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Description

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KATA PENGANTAR

Puji dan syukur Dewan Redaksi ucapkan kepada Tuhan Yang Maha Esa atas berkat dan rahmat-Nya penyusunan Jurnal Notariil yang diterbitkan oleh Warmadewa Press dapat selesai tepat pada waktunya. Dewan Redaksi juga mengucapkan terimakasih kepada para narasumber/penulis yang telah menyumbangkan ide, gagasan, atau pendapat dalam bentuk artikel ilmiah yang telah berkontribusi dalam penyusunan jurnal ini.

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Dewan Redaksi

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MEANING OF BANK SECRETS AFTER THE ENACTMENT OF LAW NUMBER 9 OF 2017 ON STIPULATION OF GOVERNMENT REGULATION IN LIEU OF LAW NO. 1 OF 2017 ON ACCESS TO FINANCIAL INFORMATION FOR THE INTERESTS TAXATION INTO LAW

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Abstract

The national economic development in Indonesia is inseparable from the banking role. The existence of the stipulation of Government Regulation in Lieu of Law (*PERPU*) Number 1 of 2017 on Access to Financial Information for Tax Purposes will certainly affect the regulation of the banking sector in particular related to bank secrets. The establishment of the Perpu appears to have attracted the attention of the government to immediately pass it into law. It is proven which on 23 August 2017 President Joko Widodo has authorized the *Perpu* to become a law through Law Number 9 of 2017 on Stipulation of Government Regulation in Lieu of Law (*PERPPU*) Number 1 of 2017 on Access to Financial Information for Tax Purposes into the Law -What. The policy is a form of Indonesia's commitment to participate in the automatic exchange of information globally for tax purposes. The automatic opening of bank secrets for tax purposes will certainly affect the previous banking arrangements, especially those related to bank secrets. Therefore, in order to avoid overlapping arrangements, the state of Indonesia needs to harmonize all regulations relating to bank secrets and the opening of bank secrets for tax purposes.

Keyword: Banking Secrecy, Taxation.

1. INTRODUCTION

Currently, bank secrets regulation in Indonesia is regulated in Law Number 10 of 1998 on Amendment to Act Number 7 of 1992 concerning Banking hereinafter referred to as the Banking Act. Provision of Article 1 Number 28 of the Banking Law provides a definition of bank secrecy. What is meant by bank secrets is everything, which with information, concerning depositors and depositors. Further regulation of bank secrecy can be found in the provisions of Article 40 of the Banking Act consisting of two paragraphs, where paragraph (1) states that Banks are required to keep confidential information about depositors and depositors, except in the case referred to in Article 41, Article 41A, Article 42, Article 43, Article 44 and Article 44A. The word 'except' in this term

shall be construed as restrictions on bank secrets¹. Under such provisions, the bank secrets can be exempted for tax purposes, for the benefit of settlement of bank accounts, for the benefit of criminal justice, for the benefit of civil courts, for the purposes of exchange of information between banks and the provision of information on the consent of the customer and the request of the legitimate heirs whereby depositors have died².

One of the exceptions to the bank secrecy is for the purposes of taxation stipulated in the provisions of Article 41 of the Banking Act. When looking at these provisions, the opening of bank secrets for tax purposes is still considered to have a relatively long procedure³. This may limit the tax authorities to obtain customer financial information to meet tax revenue

1. Zainal Asikin, *Pengantar Hukum Perbankan Indonesia*, Cet. 2. (Jakarta: PT. Raja Grafindo Persada, 2016), p.178.

2. Lihat dan baca Pasal 41, Pasal 41A, Pasal 42, Pasal 43, Pasal 44 dan Pasal 44A.

3. Darussalam, B. Bawono Kristasji, dan Deborah, *Akses Data Perbankan Untuk Tujuan Perpajakan: Keseimbangan Antara Hsk-Hak Wajib Pajak dan Penggalan Potensi Pajak-Studi Komparasi, Tax Law Disign and Policy Serries Nomor 0514*. DDT Working Paper Ensuring a Banlanced Tax System, 2014. p.14.

requirements.

