
Legal Justice: The Abolition of the Principle of Bank Secrecy for Tax Interests in Indonesia

Putri Anggia¹✉

Ani Yunita²

Fadia Fitriyanti³

¹Faculty of Law, Universitat Autònoma de Barcelona, Spain

²Faculty of Law, Universitas Muhammadiyah Yogyakarta, Indonesia

³Faculty of Law, Universitas Muhammadiyah Yogyakarta, Indonesia

✉putrianggia@umy.ac.id

Article Info

Submitted: Feb. 3, 2023

Revised: June 30, 2023

Accepted: June 30, 2023

Keywords:

Rights to privacy;
Information exchange;
Justice;
Tax law.

How to cite [Chicago Manual of Style 17th edition (full note)]:

Putri Anggia, Ani Yunita, and Fadia Fitriyanti, "Legal Justice: The Abolition of the Principle of Bank Secrecy for Tax Interests in Indonesia," *Jambura Law Review* 5, no. 2 (2023): 314-331.

Abstract

As a member of the international community, Indonesia has a responsibility to participate in the execution of global policy. Recently, a global policy was implemented to address the sharing of financial information between countries. Financial information transparency between countries requires the sharing of bank customers' financial information via both manual and automatic transmission. This policy aims to prevent economic crimes, including tax evasion. This study combines normative legal research and in-depth interviews aimed at determining how to determine how legal justice can be achieved in the context of the exchange of financial data for taxes purposes in Indonesia. The principle of bank secrecy functions as a safeguard to protect bank clients' right to privacy, which is a human right that must be preserved. On the one hand, citizens have a civic duty to voluntarily fulfill their tax obligations. On the other hand, as bank clients, citizens also have the right to be protected from violations of privacy. Assuming the perspective of legal justice, this paper seeks to describe the balance between these two needs. Finally, the study's results support the argument for abolishing the principle of bank secrecy, especially in the realm of taxation.

1. Introduction

In recent years, the Indonesian Government has carried out many tax reform programs in an effort to increase tax revenue. For example, the tax amnesty program, which was instituted in 2016, was designed to increase taxpayer compliance while expanding the tax base. The tax amnesty program was introduced for several reasons, however, the tax amnesty program, which was designed to encourage tax compliance, was deemed a failure. Indeed, although there are 32 million Indonesians with a tax identification number, only 22 million submitted an annual tax return as of 2021. In addition, 40% to 50% of these tax returns reported an income of zero.¹ Moreover, many Indonesians declared their foreign assets as part of the tax amnesty program and were able to make a so-called “ransom payment” as determined by the Indonesian Government in lieu of paying a fine for past undeclared assets. However, despite instituting this tax amnesty program, the state failed to collect the target amount of ransom payments. The North Jakarta Regional Tax Office gave a presentation titled “Post Tax Amnesty Tax Policy” on May 10, 2017, at the National Seminar event organized by the Kwik Kian Gie School of Business. The presentation revealed that payments collected as part of the tax amnesty program reached a total of IDR 135.35 trillion, consisting of IDR 114.23 trillion in ransom payments, IDR 19.37 trillion in payments of tax arrears, and IDR 1.75 trillion in cessations of bookkeeping inspections. Domestic declarations totaled IDR 1,036 and foreign declarations totaled IDR 147 trillion. Of the approximately 37 million registered taxpayers in Indonesia, only about 2.69% participated in the tax amnesty program; these participants consisted of 972,552 existing taxpayers and 31,848 new taxpayers.²

Following the failure of the tax amnesty program, the Indonesian Government declined to return property rights to Indonesian residents living abroad in an attempt to reach its target amount for tax revenue. However, it is a positive development that the international community is aggressively attempting to tackle the problem of tax evasion. An important component of this effort is the international exchange of

¹ BeritaSatu.com, “Baru 32 Juta WNI Punya NPWP,” *beritasatu.com*, 32, accessed July 26, 2021, <https://www.beritasatu.com/ekonomi/419440/baru-32-juta-wni-punya-npwp>.

