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Impact of Personal Data Protection (PDP) Law and Enforcement Authority Body for PDP Failure in Banking Industry

Ignatius Widhianto[1], Lastuti Abubakar[2], Tri Handayani[3]
[1,2,3] Faculty of Law, Universitas Padjajaran, Bandung, Indonesia
Corresponding Author: ignatius24003@mail.unpad.ac.id

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ABSTRACT

Personal Data Protection law (PDP) as enacted on 17th October 2022 is create new dimension in Indonesia legal system. PDP law not only "cherry on top" of the previous regulation, but also to perfection the law that focus on protection of the personal or individual rights, especially if that person is bank customer. Financial services is one of the most highly regulatory industry, banking industry as the part of financial services industry have holy grail obligation to protect as we called bank secrecy. PDP law is to complement bank secrecy regulation, since PDP provide specific and strict regulation regarding personal data processing activities in banking. Until February 2026, PDP law not have an implementation regulation and specific regulator as mentioned before at law, this condition can raise the challenge for the banking industry to comply. Banking industry is an industry that process personal data in large number, this industry shall to response the situation carefully, since Bank DNA must compliance with the prevailing law and regulations, unfortunately the regulation not yet enough regulate personal data protection in detail. Moreover, PDP law mandates the creation of a special intuitions related to the regulator and enforcement of PDP Law infringement. The creation of this institution can raise dualism for banking industry, considering that banking is already regulated and supervised bt the Financial Services Authority (OJK).

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Introduction

Modern Banking activity has been known in the 15th century in Italy.[1] Since that century, modern banking activity is robust not only for the funding and lending services, but started another service like bank branches, ATMs, bank agents outlet SMS Banking, and mobile banking. Mobile banking is one of the most powerful technology and digitalization into banking activity to deliver transactions and services from bank to the customers.[2] Technology always brings two impact like flip a coin, where the speed and easiness of transaction are directly proportional risk to the user like technology vulnerability, cyber security compromises, cyber-attacks, and data breach.[3] With the risk as mentioned before, bank's customer to still using modern channel like internet banking and/or mobile banking since the modern channel offers several advantages, such as : practicable, time efficiency, easy to use, trackable financial transactions, and

[1] Shahabodin Khadivi Zand, "Towards Intelligent Risk-based Customer Segmentation in Banking," versi 1, preprint, arXiv, 2020, https://doi.org/10.48550/ARXIV.2009.13929.
[2] Jimmy Ebong dan Babu George, "Financial Inclusion through Digital Financial Services (DFS): A Study in Uganda," *Journal of Risk and Financial Management* 14, no. 9 (2021): 393, https://doi.org/10.3390/jrfm14090393.
[3] Richard Apaua dan Harjinder Singh Lallie, "Measuring User Perceived Security of Mobile Banking Applications," versi 1, preprint, arXiv, 2022, https://doi.org/10.48550/ARXIV.2201.03052.

comfortable.[4] Using banking in digital space raise new issue regarding Personal Data Protection (PDP) regulation in Indonesia, the example is: in February 2025, The Jakarta Metropolitan Police's Cyber Directorate arrested two suspects for falsifying bank accounts using artificial intelligence (AI)-based technology. The suspects used this AI technology, among other things, to verify faces during account activation, also manipulated a facial verification video with the intent and purpose of making the video appear to be the actual owner of the personal data so that the banking application account could be activated.[5] Previously, there are another cases that got attention, when on 8 May 2023 Bank Syariah Indonesia (BSI) suspected of being hacked by Lock Bit 3.0 group. Reports indicate that approximately 1.5 TB of data, including customer data, financial documents, legal documents, confidentiality agreements, and internal and service access passwords, was stolen. The potentially compromised customer data includes names, phone numbers, addresses, account numbers, average account balances, transaction history, occupation, and account opening dates. The attack disrupted ATM and BSI Mobile services for several days. Bank Syariah Indonesia announced that BSI Mobile services were restored on 11 May 2023.[6]

During 2025, Indonesia is struggle to facing problem regarding online gambling cases, where most of the online gambling provider suspected to be located in Cambodia. Online gambling is not only breach article 303 Indonesian Criminal Code with the maximum punishment 10 years in jail, but arise other damage like make people become reckless and commit others criminal act. Three men were arrested in Indonesia in May 2025 for using stolen personal data Indonesian citizen to conduct illegally open bank account and mobile banking in several bank in one mobile phone, in this criminal action, the criminals collected identity information by offering money to personal data subject in exchange for their personal details, then the information used to create fake accounts. This scheme allowed the criminals to bypass banking security measures and these accounts were then used to receive and transfer funds derived from online gambling scams operated by syndicates based in Cambodia. This case reveals a complex criminal operation linking identity theft, banking fraud, and transnational online gambling networks, also highlighting the vulnerability of banking systems to such sophisticated exploitation.[7]

