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Abstract

The enactment of the Law on Access to Financial Information for Tax Purposes (Access to Financial Information) created a new paradigm in applying the principle of bank secrecy. The Law on Access to financial information has given the Director General of Taxes authority to open taxpayer data at a bank even though the taxpayer is not being audited, billed, and investigated for tax crimes. This causes taxpayer data to be accessible at the bank if it meets predetermined criteria. The state must provide legal protection to secure bank customer data, so irresponsible parties do not misuse it. This study aims to determine and analyze the form of legal protection for customer data in implementing the Financial Information Access Law. This research method uses a normative juridical approach, analyzed normatively and qualitatively. The research results show that the Law on Access to Financial Information does not explicitly regulate the legal protection of customer data, and there are no administrative and criminal sanctions for parties who misuse customer data. Protection of customer data in implementing access to financial information is only found in the Regulation of the Minister of Finance. This Regulation of the Minister of Finance should regulate the technical implementation of the law. In the future, the government can conduct studies and change the Financial Information Access Law to guarantee legal protection for customer data regulated by law.

Keywords: Taxes, Access to Financial Information, Bank Secrets.

1. Introduction

To realize the welfare and prosperity of society based on the 1945 Constitution of the Republic of Indonesia, the Government needs to carry out national development in an equitable, just, and sustainable manner. Ensuring the implementation of this development requires funding sourced from state revenues, especially tax revenues (Allan & Jones, 2029). Taxes make a significant contribution to state revenue receipts; in the realization of the 2022 State Budget (APBN) of the total revenue of IDR 2,626.4 trillion, taxes contribute 77.46% (seventy-seven point forty-six percent) or IDR 2,034.5 trillion (Minister of Finance, 2022).

Given the significant contribution of taxes to state revenues, the Government has made various efforts to increase tax revenues and compliance. Efforts to improve compliance (tax ratio) are also significant in encouraging tax revenue; Indonesia's current tax compliance ratio is still relatively low. In 2017 Indonesia's tax ratio reached 9.89%, and increased to 10.32% in 2018, then decreased to 9.61% in 2019 and 8.17% in 2020. Meanwhile, in 2021, the tax ratio increased to 9.11%. The low level of taxpayer compliance influences the Minister of Finance (2022) Indonesia's low tax ratio. Given these conditions, the Government needs to take various consolidated fiscal policy steps that can be realized through strategic efforts that focus on improving the budget deficit and increasing the tax ratio. State revenue from the taxation sector is still experiencing many internal and external obstacles. In overcoming obstacles internally, currently, the Government continues to make efforts to reform the field of taxation. Tax reform (Tax Reform) was carried out in the form of administrative and regulatory improvements in the field of taxation and an increase in the tax database aimed at achieving maximum taxpayer compliance and increasing trust in tax institutions. Meanwhile, external obstacles affect the

amount of tax revenue; in addition to the impact of the global economy, there are also many efforts to avoid paying taxes abroad.

Many countries have become tax haven countries because they do not apply lower tax rates to companies or individuals (Eden & Kudrie, 2005). One of the tax collection systems currently implemented in Indonesia is the self-Assessment System. This system gives confidence to taxpayers to fulfill and carry out their obligations in the field of taxation themselves, such as the obligation to register themselves at the tax service office, calculate the amount of tax payable by themselves, deposit it into the state treasury, and report all related matters that have been calculated and deposited by letter—notification submitted to the Directorate General of Taxes.

This Self-Assessment System makes supervision of fulfilling tax obligations crucial in increasing compliance and state revenue (Purwanto & Safira, 2020). Supervision will run optimally if the Director General of Taxes can obtain financial information in the banking sector to form an accurate tax database. With other sources of information other than documents submitted by taxpayers, the Directorate General of Taxes can carry out optimal monitoring of compliance, tax audits, and optimal law enforcement actions.

To improve the tax database in Indonesia, the Government has issued several policies, including a tax amnesty policy, the Voluntary Disclosure Program (PPS), a national payment system, and enacted a policy on access to financial information based on Law Number 9 of 2017 concerning Determination Government Regulation instead of Law Number 1 of 2017 concerning Access to Financial Information for Tax Purposes (in the future referred to as the Law on Access to Financial Information).

