013, *Perpajakan Indonesia*, Mitra Wacana Media, Jakarta, P. 4-5

<sup>27</sup> Djoko Muljono, 2010, *Hukum Pajak Konsep, Aplikasi, dan Penuntun Praktis*, Andi Offset, Yogyakarta, P. 2.

<sup>28</sup> Bambang Sugeng A.S., Agus Yudha Hernoko, Et all, 2019, *Implementasi Berlakunya Undangundang Nomor 9 Tahun 2017 Sebagai Komitmen Indonesia Dalam Pertukaran Informasi Keuangan Secara Otomatis*, Jakad Media Publishing, Sidoarjo, P. 4.

<sup>29</sup> Sri Mulyani, Menkeu: Pajak Merupakan Tulang Punggung Nasional, on "Tax Amnesty Declaration" in Semarang, 2016.

Funds).<sup>30</sup>

In addition to deposit customers, loan customers (debtors) have several rights including the right to receive payment of fees for banking services provided to customers; The right to refuse payment if it does not meet the existing requirements, and has been mutually agreed upon by both the customer and the bank; Right to Auction collateral when the customer is unable to repay the credit or financing facility provided to the debtor with a credit agreement signed by both parties between the bank and the bank customer; The right to terminate the customer's account; Right to Retrieve documents in the form of checkbooks, bilyet giro, savings books, credit cards in the event of an account closing activity.<sup>31</sup>

Banking activities are carried out based on the principle of economic democracy, with the function of collecting and distributing public funds, having an important role in the implementation of national development. National development has a goal to improve people's living standards, and the results can be enjoyed by all citizens so that economic growth can increase, and the life of the nation and state creates a national stability, towards improving the quality and standard of living of the people within the unitary territory of the Republic of Indonesia. The function of bank is as an agent of development, capital and trust.

<sup>32</sup>

### 3.1.5 The State and Taxpayers' Legal Relations

The legal relation is the relationship between legal subjects who have rights and obligations between the two. The legal relationship between the state and taxpayers is built on the basis of the 1945 Constitution as the highest source of tax law. The regulation provides the basis that taxes are levied by the state only if it has been regulated by the law that underlies the tax levy. Laws are made by the people who are represented by people's representatives in the House of Representatives. Regulations in the form of legislation of taxation stipulate that taxes must be paid by citizens and if the obligation to pay taxes is not carried out by the people, then there are rules regarding sanctions for people who do not comply.

The relationship of the state law and taxpayers is described as follows:

1. The legal relationship between the state and taxpayers is related to public law and private law, which is part of the legal system currently in force in Indonesia, i.e., the Civil Law System.
2. Tax is part of public law which is closely related to private law. There are various activities or events and legal events that are part of private law, underlying the existence of tax levies which are part of public law.
3. Based on civil law, tax is an obligation that arises due to the law and is coercive. This coercive nature gives rise to the realm of public law arising from private legal relations. Public law means that the state is present with the authority given by law to make levies related to private legal events carried out by legal subjects with one another, which results in the existence of legal relationship and give rise to the rights and obligations of the legal subject. The legal consequences of this legal event have created a legal relationship between legal subjects as

<sup>30</sup> Neni SriImaniyati, 2016, Panji Adam Agus Putra, *Pengantar Hukum Perbankan Indonesia*, Refika Aditama, Bandung, P.15.

<sup>31</sup> Munir Fuady, 2025 *Hukum Perbankan Modern (Buku Kesatu)*, PT Citra Aditya Bakti: Bandung, P. 15.

<sup>32</sup> Simulasikredi 25 m, "3 Fungsi dan Tugas Bank Umum Yang Harus Anda Tahu", accessed from <https://www.simulasikredit.com/3-fungsi-dan-tugas-bank-umum-yang-harus-anda-tahu/>, on July 15, 2021 at 2.58 a.m.

taxpayers and the state as tax collectors. The legal relationship between the state and taxpayers is seen in the elements of taxation, including: There exist an underlying law, a ruler as a tax collector, tax subjects in the form of private individuals or entities that have an obligation to pay taxes, tax objects that are subject to tax liability, which can be in the form of circumstances, actions or events, a community or public interest, in the sense that the results of tax collection are returned to the community for the benefit of the community.<sup>33</sup>

