




The Essence of Legal Protection of Personal Data of Customers In Banking Transactions

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Abstract

Introduction: Banks as an institution are not only required to protect customer funds but are also obliged to maintain the confidentiality of customer personal data.

Purposes of the Research: This paper aims to examine the regulations governing the protection of customers' personal data and to examine the supervision and law enforcement of the protection of banking customers' personal data.

Methods of the Research: This research uses normative legal research methods with a statutory approach, conceptual approach, and case approach. The statutory approach relates to legislation on personal data protection and banking. The conceptual approach relates to the concepts of banking and personal data protection. The case approach relates to cases of supervision and law enforcement of violations or crimes of personal data of banking customers.

Results of the Research: The results show that regulations governing customer data protection are contained in various laws and regulations related to personal data protection and banking and other technical regulations. In addition, the study results also show that supervision of the protection of personal data of banking customers has been carried out by three institutions that have supervisory authority, namely Bank Indonesia, the Financial Services Authority, and the Deposit Insurance Corporation. Law enforcement against violations and crimes against customers' personal data still faces challenges, because although there are many cases of crimes using customers' personal data, only a few can be enforced against crimes against customers' personal data.

1. INTRODUCTION

Indonesia's national development needs the support of the banking sector as a financial institution for public transaction processes. Lover (1997) states that banking is often regarded as the driving force of the economy of the state¹. Because as a provider of transaction services and community financing, the role of banking has a central point in supporting and moving the community's economic sector. Both for payment traffic,

¹ H. Bachtiar Simatupang, "Peranan Perbankan Dalam Meningkatkan Perekonomian Indonesia," *Jurnal Riset Akutansi Multiparadigma (JRAM)* 6, no. 2 (2019): 137, <https://doi.org/doi.org/10.30743/akutansi.v6i2.2184>.

collectors and distributors of funds, even one of the sources of funding for major changes is a bank².

The theoretical landscape mentions banks as part of the financial system in Indonesia (financial system), is a unified system formed from all existing financial institutions and its main activity is to attract funds from and distribute them to the community. The existence of this financial system is expected to carry out its function as a financial intermediary and transmission institution that is able to bridge those who are overfunded and underfunded, and facilitate of economic transaction³. Furthermore, the bank is a financial intermediary institution that supports the economic sector and is expected to maintain the trust and confidence of the public as customers.⁴

The Bank as an institution is not only obliged to protect customer funds but also obliged to maintain the confidentiality of customer personal data⁵. Moreover, as the development of advanced technology has implications for banking service activities. The digital Era makes it easy for customers to access financial services only through their hands, for example, customers can easily transact banking services through various ways ranging from short message service (SMS) to internet banking⁶. But like a double-edged knife, technological developments not only provide ease of banking transaction services but also have an impact on the risk of guaranteeing customers' personal data. This is because in banking service transactions often use personal information such as e-mail, username, password, OTP code, and contract number which is a risk opportunity for customers.

The risks that often occur are leakage of customer personal data, sale of customer personal data to other parties, and misuse of customer data that causes losses to customers. Based on data reported by CBNC Indonesia in 2021, it states that the PT Bank Pembangunan Daerah Jawa Timur database has leaked 378 GB of data containing 259 customer databases, employee data, and personal financial data⁷. Something similar has also been experienced by the central bank in Indonesia, namely Bank Indonesia. In 2022, Bank Indonesia experienced a data leak whose modus operandi was to lock the system and retrieve Bank Indonesia data as the central bank in charge of other banks and become the center of money circulation in Indonesia⁸. Overcoming these problems, internally the bank has established a security system (self-regulation). As done by PT. Bank Central Asia, Tbk (BCA).

² Ashinta Sekar Bidari, Frans Simangunsong, and Karmina Siska, "Sektor Perbankan Di Covid-19," *Jurnal Pro Hukum: Jurnal Penelitian Bidang Hukum Universitas Gresik* 9, no. 1 (2020): 4, <https://doi.org/doi.org/10.55129/jph.v9i1.1129>.

³ Hermansyah, *Hukum Perbankan Nasional Indonesia* (Jakarta: Kencana Penada Media Group, 2005), 1.

⁴ Gede Dicky Garla Dinatha and Ni Ketut Supasti Dharmawan, "Perlindungan Nasabah Penyimpan Dan Tanggungjawab Bank Terhadap Hilangnya Uang Disimpan Di Bank," *Kertha Negara: Journal Ilmu Hukum* 9, no. 12 (2021): 1067-78, <https://doi.org/ojs.unud.ac.id/index.php/Kerthanegara/article/view/73373>.