Related to that, Indonesia along with G20 members (Group of Twenty) and OECD Members agreed to make a joint blessing through an automated information exchange formulated in the form of Common Reporting Standard (CRS). Indonesia's commitment is realized by stipulating Government Regulation in Lieu of Law No. 1 of 2017 on Access to Financial Information for Tax Interest on May 8, 2017 by President Joko Widodo. Furthermore, on 23 August 2017, the Government has ratified Law Number 9 of 2017 on Stipulation of Government Regulation in Lieu of Law Number 1 of 2017 concerning Access to Financial Information for the Interest of Forced Law to be hereinafter referred to the Act of Stipulation of Perpu Access Financial Information For Tax Interest becomes the Act.

When reading the provisions of Article 1 of the Act of Stipulation of the Perpu of Access to Financial Information for Tax Interest in the Act is meant by access to financial information for the purposes of taxation includes access to receive and obtain financial information in the framework of the implementation of the provisions of laws and regulations in the field of taxation and implementation of the agreement international field of *pepajakan*⁴. Based on these provisions the authors argue that the definition of financial access in the banking sector in this rule is the opening of bank secrets related to the interests of taxation. Where previously the arrangement regarding the opening of bank secrets for tax purposes is regulated in Article 41 of the Banking Act.

When reading the provisions of Article 8 Point 2 of the Act of Stipulation of the Perpu of Access to Financial Information for Tax Interest into the Law states that the provisions of Article 40 and Article 41 of the Banking Law are declared null and void⁵. Related to that, if recalling the provisions of Article 40 of the Banking Act it is clear that the provisions regulate the bank's obligations on bank secrets, exceptions to bank secrets, and parties tied to bank secrets. As for the terms and procedures for opening of bank secrets for the purposes of further taxation stipulated

in the provisions of Article 41 of the Banking Act. The existence of provisions stating that Article 40 of the Law on Banking does not apply will certainly lead to public opinion that the bank's current secrets have been removed. In addition, it is feared will lead to confusion in banking law in Indonesia.

2. METHOD

The type of research used is normative legal research, which is done by reviewing various legal rules that are formal such as laws and other regulations that are then connected with the problems that will be discussed in this study. The approach referred to in this study is the statute approach used for this research object; Conceptual approach taken by moving from legislation and doctrines that developed in law science, legal concepts and legal principles relevant to legal issues⁶. The conceptual approach of this research is used to review the content of Article 40 of Law Number 10 of 1998 regarding the Amendment of Law Number 7 of 1992 concerning Banking with the Ratification of Law Number 9 of 2017 concerning Stipulation of Government Regulation in Lieu of Law No. 1 of 2017 on Access to Financial Information for the Interests of Taxation into Law.

Legal material is used to solve legal issues and at the same time provide prescriptions of what should be⁷. The legal materials in this study are:

2.1 Primary Legal Material is a legal material that is authoritative, which means have authority, in this study covers:

- Law Number 14 of 1967 regarding Principles of Banking;
- Act Number 7 of 1992 concerning Banking;
- Law Number 10 of 1998 concerning Amendment to Act Number 7 of 1992 concerning Banking;
- Law Number 10 of 1998 concerning Amendment to Act Number 7 of 1992 concerning Banking;
- Law Number 9 of 2017 on Stipulation of Government Regulation in Lieu of Law Number 1 of 2017 concerning Access to

4. See and read Article 1 of Law Number 9 of 2017 on Stipulation of Government Regulation in Lieu of Law No. 1 of 2017 concerning Access to Financial Information for Tax Interests into Laws.

5. See and read Article 8 Point 2 of Law Number 9 of 2017 on Stipulation of Government Regulation in Lieu of Law No. 1 of 2017 concerning Access to Financial Information for the Interests of Taxation to Law.

6. Peter Mahmud Marzuki, *Penelitian Hukum Edisi Revisi Cet. Ke-12* (Jakarta: Prenadamedia Group, 2016), p. 95

7. Dyah Ochtarina Susanti dan A'an Efendi, *Penelitian Hukum (Legal Reseach)*, Cet. Ke-2, (Jakarta: Sinar Grafika, 2015), p. 3.

Financial Information for Tax Interest into law;

- Government Regulation in Lieu of Law Number 23 of 1960 concerning Bank Secrets; and
- Regulation of the Minister of Finance of the Republic of Indonesia Number 73/PMK.03/2017 concerning Amendment to the Regulation of the Minister of Finance No. 70/PMK.03/2017 on Technical Guide Regarding Access to Financial Information for Tax Interests.

2.2 Secondary Law Materials are all publications about law that are not official documents, such as textbooks, legal dictionaries, legal journals, and comments on court decisions.

