

# A Juridical Analysis of Access Opening to the Financial Information of Bank Customers' or Taxpayers' Data for Taxation Purpose

Kristi Emelia Pasaribu<sup>1</sup>, Budiman Ginting<sup>2</sup>, Sunarmi<sup>3</sup>, Mahmud Siregar<sup>4</sup>

<sup>1</sup>Student of Master of Jurisprudence Program, Universitas Sumatera Utara

<sup>2,3,4</sup>Lecturer of the Faculty of Law, Universitas Sumatera Utara

Corresponding Author: Kristi Emelia Pasaribu

## ABSTRACT

The government legalized the Law No. 9/2017 concerning the Government Regulation in Lieu of Law No. 1/2017 on Access to Financial Information for Taxation Purpose Becoming a Law. This law annuls confidentiality of bank customer as stipulated in the Law on Banking, Law on Sharia Banking, Law on Capital Market, and Law on General Provisions and Procedures of Taxation. It indicates that banks can no longer keep their customers' data confidential to the Directorate General of Taxes. The research problems are how taxation and bank confidentiality concerning the exchange of information access for taxation purpose is regulated, what system is applied to submit the report on financial data information concerning the information access to bank customers' financial data, and what legal consequences are caused from the access opening to financial information of bank customers' data after the issuance of the Law No. 9/2017. This research employs normative juridical research method with descriptive analysis. It obtained necessary secondary data through library study, consisting of primary, secondary, and tertiary legal materials related to the research problems. The results of the research demonstrate that the exchange of information access for taxation purpose is regulated in the Law No. 9/2017. The registered Reporting Financial Institutions or Non-Reporting Financial Institutions are obliged to submit reports on financial information in accordance with the format showed in Attachment Letter G of the Regulation of the Directorate General of Taxes No. PER-04/PJ/2018. This Law allows the chase of disobeyed taxpayers because tax is the main

revenue source that is very potential, so that all taxpayers/bank customers can contribute to the development of the Republic of Indonesia by paying their taxes.

**Keywords:** Access to Financial Information, Bank Customers, Taxation

## I. INTRODUCTION

### A. Background of the Study

Customer transactions through banks, data, or information about customers' storage and deposits by banks are kept confidential based on Act No. 7/1992 on Law No. 10/1998 (Banking Law). Article 40 regulates that banks must keep their customers' information confidential. However, for taxation in Article 41, it is regulated that for taxation purposes, upon written request from the Minister of Finance, the Head of Bank Indonesia (Board of Governors) has the authority to issue written instructions to banks to provide information and show written evidence and letters concerning the financial situation and certain deposit customers to tax officials.

In 2017, the government issued the Lieu of Law No. 1/2017 concerning Access to Financial Information for Taxation Interests which was later passed on August 23, 2017 to become Law No. 9/2017 regarding Government Regulation in Lieu of Law No. 1/2017 concerning Access to Financial Information for Taxation Interests Becoming a Law. This law invalidates all confidentiality of bank customer data

contained in the Law on Banking, Law on Sharia Banking, Law on Capital Market and the Law on General Provisions and Procedures of Taxation. This means that banks can no longer keep their customers' data confidential to the Directorate General of Taxes.

In summary, the Act aims to provide toll roads to the Ministry of Finance in particular the Directorate General of Taxes (DGT) to take a peek at data and information on bank customers, capital markets, and insurance. In other words, the DGT no longer needs to seek the approval of the Minister of Finance and other parties such as Bank Indonesia (BI) or the Financial Services Authority (FSA) to obtain customer data and information access in the financial industry. However, special standards are needed in each financial service institution report to be easily understood so that the inspection can run smoothly. This law also provides a strong foundation for the Directorate General of Taxes to explore sources of revenue which so far have been very difficult to obtain data due to obstacles in the regulation of banking secrecy. With the emergence of this Act, bank secrets in the Banking Law are excluded for public use in this matter for tax revenue purposes.

Reports submitted to the Directorate General of Taxes (DGT) contain financial information as referred to at least contain: a. the identity of the financial account holder; b. financial account number; c. identity of financial service institutions; d. financial account balance or value; and e. earnings related to financial accounts. If the customer refuses to identify the account, the financial services institution will not serve to open a new financial account or new financial transactions.