⁵ Qatrunnada Ernanti, "Perlindungan Hukum Bagi Konsumen Perbankan Dalam Penggunaan Data Pribadi Nasabah (Studi Pada PT BRI Kantor Wilayah Semarang)," *Diponegoro Law Journal* 5, no. 3 (2016): 2, <https://doi.org/https://doi.org/10.14710/dlj.2016.12557>.

⁶ Melia Prabangasta Yustisia, "Perlindungan Bagi Nasabah Dalam Penyelenggaraan Layanan Perbankan Digital Di Indonesia," *Dharmasisya Jurnal Program Magister Hukum Fakultas Hukum Universitas Indonesia* 2, no. 2 (2022): 796, https://doi.org/https://scholarhub.ui.ac.id/dharmasisya/vol2/iss2/20?utm_source=scholarhub.ui.ac.id%2Fdharma%2Fvol2%2Fiss2%2F20&utm_medium=PDF&utm_campaign=PDFCoverPages.

⁷ Novina Putri Bestari, "Data Nasabah Bank Jatim Diduga Bocor, Di Jual Rp 3,5 Miliar," 2021.

⁸ Aditama Candra Kusuma and Ayu Diah Rahmani, "Analisis Yuridis Kebocoran Data Pada Sistem Perbankan Di Indonesia (Studi Kasus Kebocoran Data Pada Bank Indonesia)," *Supremasi Jurnal Hukum* 5, no. 1 (2022): 47-48, <https://doi.org/10.36441/supremasi.v5i1.721>.

implements a Data Loss Prevention (DLP) strategy for data security on an ongoing basis in improving the security of electronic information from information theft and access by unauthorized parties⁹. PT. Bank Rakyat Indonesia, Tbk (BRI) also implements self-regulation in the form of customer personal data protection measures starting from complaints, complaint acceptance, mediation to settlement. The form of internal supervision carried out by BRI is through dual-control¹⁰.

The protection of personal data is crucial because of the challenges of the banking sector in creating the right balance between digital-based services and efforts to mitigate customer risks. Answering these problems requires legal protection of personal data with self-regulation and government regulation approaches. Departing from the above expectation, this study aims to examine the regulations governing the protection of customer personal data and to assess the supervision and enforcement of the law on the protection of personal data of banking customers.

2. METHOD

This study uses normative legal research methods. The approach used is legislation approach, conceptual approach and case approach. The legislative approach deals with the legislation governing banking and the protection of personal data. The conceptual approach is related to the concept of personal data protection and banking concept, especially the protection of banking customers. The approach to the case relates to the practice of violating the personal data protection of banking customers and the protection practices of the government. The sources of data used in this study are secondary data with primary legal materials, namely legislation; secondary legal materials, namely journals, books, and research results that explain primary legal materials; and tertiary legal materials, namely dictionaries and encyclopedias used to explain primary and secondary legal materials. The technique of data collection is done by analyzing legal materials and literature studies by tracing legal materials with literature studies, which collect existing legal materials¹¹, and the next step is mapping the legal materials in accordance with the existing subject matter.

3. RESULTS AND DISCUSSION

The existence of banking institutions is highly dependent on the absolute trust of customers who entrust funds and use banking services. Therefore, banking has an important role as a public fund storage institution and a provider of funds for the community or the business world in terms of protecting customer personal data. The relationship between the bank and the customer can be interpreted that the bank is responsible for keeping the customer's personal data confidential from other parties unless otherwise specified by laws and regulations¹².

The urgency of protecting customers' personal data is needed in banking transaction services as a result of the implementation of digital-based service systems. The form of legal

⁹ Anonim, "Perlindungan Privasi Dan Keamanan Data Nasabah," 2022, 75.

¹⁰ Ernanti, "Perlindungan Hukum Bagi Konsumen Perbankan Dalam Penggunaan Data Pribadi Nasabah (Studi Pada PT BRI Kantor Wilayah Semarang)."

¹¹ Irwansyah, *Penelitian Hukum; Pilihan Metode Dan Praktik Penulisan Artikel* (Yogyakarta: Mirra Buana Media, 2020), 94.

¹² Octa Villa and David Tan, "Efektivitas Perlindungan Data Diri Konsumen Dalam Bidang Perbankan," *Justitia: Jurnal Ilmu Hukum Dan Humaniora* 9, no. 5 (2022): 2441, <https://doi.org/http://dx.doi.org/10.31604/justitia.v9i5.2441-2452>.

protection for customer personal data in banking transactions can be seen from two approaches, namely, self-regulation and government regulation approaches. Then from this approach, it is examined how the supervision and enforcement of the law in the event of violations related to customer personal data as an effort to realize the essence of legal protection of customer personal data in banking transactions.