The relationship of taxpayers and the state lies in the existing tax laws and regulations related to taxes, the ruler or the state as the party who collects taxes and the people in the capacity as taxpayers. This legal relationship arises based on the existence of an agreement between the two, namely based on Article 1233 of the Civil Code where the engagement occurs with the agreement can be born either due to approval or the law. The obligation to pay taxes by taxpayers arises based on the laws that have regulated it. The legal relationship is closely related to the rights and obligations of the parties, including the legal relationship between the state and taxpayers. Based on the understanding of tax law, which is defined as the law regulates the relationship between the government and its people with regard to the rights and obligations of taxpayers and the rights and obligations of the government regarding taxes.<sup>34</sup>

The legal basis for taxation is constitutionally regulated in Article 23A of the 1945 Constitution of the Republic of Indonesia, which is stated as follows "Taxes and other levies that are coercive for state purposes are regulated by law." Philosophically, tax contributions in Indonesia start from the formulation of Pancasila which is the basis of the state and the implementation of the nation and state in Indonesia. The provisions in the Constitution provide the basis for the birth of several laws governing taxes as a form of delegation of authority granted constitutionally based on the provisions of the 1945 Constitution.

The bank and the taxpayer/ bank customer have legal relationship including the legal relationship between the bank and the taxpayer or bank customer born of the trust given by the customer to the bank. Legal relationships are born from contractual agreements made by the Bank with customers, which arise and develop into a relationship based on trust (fiduciary relationship). There are 4 (four) pillars of the relationship between depositors and banks, namely the application of prudential principles, maintaining banking health, providing protection in the form of bank secrecy, and maintaining trust.<sup>35</sup> Yunus Husein said that the relationship between banks and taxpayers or customers is closely related to the principle of bank secrecy. Bank secrecy should be maintained and it is very necessary both the benefit of the bank and for the benefit of the customer. Protection and guarantee of confidentiality for all investments or deposits and the financial condition of customers, can further create and grow customer trust in banking financial service institutions as a safe place to place or store funds or deposits. The relationship between a bank and its customers based on or starting from a process of making an agreement or contract. Contracts or agreements in the case of deposits, relate to agreements to place funds in banking financial services institutions. The agreement between the bank and the customer, which subsequently creates a contractual

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<sup>33</sup> Syukri Hidayatullah, *Kewenangan Nedara Dan Kewajiban Subjek Hukum Perdata Dalam Hubungannya Dengan Hukum Pajak*, Pranata Hukum, Vol.11 Number 1, 2016, P.4.

<sup>34</sup> *Ibid*, P. 15

<sup>35</sup> Fitriah, *Bentuk Dan Tanggungjawab Pihak Bank Terhadap Dana Simpanan Para Nasabah*, Jurnal Unpal, Volume 16 September 3, 2018, P 317.

8 relationship between the bank and the customer, is based on the principles applicable in contract law, one of which is that the agreement is executed in good faith by the parties. Based on this principle, banks have an obligation to keep information about bank customers and their deposits.<sup>36</sup>

The legal relationship between a bank and a bank customer or taxpayer is in the form of fulfilling the rights and obligations between the two. Specifically, the Financial Services Authority also has restrictions on the rights of customers as banking consumers, including those based on Article 2 of the Financial Services Authority Regulation number 1 of 2013 concerning Consumer Protection in the Financial Services Sector (referred to as POJK Consumer Protection). There are 5 principles of rights that must be obtained by one or every consumer of financial service institutions including transparency; fair treatment; reliability; confidentiality and security of Consumer data/information; and handling complaints and resolving consumer disputes in a simple, fast, and affordable way.<sup>37</sup> Five principles of rights that must be obtained by a consumer, based on the Regulations of the Financial Services Authority, including the Right to Get Clear Information (Transparency Principle), Right to Get Fair Treatment (Fair Treatment Principle), Right to Get Reliable Service (Reliability Principle), Right to Get Data Security Protection (Principles of Confidentiality and Security of Data/Consumer Information), Right to File a Complaint When a Problem Occurs (Principle of Handling Complaints and Settlement of Consumer Disputes in Simple, Fast, and Affordable Costs).<sup>38</sup> The obligations of customers as consumers of financial services institutions, in Article 3 Financial Services Authority (POJK) Regulation No. 1 of 2013, mentioned that customers must have good faith towards the bank as a Financial Services Institution. It means that the customer does not have nor has the desire or intention to abuse the product or service, and provide information and/or documents that are accurate, honest, and clear to the bank.