Access to financial information is only for tax purposes, not for other purposes. The Government or the Directorate General of Taxes (DGT) will protect the security and confidentiality of customer data in accordance with the provisions of the Taxation Law and

International Treaties. Only DGT officials have access and there are criminal sanctions for those who leak.

## **B. Problem Statement**

Based on the aforementioned background of the study, the following problems can be formulated:

1. what are the taxation and bank confidentiality arrangements related to the exchange of access to information for current taxation interests?
2. what is the system for submitting financial data information reports related to accessing customer financial information?
3. what are the legal consequences of opening access to financial information of customer data after the issuance of Law No. 9/2017 concerning Establishment of Government Regulation in Lieu of Law No. 1/2017 concerning Access to Financial Information for the Interests of Taxation Becoming a Law?

## **C. Research Objectives**

The research objectives to be achieved from this study are :

1. to find out the taxation and bank confidentiality arrangements related to the exchange of access to information for current taxation interests.
2. to find out the system for submitting financial data information reports related to accessing customer financial information.
3. to find out the legal consequences of opening access to financial information of customer data after the issuance of Law No. 9/2017 concerning Establishment of Government Regulation in Lieu of Law No. 1/2017 concerning Access to Financial Information for the Interests of Taxation Becoming a Law.

#### **D. Significance of the Study**

This research is expected to provide the following benefits:

##### 1. Theoretically

The results are expected to be able to enrich the understanding of knowledge about legal knowledge, especially regarding opening access to financial information on customer or taxpayers' extensive data for tax authorities to receive and obtain financial information for taxation purposes.

##### 2. Practically

It is hoped that this research can serve as a guideline and input for the government or legislative body in making policies and legal arrangements regarding access to financial information for the benefit of taxation currently in force.

## **II. THEORETICAL FRAMEWORK**

The theory used as a reference in this research thesis is the theory regarding bank confidentiality; they are the absolute theory and the relative theory of bank confidentiality as well.

##### 1) Absolute Theory

All information regarding customers and their finances recorded at the bank must be kept confidential without exceptions and restrictions. For whatever reason and by no means confidentiality regarding customers and their finances may be disclosed. If a breach of confidentiality occurs, the bank concerned must be responsible for all consequences that result.

Objection to this absolute theory is too individualistic, meaning that only concerned with the rights of individuals. In addition, this theory also contradicts the public interest, meaning that the interests of the state or society are often ruled out by individual interests which harm the state or society at large. In other words, according to this theory the absolute nature of bank secrets is very difficult to break through for any reason and even by law and law. Absolute theory is too much concerned with the individual so that the interests of the state and society are often overlooked. This

theory is adopted by Swiss banks which are very strict in maintaining the confidentiality of their customers.

##### 2) Relative Theory

According to this theory, bank secrets are relative (limited). All information regarding customers and their finances recorded at the bank must be kept confidential. However, if there is a reason that can be justified by the law, bank secrets regarding the finances of the customer concerned may be disclosed to the authorized official. The objection to this theory is that bank secrecy can still be a protection for non-halal fund owners who happen to be unreachable by law enforcement officials because they are not subject to investigation. Thus the funds remain safe.

This relative theory protects the interests of all parties, both individuals, communities and countries. This theory is shared by banks in the United States, the Netherlands, Malaysia, Singapore and Indonesia. In Indonesia, this relative theory is regulated in Article 40 of Law No. 7/1992 on the Law No. 10/1998 concerning Banking.

## **III. RESULTS AND DISCUSSIONS**

### **A. Taxation Arrangements and Bank Confidentiality Regarding the Exchange of Information Access for Taxation Purposes**

The taxation legal system in Indonesia adheres to the Continental European Legal system, they are public law and private law. This is because the tax law regulates the relationship between the government and taxpayers or citizens. However, although tax law is part of public law, tax law is also much related to private law, which is called civil law. This is because tax law has a lot to do with civil material such as a person's wealth or legal entity that is regulated in civil law but becomes one of the objects in tax law.