Based on the threat and advantage as explained before, people will still use technology, especially in the financial sector, therefore cyber law is need to expanded through lex informatica. Lex informatica itself is the theory that developed by Prof. Joel Reidenberg from faculty of law, Fordham University that has objective to develop solution on how to regulate law in the era of networking and information technology using internet, because in this era is implement beyond national borders, this situation can arise difficulties in determining which law applies due to the possibility of differences in jurisdiction,[8] In banking Industry, before personal data protection implementation in the banking activity there is apply bank secrecy. Bank secrecy has been known since ancient times, even since the time of Hammurabi around 4000 years ago that introduce this technique of financial privacy associated with personal data. Warren and Brandeis describe that privacy is important because the person's right are irrevocably protected from disturbance or unwanted disclosure.[9] In Indonesia bank secrecy principle has been known since 1960s, and became an important principle for banking activities by Law No 10 of 1998 concerning Amendment to Law No 7 of 1992 concerning Banking (Banking law) . The Banking law then underwent several evolution to respond the

[4] Agnes Kurnia dkk., "Penerapan M-Banking dalam Meningkatkan Jasa, Layanan Perbankan di Bank Syariah Indonesia," *JICN : Jurnal Intelek dan Cendikiawan Nusantara* 1 (Juni 2024): 7793–800.
[5] Wildan Noviansah, "Pemalsu Rekening Pakai AI buat Verifikasi Wajah Saat Aktivasi Akun," *detik.com*, 8 Februari 2025, https://news.detik.com/berita/d-7769001/pemalsu-rekening-pakai-ai-buat-verifikasi-wajah-saat-aktivasi-akun.
[6] Guna Gerhat Sinaga dkk., "Analisis Peran Otoritas Jasa Keuangan Terhadap Perbankan Sebagai Upaya Perlindungan Data Pribadi Nasabah Bank (Studi Kasus Kebocoran Data Nasabah Bank Syariah Indonesia)," *Jurnal Pendidikan Tambusai* 7 No.3 (2023), no. Desember 2023 (t.t.): 28374–83.
[7] Baharudin Al Farisi dan Larissa Huda, "Pakai Data WNI, Tiga Pria Tampung Uang Penipuan Online Kamboja Lewat Rekening Bodong," *kompas.com*, 5 September 2025, https://megapolitan.kompas.com/read/2025/05/09/17454861/pakai-data-wni-tiga-pria-tampung-uang-penipuan-online-kamboja-lewat?utm_source=chatgpt.com#google_vignette.
[8] Tarsisius Murwadji dan Helza Nova Lita, *Rekonstruksi Teori Hukum Ekonomi: Pengembangan Paradigma, Konsep, dan Pembaharuan Teori Eksisting* (PT Rajagrafindo Persada, 2024), 1:3.
[9] Budi Agus Riswandi, "A Shift in The Principle of Bank Secrecy due to Advancement in Information Technology," *Varia Justicia* 16, no. 1 (2020): 39–47, https://doi.org/10.31603/variajusticia.v16i1.3336.

challenges of several financial problem, until the latest was issued Law No 4 of 2023 concerning the Development and Strengthening of the Financial Sector (PPSK Law). Indonesian banking sector has special supervision from Financial Services Authority (OJK) as mentioned in article 6 of Law No 21 of 2011 concerning Financial Services Authorities (OJK Law) that mentioned that OJK responsible for regulating and overseeing financial services activities in the banking sector, capital market, and non-bank financial industry. In the implementation of banking supervision, OJK as regulator enacted set of regulation to ensure banking industry is comply with the important principle in banking activity and operation, like prudential principle, banking secrecy, and the new trend of customer protection. OJK for first time introduce about customer protection on 2013, this regulation has purpose that financial services activities must provide fair, transparent, and accountable, and able to create a financial system that grows sustainability and stable, also able to protect the interest of customers and the public. One of the main principles of customer protection is protection of consumer/customer assets, privacy, and data.

Protection of data currently enter new regime since Law no 27 of 2022 concerning Personal Data Protection (PDP Law) enacted on 17th October 2022. Since then, protection to the personal data of personal data subject is becoming obligation that bound to any parties that managed the personal data. By this situation, Bank activities is cannot separate with customer data, when the customer is individual, Bank has obligation to PDP Law and bank secrecy regulation. However, Indonesian government until today not yet publish the Government Regulation as the implementation regulation of PDP Law, while many technical matters mandated by PDP law shall be regulated in the Government Regulation. Furthermore, PDP Law also stipulated that the Government shall established a special intuitions who acts as the regulator and enforcement of PDP Law infringement (PDP Agency), unfortunately until this day the PDP agency not yet established. Nevertheless, establishment of PDP Agency will lead to dualism of regulator, since OJK has competency in banking activities supervisor, including bank secrecy and bank customer protection, while PDP agency has authorized in Personal Data Protection. Therefore, if banking facing an incident like data compromise, it is means bank facing bank secrecy, customer protection, and PDP breach simultaneously. The questions is, who is the authorized agency that has authority to declared the violation and imposes a sanction. Based on the problem as explained before, these issues will be discussed in this paper and will become a novel aspect of it. This paper shall examine specific regulation in banking industry related with bank secrecy, customer protection, and PDP.