2.3 Non-Law Material is a supporting material that can be books on political science, economics, sociology, philosophy and so long as it has relevance to the research topic. In this study, in addition to using legal materials both primary and secondary, the author will also use non-legal materials related to banking and bank secrets.

3. RESULTS AND DISCUSSION

The importance of the banking role can not be separated from the function of the bank itself, as can be seen the provisions of Article 3 of the Banking Act which states that the main function of Indonesian banking is as collectors and distributors of public funds⁸. According to Oliver G. Wood in Zainal Asikin there are 5 (five) functions held by banks in the economy, namely holding customers' funds; presents the payment mechanism; creating money and credit; provide trust services; and presents other services⁹. In addition, Hanson and Partington also argue that banks function as a transmission role and intermediation role¹⁰.

Banks plays an important role in national economic development so that there is an effort to maintain the existence of the Bank. Agree with Sutan Remy

Sjahdeini that the existence of a Bank is strongly influenced by the trust of the community¹¹. According Sutan Remy Sjahdeini there are several factors that affect the level of public confidence that is¹²:

- Integrity of the board;
- Knowledge and ability of management either in the form of knowledge of managerial ability and knowledge and technical ability of banking;
- Health of the bank concerned; and
- Bank compliance with bank secret obligations.

Based on this, the Bank's compliance with the bank's secret obligations is one of the factors affecting the level of public trust. So important is the role of bank secrets in banking activities, so it is necessary for a regulation that regulates the secrets of banks.

3.1 Meaning in Bank Secrets

The word "meaning" according to Big Indonesian Dictionary means "the meaning or purpose of the word"¹³. According Hornby in Yendra meaning is what is meant or what is meant in speech language¹⁴. According to Djajasudarma meaning is the link that exists among the elements of the language itself, especially the words¹⁵. Selain itu Kridalaksana also argues that meaning is the purpose of the speaker, the influence of the language unit in understanding perception or human behavior¹⁶.

Based on the description can be concluded that what is meant by meaning is everything what is meant or intended by the speaker. Everything the speaker means here is anything the author means. According to the authors, the meaning of bank secrets in this case is the shifts in the regulation of bank secrets until the passage of Law No. 9 of 2017 on Stipulation of Government Regulation in Lieu of Law No. 1 of 2017 on Access to Financial Information for Tax Interest Become Act.

8. See and read Article 3 of Law Number 10 of 1998 on Amendment to Act Number 7 of 1992 concerning Banking.

9. Zainal Asikin, *Op. Cit.*, p.17

10. Sarwedi, *Diklat Perkuliahan Manajemen Perbankan*, (Jember: Laboratorium Perbankan Fakultas Ekonomi Universitas Jember, 2002), p. 1-2.

11. Sutan Remy Sjahdeini, *Rahasia Bank: Berbagai Masalah Disekitarnya*. Jurnal Hukum. 2005, p.2.

12. *Ibid.*

13. Tim Penyusun Kamus Pusat Pembinaan dan Pembangunan Bahasa, *Kamus Bahasa* (Jakarta: Pusat Bahasa, 2008), p. 973.

14. Yendra, *Mengenal Ilmu Bahasa*, Edisi 1, Cet, ke-1, (Yogyakarta: Deepublish, 2016), p. 161.

15. *Ibid.*

16. *Ibid.*

3.2 Rationale of the Birth of Bank Secrets in Indonesia

Usman has placed trust as one of the principles in banking activities. This shows that trust is the most important part of banking activities. In addition, Sutan Remy Sjahdeini also said that the existence of a financial institution depends solely on the trust of the people who store funds in the Bank¹⁷. As has been explained previously that one of the factors that influence the level of public confidence is the ability of banks to hold firm bank secrets.

In some countries such as the United States, the Netherlands, Germany, and South Korea the arrangement of bank secrets was born from the concept of Human Rights regulated in the constitution or the constitution of the country¹⁸. Where bank secrets are a norm and staple on the notion that private property must be perfectly protected¹⁹. Such an assumption leads to the belief that the property of a person must be fully respected by anyone. This also applies to customers' funds deposited in a bank which is the property of a customer who must have perfect protection, so that the right of ownership must be fully respected by anyone, including by the state²⁰.