Existing bank secrecy provisions govern certain exceptions which make it possible to know a bank secret from

someone and can be done if there is a public interest in the form of interests:

- a. Taxation;
- b. Settlement of Receivables handled by BUPLN/PUPN (State Receivables and Auction Affairs Agency/State Receivables Committee);
- c. Justice both for criminal and civil cases;
- d. The interests of the smoothness and security of the banks' business activities, including the request for the disclosure of secrets based on the authority of the depositing customer itself or the request of a legal heir;

Previously, pursuant to Law No. 7/1992, that the scope of bank secrecy included customer deposit funds (creditor customers) as well as credit received by customers (debtor customers), but today the scope of bank secrecy is limited only to the identity of "depositing customers." In addition to the "condition" of the depositor in question. This means that what is protected by bank secrecy is not only related to deposits, but also includes the "identity" of the depositing customer.

The preamble (disclosure of Bank Secrets, Article 41 paragraph (1) of Law No. 10/1998 concerning Banking stipulates the elements that must be fulfilled as follows:

- a. Opening of the banks' secrets for tax purposes.
- b. Opening of the banks' secrets at the written request of the Minister of Finance.
- c. The disclosure of the banks' secrets on written instructions from the Management of Bank Indonesia.
- d. The disclosure of bank secrecy is carried out by the bank by providing information and showing written evidence and letters concerning the financial condition of the Depository customer whose name is mentioned in the request of the Minister of Finance.
- e. A statement with written evidence regarding the financial condition of the depositing customer is given to the tax official whose name is stated in the

written order of the Chairman of Bank Indonesia.

Indonesia has committed itself to an international agreement in the field of taxation which is obliged to fulfill the commitment to participate in implementing the automatic exchange of information (AEOI) to meet the needs of tax revenue and maintain the effectiveness of effective tax amnesty policies. Indonesia is therefore urged to immediately form legislation at the level of law regarding access to financial information for tax interests prior to 30 June, 2017.

The OECD publication as of April 14, 2016 provides information that as many as 94 jurisdictions have committed to implement AEOI through the application of the Common Report Standard (CRS). CRS is an automatic standard for exchange of financial information for tax interests including commentaries prepared by the Organization for Economic Cooperation and Development (OECD) together with Group of Twenty (G20) member countries.

Simply put, Automatic Exchange Of Information (AEOI) is a system that supports the exchange of taxpayer account information between countries that allows taxpayers to open bank accounts in other countries and will be directly tracked in their home country so that later a country can find out its citizens who are taxpayers open accounts in other countries and know if there is a possibility of transfer pricing practices and money laundering practices.

Automatic Exchange of Account Information (AEOI) or the exchange of information automatically for taxation purposes began to emerge in 2010 when the United States Government (US) issued a Foreign Account Tax Compliance Act (FATCA) policy. FATCA requires Foreign Financial Institutions (FFIs), which are financial institutions outside the US, to report to the US Government regarding information related to financial accounts owned by US residents or other entities where US residents hold significant

ownership interests (substantial ownership interest).

The implementation of AEOI has improved tax compliance and has positive implications for governments around the world. That conclusion is the result of the latest data released by the Organization for Economic Cooperation and Development or OECD on 7 June, 2019.

## **B. Technical and Method of Submitting Financial Information Report Related to Access to Financial Information of Customer/Taxpayer Data**

### **1. Technical Financial Information for Taxation Purposes**

Access to Financial Information for Taxation Interests includes access to receive and obtain financial information in the context of implementing the provisions of laws and regulations in the field of taxation and the implementation of international agreements in the field of taxation. Article 2 states :

- 1) The Director General of Taxes is authorized to obtain access to financial information for tax interests as referred to in Article 1 of financial service institutions that carry out activities in the banking sector, capital market, insurance, other financial service institutions, and/or other entities that are categorized as financial institutions according financial information exchange standards based on international agreements in the field of taxation.
- 2) Financial service institutions, other financial service institutions, and/or other entities as referred to in paragraph (1) must submit to the Director General of Taxes:
  - a. reports containing financial information in accordance with financial information exchange standards based on international agreements in the field of taxation for each financial account identified as a financial account that must be reported; and

- b. reports containing financial information for taxation purposes, which are managed by financial service institutions, other financial service institutions, and/or other entities referred to for one calendar year.