² Chairil Anwar Pohan, *Pedoman Lengkap Pajak Internasional*, Revisi (Jakarta: Gramedia Pustaka Utama, 2019).

information. Chairil Anwar Pohan³ cites a claim by Media Indonesia stating that a third of Singapore's wealthy businessmen are from Indonesia and are collectively worth \$68 billion to \$70 billion. Moreover, in 2009, clients residing in Indonesia transferred a total of \$1.4 billion to Singaporean banks.⁴ However, a spokesman for the Monetary Authority of Singapore stated that Singapore does not tolerate people abusing the financial system to protect their assets or evade taxes.⁵

However, many wealthy investors hid their wealth abroad to take advantage of differences in taxation rates. For example, Singapore has a corporate income tax rate of 17%, whereas Indonesia has a corporate tax rate of 25%.⁶ This incentivizes investors to invest in Singapore rather than Indonesia, in turn negatively affecting the tax revenue of the Indonesian Government. Similar tax rate differentials exist between other countries as well, causing what is sometimes referred to as a "tax rate war." Moreover, the Organization of Economic Cooperation and Development (**OECD**) and world tax experts are very cognizant of these tax wars, and they seek to minimize tax and tariff wars by eliminating tax havens and implementing uniform tariffs across multiple countries. Additionally, cross-national information exchanges represent an important method for regulating corporations and individuals who hide large sums of money outside of their countries of domicile to avoid paying taxes, which, in turn, negatively affects national tax revenues.

The preamble to the act, which is concerned with access to financial information for tax purposes, states that taxation authorities must be granted the authority to obtain financial access for tax purposes. So far, authorities' limited access to financial records has constituted an obstacle to strengthening the taxation database and maintaining the effectiveness of the tax amnesty policy for the purpose of increasing tax revenue. Meanwhile, the Indonesian Directorate General of Tax requires access to the legal banking information of bank customers because Indonesia has signed various

³ Ibid.

⁴ Sakina Rakhma Diah Setiawan, "Kasus Mega Transfer Rp 19 Triliun, Singapura Investigasi Standard Chartered," *KOMPAS.com*, October 10, 2017, <https://ekonomi.kompas.com/read/2017/10/10/180254926/kasus-mega-transfer-rp-19-triliun-singapura-investigasi-standard-chartered?page=all>.

⁵ Ibid.

⁶ Pohan, *Pedoman Lengkap Pajak Internasional*, 95.

international tax treaties and, therefore, is obligated to commit to automatic exchanges of tax information. That is, if Indonesia does not form a legal product, then it will fail to fulfill its commitments regarding the automatic exchange of financial information.⁷

Access to information for tax purposes includes granting access to financial information related to tax matters and the implementation of international treaties regarding taxation. Free access to tax information is in direct opposition to the prevailing principle of bank secrecy, which protects bank customers' data as part of the larger right to privacy. However, in the realm of taxation, there are exceptions to this right to privacy. Therefore, as stated in Article 41, Article 41A, Article 42, Article 43, Article 44, and Article 44A of Law Number 10 of 1998 concerning banking, this new policy will provide easier access to bank customers' information.

2. Problem Statement

This legal study discusses how legal justice can be achieved in the context of the exchange of financial information in the interest of taxation in Indonesia.

3. Methods

This study employs both a normative legal research approach alongside in-depth interviews with knowledge sources on this topic, including Mr. Ruben Hutabarat, Deputy Director of the Center for Indonesia Taxation Analysis (**CITA**). The normative legal research approach relies on secondary data sources obtained through library research, as well as primary legal documents (primary sources), secondary legal materials (secondary sources), and tertiary legal materials related to research on bank secrecy, financial information disclosures for tax purposes, and legal justice. The obtained data was analyzed qualitatively in order to determine their validity and formulated into a description that elaborates on the disclosure of financial information for tax purposes and its implications for the principle of bank secrecy. In addition, the data, which was selected according to its level of truthfulness, was then evaluated using the theories obtained from the literature review to generate answers to the research questions.

⁷ Consideration Section, Law Number 9 of 2017 concerning Access to Financial Information in the Field of Taxation

4. Results and Analysis

4.1. The Principle of Bank Secrecy

Following The banking sector is the primary driving force behind national economic development, and therefore, no country's financial system lacks a banking sector. In Indonesia, the Pancasila— that is, the foundational philosophy of the country—as well as the 1945 Constitution, established that the banking sector plays a vital role in achieving national development goals by creating a just and prosperous society.

Banks are part of the financial and payment systems of countries. Banks are also vital to the global financial system and payment traffic. Law Number 7 of 1992, which was amended by Law Number 10 of 1998 concerning Banking, defines a bank as follows: "A bank is a business entity that collects funds from the public in the form of savings and distributes them to the public in the form of credit and other forms to improve the standard of living of the people at large."⁸

When carrying out their duties as intermediary institutions, banks are required to adhere to banking principles, including the principle of confidentiality, also referred to as banking secrecy. Banking Secrecy is a known concept in any country with banks and financial institutions.

also comply with the rules regarding their obligations to maintain banking secrecy and trust within the community.⁹ Therefore, for a bank to be trusted by its customers, it is important that "the bank does not disclose the details of customers' deposits or their identities to other parties." That is, trust depends on the bank's ability to uphold "bank secrets."