Increasingly, the era of technology and progress, with the arrangement of bank secrets, the bank can be used as a place to save funds from proceeds of crime, such as money laundering, corruption funds and so forth. In the liberal countries the arrangement of bank secrets that were originally set up in absolute terms, since the late 19th century there have been many arrangements on bank secrets, which were originally preserved in absolute terms, and then if the interests of the state desired, were to be released²¹.

According to Taufik E.L. in Dadang Husen Sobana said that the secret nature of banks is the bank's obligation to keep and confidential from the customer based on the following²²:

- The right of any person or entity not to interfere in matters of a personal

nature;

- The right arising from the engagement relationship between the bank and its clients shall be obliged and in good faith shall protect the interests of its customers;
- The Bank in collecting and from the community works based on public trust. Thus, the bank's knowledge of the customer's finances is not to be blamed and must be maintained by the bank;
- Habits and prevalence in the banking world.

According to Sutan Remy Sjahdeini, the bank's secret concept stems from the bank's goal of protecting its customers²³. The existence of these objectives leads to the emergence of thoughts to conceal the financial condition of bank customers is to protect the interests of customers individually²⁴. It is also proposed by Dadang Husen Sobana that the thought of keeping the financial state of the bank's customers gave rise to the provisions concerning the secret obligations of banks aimed at protecting the interests of individual customers²⁵.

When reading the general explanation of the Secret Perpu Bank, bank secrets are for the benefit of the bank itself which requires the trust of the people who put their money dibank. The public will only entrust their money to the bank if the bank has a guarantee that the bank's knowledge of deposits under his control will not be misused²⁶.

Based on the above description, it can be concluded that the regulation on bank secrets is one factor that can affect the level of public confidence in a bank, so that the bank can not trust the community depends on the bank's ability to apply bank secrets. In addition, according to the author of the regulation on bank secrets is true not only for customers themselves, but also for the interests of banks that require public trust to save money dibank.

17. Sutan Remy Sjahdeini, *Loc., Cit.*

18. Yunus Husein, *Rahasia Bank Dan Penegakan Hukum*, (Jakarta: Pustaka Juanda Tiga Lima, 2010), p.28.

19. See and read General Elucidation of Government Regulation in Lieu of Law Number 23 of 1960 on Bank Secrets.

20. *Ibid.*

21. *Ibid.*

22. Dadang Husen Sobana, *Hukum Perbankan di Indonesia*, (Bandung: Pustaka Setia, 2016), p. 163.

23. Sutan Remy Sjahdeini, *Loc. Cit.*

24. *Ibid.*

25. Dadang Husen Sobana, *Op. Cit.*, p. 152.

26. See and read General Elucidation of Government Regulation in Lieu of Law Number 23 of 1960 on Bank Secrets.

3.3 Bank Secrets in Government Regulation in Lieu of Law Number 23 of 1960 on Bank Secrets

The bank secrecy arrangement was first stipulated in Government Regulation in Lieu of Law Number 23 of 1960 on Bank Secrets hereinafter referred to as the Bank Secrets Regulation. The beginning of the arrangement of bank secrets began in the guided economy precisely in 1959. Where at that time the bank was used as one of the tools used to achieve the objectives of the revolution, until finally in 1960 the government established Perpu of Bank Secrets.

The confidential bank arrangements are explicitly stated in the provisions of Article 2 of the Bank Secrets *Perpu* stating that:

"The Bank shall not provide information about the financial condition of his/her customers who are registered with him and any other matters that the bank shall keep confidential in accordance with the norms in the mass, except as provided in Article 3 of this rule."

In view of the provisions of Article 3 of the Bank Secret *Perpu*, the exemption of bank secrecy covers the interests of taxation and for the interest of the judiciary in criminal cases²⁷.

3.4 Bank Secrets in Law Number 14 of 1967 on Banking Principles

Through the enactment of Law Number 14 of 1967 concerning Banking Principles, the Bank Secret *Perpu* is revoked. The enactment of Law Number 14 of 1967 on Banking Principles to be hereinafter referred to as the Banking Principles Act seems to remain accommodated by the Banking Principles Act. This can be seen in the provisions of Article 36 of the Banking Principles which states that:

"The Bank shall not provide any information concerning the financial condition of its clients recorded therein and other matters that the bank shall keep confidential according to the prevalence in the banking world, except in matters specified in this Law."

While reading the explanation of Article 36 of the Banking Principles Act has provided a definition of bank secrets. As for the definition of bank secrets according to everything related to finance and other things from bank customers who according to the prevalence of the banking world

need to be kept secret²⁸.