3.1 Regulation On The Protection Of Personal Data Of Banking Customers

The discussion of the regulation on the protection of personal data of banking customers will be described with two approaches, namely, self-regulation and government regulation in banking. Self-regulation in banking is the process of preparing internal policies in banking that govern the achievement, evaluation and process of banking itself. But still refer to the existing legislation. While government regulation in banking is the responsibility of the state to make laws that contain regulation in banking¹³.

Indonesia as a legal country has provided guarantees for the protection of personal data for banking customers with the legal basis for the protection of personal data of banking customers including:

First, the 1945 Indonesian constitution, mentioned in Article 28g Paragraph (1) states that: "everyone has the right to personal protection of family, honor, dignity, and property under his control, and the right to a sense of security and protection from the threat of fear to do or not do something that is a human right". The 1945 Indonesian constitution became the legal basis for the formation of the law on the protection of personal Data.

Second, Act Number 7 year 1992 on banking as amended by Act Number 10 Year 1998. In this law, data Protection has been regulated through the principles of: a) bank secrecy is one of the principles of legal protection regulated in Article 40 paragraph (1) which states that: banks are obliged to keep information about depository customers and their deposits confidential, except in matters of taxation¹⁴, about settlement of bank receivables¹⁵, for the benefit of the judiciary¹⁶ and related to the request, consent or power of attorney from the depository customer¹⁷. b) Prudential principle, Indonesian banking in conducting its business based on economic democracy by using Prudential principle¹⁸. The application of the precautionary principle is not only limited to its application as a legal foundation for the implementation of customer personal data protection, but also a preventive and repressive measure.

Third, Act Number 21 Year 2011 on Financial Services Authority. OJK is a state institution that functions to organize an integrated system of regulation and supervision of all activities in the banking sector, capital markets and the non-bank financial services sector. The regulation and supervision that is the responsibility of OJK is regarding the prudential aspects of banks, including Risk Management, bank governance, know your customer and anti-money laundering principles, prevention of terrorism financing and

¹³ Monika Marcinkowska, "Regulation and Self-Regulation in Banking: In Search of Optimum," *Bank i Kredyt EconPaper Economics at Your Fingertip* 44, no. 2 (2013): 120, <https://doi.org/https://EconPapers.repec.org/RePEc:nbp:nbpbk:v:44:y:2013:i:2:p:119-158>.

¹⁴ Pemerintah Republik Indonesia, "Undang-Undang Republik Indonesia Nomor 7 Tahun 1992 Tentang Perbankan Sebagaimana Telah Diubah Dengan Undang-Undang Nomor 10 Tahun 1998" (1998), Pasal 41.

¹⁵ Pemerintah Republik Indonesia, Undang-Undang Republik Indonesia Nomor 7 Tahun 1992 Tentang Perbankan Sebagaimana Telah Diubah Dengan Undang-Undang Nomor 10 Tahun 1998.

¹⁶ Pemerintah Republik Indonesia.

¹⁷ Pemerintah Republik Indonesia.

¹⁸ Pemerintah Republik Indonesia.

banking crimes, and bank checks. OJK in ensuring the protection of data and/or personal information of consumers or customers stipulates that ; financial services business actors (PUJK) are prohibited in any way, from providing data and / or personal information about their consumers to third parties. Unless the Consumer gives written consent or is required by law. The data or consumer information that must be kept confidential consists of personal data, namely: name, address, date of birth and/or age, telephone number, mother's name. For corporate data, namely: name. Address, telephone number, susuanan directors and commissioners, including identity: identity card, / passport/residence permit and / or composition of shareholders¹⁹.

Fourth, Act Number 8 year 1999 on Consumer Protection. regulate that: "consumer protection is any effort that ensures the existence of legal certainty to provide protection to consumers".This provision provides legal consequences to ensure the protection of consumer rights as a customer against all banking business activities, as well as being the legal basis for the protection of customer personal Data in banking²⁰.