### **2. The Way of Submitting Financial Information Reports Regarding Access to Financial Information Customer/Taxpayer Data**

Financial accounts that must be reported according to domestic interests are all financial accounts held by Individual Financial Account Holders or Entity Financial Account Holders, other than those reported in the context of implementing international agreements. The holder of an entity's Financial Account does not include government entities, international organizations, or central banks.

In accordance with the provisions of Law No. 9/2017 and Regulation of the Minister of Finance No. 70/PMK.03/2017 concerning Access to Financial Information for Taxation Interests and its implementation instructions where Financial Institutions are required to submit reports containing financial information automatically, the Director General of Taxes issued Regulation of the Director General of Taxes No. PER-04/PJ/2018 on January 31, 2018 regarding the procedures for registration for Financial Institutions and Submission of Reports that contain Financial Information automatically.

Reporting Financial Institutions or Non-Reporting Financial Institutions that have been registered are required to submit financial reports for 1 (one) calendar year for tax purposes to the DGT and submit reports on financial information containing at least the following information:

- i. The identity of the holder of the Financial Account;
- ii. Financial Account Number;
- iii. Identity of the Reporting Financial Institution;
- iv. Financial Account Balance or Value; and

v. Earnings related to Financial Accounts,

### **C. Legal Consequences of Opening Access to Financial Information for Customer Data or Taxpayers for Tax Purposes**

#### **1. Legal Consequences of Taxation Authority**

In fact long before this law existed, the Directorate General of Taxes had the authority to access financial information for tax interests. It is just that the Directorate General of Taxes must ask permission from Bank Indonesia. It's not an easy case to obtain the consent from BankIndonesia. The process often requires a long time. As a result, tax audits can be delayed. However, after the Law on Access to Financial Information for the Interest of Taxation, the Directorate General of Taxes no longer needs to struggle. The Directorate General of Taxes can directly request data from the bank. Through this regulation, the Directorate General of Taxes of the Ministry of Finance has the discretion to access financial information of customers who are taxpayers.

The tax authority only accepts recapitulation of reports consisting of at least five of these matters. The tax authorities cannot access the financial system directly, cannot see the flow of funds in and out of a customer's account, and cannot even see the customer's account balance at any time because there is a period of reporting time. The law only requires financial services institutions to open their customers' data skins to the tax authorities.

#### **2. Legal Consequences for Banking**

There are Banks or Financial Services Institutions that do not submit, do not carry out the procedures of this provision and who do not meet the requirements for reporting financial information in accordance with the legislation to the tax authorities will be subject to sanctions on banks or financial service institutions in accordance with Article 7 of Law No. 9/2017 which is in the

form of a maximum fine of Rp. 1,000,000,000 (one billion rupiah), for leaders or employees of financial service institutions threatened with a maximum imprisonment of 1 (one) year and a maximum fine of Rp. 1,000,000,000 (one billion rupiah) and for people who make false statements or conceal or subtract actual information from information that must be submitted in a criminal report with a maximum imprisonment of 1 (one) year or a maximum fine of Rp. 1,000,000,000 (one billion rupiah).

#### **3. Legal Consequences of the Customer/Taxpayer**

The openness of access to financial information of customer data or taxpayers for tax purposes has other legal consequences for the Customer/Taxpayer in the form of more legal protection measures for the Customer/Taxpayer. The efforts made by the government by forming a tax reform security assurance team for financial data do some protection for Customers/Taxpayers including regulating procedures and governance in the law, ensuring the Directorate General of Taxes carries out an exchange of information according to international protocols, providing Whistle Blowers System (WISE) Directorate General of Taxes of the Ministry of Finance in a forum for public complaints.

The legal consequences caused by taxpayers/customers are nothing but resulting in the creation of justice in the tax collection system, i.e., if there is a customer/taxpayer who is not obedient in paying his taxes, then through this law the disobedient taxpayers can be pursued because taxes are a source the country's main income is very potential so that all taxpayers/customers can contribute through tax payments for the development of the Republic of Indonesia, both domestic and foreign income and assets.