Based on the Regulation of the Financial Services Authority, banks have rights obtained from customers or consumers of financial services institutions, namely based on Article 1 of the Regulation of the Financial Services Authority of 2013, which states that Financial Services Businesses have the right to ensure the existence of goodwill Consumers and obtain information and/or documents regarding Consumers that are accurate, honest, clear, and not misleading. Banks as providers of financial services have limitations that must be carried out, including carrying out the principles of banking operations that focus on the prudential principle which aims to maintain public trust in depositors of funds in banking financial service institutions, and as an effort to realize a more efficient, healthy and reliable banking systems. Act Number 10 of 1998 concerning Banking (Banking Law) requires financial service institutions, especially banks, to apply the Know Your Customer (referred to as KYC) principle. The implementation of the prudential principle and the application of the Know Your Customer principle are to identify customers. The three objects of application of the Know your Customer Principles include: a. to customers personally (individual customers); to documents related to customers; c In addition, banks are also required to carry

21  
<sup>36</sup> Dinda Anna Zatika, *Pembukaan Prinsip Kerahasiaan Bank sebagai Perbuatan Melawan Hukum*, SASI, Universitas Pattimura, Volume 26 Number 4, October - December, 2020, P.8

<sup>37</sup> See Article 2 Financial Services Authority Regulation number 1 of 2013 concerning Consumer Protection in the Financial Services Sector

<sup>38</sup> Sobat Sikapi Ojk, *Apa Saja Hak Kamu Sebagai Konsumen Keuangan*, accessed from <https://sikapiuangmu.ojk.go.id/FrontEnd/CMS/Article/10436>, on January 24, 2021 02.05 a.m.

out monitoring of customer accounts which includes monitoring of outgoing and incoming transactions for every transaction activity carried out by customers.<sup>39</sup> Based on Bank Indonesia Regulation number 3/10/PBI/2001 concerning the Application of Know Your Customer Principles, it is stated in article 1 paragraph 2, that Know Your Customer Principles are principles applied by Banks to identify customer identities, monitor transaction activities of customers, including reporting suspicious transactions. Thus, the Bank has the right to search and identify customers before customers place funds in financial service institutions, especially in banking.

The right owned by banks to obtain information and/or documents regarding consumer that is accurate, honest, clear, and not misleading creates obligations that must be carried out by banks. Based on article 2 of Bank Indonesia Regulation number 3/10/PBI/2001 concerning the Application of Know Your Customer Principles, there are 30 (thirty) banking obligations described in the Financial Services Authority Regulation Number: 1/Pojk.07/2013 concerning Consumer Protection in the Financial Services Sector. Financial services regulation number 1/Pojk.07/2013 has been amended by POJK Number 6/POJK.07/2022 concerning Consumer and Community Protection in the Financial Services Sector.

Prohibitions or restrictions that may not be carried out by financial service institutions, one of which banks are related to consumer data and/or information. Based on Article 31 of the Financial Services Authority Regulation Number: 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector, it states that:

1. Financial Services Business Actors are prohibited to provide data and/or information regarding their Consumers to third parties.
2. The prohibition as referred to above except:
  - a. Consumers provide written consent; and/or
  - b. required by legislation.
3. The Financial Services Providers obtain personal data and/or information of a person and/or group of people from other parties to be used to carry out their activities, the Financial Services Providers are required to have a written statement that the other party have obtained written approval from a person/or group of people that their personal data/or information can be disclosed to any party, including Financial Services Business Actors.
4. Cancellation or partial amendment of the consent to the disclosure of data and or information is made in written form by the Consumer in the form of a statement letter.