According to the Act of the Republic of Indonesia Number 7 of 1992 concerning Banking as Amended by Act Number 10 of 1998, the term "bank secrecy" refers to all information regarding depositors and their deposits.¹⁰ Thus, the bank must provide customers with information regarding their identities and financial condition.

⁸ Kasmir, *Bank Dan Lembaga Keuangan Lainnya*, Revisi, Cet. 17 (Jakarta: Kasmir, 2016), 24.

⁹ Akhmad Yasin, "Keterkaitan Kerahasiaan Bank Dan Pajak: Antara Kepentingan Negara Dan Pribadi," *Jurnal Konstitusi* 16, no. 2 (July 11, 2019): 212–34, <https://doi.org/10.31078/jk1621>.

¹⁰ Indah Widi, "Prinsip Kerahasiaan Bank Terhadap Data Nasabah dalam Financial Technology Terkait Terjadinya Cybercrime," *Justitia Jurnal Hukum* 2, no. 2 (October 30, 2018): 392, <https://journal.um-surabaya.ac.id/index.php/Justitia/article/view/2246>.

However, in this case, the bank also keeps this information confidential from other parties, except for parties that are granted access to this information according to the Banking Law. The bank–customer relationship is unlike an ordinary contractual relationship. Moreover, in this relationship, there is an obligation for banks not to disclose their customers’ confidential information to a third party unless otherwise stipulated by applicable laws and regulations. In this context, the term “bank secrecy. Thus, the term bank secrecy” refers to confidential information regarding the relationship between a bank and its customers. Therefore, the banking world seeks to manage public money so that banks are able to maintain trust within the community. Additionally, banks are obliged to maintain the security of customers’ deposits. To ensure the safety of customers’ deposits, banks are prohibited from providing information recorded at the bank regarding their customers’ financial situations and other matters. That is, banks must keep customers’ financial conditions confidential, and if they violate banking secrecy regulations, they will be subject to sanctions.

Considering in recognition of the importance of the principle of banking confidentiality, Indonesian legislators officially institutionalized this principle in Articles 40 to 45 of Law Number 10 of 1998.¹¹ The law states that excluding the extenuating circumstances described in Article 41, Article 41A, Article 43, Article 44, and Article 44A, customer data cannot be revealed to parties outside of the bank.

There are two theories about bank secrecy, as put forward by Muhammad Djumhana,¹² meanwhile, has introduced the following two principles regarding bank secrecy:

- 1) The “absolute principle” states that no bank is allowed to disclose the financial secrets of its customers. Currently, there are almost no countries that adhere to this principle. However, some countries, such as the Bahamas, provide tax havens that permit bank secrecy in special cases.

¹¹ Carissa Amelia Haryono, “Kewajiban Bank Melaporkan Perpajakan Data Nasabah Berdasarkan Prinsip Kerahasiaan Bank,” *Notarius* 12, no. 1 (June 10, 2019): 419, <https://doi.org/10.14710/nts.v12i1.28854>.

¹² Joko Satrianto Wibowo, “Penghapusan Prinsip Kerahasiaan Dalam Regulasi Perbankan Indonesia,” *Jurnal Paradigma Hukum Pembangunan* 2, no. 02 (2017): 106, <https://doi.org/10.25170/paradigma.v2i02.1898>.

- 2) The “relative principle” states that bank secrecy should be maintained, but that in special cases, particularly in extraordinary circumstances regarding tax evasion, the principle of bank secrecy can be breached.