In addition to regulating the liability for bank secrecy provisions of Article 36 of the Banking Principles Act, also provides exceptions to bank secrets. The exemption is for the benefit of taxation and for the interest of the judiciary in a criminal case²⁹.

Based on this, it can be seen that even though the Bank Secrets *Perpu* has been revoked by the Banking Principles Act, the arrangement of bank secrecy remains accommodated and there has been a definition of the bank's own secrets. The confidential bank arrangements are placed in chapter 7 governing other provisions. Although both regulate bank secrets, there are different sanctions imposed by the Banking Principles Act. Where is the fine sanction at Bank Secret Regulation of Rp. 250.000,00 (two hundred and fifty thousand), while the fine sanction on the Banking Principles Act is Rp. 10.000,00 (ten thousand rupiah).

3.5 Bank Secrets in Law Number 7 of 1992 Concerning Banking

The regulation on bank secrets is changing again. The existence of regulatory reform related to banking will certainly affect the regulation of bank secrets in Indonesia. Act Number 7 of 1992 concerning Banking hereinafter referred to as the Banking Act prior to amendment has provided a definition of bank secrets mentioned in its own terms. This can be seen in the provisions of Article 1 number 16 of the Banking Act before the amendment stating that bank secrets are anything related to finance and other matters of bank customers which according to the prevalence of the banking world shall be kept confidential.

The arrangement of bank secrets is further stipulated in Chapter 7 on Banking Act before the amendment. Where the provisions of Article 40 paragraph (1) of the Banking Act before the changes. As for the shifting of the regulation concerning bank secrets Firstly, the definition of bank secrets, in the Banking Principles Act even though it has provided a definition of bank secrets, but the definition is mentioned in the explanatory provisions and become one with explanation of bank liabilities over bank secrets. This is certainly different from the Act Number 7 of 1992 on Banking. Where this law has provided a

27. See and read Article 3 of Government Regulation in Lieu of Law Number 23 of 1960 on Bank Secrets.

28. See and read the Elucidation of Article 36 of Law Number 14 of 1967 concerning Banking Principles.

29. See and read Article 37 paragraph (1) and paragraph (2) of Law Number 14 of 1967 concerning Banking Principles.

definition of bank secrets which are subject to separate provisions.

Secondly, the party is obliged to bank secrecy. The Principal Act states that the bank is a party that is obliged to uphold the secrets of the bank. In addition, when reading the provisions of Article 39 paragraph (2) and paragraph (3) of the Banking Principles, the party that is obliged to uphold the bank secrecy is the member of the Board of Directors and the bank's employees. Where such provision regulates the sanctions granted to members of the Board of Directors and bank employees who do not comply with the provisions governing the obligations of bank secrecy. The existence of sanctions arrangements directed to members of the Board of Directors and employees of such banks provides the consequence that the members of the Board of Directors and employees of the bank are also bound by the secrets of the bank. In relation thereto, parties who are bound to the obligation of bank secrecy in the Banking Act prior to this change are expressly mentioned in the provisions of Article 40 namely banks and affiliated parties.

Third, Exceptions to bank secrets. The Banking Principles Act only provides exceptions to bank secrets for tax purposes and for the benefit of the judiciary in criminal cases. However, in this banking law there are additional exceptions to bank secrecy, namely for tax incentives, the interests of the judiciary in criminal cases, the interests of civil cases between the bank and its customers, as well as the interests of information exchange.

Fourth, sanctions related to bank secrets. There are differences that are subject to sanctions provided by the Banking Principles and Banking Act. Where the Banking Principles Act there are three sanctions targets for bank secrets addressed to: any person who compels the bank to provide confidential information, a member of the Board of Directors or a bank clerk who deliberately provides a confidential information, and a member of the Board of Directors or a bank clerk who intentionally does not provide information for tax purposes and for the benefit of the court in a criminal case. In this Banking Law there are only two sanctions addressed to that is Whoever without a

written order from the Minister who deliberately forced the bank or affiliated parties to provide information that must be kept confidential and Members of the board of commissioners, directors, employees of banks or parties affiliated who deliberately provide information that must be kept secret. In addition, the regulation on the size of prison sentences and dendapun also experienced a shift. Where the Banking Principles Act provides a penalty of 1 (one) and a fine of Rp. 10.000,00 (ten thousand rupiah), whereas in this Banking Act the threat of imprisonment is maximum 3 (three) years and fine of Rp. 3,000,000.00 (three million rupiah).