The provisions of Article 2 of POJK Number 6/POJK.07/2022 concerning Consumer and Community Protection in the Financial Services Sector mentions several principles used to protect consumers, including Article 2 that Consumer and Community Protection in the financial services sector applies the principle of a. adequate education; b. openness and transparency of information; c. fair treatment and responsible business conduct; d. protection of Consumer assets, privacy and data; and e. effective and efficient complaint handling and dispute resolution.<sup>40</sup>

<sup>39</sup> Asep Rozali, "Prinsip Mengenal Nasabah (Know Your Customer Principle) dalam Praktik Perbankan", *Jurnal Wawasan Hukum*, Vol. 24, no 1, Ejournal.sthb.ac.id, 01 February 2011.P 305.

<sup>40</sup> See Article 2 of POJK Number 6/POJK.07/2022 concerning Consumer and Community Protection in the Financial Services Sector

Consumer data or information, in relation to deposits saved in banks, is information protected by banks, and is known as bank secrecy as regulated in Act Number 10 of 1998 concerning Banking. The form of legal protection for consumers and citizens based on POJK number 6/POJK.07/2022 must be made in written form, the standard provisions for making policies and written procedures, especially regarding the protection of data and financial information are contained in Article 6 paragraph 1 which requires financial services business actors to have and implement a policy to create a written standard.

In the above-mentioned activities, provisions shall be regulated, one of which is protecting data and information held by customers, as regulated in paragraph 3 in letter d which stipulates that the implementation of consumer protection includes protection of consumer data and/or information, in letter f in paragraph 3 of article 6 PUJK is required to have and implement written policies and procedures for consumer protection, of which written policies and procedures must include mechanisms for the use of consumer personal data and/or information. Based on Moch Isnaeni's theory of legal protection, POJK policy is a form of external protection in the form of policy standards made by the authorities as an effort to protect citizens.

### 3.2 Regulation of Reporting Financial Information of Bank Customers for Tax Purposes Based on Legal Protection Principles

Protection is a characteristic of law. As a norm, law has specific characteristic that is to protect, regulate and provide balance in maintaining the public interest.<sup>41</sup> M. Hadjon argues that there are two forms of legal protection, namely:

1. Preventive protection to prevent loss.
2. Repressive legal protection

Repressive protection is a protection given if a loss has occurred, while preventive protection aims to prevent a loss. Preventive legal protection can be given to the parties to prevent losses that can be experienced by the parties involved in making an agreement, while repressive legal protection is given if the loss has occurred.<sup>42</sup> Both preventive protection and repressive protection are in line with the legal protection of bank customers, which is a form of protection of basic rights (classical rights and social rights), one of which is the protection of bank secrecy determined in laws and regulations, especially banking.

Following M. Hadjon, Moch. Isnaini also argues that there are two kinds of legal protection as follows:

1. Internal legal protection  
Moch. Isnaeni stated that an internal legal protection exists in the form of an agreement made by the parties. This protection is formed in an agreement made by the parties. The form of legal protection is desired and accommodated in an agreement by the parties. Legal protection other than internal protection is known as external legal protection that comes from laws and regulations.<sup>43</sup>

<sup>41</sup> bdoel Djamali, 1993, *Pengantar Hukum Indonesia*, Rajagrafindo Persada, Jakarta, P 3.

<sup>42</sup> Siti Mahmudah, Sartika Nanda Lestari, *Perlindungan Hukum Terhadap Nasabah Bank Penerbit Letter Of Credit (L/C)*, Diponegoro Law Review, Vol 5, Number 2, 2016, P. 8.

<sup>43</sup> Moch. Isnaeni, 2017, *Seberkas Diaroma Hukum Kontrak*, PT. Revka Petra Media, Surabaya, P. 179-180.

2. External legal protection.

External legal protection is protection created by the authorities in the form of regulation for the interests of the weak. The external protection is made in order that the implementation of the principle of freedom of contract is not abused arbitrarily in business practices by parties who are relatively stronger in their legal positions.<sup>44</sup>