Based on exceptions to the bank secrecy provisions contained in Article 40, Paragraph 1 of the Banking Law can be described as follows:¹³

- 1) For tax purposes. The disclosure of confidential bank information for tax purposes is regulated by Article 41, Paragraph 1 of the Banking Law, which stipulates that for tax purposes, the leadership of Bank Indonesia, at the request of the Minister of Finance, is authorized to issue written orders to banks ordering them to provide information and provide written evidence and documentation regarding the financial condition of certain depositors to tax officials.
- 2) For the purpose of the settlement of bank receivables that have been submitted to the State Receivables and Auctions Agency (**BUPLN**) and State Receivables Affairs Committee (**PUPN**). Article 41A, Paragraph 1 of the Banking Law provides the legal basis for providing access to confidential bank information for the benefit of bank receivables submitted to the BUPLN or the State Receivable Affairs Committee.
- 3) Confidential bank information may be shared with a third party on the grounds that it serves the interests of the judiciary in a criminal case, as stipulated by Article 42, Paragraph 1 of Law Number 10 of 1998 concerning Banking.
- 4) Civil cases between banks and customers, Article 43 of the Banking Law states that bank directors can inform the court about a customer’s financial condition and provide information relevant to the case.
- 5) According to Article 44 paragraph (1) of the Banking Law, in the context of exchanging information between banks, Article 44, Paragraph 1 of the Banking Law states that there are grounds for violating bank secrecy provisions.

¹³ Hermansyah, *Hukum Perbankan Nasional Indonesia*, Revisi (Jakarta: Bumi Aksara, 2008), 137.

- 6) Law Number 10 of 1998 states that in accordance with Article 44A, Paragraph 1 of the Banking Law, the principle of banking secrecy can be voided when it is done at the request or approval of the depositing customer or their heirs.

In some countries, the right to bank secrecy has been institutionalized as a human right. Human rights are inherent rights granted to humans based on their human dignity, and they are not dependent on one's status as a member of a certain society or nation. Most human rights are regulated by national constitutions, and therefore, in several countries—such as the United States, the Netherlands, Germany, and South Korea—provisions regarding bank secrecy are based on the concept of human rights.

Rights and obligations constitute a delicate balance of power whereby individual rights correspond to obligations held by the opposing party, and legal protections ensure that these rights and obligations will be upheld. According to Hermansyah, the essence of customer protection is to protect the interests of depositing customers and their deposits against the risk of losses. This, in turn, maintains public trust, especially among customers.

Violation of violating bank secrecy obligations by disclosing customer information to an unauthorized party is a violation of customers' rights. The customer's right to the confidentiality of personal data is a right that is protected by legal deposit agreements between customers and banks and the Banking Law. Potential disputes between banks and customers will occur if banks violate the rights of customers. Legal protection for customers is, therefore, acutely necessary, as banks possess considerably more bargaining leverage than customers.

The Financial Services Authority Institution serves to protect customer rights. It was first established pursuant to Law Number 23 of 1999 concerning Bank Indonesia, which has been amended several times, most recently by Law Number 6 of 2009 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2008 concerning Second Amendment to Law Number 23 of 1999 concerning Bank Indonesia. The Financial Services Authority Institution was established to address multiple cross-sectoral problems in the financial services sector; however, it has not yet achieved optimal protection for consumers of financial services.

The obligation to maintain bank secrecy can be waived if the public interest requires the disclosure of confidential bank information. In reference to the principles of bank secrecy addressed above, exceptions to the principle of bank secrecy for tax purposes can be categorized as belonging under the relative principle. The relative principle of bank secrecy provides justification for breaching the confidentiality of bank customers for the benefit of the state and public interest. That is, the Indonesian Directorate General of Taxes must be granted access to taxpayer banking data to accurately calculate the tax obligations of taxpayers, also conforms to OECD regulations implemented in 2018 regarding the automatic exchange of tax information with other countries. The Indonesian Government has committed to cooperating with tax administrations around the globe on exchanging banking information for tax purposes, and therefore, Indonesian tax authorities will be given the authority to access customer data. The authority of the Directorate General of Taxes to disclose bank customer data for tax purposes is further strengthened by the issuance of Government Regulation in Lieu of Law Number 1 of 2017 concerning Access to Financial Information for Tax Purposes. This regulation grants tax authorities' additional tools to secure tax revenue.

4.2. The Principle of Tax Justice

The tension between the regulations intended to increase the tax revenue of the state and laws amending the principle of banking secrecy, which protects the human rights of bank customers, raises questions over legal justice and the basic principle of taxation. There are many definitions and understandings of justice. In subsection B, we discuss the various types of justice applied to taxation. Initially, the theory of justice in taxation was equated with the extraction of as many goose feathers as possible before the geese screamed. This theory is known as the “economic theory of mercantilism,” or the “theory of Colbertism,” which states that the welfare of a country is determined by the amount of assets it possesses. The ancient theory of taxation justice, which is the basis of the current understanding of justice and is well-known in the taxation environment, is represented by the four-maxim theory proposed by Adam Smith. The four-maxim theory consists of four theories: the principle of balance (equality), the principle of legal certainty (certainty), the principle of billing accuracy (convenience of