3.6 Bank Secrets in Law Number 10 of 1998 on Amendment to Act Number 7 of 1992 concerning Banking

After a few years later, the regulation concerning the banking system has changed through Law Number 10 of 1998 concerning Amendment to Act Number 7 of 1992 concerning Banking, hereinafter referred to as the Banking Law. This change is in the background of a fast-moving, competitive, and integrated national economy with an increasingly complex challenge, as well as an advanced financial system³⁰. In addition, the change is due to several international agreements in the field of trade in goods and services that have been ratified by Indonesia as well as the background of the need to change the law in the banking sector³¹. The change in the banking regulation will certainly affect the confidential arrangement of banks in Indonesia.

The enactment of Law Number 10 of 1998 on Amendment to Act Number 7 of 1992 concerning Banking hereinafter referred to as the Banking Act still regulates the secrets of banks in Indonesia. The amendment of the Banking Act has affected the regulation of bank secrets that are significant. Where this law provides a new definition of bank secrets. This can be seen in the provisions of Article 1 Number 28 of the Banking Law stating that bank secrets are all things related to information about depositors and depositors.

The bank's confidential arrangement in this law is different from the previous arrangement, namely First, this law

30. See and read the consideration weighing the letter b of Law Number 10 of 1998 concerning Amendment to Act Number 7 of 1992 concerning Banking.

31. See and read the consideration weighing the letter b of Law Number 10 of 1998 concerning Amendment to Act Number 7 of 1992 concerning Banking.

provides a new definition of bank secrets. Where before any change in the definition of bank secrecy is anything related to the financial and other things of the bank customers which according to the prevalence of the banking world shall be kept confidential, after the change of the definition of bank confidential is everything related to information about depositors and depositors, so in the new arrangement, bank secrets are limited to depositors and depositors.

Secondly, in the Banking Act before the change there are only four exceptions to bank secrecy, namely for the purposes of taxation, for the interest of the court in criminal cases, for the interest of the court in civil cases between banks and customers, and for the purposes of exchange of information between banks, while the exception of bank secrets after the Banking Act changes, the number of exceptions to bank secrecy increases in number, ie for tax purposes, settlement of bank receivables already submitted to the State Agency for Accounts Receivable and Auction / State Receivables Committee, the court's interest in the case criminal offenses, judicial interest in civil cases between the Bank and its customers, exchange of information between Banks, requests, approvals or proxy of written depositors, and the legitimate heirs of deceased customers.

Third, the sanction of bank secrecy, in which the Banking Act before sanction change is only given to anyone who forces the bank to disclose the bank without carrying a warrant or written permission from the Minister and affiliated parties who deliberately provide information that must be kept secret, while in the amended Banking Act there are additional sanctions addressed to affiliated parties who intentionally do not provide information that is exempt and has appropriate procedures.

Fourth, the regulation on bank secrets until the Banking Act has not changed the written order or written permission of the bank secret opening given by the Minister of Finance, while after the amendment of the Banking Act, written orders or written permission are given by the Chairman of Bank Indonesia.

3.7 Bank Secrets in Law Number 9 of 2017 on Stipulation of Government Regulation in Lieu of Law No. 1 of 2017 on Access to

Financial Information for the Interests Taxation into law

The Government of Indonesia together with other G20 member countries and the OECD in 2014 agreed to formulate a policy on which the automatic exchange of information for the tax administration of the Common Reporting Standard³². President Joko Widodo on May 8, 2017 has stipulated a Government Regulation in Lieu of Law No. 1 of 2017 concerning Access to Financial Information for Tax Interest. Following the stipulation of the Perpu of Access to Financial Information for Tax Interest, on 23 August 2017 President Joko Widodo ratified Law No. 9 of 2017 on Stipulation of Government Regulation in Lieu of Law No. 1 of 2017 on Access to Financial Information for Tax Interest to Law hereinafter referred to the Act of Stipulation of Perpu of Access of Financial Information for Tax Interest to become Law. Based on this, the Perpu of Access to Financial Information for the Interests of Taxation has become law.