Based on the provisions above, financial service institutions must submit to the Director General of Taxes related to financial information data of banking sector users. This provision also revokes the authority of banking institutions to maintain the confidentiality of customer data specifically for tax purposes as mandated by Law Number 7 of 1992 concerning Banking as amended several times, most recently by Law Number 6 of 2023 concerning Stipulation of Government Regulations instead of Laws -Law Number 2 of 2022 concerning Job Creation becomes a Law (from now on referred to as the Banking Law).

This Law on Access to Financial Information provides a new paradigm for bank secrecy in taxation matters (Estellita & Bastos, 2015; Navarro-Schiappacasse et al, 2023). Prior to the enactment of this Financial Information Access Law, provisions related to bank secrecy in terms of taxation interests had been regulated in the Banking Law, based on the provisions of Article 41 of the Banking Law that:

"For tax purposes, the Management of Bank Indonesia, at the request of the Minister of Finance, has the authority to issue a written order to the bank to provide information and show written evidence and letters regarding the financial condition of certain Depositors to the tax official."

The implementation of Article 41 of the Banking Law is further regulated by Bank Indonesia Regulation Number 2/19/PBI/2000 concerning Requirements and Procedures for Granting Written Orders or Permits to Open Bank Secrets, disclosure of customer data can be carried out if preceded by request from the minister of finance, while the reasons why do taxpayers do data disclosure because of the enforcement of laws and regulations in the field of taxation in the form of tax audits, tax collection, and criminal investigations in the field of taxation.

With the enactment of the Law on Access to Financial Information, customer data can be accessed even though the enforcement of laws and regulations in the field of taxation needs to be carried out. This access is provided in 2 (two) ways: automatically by fulfilling the balance requirements and by providing data by request.

In order to guarantee legal certainty for guaranteeing the confidentiality of customer data submitted to the Directorate General of Taxes, the state must provide legal protection to every customer so that customer data is not misused, which can result in losses for customers. Based on the description of the background of the problem, the authors formulate that: How is the legal protection of customer data in implementing access to financial information for tax purposes?

2. Methods

Legal research methods in answering problems using normative juridical research methods. The approach used is the statutory approach (Statute approach) and the conceptual approach (*conceptual approach*). The legal materials used were primary, secondary, and tertiary, while all the data obtained from the research results were processed and analyzed qualitatively and described in a descriptive analysis.

Getting legal protection is the right of every citizen. Legal protection guarantees the rights and obligations protected by the state based on the law. According to Satjipto Raharjo, the purpose of legal protection is to protect human rights (HAM) that other people harm. That protection is given to the community so that they can enjoy all the rights granted by law ((Rahardjo, 2000). Legal protection can represent the function of the law itself, the law can provide justice, certainty, and benefits.

Law enforcement, legal process, and the implementation or enforcement of the law must be evidence of legal protection. This can be seen from the various relationships that exist in society. The laws that govern and protect the interests of each community are created by the relations between people. Because of this variety of legal relationships, society needs rules to keep relationships in order (Hadjon, 1987).

Law as a norm is a guide for humans to behave in their relationships in society. The law also guides what to do and what not to do. The law also provides instructions on which things are not allowed so that everything can run in an orderly and orderly manner. This is possible because the law has the nature of regulating human behavior and has the characteristics of commanding and forbidding it, as well as the law being able to force that law to be obeyed by members of the public.

According to Philipus M. Hadjon, legal protection for the people is a form of preventive and repressive government action (Badrujaman, 2001). Preventive is a legal protection that is preventive. Protection provided by the government with the aim of preventing violations before they occur. Meanwhile, repressive legal protection functions to resolve disputes when they occur.

3. Results and Discussion

In carrying out its business activities and to maintain its existence, banks are required to maintain public trust (Husein, 2010). If you have won the trust of the public, of course the public will not hesitate to become customers and place their funds in the bank, either in the form of savings, demand deposits or time deposits. These funds then become capital for the bank to channel back to the community in the form of credit.

One of the bank's efforts to maintain trust is to provide assurance to customers that the bank will maintain the confidentiality of customer data. This is intended so that customer data is not misused by irresponsible parties and has the potential to cause harm to customers. So that the bank's efforts to maintain the confidentiality of customer data is a form of legal protection.