payment), and the principle of economy (economy in collection).¹⁴ Among these four principles, the principle of equality addresses questions of justice. According to this principle, state tax collection must account for the capacity and income of the taxpayer.¹⁵ The state may not act in a discriminatory manner toward taxpayers. A fair taxation system requires that identical treatment be applied to all people or entities that possess similar economic means.¹⁶ According to Edwin R. A. Seligmen, within taxation, there are four principles of justice: fiscal, administrative, economic, and ethical justice.¹⁷ The ethical principle of justice is characterized by uniformity and universality.¹⁸ Seligmen states that uniformity, which refers to the equality of taxation, is not an absolute but rather a relative concept of justice. In this context, the word uniformity describes the equal treatment of taxpayers.¹⁹

Meanwhile, according to Musgrave, tax justice can be upheld when everyone pays taxes according to their respective economic capacity. That is, horizontal equity implies that people earning a similar amount of money pay the same amount in taxes, while vertical equity implies that people with higher incomes pay more taxes.²⁰ According to Richard M. Bird, Richard A. Musgrave and Peggy B. Musgrave,²¹ there are two principles of justice in the context of tax collection:

- 1) The “benefit principle” states that taxpayers must pay taxes in accordance with the benefits they enjoy from the Government (this approach is called the “revenue and expenditure approach”).
- 2) The “ability principle” states that taxpayers must pay taxes according to their economic ability (according to income).

¹⁴ Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, Books I, II, III, IV and V (Amsterdam; Lausanne; Melbourne; Milan; New York; Sao Paulo: Metalibri, 2007), https://www.ibiblio.org/ml/libri/s/SmithA_WealthNations_p.pdf.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ajay K. Mehrotra, “Edwin R.A. Seligman and the Beginnings of the U.S. Income Tax,” SSRN Scholarly Paper (Rochester, NY, August 17, 2006), <https://papers.ssrn.com/abstract=925011>.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Richard M. Bird, Richard A. Musgrave, and Peggy B. Musgrave, “Public Finance in Theory and Practice,” *The Canadian Journal of Economics* 10, no. 3 (August 1977): 524, <https://doi.org/10.2307/134487>.

²¹ Ibid.

Concepts of justice within taxation continue to evolve, and new theories have emerged in response to the increasingly global scale of taxation. This study seeks to examine the principle of tax justice in the context of international information exchanges that directly oppose the principle of bank secrecy. More specifically, this study discusses this principle in relation to various laws and regulations regarding access to information.

4.3. Exchange of Financial Information for Tax Purposes in Indonesia

The various theories of tax justice outlined above do not cover the rights of taxpayers who are also bank customers, as will be demonstrated in the following analysis. However, it is first necessary to conduct a juridical analysis of the arrangement to draw conclusions.

Before being covered by Law Number 9 of 2017, this topic was governed by the following regulations established by the Minister of Finance:

- 1) Regulation of the Minister of Finance of the Republic of Indonesia Number 60/PMK.03/2014 concerning Exchange of Information
- 2) Ministerial Regulation Finance Number 125/PMK.010/2J15 concerning Amendment to Regulation of the Minister of Finance Number 60/PMK.03/2014 concerning Procedures for exchange of Information
- 3) Regulation of the Minister of Finance of the Republic of Indonesia Number 39/PMK.03/2017 concerning Procedures for Exchange of Information Based on International Agreements

These ministerial regulations are not sufficient to meet the conditions for becoming a participating country in the Automatic Exchange of Information, a program launched by the OECD. Therefore, the Indonesian Government issued Government Regulation in Lieu of Law Number I of 2017 concerning Access to Financial Information for Tax Purposes, which was later ratified as Law Number 9 of 2017 concerning Access to Financial Information for Tax Purposes.

Law number 9 of 2017 completely abolished the principle of bank secrecy on the grounds of serving public taxation interests. This was similarly described by Niels

Johannesen and Gabriel Zucman, who stated, “A comprehensive network of treaties providing for automatic exchange of information would put an end to bank secrecy and could make tax evasion impossible.”²² This was largely already made clear in 2014 with the recognition of information disclosures by the G20 and the admission that the principle of bank secrecy would end and that tax avoidance would become impossible. This is corroborated by several articles and paragraphs in Law Number 9 of 2017, which state that the principle of bank secrecy does not apply in the following cases:

First clause: Article 2, Paragraph 4

In the context of submitting the report, as referred to in Paragraph 2, Letter A, financial service institutions, other financial service institutions, and other entities, as referred to in Paragraph 1, are required to carry out procedures for identifying financial accounts in accordance with financial information exchange standards based on international agreements in the field of taxation.