Prior to the enactment of the Law on the Establishment of Government Regulation on Access to Financial Information for Tax Interest in Tax Laws, the tax authorities in performing their duties to obtain financial information in order to meet the needs of tax revenues and maintain the sustainability of the effectiveness of tax policy policies are still limited due to regulations regulating bank secrecy. This can be seen in the provisions of Article 41 of the Banking Act concerning the procedures and requirements for opening bank secrets for tax purposes.

When reading the provisions of Article 8 of the Act of Stipulation of the Perpu of Access to Financial Information for Tax Interest to the Law stating that Article 40 and Article 41 of the Banking Law are declared null and void. Where the true provisions of Article 40 paragraph (1) of the Banking Act regulates the obligations of Banks and affiliated parties to bank secrets as well as exceptions to bank secrets.

Based on this, after the enactment of the Law on the Establishment of the Perpu of Access to Financial Information for Tax Interest into Law there has been a shift in the regulation regarding the obligation for confidentiality which in this case relates to bank secrets. The occurrence of a shift in bank secrecy is only related to taxation. Where previously the opening of bank

32. Kementerian Keuangan Republik Indonesia Sekretariat Jenderal Biro Komunikasi dan Layanan Informasi, *Siaran Pers: Automatic Exchange Of Information (AEOI)*, 2016, p. 1.

secrets for tax purposes is regulated in the provisions of Article 41 of the Banking Act. However, after the stipulation of the Financial Information Access Ordinance For Interest Taxation the procedure of opening bank secrets for tax purposes is done automatically or the Bank reports financial information to the Director General of Taxes periodically. This is certainly different from the previous arrangement which in the Banking Act must obtain written permission from the Chairman of Bank Indonesia. The existence of the new arrangement, also resulted in a shift on the parties that must be kept secret. Where the perpu gives liability to the tax authorities to keep the information concealed. The sanctions given after the Perpu are also different from the previous arrangements, in which sanctions are given more softly than the sanctions provided by the Banking Act.

4. CONCLUSION

Based on the above description it can be concluded that the confidential nature of banks in Indonesia began the enactment of Government Regulation in Lieu of Law No. 23 of 1960 on Bank Secrets until the passing of Law Number 10 of 1998 on the Amendment of Act Number 7 of 1992 on Banking actually embraced the bank's secret theory is relative. The bank secrets after the enactment of Law No. 9 of 2017 on Stipulation of Government Regulation in Lieu of Law No. 1 of 2017 on Access to Financial Information for Interests Taxation into law is still regulated. However, the bank's confidential arrangement in Law No. 9 of 2017 concerning the Stipulation of Government Regulation in Lieu of Law No. 1 of 2017 on Access to Financial Information for Tax Interest becomes the only law relating to the opening of bank secrets for the purposes of taxation. Based on the above, the bank's confidential provisions as stipulated in the Banking Act except those related to taxation are still in use. As for the shifting of bank secrecy after the enactment of Law Number 9 of 2017 on Stipulation of Government Regulation in Lieu of Law No. 1 of 2017 on Access to Financial Information for Tax Interest into law lies in the procedure of opening bank secrets for the purposes of taxation. Law Number 9 of 2017 on Stipulation of Government Regulation in Lieu of Law Number 1 of 2017 concerning Access to Financial Information for Tax Interest to Act only regulates the terms and

procedures for the opening of bank secrets for the purposes of taxation. Where it is previously regulated in the provisions of Article 41 of the Banking Act. The existence of the provision of Article 8 of Law Number 9 of 2017 concerning the Stipulation of Government Regulation in Lieu of Law No. 1 of 2017 concerning Access to Financial Information for Tax Interest becomes the law, stating that the provisions of Article 40 of the Banking Act are not in effect. This resulted in the ratification of Law Number 9 of 2017 concerning the Stipulation of Government Regulation in Lieu of Law No. 1 of 2017 concerning Access to Financial Information for Tax Interest into a law not in accordance with the contents of Article 40 of the Banking Act, stating that such not only applies to the provisions of Article 41 of the Banking Act.

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LEGISLATION

Law Number 14 of 1967 regarding Principles of

Banking
Law Number 10 of 1998 concerning
Amendment to Act Number 7 of 1992
concerning Banking
Law Number 9 of 2017 on Stipulation of

Government Regulation in Lieu of Law
Number 1 of 2017 concerning Access to
Financial Information for Tax Interests
Government Regulation in Lieu of Law Number
23 of 1960 on Bank Secrets