Method

In conducting this research in this paper, the type of research that will use the descriptive analytical research method with a normative juridical approach. Normative juridical legal research was chosen because this paper is a scientific study to find the truth based on the logic of legal science from its normative perspective.[10] The legal material to be studied in this paper will utilize library research based on legal regulations as primary legal material, rather than empirical data with focus on prevailing law concerning bank secrecy, customer protection, and personal data protection that related with financial services industry. Legal science, as the science of norms, directs its reflection on basic norms that are given concrete form in norms determined in certain fields. These norms will, in turn, be embodied in concrete regulations for certain communities.[11] This research will use several legal materials, including: primary legal materials such as applicable laws and regulations; secondary legal materials such as books and research results at national and international levels; and tertiary legal materials in the form of legal dictionaries and national and international journals.[12]

Results and Discussion

A. The Digital Space is a Place Where Data Privacy Breaches Thrive

Human and technology are inseparable, moreover for urban society that most of interaction is happened through application in their smartphones. The users of smartphones can easily get access to almost every area of life, from entertainment to shopping, saving to spending, that improve and make their

[10] Valerine J.L. Kriekhoff, *Metode Penelitian Hukum, Kumpulan Bacaan untuk Program S-2 dan S-3*, Revisi (Program Pascasarjana Fakultas Hukum Universitas Indonesia, 2014), 57.
[11] Kriekhoff, *Metode Penelitian Hukum, Kumpulan Bacaan untuk Program S-2 dan S-3*, 49.
[12] Ronny Hanitijo Soemitro, *Metodologi Penelitian Hukum dan Jurimetri*, 4 ed. (Ghalia Indonesia, 1990), 11–12.

lives more convenient by technology.[13] Using the application in smartphones usually require to input the data of the user, sometimes user even to input the personal documents. Unfortunately, a lot of users as personal data owner is not aware to the terms and conditions for use the application, even they don't even know what will happen to their personal data, so they don't understand what the risk that can be happened to them. In other hand, the application owner or provider not aware with the legal obligations to protect the user's personal data under prevailing law.

Based on the conditions of the user and provider in understanding the use of digital space, so it is not surprising that there are many breaches of personal data occur. Institute for Policy Research and Advocacy (ELSAM) in their press release in International Data Protection Day 2024 provide research that one year after enactment of PDP Law awareness and good practices of personal data protection in Indonesia do not seem to be performing. ELSAM found that there were at least 668 million personal data allegations of unlawful disclosure, with details:[14]

Name of Data Controller	Time of Incident	Number of Alleged Disclosure of Personal data
My Pertamina	November 2022	44 Million
BSI	May 2023	15 Million
MyIndihome	June 2023	35,9 Million
Directorate General of Immigration	July 2023	34,9 Million
Ministry of Home Affairs	July 2023	337 Million
KPU	November 2023	252 Million

Based on this report that we can found there is tremendous of number for the alleged disclosure of personal data, most of alleged of breach happened on the government area and state own enterprise. However, we can find that there is an incident in financial services sector, where usually bank is very prudent and diligent in their operation activity, therefore this is a question mark what happened in this situation, whether by following the current business development powered by information technology cause bank abandon the traditional principle to comply. The main principle of the banking activities is prudential banking. Banking law is do not provide an explicit definition of the prudential principle. However, based on a systematic interpretation, namely by linking one article to another, the prudential principle in banking is closely related to the bank's compliance with all applicable laws and regulations, both institutionally, in terms of processes, and in terms of products. Implementation of prudential principle is for the purpose to protect the bank from losses in carrying out intermediary functions and to protect the interest of customer, especially customer who entrust their funds to the bank.[15]

Banking business traditional activities focus on collecting fund from the public in the form of deposits or savings, and distributing funds in the form of providing credit.[16] In period 1997-1999, Indonesia facing the most turbulence economy condition triggered by monetary crisis and currency depreciation. This condition also impacted to the banking and financial services industry, where the number of bad debts increased significantly in almost all bank, especially for loan facility with the foreign currency. The crisis in financial industry usually happened when non-performing loan/financing ration become high, then

[13] Teresa Gajewska dan Dominika Walczyk, "Development of Transport Management Software," *Sustainability* 15, no. 15 (2023): 12083, https://doi.org/10.3390/su151512083.
[14] *International Data Protection Day 2024: A Year of Challenges in Implementing Personal Data Protection La*, Press Release (ELSAM, 2024), https://www.elsam.or.id/en/press-release/international-data-protection-day-2024--a-year-of-challenges-in-implementing-personal-data-protection-law.
[15] Lastuti Abubakar dan Tri Handayani, "TELAAH YURIDIS TERHADAP IMPLEMENTASI PRINSIP KEHATI-HATIAN BANK DALAM AKTIVITAS PERBANKAN INDONESIA," preprint, Center for Open Science, 22 Oktober 2017, https://doi.org/10.31219/osf.io/acxqu.
[16] S. M. Akber dan Asha Dey, "Evaluation of the Financial Performance between Traditional Private Commercial Banks and Islamic Banks in Bangladesh," *International Journal of Islamic Banking and Finance Research* 4, no. 2 (2020): 1–10, https://doi.org/10.46281/ijibfr.v4i2.640.

financial system stability will be disrupted, and finally lead the possibility of instability.[17] The crisis then lead to financial service industry, especially banking to be reformed through Law No 10 of 1998 concerning Amendment to Law No 7 of 1992 concerning Banking (Banking Law). Banking Law require Bank to maintain the health indicator level like capital adequacy ratio, asset quality, liquidity, profitability, solvency, and other aspect related to bank's business, and required to conduct business activities in accordance with prudent principle.