#### **IV. CONCLUSIONS AND RECOMMENDATIONS**

##### **A. CONCLUSIONS**

1. Taxation arrangements and bank secrecy related to the exchange of access to information for taxation interests are regulated in Act No. 9/2017 concerning the Stipulation of Government Regulation in Lieu of Law No. 1/2017 concerning Access to Financial Information for Taxation Interests. Before this Act was established, bank secrets and bank secret exclusions for tax purposes had been carried out in harmony as Article 35 paragraph (2) and Article 35A of the KUP Law on the Article 40 and Article 41 of the Banking Law. After this law is established, the DGT can directly obtain data and financial information on taxpayers without going through an ineffective bureaucracy. However, on the other hand the principle of bank secrecy for tax purposes is eliminated as Article 8 of Law No. 9/2017. The principle of bank secrecy can be penetrated only in the context of tax data and information that is regulated by Law No. 9/2017 alone.
2. Reporting system for reporting financial data information related to accessing financial information of customer data in accordance with the provisions of Law No. 9/2017 and Regulation of the Minister of Finance No. 70/PMK.03/2017 concerning Access to Financial Information for Taxation Interests and instructions for implementation where financial institutions are required to submit reports containing financial information automatically, the Director General of Taxes issues the Director General of Taxes Regulation No. PER-04/PJ/2018 concerning procedures for registration for Financial Institutions and Submission of Reports containing financial information automatically.
3. Legal consequences for opening access to financial information of customer data after the issuance of Law No.

9/2017 concerning Establishment of Government Regulation in Lieu of Law No. 1/2017 concerning Access to Financial Information for the Purpose of Taxation Becoming a Law is for taxation parties namely the Directorate General of Taxes no longer need to bother but can directly request data from the bank. Through this regulation, the Directorate General of Taxes of the Ministry of Finance has the discretion to access financial information of customers who are taxpayers. Then, due to the law for banks, they are required to provide information to the Director General of Taxes, either through electronic/non-electronic or through access and exchange of other information. Banks or Financial Services Institutions that do not submit, do not carry out the procedures of this provision, are threatened with a maximum imprisonment (1) one year and a maximum fine of Rp. 1,000,000,000 (one billion rupiah). In addition, the legal consequences for taxpayers/customers, that is the open access to information can encourage taxpayers/customers in terms of reporting incomes and assets according to the actual conditions and result in the creation of justice in the tax collection system and if there is a customer/taxpayer disobedient in paying taxes, through this Law, disobedient taxpayers can be pursued because taxes are the country's main potential source of income so that all taxpayers/customers can contribute through tax payments for the development of the Republic of Indonesia both domestic as well as abroad incomes and assets.

##### **B. RECOMMENDATIONS**

1. There is a need for further socialization by the government to parties related to the regulation of access to financial information disclosure, they are the Directorate General of Taxes, the

banking or financial service institutions, and taxpayers/customers related to the issuance of Law No. 9/2017 concerning Establishment of Government Regulation in Lieu of Law No. 1/2017 concerning Access to Financial Information for the Purpose of Taxation Becoming a Law so that the relevant parties can exercise their rights, obligations and authorities in accordance with applicable provisions and this law can be implemented effectively and is running as it should.

2. The taxpayer/customer as the reporting party is obliged to submit financial and asset information reports in accordance with the actual conditions with technical regulations and the way to submit financial data information reports related to accessing financial information of customer data that has been regulated in Law No. 9/2017 concerning Establishment of Government Regulation in Lieu of Law No. 1/2017 concerning Access to Financial Information for the Purpose of Taxation Becoming a Law. In addition, the Directorate General of Taxes should not make it difficult for reporters who wish to register and report financial information reports.
3. There is a need for law enforcement and legal protection from the government to maintain confidentiality related to the open access to taxpayer/customer financial information in order to avoid the occurrence of crimes in the form of information leakage that will harm the taxpayer/customer. If the parties involved in committing a violation or crime must be sanctioned according to the provisions of the applicable laws and regulations.