The identification of financial accounts in accordance with financial standards was previously not carried out without written approval from Bank Indonesia officials. However, this task can now be executed automatically and has been granted a legal justification within the field of taxation.

Second clause: Article 2, Paragraph 6

Financial service institutions, other financial service institutions, and other entities, as referred to in Paragraph 1, are not allowed to (a) open a new financial account for new customers or (b) conduct new transactions related to financial accounts for existing customers who refuse to comply with the provisions on the identification of financial accounts as referred to in Paragraph 4.

It is not an agreement if the legislation has been regulated. There is an obligation to comply with the requirement regarding the identification of financial accounts because financial service institutions are prohibited from serving customers who do not wish to have their financial identification revealed. This can be referred to as an obligation that provides no provision for refusing to comply on the grounds of the right to privacy.

²² Niels Johannesen and Gabriel Zucman, “The End of Bank Secrecy? An Evaluation of the G20 Tax Haven Crackdown,” *American Economic Journal: Economic Policy* 6, no. 1 (February 2014): 27, <https://doi.org/10.1257/pol.6.1.65>.

The third clause: Article 2, Paragraph 8

In the event that financial service institutions, other financial service institutions, and other entities, as referred to in Paragraph 1, are bound by the obligation to maintain secrecy under the provisions of laws and regulations, then the obligation to maintain confidentiality does not apply in implement the Government Regulation in Lieu of this Law.

Indeed, based on the law, any agency can now legally request that information that was previously confidential be made public for reasons of taxation interests. Here, it is interesting to note the statements made by interviewers regarding the results of our research. Ruben Hutabarat, who is the director of the CITA, one of the leading and most trusted agencies in the field of Indonesian tax analysis, stated that a customer's right to privacy is still protected because their banking information, which is protected by the right to privacy, is only disclosed for tax purposes. In addition, tax authorities use confidentiality only for tax purposes and not other purposes.²³ Accordingly, it can be emphasized that disclosing personal information does not violate human rights if it is done for tax purposes.

In principle, the public interest is prioritized over private interests. However, legal protection is needed to safeguard customers against the deregulation of the banking secrecy principle. In addition to the clauses above, Article 8, which negates the enactment of the law governing the principle of bank secrecy, is also of concern. That is, Law Number 9 of 2017 negates the principle of banking secrecy for tax purposes.

The juridical analysis above provides information on the status of the privacy rights of bank customers as well as taxpayers in the era of financial information disclosure, especially for tax purposes. The OECD has outlined the rights and obligations of taxpayers (taxpayers), one of which is the right to privacy. The tax authority will (1) only make inquiries about a taxpayer when it is necessary to confirm that they have met their tax obligations; (2) only seek access to information relevant to valid inquiries; and (3) treat any information obtained, received, or held as confidential.²⁴ That is, tax

²³ Interview with CITA, Mr. Ruben Hutabarat on July 5, 2021.

²⁴ OECD Committee of Fiscal Affairs Forum on Tax Administration, "Centre for Tax Policy and Administration: Tax Guidance Series" (OECD Committee of Fiscal Affairs Forum on Tax Administration, April 27, 1990), https://www.oecd.org/tax/administration/Taxpayers'_Rights_and_Obligations-Practice_Note.pdf.

authorities will treat information obtained from bank customers who are also taxpayers as personal information, and there is an assurance that this information will not be disseminated or used for purposes other than evaluating relevant tax obligations. In a sense, bank customers' right to banking security has been violated. This creates a sense of injustice and raises questions regarding the balance between taxpayers' rights and obligations. However, the limited nature of access to information functions to restore a sense of justice and ensure legal protections for bank customers and taxpayers. Although the principle of bank secrecy has become more flexible, the Indonesian Government is still trying to protect the rights of bank customers by stipulating that any information exchanged must be kept confidential in accordance with laws and international agreements.²⁵ Therefore, the government is seeking a "middle way" that ensures that citizens meet their tax obligations while still protecting bank customers' rights.