Fifth, Act Number 27 year 2022 on Personal Data Protection (hereinafter referred to as the PDP law). The PDP law provides a definition of personal data protection is: "data about an individual who is identified or can be identified separately or in combination with other information either directly or indirectly through electronic or non-electronic systems"²¹. The personal data that is protected is personal data that is specific or general. The rights of the subject of personal data, is a natural person to whom personal data is attached, which is none other than ourselves as a society, including the right to obtain information about the clarity of identity, the basis of legal interest, the purpose of the request and use of personal data, and accountability of the party requesting personal data, the right to²². The protection of the rights of subjects of personal data is excluded in the interests of national defense and security; the interests of law enforcement proceedings; the public interest in the framework of State Administration; the interests of supervision of the financial services sector, monetary, payment systems and financial system stability carried out in the framework of State Administration; and or the interests of²³.

Sixth, Bank Indonesia Regulation Number 22/20/PBI/2020, regulates that; consumer protection regulated in this Bank Indonesia Regulation covers consumer protection for consumers who utilize products and/or services from providers regulated and supervised by Bank Indonesia²⁴.

3.2 Supervision and enforcement of Banking Customer Personal Data Protection Laws

The rampant cases of violation and crime data private banking customers give the impact of a significant loss for the community. In the period 2020 to 2022, the rate of leakage of personal data continues to increase. In 2020, there are 3500 cases of data leakage no phone, 402 cases leak credit card data, and 402 cases of identity theft the customer. Later in the year

¹⁹ Otoritas Jasa Keuangan, "Surat Edaran No.14/SEOJK.07/2014 Tentang Kerahasiaan Dan Keamanan Data Dan/Atau Informasi Pribadi Konsumen" (2014).

²⁰ Pemerintah Republik Indonesia, "Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen" (1999), Pasal 1 Angka 1.

²¹ Pemerintah Republik Indonesia, "Undang-Undang Nomor 27 Tahun 2022 Tentang Perlindungan Data Pribadi" (2022), Pasal 1 Angka 1.

²² Pemerintah Republik Indonesia, Undang-Undang Nomor 27 Tahun 2022 Tentang Perlindungan Data Pribadi.

²³ Pemerintah Republik Indonesia.

²⁴ Bank Indonesia, "Peraturan Bank Indonesia No. 22/20/PBI/2020" (2020), Pasal 2.

2021, there are 1.1 million cases of data leakage phone numbers, 458 cases data leak credit card and 542 cases of the theft of the identity of the customer. This continues to increase in 2022, with 3.5 million phone numbers data leaks, 2 million credit cards data leaks and 52,000 cases of identity theft. This phenomenon reflects that supervision and enforcement are needed to optimize legal protection of customer personal data.

3.2.1 Supervision Of The Protection Of Customer's Personal Data

In terms of the authority of the banking supervision system, there are three institutions that are given the task of regulating and supervising banking, namely Bank Indonesia, The Financial Services Authority and the Deposit Insurance Agency. First, Bank Indonesia, which has supervisory functions including the authority to grant permits (right to license), the authority to regulate (right to regulate), the authority to supervise (right to control), and the authority to impose sanctions (right to impose sanctions) carried out by Bank Indonesia. Bank Indonesia conducts supervision based on compliance and based on risk²⁵. With regard to the protection of personal data of banking customers, Bank Indonesia conducts supervision by regulating the application of the principles of data protection and/or consumer information. Bank Indonesia requires banking providers to maintain the confidentiality and security of consumer information data. If there is a banking operator that does not meet the obligations of personal data protection and / or consumer information is subject to sanctions in the form of a written warning, temporary suspension of part or all of business activities and / or revocation of licenses²⁶.

Second, the Financial Services Authority (FSA). The implementation of OJK supervisory functions include: regulation and supervision of bank institutions, bank health, bank prudential aspects and bank inspections. The supervision carried out by OJK includes: direct bank supervision (on supervision), the aim is to get an overview of the financial condition of the bank and to monitor the level of bank compliance with applicable regulations, as well as to find out whether there are unhealthy practices and endanger the continuity of a bank. Indirect supervision (off site supervision) is supervision through monitoring such as periodic reports submitted by banks, reports on inspection results and other information, the authority to impose sanctions (right to impose sanctions, namely the authority to impose sanctions in accordance with the provisions of the legislation against banks, if banks lack or do not comply with the provisions. This action contains elements of guidance for banks to operate in accordance with the principles of sound banking, and the authority to conduct consumer protection (right to protect), namely the authority to conduct consumer protection in the form of consumer loss prevention, community, consumer complaints services, and legal defense²⁷.

As a concrete step OJK in protecting personal data of banking customers is to make OJK regulations (POJK) and circulars related to Information Technology Risk Management for commercial banks. The regulation stipulates that financial service providers must implement Supervision, Standards, Control Systems, and audits. Reporting facilities are also required to be provided by banks and rural banks.