Legal protection is an effort by legislation to protect legal subjects against violations of rights and obligations by certain parties in a legal relationship. Legal protection for customers is a form of protection provided by the Banking Law with the aim of protecting the rights and obligations as well as the interests of customers that may cause a risk of loss (Hermasnyah, 2006). The existing banking system to provide protection for customers can be carried out in

the form of supervision of banks as providers of financial services so that bank conditions are always stable and the establishment of an institution to guarantee funds deposited by customers as well as guarantees for the confidentiality of transactions and customer data (Hermasnyah, 2006).

According to Philipus M. Hadjon, legal protection for the people is a form of preventive and repressive government action.

1) Preventive Legal Protection

Preventive legal protection. Protection provided by the government with the aim of preventing violations before they occur. This is contained in statutory regulations with the intention of preventing a violation and providing signs or limitations in carrying out an obligation.

In its development, the confidentiality of customer data is currently equated with human rights that must be protected. So that the bank's efforts to maintain the confidentiality of customer data is a form of legal protection. The obligation of banks to maintain the confidentiality of customer data is regulated in Article 40 of the Banking Law, which states that banks are required to maintain and keep confidential customer data. This obligation is of course not absolute, there are exceptions regarding parties who in certain terms and conditions can access customer data even though they have to go through established procedures.

Article 47 paragraph (2) of the Banking Law also regulates parties who are required to maintain bank customer data consisting of Members of the Board of Commissioners, Directors, Bank Employees and other Affiliated Parties from banks. If parties who are prohibited from leaking customer data are subject to imprisonment for a minimum of 2 (two) years and a maximum of 4 (four) years and a minimum fine of IDR 4,000,000,000 (four billion rupiah) and a maximum of IDR 8,000,000,000 (eight billion rupiah).

Protection of customers has become a special concern of Bank Indonesia as the institution tasked with supervising and regulating the organizers (Bank Indonesia, 2020) to consumers, as well as providing instructions and maintaining the implementation of consumer protection based on the principles of consumer protection regulated in Article 30 of Bank Indonesia Regulation Number 22/20/PBI/2020 concerning Bank Indonesia Consumer Protection, Bank Indonesia legally provides protection to consumers in the form of maintaining confidentiality and ensure the security of information data. The aim is to have a good impact on the sustainability of the bank's business by prioritizing consumer protection (Bank Indonesia, 2020).

Legal protection for customer data is also regulated in the Financial Services Authority Regulation POJK 6/POJK.07/2022 concerning Consumer and Community Protection in the Financial Services Sector. This POJK provides protection guarantees for customers as consumers of financial services. Article 11 paragraph (1) letter a POJK 6/POJK.07/2022 stipulates that banks as financial service businesses are prohibited from providing personal data/or information about consumers to other parties. Specific data and information for individuals includes name, NIK, address, date of birth, telephone number, birth mother's name, whereas if the consumer is in the form of a business entity, the composition of the board of directors and the board of commissioners, as well as the composition of the shareholders are included in the parts that must be kept secret by business actors financial services.

With the enactment of the Law on Access to Financial Information for tax purposes, banks are required to provide customer data and information to the Directorate General of Taxes through the Financial Services Authority. Due to the enactment of the Access to Financial Information Law on customer data and information, in order to guarantee legal certainty and guaranteed protection, the Access to Financial Information Law should also regulate the protection of customer data and information.

If you look at the provisions stipulated in the Financial Information Access Law, there are no articles that provide protection and guarantees for customer data and information provided to the Directorate General of Taxes. Provisions governing guarantees for the confidentiality of customer data are found in the implementing regulations for PMK Access to Financial Information. What should be these arrangements regulated by the Financial Information Access Law itself in order to have a legal basis equivalent to the Act. Even though with the omnibus concept (Undang-undang Omnibus law), the Law on Access to Financial Information revokes the provisions of Article 40 of the Banking Law, which is the article on which the principle of confidentiality is applied.

In Article 30 PMK Access to Financial Information provides guarantees and legal protection for customer data and information which will be used as a tax database. Every official, tax official and related parties are prohibited from leaking and disseminating customer data. If these parties commit a violation, they will be subject to sanctions as stipulated in Article 41 of the KUP Law with a maximum imprisonment of 1 (one) year and a maximum fine of Rp. If the act is done intentionally, it will be subject to a maximum imprisonment of 2 (two) years and a maximum fine of Rp. 50,000,000 (fifty million rupiah).