In 2023 banking law had been update through Law No 4 of 2023 concerning The Development and Strengthening of the financial sector (PPSK Law). The update itself not only for banking industry but all financial sector entirely, including cooperation, capital market, commodity futures exchange, insurance, and pension fund. PPSK not only rearrangement for Financial Services Institution, but also the regulator, like Bank Indonesia, Financial Service Authority (OJK), and Deposit Insurance Agency (LPS). One of the purposed why this new regulation needed is because to response the current growing technology-based on financial activity (financial technology), also to create mature environment to non-banking institution in financial services industry should be treated like a bank.[18] Basically in PPSK Law the business activities that regulate in this law is same with Banking Law, however PPSK Law add focus into technological development, like open banking, digital lending, and big data. Therefore, Bank can become a business actor in payment sector like digital wallet, switching, and clearing. Furthermore, Bank can development new business with using information technology like open banking, application programming Interface (API), and digital banking. This new business often utility by the Financial Technology (Fin-tech) to enlarge their business scale capabilities in the financial services environment, in other hand some banks in Indonesia utilize the services by Fin-tech in the framework of efficiency by using non-traditional credit scoring to screen potential borrowers. [19] Collaboration between Bank and Fin-tech must consider the prudential principle, since in the collaboration, there is an opportunity of the data exchange between the parties, this data sharing must be conduct carefully because bank is bound with bank secrecy obligation.

B. Bank Secrecy as Holy Obligation of the Bank

Bank and secrecy is inseparable and becoming one of most important principle in banking industry. If secrecy principle is separate by the bank, then it is certain that chaos will occur in the industry and people will loss of trust to the bank. Therefore, as an hypothesis the secrecy is more needed by bank than it is customer, because with secrecy, people trust will robust and bank can get fund to operate and provide credit facility as their function as intermediary institution. When bank implementing secrecy principle it is not only a legal obligation, but a measure for bank to protect their reputation and avoid legal risk and reputational risk, also bank are required to operate in professional way, able to assess the risk and analysis all activities that arise from economy activity.[20]

Bank secrecy in Indonesia for the first time is regulated in Government Regulation in Lieu of Law No 23 of 1960 concerning Bank Secrecy (Perpu No 23 of 1960). The uniqueness of this regulation is Perpu No 23 of 1960 is enacted before the Law that concerning the basic principle of banking (Law No 14 of 1967), this is so meaningful because the bank secrecy goes beyond the principle of banking, so it not exaggeration to called bank secrecy is the soul of the bank.. When the first banking law effective through Law No 14 of 1967, Bank Secrecy definition is anything the finances and other matters of bank customer which, according to banking custom, must be kept confidential. Fast forward to 1990s, where Law No 7 of 1992 enacted,

[17] Irfan Nurfalah dan Aam Slamet Rusydiana, "THE REGIME SWITCHING OF CYCLE INSTABILITY OF ISLAMIC BANKING AND THE ECONOMY: EVIDENCE FROM INDONESIA, MALAYSIA, AND PAKISTAN," *Journal of Islamic Monetary Economics and Finance* 7, no. 2 (2021): 233–62, https://doi.org/10.21098/jimf.v7i2.1362.
[18] Lastuti Abubakar dkk., "IMPACT OF SHADOW BANKING ACTIVITIES AS NON BANK INTERMEDIATION TOWARD REGULATORY DEVELOPMENTS IN FUNCTION CONTROL OF FINANCIAL SERVICES SECTOR IN INDONESIA," *Diponegoro Law Review* 1, no. 1 (2016): 47, https://doi.org/10.14710/dilrev.1.1.2016.47-60.
[19] Lastuti Abubakar dan Tri Handayani, "Financial Technology: Legal Challenges for Indonesia Financial Sector," *IOP Conference Series: Earth and Environmental Science* 175 (Juli 2018): 012204, https://doi.org/10.1088/1755-1315/175/1/012204.
[20] Nayla Azarine dkk., "Upaya Perlindungan Hukum terhadap Nasabah Perbankan melalui Prinsip Kerahasiaan Bank dalam UU No 4 Tahun 2023 tentang Pengembangan dan Penguatan Sektor Keuangan," *Pajak dan Manajemen Keuangan* 1, no. 5 (2024): 64–74, https://doi.org/10.61132/pajamkeu.v1i5.671.

Bank Secrecy define is anything related to the finances and other matters of bank customers which according to banking customs must be kept confidential. In Law No 7 of 1992, the exemption is not only for taxation interest and criminal justice interest, but also for the interest of civil cases between banks and their customers, and for information exchanges between banks. For Bank Secrecy breach, the action is still categorized as criminal act and sanction for the criminal is bigger than before, like sanction with maximum imprisonment of 3 years or maximum fine of Rp 3.000.000.000,- (three billion Rupiahs) for anyone who, without a written order from the Minister to a bank or without the Minister's permission, intentionally forces a bank to provide information regarding the financial condition and other matters of its customers. Another sanction is maximum imprisonment of 2 years or maximum fine of Rp 2.000.000.000,- (two billion Rupiahs) for infringement conduct by a member of the Board of Commissioners, Directors, or bank employee who provides information regarding matters that must be kept confidential.