## V. REFERENCES

### A. BOOKS

1. Afrizal. *Metode Penelitian Kualitatif: Sebuah Upaya Mendukung Penggunaan Penelitian Kualitatif dalam Berbagai Disiplin Ilmu*. Jakarta: Rajawali Pers, 2016.

2. Ali, H. Zainuddin. *Metode Penelitian Hukum*. Jakarta: Sinar Grafika, 2015.
3. Asikin, H. Zainal. *Pengantar Hukum Perbankan Indonesia*, Jakarta: PT. Raja Grafindo Persada, 2015.
4. Bohari, H. *Pengantar Hukum Pajak*, Jakarta : PT. Raja Grafindo Persada, 2002.
5. Djumhana, Muhamad. *Hukum Perbankan di Indonesia*, Bandung: PT. Citra Aditya Bakti, 2012.
6. Gazali, Djoni S dan Rachmadi Usman. *Hukum Perbankan*, Jakarta: Sinar Grafika, 2012.
7. Hermansyah. *Hukum Perbankan Nasional Indonesia*, Jakarta: Kencana Prenad, 2005.
8. Iskandar, Muchlis dan Arif Bachtiar, *Akuntansi Pemerintahan*, Jakarta: Salemba Empat, 2002.
9. Judisseno, Vide Rimsky K. *Pajak dan Strategi Bisnis: Suatu Tinjauan tentang Kepastian Hukum dan Penerapan Akuntansi di Indonesia*, Jakarta: PT. Gramedia Pustaka Utama, 1997.
10. S, M. Farouq. *Hukum Pajak di Indonesia: Suatu Pengantar Ilmu Hukum Terapan di Bidang Perpajakan*, Jakarta: Kencana, 2018.

### B. REGULATIONS

1. Undang-Undang No. 9 Tahun 2017 Tentang Perppu Nomor 1 Tahun 2017 Tentang Akses Informasi Keuangan Untuk Kepentingan Perpajakan Menjadi Undang-Undang.
2. Undang-Undang No. 10 Tahun 1998 Tentang Perubahan Atas Undang-Undang Nomor 7 Tahun 1992 tentang Perbankan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2017 Tentang Akses Informasi Keuangan Untuk Kepentingan Perpajakan.
3. Peraturan Menteri Keuangan No. 39/PMK.03/2017 Tentang Tata Cara Pertukaran Informasi Berdasarkan Perjanjian Internasional.
4. Peraturan Menteri Keuangan No. 70/PMK.03/2017 Tentang Petunjuk Teknis Mengenai Akses Informasi Keuangan Untuk Kepentingan Perpajakan.
5. Surat Edaran Otoritas Jasa Keuangan No. 16/SEOJK.03/2017 Tentang Penyampaian Informasi Nasabah Asing terkait Perpajakan dalam Rangka Pertukaran Informasi Secara Otomatis Antar Negara dengan



Menggunakan Standar Pelaporan Bersama  
(Common Reporting Standard).

### C. ARTICLES/PAPERS/RESEARCH REPORTS

1. Bustamar Ayza, dalam Indonesian Tax Review Vol. IX Ed, 6 Tahun 2016.
2. Tim Penulis Direktorat Jenderal Pajak, *Frequently Asked Question Common Reporting Standart (CRS) dalam rangka implementasi UU Nomor 9 tahun 2017 beserta aturan pelaksanaannya*, 2017.

### D. WEBSITES

1. <http://www.hukumonline.com/berita/baca/lt57cd22602e267/kebut-revisi-uu-demi->

mengejarimplementasi-iautomatic-exchange-ofinformation-iaccessed on30 June, 2019.

2. <https://bisnis.tempo.co/read/1213233/ditjen-pajak-tanggapi-laporan-oecd-soal-pertukaran-data-otomatis/full&view=ok> accessed on 30 June, 2019.

How to cite this article: Pasaribu KE, Ginting B, Sunarmi et.al. A juridical analysis of access opening to the financial information of bank customers' or taxpayers' data for taxation purpose. International Journal of Research and Review. 2020; 7(8): 371-379.

\*\*\*\*\*