²⁵ Sulistyandari, "Lembaga Dan Fungsi Pengawasan Perbankan Di Indonesia," *Mimbar Hukum* 24, no. 2 (2012): 197.

²⁶ Bank Indonesia, "Peraturan Bank Indonesia Nomor 22/20/PBI/2020 Tentang Perlindungan Konsumen Bank Indonesia" (2020), Pasal 30 Ayat (5).

²⁷ Otoritas Jasa Keuangan, "Undang-Undang Nomor 21 Tahun 2011 Tentang Otoritas Jasa Keuangan" (2011).

Third, the Deposit Insurance Agency (LPS). IDIC is an independent institution that serves to guarantee deposits of banking customers in Indonesia. Supervision carried out by LPS in protecting personal data of banking customers through international standard information security risk management and conducting comprehensive, tested and periodic cyber security management, which includes Cyber Security Management, Cyber Security Exercise, and Cyber Security Reporting. It is necessary to constantly check for potential violations and crimes using the customer's personal data²⁸, of the three institutions that have the authority to supervise banking activities, in terms of protecting customer personal data, institutional synergy is needed.

3.2.2 Law enforcement against violations and crimes against customers ' personal Data

Recognizing the importance of customer personal data, regulations are made that protect the rights to personal data, especially personal data of banking customers. Law enforcement is aimed at improving order and legal certainty in society, this is done, among other things, by publishing the functions, duties and authorities of the institutions in charge of enforcing the law according to the proportion of their respective scope.²⁹

The entire arrangement in dealing with violations and crimes using the customer's personal data described above has legal consequences if it is not carried out. For example, in the banking law, it is emphasized that if there are problems related to the implementation of the provisions for the request for confidentiality of personal data, it is mandatory to first obtain a written order or permission to disclose bank secrets from the leadership. If you do not have a permit, of course, you can be threatened with imprisonment of at least 2 years and a maximum of 4 years and a fine of at least Rp10 billion and at most Rp200 billion³⁰.

Law enforcement against violations and crimes against customers ' personal data still faces challenges. Although there are many cases of crimes that use customers ' personal data, there is little that law enforcement can do about these crimes. As in the case of the burglary of the Representative Office of PT Bank Negara Indonesia New York conducted by Rudy Demy. In this case the crime is committed using the means of computer technology. The modus operandi is to transfer funds from the Bank through a personal computer equipped with a modem. In law enforcement, the case is not captured by the banking law, but is classified as theft as stipulated in the Criminal Code (Article 362)³¹.

In the example case, it is actually related to the modus operandi of banking crimes that result in leakage of customer personal data by using the development of computer technology, but banking crimes whose modus operandi has characteristics that have not been obtained in existing laws and regulations. In this case, the existing provisions are inadequate, therefore, in the future, anticipation from the side of the law and its enforcement must be prepared.

4. CONCLUSION

²⁸ Lembaga Penjamin Simpanan, *Sinergi Untuk Menjaga Stabilitas Sistem Keuangan Dan Percepatan Pemulihan Ekonomi Nasional*, 2022, 67.

²⁹ Rory Jeff Akyuwen, Muchtar Anshary Labetubun, and Alvian Febriawan Pane, "Copyright Legal Responsibility For Illustrated Literary Works (Comics)Published on Online Situs Without Authors," *Sasi* 29, no. 2 (2023): 383, <https://doi.org/https://doi.org/10.47268/sasi.v29i2.1354>.

³⁰ Pemerintah Republik Indonesia, Undang-Undang Republik Indonesia Nomor 7 Tahun 1992 Tentang Perbankan Sebagaimana Telah Diubah Dengan Undang-Undang Nomor 10 Tahun 1998.

³¹ Supaijo, "Penegakan Hukum Pidana Dalam Kejahatan Perbankan," *Asas: Jurnal Hukum Ekonomi Syariah* 2, no. 1 (2012): 94, <https://doi.org/https://doi.org/10.24042/asas.v2i1.1623>.

The essence of legal protection of personal data of banking customers can be seen from the regulation of personal data of customers in various laws and regulations. In relation to the supervision and enforcement of the law on the protection of personal data of banking customers, there are three institutions that have supervisory authority. These three institutions must still work together in order to provide legal protection for customer personal data. Law enforcement against violations and crimes against customers' personal data still faces challenges. Although there are many cases of crimes that use customer personal data, there is little that can be done by law enforcement against customer personal data crimes.

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