Law No 10 of 1998 concerning Amendment to Law No 7 of 1992 concerning Banking (Banking Law) raise as response of economic crisis. One of the spirit of Banking Law is to reviewed the bank secrecy, where not all aspects of bank administration are confidential. Therefore, definition of Bank Secrecy under Banking Law is everything related to information about depositors and their savings. Based on that definition, article 40 Banking Law clearly mentioned that if a bank customer is a depositor who is also a debtor, the bank is required to maintain confidentiality of information about the customer in their capacity as a Depositor, then the information about customers other than Depositors is not information that the bank is required to maintain confidentiality. The adjustment of Bank Secrecy is provide clarity of interpretation, because one of the reason why banking industry is broken during financial crisis 1997-1997 is because simultaneous bad debt, therefore information of the bad debt is no longer part of bank secrecy with purpose to protect the banking and financial services industry. Law 10 of 1998 also restructured the Bank Secrecy exemption, where bank can open the Bank Secrecy for : taxation purpose, settlement of bank receivables that have been submitted to State Receivables and Auctions Agency / State Receivables Committee, criminal litigation process, civil litigation purposes between banks and their customers, for the purpose of exchanging information between banks, and upon written request, approval, or authorization from the depositors.

Bank Secrecy breach under Banking Law will be impose sanction is more bigger than before, even the sanction is more double up than previously, like : minimum imprisonment 2 years and maximum imprisonment 4 years and minimum penalty Rp 10.000.000.000,- (ten billion Rupiah) and a maximum penalty Rp 200.000.000.000,- (two hundred billion Rupiahs) for anyone who, without a written order or permission from Bank Indonesia, intentionally forces a bank or Affiliated Party to provide information regarding a Depositor and his/her savings. Another sanction is can impose to Members of the Board of Commissioners, Directors, bank employees or other Affiliated Parties who intentionally provide information regarding Depositors and their deposits, shall be subject to imprisonment of at least 2 years and a maximum of 4 years and a fine of at least Rp 4.000.000.000.- (four billion Rupiahs) and a maximum of Rp 8.000.000.000,- (eight billion Rupiahs). Members of the Board of Commissioners, Directors, bank employees or other Affiliated Parties also can be impose of imprisonment at least 2 years and a maximum of 7 years and a fine minimum Rp 4.000.000.000.- (four billion Rupiahs) and a maximum of Rp 15.000.000.000,- (fifteen billion Rupiahs) if intentionally do not provide the information they are required to provide under request by State Receivables and Auctions Agency / State Receivables Committee, criminal litigation process, request by depositors and their proxy, including their legal heirs.

PPSK Law as known as financial sector omnibus law is not create new definition of Bank Secrecy, because still focus on information related to information about depositors and savings from the depositors. The difference between PPSK Law and Banking Law is the exemption for the Bank Secrecy, in this Law we can found 12 exemptions as mentioned in Article 40A:

a. Judicial interest in civil cases between the Bank and the Customer, the customer to the customer, and related to the customer;
b. Interests of justice in criminal cases;
c. Request of a curator appointed based on a commercial court decision regarding bankruptcy or a request of a liquidator appointed based on a court decision in the context of settling assets**;**
d. Request, approval, or power of attorney from a Depositor made in writing;
e. Request of the legal heir of a Depositor who has died;
f. Exchange of Information between Banks;

g. Fulfilled mutual assistance in criminal matters;
h. Request for financial information for tax purposes based on provisions of laws and regulations;
i. The interests of other agencies for the purpose of organizing the state at the central level and the public interest in accordance with the duties and authorities in the Law**;**
j. The interests of implementing duties in the fields of monetary, macroprudential, and payment systems by Bank Indonesia**;**
k. The interests of implementing duties in the field of deposit insurance and resolution by the Deposit Insurance Agency; and
l. The implementation of cooperation agreements between authorities between countries that have been signed reciprocally.

Even though the exemption is so many as mentioned above, however the authority to open Bank Secrecy is based on approval from OJK. Therefore if any person who intentionally forces a Bank or Affiliated Party to provide information related to information regarding Depositors and Deposits from Depositors without permission from the OJK, that person shall be subject to imprisonment for a minimum of 2 years and a maximum of 4 years and a fine of at least Rp10.000.000.000,- (ten billion Rupiahs) and a maximum of Rp 200.000.000.000,- (two hundred billion Rupiahs). Based on PPSK Law, members of the board of commissioners or equivalent, members of the board of directors or equivalent, Bank employees or other Affiliated Parties can be impose : (a) imprisonment for a minimum of 2 years and a maximum of 4 years and a fine of at least Rp 4.000.000.000,- (four billion Rupiahs) and a maximum of Rp 8.000.000.000,- (eight billion Rupiahs) if their intentionally provide information related to information regarding Depositors and Deposits from Depositors; (b) The sanction of imprisonment at least 2 years and a maximum of 7 years and a fine minimum Rp 4.000.000.000.- (four billion Rupiahs) and a maximum of Rp 15.000.000.000,- (fifteen billion Rupiahs) if intentionally do not provide the information they are required to provide under request by State Receivables and Auctions Agency / State Receivables Committee, criminal litigation process, request by depositors and their proxy, including their legal heirs.