These restrictions on the sharing of bank customers' information establish legal protections for bank customers who want to retain their privacy rights while still fulfilling their tax obligations. The restrictions in question are restrictions on access to information. The information referred to is tax information, namely information established via the taxation laws of each country. Legal regulations mandating the exchange of information are not intended to disclose trade, business, industrial, commercial, or expert secrets, nor are they designed to reveal trade procedures or information that would violate the general policy agreed to between the Indonesian Government and any country that has signed the treaties for the avoidance of double taxation.²⁶ Pertinent information as stipulated by the Foreign Account Tax Compliance Act includes the name of the account holder, their address and taxpayer identification number, jurisdiction of tax residence, date and place of birth, the name of the financial institution, the gross amount of interest paid on the deposit account, the gross amount of dividends paid or credited to the account, the gross amount of interest (including interest and dividends) paid into the account, the gross amount resulting from the sale

²⁵ Article 10, Minister of Finance Regulation Number 39/PMK.03/2017 of 2017 concerning Procedures for Information Exchange Based on International Agreements

²⁶ Article 1 Number 4, Regulation of the Director General of Taxes Number PER-67/PJ/2009 concerning Procedures for Information Exchange Based on Double Tax Avoidance Agreement (P3B)

of assets held in the account, account balance at the reporting date, and account balance at closing date (if it has been closed during the reporting period).²⁷

This detailed information outlined above, which must be kept confidential, can only be used for tax purposes, and the legal basis for exchange sets limits on usage. The revenue authority receiving the information must ensure that the details of the information remain confidential.²⁸

In particular, the government oversees the legal protection of the privacy rights of bank customers as well as taxpayers, including the submission of official documents relating to the exchange of information from the director of international taxation to the head of the unit within the DGT, which is carried out carefully, and confidential qualifications are primarily used. On the official document on the information exchanged [8], affix the “CONFIDENTIAL” stamp on the official document master and the stamp of limits on use and disclosure in the attachment of the official document.²⁹ Meanwhile, official documents relating to the exchange of information from unit leaders within the DGT to the director of international taxation are submitted using official documents with confidential qualifications.³⁰ Not only at the international level setting limits on the exchange of information that is kept confidential, but it also regulates the scope of the partner country or partner jurisdiction relating to the exchange of information to authorized officials, namely in addition to using official documents and secret qualifications also affixing a seal stating “CONFIDENTIAL” on the main document and the stamp on the restrictions on the use and disclosure of information, which is placed in the attachment to the official document.³¹

²⁷ Revenue.ie, “What Is Automatic Exchange of Information (AEOI)?,” Revenue, accessed July 26, 2021, <https://www.revenue.ie/en/companies-and-charities/international-tax/aeoi/what-is-aeoi.aspx>.

²⁸ Ibid.

²⁹ Article 7 paragraph 2 letter a, Regulation of the Director General of Taxes Number PER-24/PJ/2018 concerning Procedures for Spontaneous Exchange of Information in Order to Implement International Agreements

³⁰ Article 7 paragraph 2 letter b, Regulation of the Director General of Taxes Number PER-24/PJ/2018 concerning Procedures for Spontaneous Exchange of Information in Order to Implement International Agreements

³¹ Article 7 paragraph 4 letter b, Regulation of the Director General of Taxes Number PER-24/PJ/2018 concerning Procedures for Spontaneous Exchange of Information in Order to Implement International Agreements

As part of regulations governing the exchanging of banking information for tax purposes, sanctions are imposed on violations of existing regulations. [13] Therefore, confidentiality as a form of privacy is strictly maintained and does not result in human rights violations because, in essence, the right to privacy is a human right of every citizen, and the government is obliged to protect this right.

5. Conclusion

The principle of legal justice continues to be a pertinent topic and object of analysis in the field of taxation. Indeed, justice has always been a central concern when forming tax laws and regulations. However, the principle of justice is not reflected in the application of the exchange of financial information for tax purposes as long as the principle of human rights of a bank customer is followed. Consequently, confidential information and data can be accessed and distributed for tax purposes. The underlying justification is that it serves the public interest, which is prioritized over private interests. The initial agreement between a bank customer and the bank is not viable because the clause in the law that regulates this relationship is mandatory. Bank customers and bank institutions that refuse to agree to the exchange of information can neither receive nor provide bank services. Moreover, granting access to the personal data of bank customers does not require approval from Bank Indonesia because it is an automatic process; therefore, it can be concluded that a new legal framework emerges from the application of the principle of bank secrecy, which is no longer rigid or flexible and has come under state ownership on the basis of taxation interests.