In the Indonesian constitution, legal protection is stated in the 1945 Constitution of the Republic of Indonesia (hereinafter abbreviated as UUDNRI 1945), which is contained in the preamble of paragraph IV and the body as the basis for guaranteeing legal protection for the people of Indonesia. The nature of legal protection for bank customers according to Hemansyah lies in the form of protection for the interests of a depositing customer and their deposits held in a particular bank from the risk of loss. Forms of legal protection are described and divided into two types, namely indirect protection which is carried out indirectly is a form of legal protection provided to customers, both individual customers or legal entities as depositors of funds from various risks of loss arising from the making of a policy or from operational business activities of a bank. There is direct protection carried out directly as a form of legal protection given to bank customers, both individuals and legal entities as depositors directly from the risk of loss from operational activities carried out by the bank.<sup>45</sup>

The implementation of the exchange of financial information is based on the AEOI agreement as a necessity with the issuance of Act Number 9 of 2017 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2017 concerning Access to Financial Information for Tax Purposes to become Law. Apart from reducing the potential for tax evasion, Indonesia will also obtain other benefits from participating in the AEOI program, include increasing the tax ratio, encouraging tax compliance, tracking the track record of taxpayers even though they are in non-origin countries, as well as increasing transparency, cooperation, accountability between institutions and inter-country finance. Various obstacles, including the existence of laws in banking, as well as the capital market, and provisions for bank secrecy for customers. The Ministry of Finance seeks to include various articles in the KUP (General Tax Provisions) to strengthen the implementation of access to information for tax matters, so that the government can implement and fulfill the requirements in the AEOI process.<sup>46</sup> Indonesia in implementing the AEOI uses the principle of reciprocity which requires the parties to provide information between the two. The implementation of the principle of reciprocity has the consequence that apart from being a country that provides financial information, on the other hand, Indonesia will also act as a country that receives financial information.<sup>47</sup> This commitment to reporting financial information has

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<sup>44</sup> Moch. Isnaini, 2016, *Hukum Jaminan Kebendaan, Eksistensi, Fungsi dan Pengaturan*, Laksbang Pressindo, Yogyakarta, P.118.

<sup>45</sup> Hermansyah, 2005, *Hukum Perbankan Nasional Indonesia*, (Jakarta: Prenada Media, Jakarta, P.132.

<sup>46</sup> <https://indonesiabaik.id/memburu-wajib-pajak-nakal-dengan-aeoi-1>, from <https://indonesiabaik.id/infografis/memburu-wajib-pajak-nakal-dengan-aeoi-1>, accessed on May 30, 2022 at 6.23 a.m.

<sup>47</sup> Ika Khairunnisa Simanjuntak, *Pengecualian Rahasia Bank Untuk Kepentingan Perpajakan di Indonesia*. Pena Justicia, Vol. 19. No.1, 2020, p.10.

eliminated the legal protection of bank customers, especially in relation to bank secrecy. The supremacy of international law means that as part of the international community, Indonesia is obliged to comply with and waive some of the customer's rights, especially related to bank secrecy on the financial information of bank customers. This rule further obscures the legal certainty of bank secrecy.

#### 4 Conclusions

Based on the above-described analysis, the following conclusions are drawn:

1. The essence of legal protection for bank customers in reporting financial information for tax purposes is a form of state intervention in realizing protection for bank customers, particularly regarding to bank secrecy guarantees. However, in realizing the nature of legal protection, it is reduced by the increasing number of exceptions, which are correlated with the implementation of automatic reporting of financial information in the field of taxation.
2. The regulation of financial information reporting aims to realize the efforts to optimize state revenues in the field of taxation in terms of the principle of legal protection for bank customers, one of which is due to a policy of reporting financial information for taxation purposes. The regulation on reporting of bank customers' financial information for tax purposes is contrary to the principle of legal protection, in particular the legal protection for bank customers on bank secret guarantees that should be maintained. It is contrary to the principle of legal protection for bank customers because the financial reporting system for tax purposes has intervened the privacy aspects of customers regarding their financial condition. On the other hand, due to the intervention, the existence of bank secrecy as a norm becomes blurred and no longer applies.

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#### Suggestions

Based on the analysis mentioned above, the authors suggest that adjustments to the formulation of limits on bank secrecy and financial information to arrangements that accommodate the realization of legal protection for bank customers related to financial information reports in the field of taxation shall be immediately arranged.

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# THE NATURE OF LEGAL PROTECTION OF BANK CUSTOMERS IN REPORTING FINANCIAL INFORMATION FOR TAXATION PURPOSES

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