One year after PPSK Law enacted, OJK published Financial Sector Regulation of The Financial Services Authority No 44 of 2024 concerning Bank Secrecy (POJK No 44 of 2024). POJK No 44 of 2024 expand Bank Secrecy, that not only cover of about deposit customers and their deposits, but also cover Investor customers and their investment (for sharia products). POJK No 44 of 2024 also provide guidance for banking, in terms of: (a) Depositors who are also debtor Customers; (b) Depositors who are also facility recipient Customers; (c) Investor Customers who are also facility recipient Customers; or (d) Investor Customers who are also debtor Customers. Therefore the obligation of the Bank and Affiliated Parties to keep confidential information regarding Customers in their positions as Depositors and their Deposits and/or for sharia means Investor Customers and their Investments. For the exemption of Bank Secrecy, basically the exemption in POJK No 44 of 2024 is same as stipulated in PPSK Law. If the Bank conduct Bank Secrecy breach, other than criminal sanction as stipulated in PPSK Law, the Bank also can impose administrative sanction as follows : written warning, decrease in the assessment of governance factors in assessing the level of Bank health, prohibition to provide services to banks and/or submit proposals to authorized agencies to revoke or cancel business licenses as service providers for banks, fine /forfeit (based on the type of violation).

C. Customer Protection as New Horizon of Protection

Customer protection in the digital era is very importance to monitoring business practices conduct by the bank and ensure to safeguard the interest of bank customers, in the light of the improvements made to customer experience and protection in the digital banking landscape, with focus on crucial points like : bolster customer protection by bank governance, equitable customer treatment, transparent disclosure practices, and safeguarding customer data and privacy.[21] Customer protection can encourage compliance regulation execution and good banking practise. The study's finding that if bank better implement effective customer protection it will be affect bank financial performance and credit risk, and finally can keeps the

[21] Matthew Yau Choi Chow dan Shirie Pui Shan Ho, "Effects of Financial Consumer Protection on Brand Love and Brand Advocacy," *Journal of Financial Services Marketing* 30, no. 2 (2025), https://doi.org/10.1057/s41264-025-00306-x.

banking industry safe, reliable, and stable.[22] Financial Services industry in Indonesia adopt the customer protection for the first time in 2013 through Financial Services Authority Regulation No 1/POJK.07/2013 of 2013 concerning Bank Customer Protection in the Financial Services Sector. The regulation from Financial Services Authority then underwent several changes, most recently through Financial Services Authority Regulations No 22 of 2023 concerning Customer and Community Protection in the Financial Services Sector (POJK Customer Protection).

POJK Customer Protection explain that Customer Protection is any effort that guarantees legal certainty to provide protection to any person who owns and/or utilizes products and/or services (Customer) provided by any Financial Services Institutions (in form conventional and/or sharia). The main principle of customer of customer protection under POJK Customer Protection is: adequate educations, openness and transparency of product and/or service information, Fair treatment and responsible business behaviour, Protection of Consumer assets, privacy, and data, Effective and efficient handling of Complaints and Dispute resolution, Enforcement of compliance; and healthy competition. Regarding the privacy and data principle in this POJK Customer Protection actually already putted into previous regulation. The main difference between current POJK Customer Protection with previous regulation is in the newest one is already align customer protection with prevailing Personal Data Protection Law as stipulated in article 19 Paragraph 3 of POJK Customer Protection that obligation to protect the confidentiality & security of customer data are carried out by applying the basic principles of processing personal data protection in PDP Law.

POJK Customer Protection not only concern about customer protection, but protection to the bank itself from customer that have bad intention, where bank have the right to reviewing the conformity of documents containing information about prospective customer and/or customer with actual facts, also requesting prospective customers and/or customers to declare that all information and/or documents provided to the bank are true and accurate. Furthermore, Bank has authority to taking actions to request customer to comply with the agreement between customer and financial authority, and/or bank able to request customer to comply with the provisions of law and regulations in the financial services sector.

Market conduct for financial services institution is also one important part from POJK Customer Protection. The Market conduct itself has purpose to supervision of financial services institution behavior in designing, providing information, offering, drafting agreement, and providing any services for the use of product and/or services, as well as handling complains and resolving disputes in effort to realize customer protection. If banks or financial institutions fail to provide customer protection under POJK Customer Protection, therefore bank can be imposed sanction as follows: written warning, restriction of products and/or services and/or business activities in part or in whole, freezing of products and/or services and/or business activities in part or in whole, dismissal of management, administrative fines (maximum amount : Rp 15 Bio), Revocation of product and/or service permits; and/or revocation of business permits. Other than that, the bank still can imposed penalty and/or criminal sanction under PPSK Law, if the violation of customer protection regulation also breach data privacy simultaneously.

D. Personal Data Protection as Protection to Individual Rights from Exploitation

Digitalization is applied in all sector of human life also inseparable from the community, since people interaction is shifting from physical into digital space, including the financial services interaction, especially in banking industry. Banking industry no longer can survive if still doing business traditionally, since financial ecosystem is reshaping powered by acceleration of digital technology, increasing digital advance customers, and to provide better customer services or experience. With adoption of technology, bank will do transformation of business and get more advantage, like attract customer, reduce cost, and stay competitive in an industry.[23] Since a lot of banking transaction is run on digital platforms, where build the business on the processing of personal data, because the service usually rely-on personalization and profiling conducted based on data user behavior collected across the internet. The collection of personal data