References

- BeritaSatu.com. "Baru 32 Juta WNI Punya NPWP." *beritasatu.com*. Accessed July 26, 2021. <https://www.beritasatu.com/ekonomi/419440/baru-32-juta-wni-punya-npwp>.
- Bird, Richard M., Richard A. Musgrave, and Peggy B. Musgrave. "Public Finance in Theory and Practice." *The Canadian Journal of Economics* 10, no. 3 (August 1977): 524. <https://doi.org/10.2307/134487>.

- Haryono, Carissa Amelia. "Kewajiban Bank Melaporkan Perpajakan Data Nasabah Berdasarkan Prinsip Kerahasiaan Bank." *Notarius* 12, no. 1 (June 10, 2019): 416–32. <https://doi.org/10.14710/nts.v12i1.28854>.
- Hermansyah. *Hukum Perbankan Nasional Indonesia*. Revisi. Jakarta: Bumi Aksara, 2008.
- Johannesen, Niels, and Gabriel Zucman. "The End of Bank Secrecy? An Evaluation of the G20 Tax Haven Crackdown." *American Economic Journal: Economic Policy* 6, no. 1 (February 2014): 65–91. <https://doi.org/10.1257/pol.6.1.65>.
- Kasmir. *Bank Dan Lembaga Keuangan Lainnya*. Revisi, Cet. 17. Jakarta: Kasmir, 2016.
- Law Number 9 of 2017 concerning Access to Financial Information in the Field of Taxation
- Mehrotra, Ajay K. "Edwin R.A. Seligman and the Beginnings of the U.S. Income Tax." SSRN Scholarly Paper. Rochester, NY, August 17, 2006. <https://papers.ssrn.com/abstract=925011>.
- Minister of Finance Regulation Number 39/PMK.03/2017 of 2017 concerning Procedures for Information Exchange Based on International Agreements
- OECD Committee of Fiscal Affairs Forum on Tax Administration. "Centre for Tax Policy and Administration: Tax Guidance Series." OECD Committee of Fiscal Affairs Forum on Tax Administration, April 27, 1990. https://www.oecd.org/tax/administration/Taxpayers'_Rights_and_Obligations-Practice_Note.pdf.
- Pohan, Chairil Anwar. *Pedoman Lengkap Pajak Internasional*. Revisi. Jakarta: Gramedia Pustaka Utama, 2019.
- Regulation of the Director General of Taxes Number PER-24/PJ/2018 concerning Procedures for Spontaneous Exchange of Information in Order to Implement International Agreements
- Regulation of the Director General of Taxes Number PER-67/PJ/2009 concerning Procedures for Information Exchange Based on Double Tax Avoidance Agreement (P3B)
- Revenue.ie. "What Is Automatic Exchange of Information (AEOI)?" Revenue. Accessed July 26, 2021. <https://www.revenue.ie/en/companies-and-charities/international-tax/aeoi/what-is-aeoi.aspx>.

- Setiawan, Sakina Rakhma Diah. "Kasus Mega Transfer Rp 19 Triliun, Singapura Investigasi Standard Chartered." KOMPAS.com, October 10, 2017. <https://ekonomi.kompas.com/read/2017/10/10/180254926/kasus-mega-transfer-rp-19-triliun-singapura-investigasi-standard-chartered?page=all>.
- Smith, Adam. *An Inquiry into the Nature and Causes of the Wealth of Nations*. Books I, II, III, IV and V. Amsterdam; Lausanne; Melbourne; Milan; New York; Sao Paulo: Metalibri, 2007. https://www.ibiblio.org/ml/libri/s/SmithA_WealthNations_p.pdf.
- Wibowo, Joko Satrianto. "Penghapusan Prinsip Kerahasiaan Dalam Regulasi Perbankan Indonesia." *Jurnal Paradigma Hukum Pembangunan* 2, no. 02 (2017): 102–14. <https://doi.org/10.25170/paradigma.v2i02.1898>.
- Widi, Indah. "Prinsip Kerahasiaan Bank Terhadap Data Nasabah dalam Financial Technology Terkait Terjadinya Cybercrime." *Justitia Jurnal Hukum* 2, no. 2 (October 30, 2018). <https://journal.um-surabaya.ac.id/index.php/Justitia/article/view/2246>.
- Yasin, Akhmad. "Keterkaitan Kerahasiaan Bank Dan Pajak: Antara Kepentingan Negara Dan Pribadi." *Jurnal Konstitusi* 16, no. 2 (July 11, 2019): 212–34. <https://doi.org/10.31078/jk1621>.