The application of sanctions in Article 41 of UU KUP can only be prosecuted if there is a complaint offense. Complaints from the aggrieved party because the confidentiality of the data is not maintained. This sanction is certainly not comparable to the threat of sanctions for banks who deliberately leak bank secrets as stipulated in the Banking Law. The threat of sanctions for violations of data confidentiality should be comparable to the threats of sanctions in the Banking Law, considering that the Financial Information Access Law has revoked the obligation of banks to maintain data confidentiality.

In particular, Article 34 of the KUP Law also regulates legal protection of taxpayer data, this data includes financial information data, the following arrangements: (1)	<i>Every official is prohibited from telling other parties everything that is known or notified to him by a Taxpayer in the context of his position or work to carry out the provisions of the tax laws and regulations.</i>
2)	<i>The prohibition referred to in paragraph (1) also applies to experts appointed by the Director General of Taxes to assist in the implementation of the provisions of the tax laws and regulations.</i>

Elucidation of Article 34 paragraph (1) that every official, both a tax official and those who carry out tasks in the field of taxation, are prohibited from disclosing the confidentiality of taxpayers regarding taxation issues, including:

- a. Notification Letters, financial reports, and others reported by the Compulsory.
- b. data obtained in the context of carrying out the inspection.
- c. documents and/or data obtained from third parties that are confidential.
- d. documents and/or secrets of the Taxpayer in accordance with the provisions of the relevant laws and regulations

From the elucidation of Article 34 paragraph (1) it is explained that all forms of data, information and documents received from third parties including banks that are confidential must be kept confidential by tax officials or officers. All data and information received by the tax official is bound by official confidentiality. The secret of office for implementing tax provisions is regulated in Article 54 paragraph (1) and (2) of Government Regulation Number 50 of 2022 concerning Procedures for Fulfilling Taxpayer Rights and Obligations that:

- (1) *Every official and expert is prohibited from telling other parties everything that is known or notified to him by a Taxpayer in the context of his position or work*
- (2) *In the interests of the state, in the context of investigations, prosecutions, or in the framework of establishing cooperation with state institutions, government agencies, legal entities established through laws or government regulations, or other parties, the Minister has the authority to give written permission to officials and/or staff expert as referred to in paragraph (1) to provide information and/or show written evidence from or regarding the Taxpayer to a certain party designated in the Minister's written permit.*
- (3) *Certain parties appointed as referred to in paragraph (2):*
 - a. *can only ask for information and or written evidence regarding written information and/or evidence listed in the Minister's written permission.*
 - b. *obligated to keep secret all information and/or written evidence known or obtained from officials and/or experts.*
 - c. *can only utilize written information and/or evidence in accordance with the purpose of submitting a request for information and/or written evidence from or about the Taxpayer.*

Arrangements related to secret positions are also regulated in Article 3 letter g of Government Regulation Number 94 of 2021 concerning Discipline for Civil Servants, which stipulates that "PNS are required to keep position secrets and can only reveal position secrets in accordance with statutory provisions." Employees of the Directorate General of Taxes who are part of the State Civil Apparatus (UU Number 5 Year 2014) must also comply with and comply with this Government Regulation. If you violate Article 3 letter g of Government Regulation Number 94 of 2021, you will be subject to light disciplinary sanctions and may even be subject to severe disciplinary punishment if the violation has a negative impact on the state.

Normatively, the provisions governing the protection of customer data and information in the context of access to financial information are not explicitly regulated in the Financial Information Access Law, instead the arrangements for the obligation to keep customer data confidential are regulated by the PMK Access to Financial Information. This condition is very inappropriate, because PMK Access to Financial Information is a technical guidance regulation regarding access to financial information in accordance with the delegation of Article 9 of the Law on Access to Financial Information. PMK Access to Financial Information only regulates prohibited actions without any sanctions. Because based on the principle of no punish without representative, that setting criminal sanctions is only permissible if it can be agreed with the people, in this case the representative is the House of Representatives, the legal product must be in the form of a law.