[22] Fredi Wijaya Kusuma, "The Effect of Financial Services Authority Regulatory Implementation Concerning Financial Consumer Protection on Banking Financial Performance," *Eduvest - Journal of Universal Studies* 3, no. 7 (2023): 1289–302, https://doi.org/10.59188/eduvest.v3i7.845.
[23] Estelle Liu, "Stay Competitive in the Digital Age: The Future of Banks," *IMF Working Papers* 20, no. 278 (2021), https://doi.org/10.5089/9781513570051.001.

provides, information, and knowledge, based on this power, the company or institution have access and able to process that data to obtain information about the data subjects and even their characteristic. The problem is because the individual as personal subject data is do not know how their data is processed and what risks the processing of data.[24] Based on this risk, European Union (EU) create General Data Protection Regulation (GDPR) on 2016 that contained the principle and rules on the protection of natural person with regard to the processing of their personal data should, whatever their nationality or residence, respect their fundamental rights and freedoms, in particular their right to the protection of personal data.[25]

Currently GDPR is an inspired regulation of the personal data protection and influence on global regulations, this influence and usually called "Brussels Effect", however this influence may not be equally pronounced across all countries and regions. Even though GDPR inspired the substance of privacy law in many countries, the implementation of privacy law is still rely-on legislative process, legal framework, and strategic acceleration to aligning with legal norms with common principles and standard.[26] On October 2022, Government of Republic Indonesia enacted Law No 27 of 2022 concerning Personal Data Protection (PDP Law), the consideration why this Law is needed is because personal data protection is one the human rights that constitutes personal rights, therefore it is necessary to provide a legal basis to provide security for personal data as mentioned in the considering part of PDP Law. With Protection of personal rights or private rights will increase human value, improve the relationship between individuals and their society, increase independence or autonomy to exercise control and obtain appropriateness, as well as increase tolerance and distance from discriminatory treatment and limit government power.[27]

PDP Law on article 1 defined that personal data has 3 elements: data about individual, can identify a person individually or in combination with other data; and can identify directly or indirectly through electronic and non-electronic system. PDP Law also divide personal data into general personal data and specific personal data. General personal data includes: full name, gender, nationality, religion, marital status and/or data that if combines can identify an individual. While specific personal data is like: health data and information, biometric data, genetic data, criminal records, children's data, personal financial data, and/or other data accordance with the provision of law. In banking business activity, bank is inseparable with the processing with personal data and personal financial data, that both of information is must be protected under PDP Law terms, the sample of data that processing by the bank is: customer data, employee data and their family or legal heirs, board of director / commissioner of the bank or customer, individual shareholders, vendors data, and business partners. Based on that role, bank can categorize as personal data controller under article 1 paragraph 4 PDP law, because bank determining purposes and exercising control over the processing of Personal Data, the actual example is like bank collects identity of customer for opening saving account or bank analyzes financial capabilities of prospective customers who will apply for housing loan facility.

Bank as personal data controller, based on article 16 paragraph 1 of PDP Law will processing personal data in business activity include: acquisition and collection, filtering and analysis, storage, fixes and update, display/announcement, transfer, dissemination, or disclosure, and/or deletion or destruction. Furthermore, the processing activity must carry out PDP Principles as mentioned in article 16 paragraph 2 of PDP Law:

1. Processing purpose, meaning every processing of personal data is carried out in accordance with its purposes, or in contrary, the bank as controller is prohibited to process if they don't have the purpose.

[24] Tuulia Karjalainen, "The Battle of Power: Enforcing Data Protection Law against Companies Holding Data Power," *Computer Law & Security Review* 47 (November 2022): 105742, https://doi.org/10.1016/j.clsr.2022.105742.
[25] Regulation on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), 2016/679 (EU) (2016). https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679.
[26] Wenlong Li dan Jiahong Chen, "From Brussels Effect to Gravity Assists: Understanding the Evolution of the GDPR-Inspired Personal Information Protection Law in China," *Computer Law & Security Review* 54 (September 2024): 105994, https://doi.org/10.1016/j.clsr.2024.105994.
[27] Danrivanto Budhijanto, *Hukum Telekomunikasi, Penyiaran, dan Teknologi Informasi Regulasi dan Konvergensi*, 1 ed. (PT Refika Aditama, 2010), 4.

2. Data protection, meaning that Personal Data processing is carried out by protecting the security of Personal Data from unauthorized access, unauthorized disclosure, unauthorized alteration, misuse, destruction and/or loss of Personal Data.
3. Accurate and complete, is the obligation of controller to do processing accurately, completely, not misleadingly, up to date and can be accounted for.
4. Data subject rights, meaning that bank as controller must be honor the rights of personal data subject as stipulated from article 5 until article 13 PDP Law, that is : request and delivery information, getting access and copies of personal data, completion or update or correction of personal data, portability and inter-operability of personal data, delay and cancellations of processing, termination of processing, deletion of personal data, withdrawal consent, objections of processing personal data, and submission of lawsuit and compensation.
5. Limitation of retention, is to purpose that Personal Data is destroyed and/or deleted after the retention period ends or based on the request of the Personal Data Subject, unless otherwise specified by laws and regulations
6. Accountability, where the act of processing personal data by data controller must conduct in responsibility and can be crystal clear proven.
7. Data limitation, whereas the Collection of Personal Data is carried out in a limited and specific manner, legally valid, and transparent manner

The concept of data protection is actually not new for bank in Indonesia, because for more than 50 years they have been mandated to protect customer confidentiality through the concept of bank secrecy. Between bank secrecy and PDP is look loke similar, however it is not the same, since bank secrecy covers the deposit customers and their deposits, but also cover investor customers and their investment (for sharia products), where the basic obligation is non-disclosure principle, except for the party that have exemption as clearly mentioned in the Banking Law. The different spot with the PDP is PDP not only regarding non-disclosure, but how the processing of personal data can do by the bank as the controller must have legal basis for processing activity. Based on article 20 paragraph 2 PDP Law, there are six legal basis for personal data processing: consent, compliance of law, contract obligation, vital interest, public interest, and legitimate interest. Bank as data controller must ensure that bank at least have one legal basis to processing before conduct processing of personal data.