In order to realize legal certainty and legal protection for customer data, the Information Access Law should regulate prohibitions on misuse of customer data along with the sanctions imposed. This is very important because the Law on Access to Financial Information has provided the Directorate General of Taxes with the widest possible access to access customer data and information. So that the Law on Access to Financial Information is related to criminal sanctions for parties who violate it, so that there is no abuse of authority by related parties. The regulations stipulated in Article 34 paragraph (1) of the KUP Law and Article 54 of Government Regulation Number 50 of 2022 concerning Procedures for Fulfilling Taxpayer Rights and Obligations do not specifically stipulate prohibitions and limitations on misuse of access to financial information.

2) Repressive Legal Protection

Repressive legal protection functions to take action against legal violations of the confidentiality of customer data. Repressive legal protection is the last resort in the form of imposition of sanctions such as fines, imprisonment, additional laws given when a dispute has occurred or a violation has been committed. Legal protection for taxpayers who are harmed due to data confidentiality is not maintained can be carried out by enforcing criminal law and administrative law. There are several institutions that carry out supervision as well as enforce criminal law and administrative law for violations of office within the Directorate General of Taxes, including:

a) Criminal Law Enforcement

If there is a violation of Article 34 of the KUP Law, then the tax officer who does not maintain the confidentiality of taxpayer data by negligence can be sentenced to a maximum of 1 (one) year in prison and a maximum fine of IDR 25,000,000 (twenty-five million rupiah), if the deliberately, then subject to a maximum imprisonment of 2 (two) years and a maximum fine of Rp. 50,000,000 (fifty million rupiah).

Violations of Article 34 of the KUP Law must be preceded by a complaint from the taxpayer. Taxpayers can submit complaints to the local Regional Office of the Directorate General of Taxes or the Head Office of the Directorate General of Taxes through a complaint letter along with supporting evidence. Complaint information from taxpayers will be included in Information, Data, Reports, and Complaints (IDL P). Then a review will be carried out on the IDLP to analyze whether there is an element of a violation of Article 34 of the KUP Law.

If there are indications of violations, preliminary evidence can be carried out by PPNS. The initial evidence process is a process to obtain initial evidence related to alleged criminal acts in the field of taxation. If in the initial evidence process, they get enough evidence, then the PPNS will upgrade the status to investigation and determination of the suspect. The investigation process is carried out up to the stage of handing over the suspect to the Prosecutor for prosecution in court.

b) Administrative Law Enforcement

In addition to criminal law enforcement, violations of the provisions of Article 34 of the KUP Law can also be subject to an inspection process for administrative sanctions. The process of imposing administrative sanctions also begins with complaints from taxpayers. Complaints can also be submitted through the local Regional Office of the Directorate General of Taxes or the Head Office of the Directorate General of Taxes through a complaint letter. This complaint will be followed up with the Collection of Materials and Information (Pulbaket). In the process of collecting materials and information, if there are elements of alleged administrative violations, the inspection process is carried out through investigative activities against tax officials or officers who are suspected of committing violations.

This investigative activity can be carried out by the Inspectorate General of the Ministry of Finance (external party) (Ministry of Finance, 2022), or it can also be done by the Directorate of Internal Compliance and Transformation of Apparatus Resources (KITSDA), which is an internal party. These two institutions have the authority to conduct a thorough examination of employees who are suspected of violating the code of ethics and laws and regulations. The results of this investigative examination will provide recommendations for the imposition of administrative sanctions in the form of light, moderate and severe disciplinary punishment. The process for imposing disciplinary punishment refers to the provisions of Government Regulation Number 94 of 2021 concerning Discipline for Civil Servants.

4. Conclusion

Preventive measures have carried out legal protection for customer data by issuing laws that regulate obligations for parties to maintain the confidentiality of customer data. However, there

are no prohibitions and sanctions in the event of a violation of customer data and information misuse, as stated in the Financial Information Access Act. In addition to preventive efforts, legal protection can also be carried out through law enforcement efforts, both criminal and administrative, against employees who leak taxpayer data. PPNS can carry out criminal law enforcement, while investigative examinations by the Inspectorate General and KITSDA carry out administrative law enforcement. Arrangements for prohibitions and sanctions for misuse of customer data and information are to be regulated directly in the Financial Information Access Law, thus creating certainty in the legal protection of customer data.

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