Prof. Dr. Mochtar Kusumaatmadja, S.H., LL.M. once said that law is set of rules and principle that regulate human life in society, but must also include the institutions and processes needed to realize the law in reality.[28] In context of PDP Law, currently the processes and institution is not yet complete, until February 2026, the agency as mentioned in article 58 PDP Law is not yet formed, also the Government Regulation as the implementation regulation is not yet enacted. The absence of government regulation until early of 2026 is crucial since there are at least 10 (ten) article in PDP Law that need Government Regulation to be implement: article 10 par (2), article 12 par (2), article 13 par (3), article 16 par (3), article 34 par (3), article 48 par (5), article 54 par (3), article 56 par (5), article 57 par (5), and article 61.[29]

PDP implementation without government regulation as implementing regulation is actually create an ineffectiveness. One of the problem that raise is PDP Law interpretation is becoming free, and can create potential dispute, especially if the interpretation is not suitable or different perspective with the meaning contained in the PDP Law. Another problem that can bring up is some mandatory activity details shall be regulated in Government Regulation. The example of this situation is the obligation as stipulated on article 34 par 1 and 2 of PDP Law, when bank as controller has obligation to assess the impact of personal data protection in the event personal data processing has a high risk potential to personal data subject, like processing of personal data on large scale. The question is how the large scale must be define, because based on article 34 par 3 said that the provision shall be regulated in government regulation. Therefore bank to interpretation this situation prefer to use rationality, rationality herein is maximizing something and that in morals it must be maximizing the good, it is tempting to suppose that is self-evident that things

[28] Mochtar Kusumaatmadja, *Konsep-Konsep Hukum Dalam Pembangunan*, 2 ed. (PT Alumni, 2013), 91.
[29] Bella Christine dan Christine S.T. Kansil, "Hambatan Penerapan Perlindungan Data Pribadi di Indonesia Setelah Disahkannya Undang-Undang Nomor 27 Tahun 2022 Tentang Perlindungan Data Pribadi," *Syntax Literate ; Jurnal Ilmiah Indonesia* 7, no. 9 (2023): 16331–39, https://doi.org/10.36418/syntax-literate.v7i9.13936.

should be arranged so as to lead to the most good.[30] One of the rational step that can be taken by the bank is to do comparative approach to the similar industry in other country that the regulation of PDP is more mature in Indonesia, like the regulation in European Union (EU) that already launched since 2018 and is often used as the main reference for PDP implementation in other countries. Even PDP in Indonesia implemented without government regulation, however PDP is still imperative law in force in Indonesia since PDP Law enacted on 2022. This is means that if there any PDP violation, the sanctions already on there. PDP law stipulated type of sanction, administrative sanction and criminal sanction. There are various types of administrative sanction under PDP Law : warning letter, temporary suspension of personal data processing activities, deletion or destruction of personal data, and administrative fines. Administrative sanction as stipulated at Article 57 paragraph 3 of PDP Law is new method of imposing sanctions where the calculation is 2% (two percent) of annual income or annual revenue at the maximum against the violation variable. Banking industry must be taken into serious about the threat of administrative sanction, since banking industry usually has big revenue, in example is PT Bank Rakyat Indonesia Tbk (BRI) has annual revenue was Rp 241Trillion in 2023 financial report.[31] Based on the calculation as mentioned in article 57 par 3 PDP Law, if BRI is proven to have violated PDP Law it can be subject to maximum administrative sanctions of up to Rp 4,82 Trillion, these excessively large sanctions could destabilize the industry, therefore the choice to comply is non-negotiable. Moreover, there are other criminal sanctions: (a) maximum of 5 years imprisonment and/or a maximum fine of Rp 5.000.000.000,- (five billion Rupiahs) if conduct violation obtaining / Collecting illegally with the intention of benefiting oneself or another person which may result in loss to the Data Subject; (b) maximum of 4 (four) years imprisonment and/or a maximum fine of Rp 4.000.000.000,- (four billion Rupiahs) if conduct violation unlawful disclosure; (c) maximum of 5 (five) years imprisonment and/or a maximum fine of Rp 5.000.000.000,- (five billion Rupiahs) if conduct violation use unlawfully personal data; (d) maximum of 6 (six) years imprisonment and/or a maximum fine of Rp 6.000.000.000,- (six billion Rupiahs) if conduct violation falsifying personal data for the benefit oneself or others which may result in harm to others. If the criminal violation committed by corporations like banking institution are subject to a maximum fine of 10 (ten) times the maximum fine threatened.

E. Authorize Agency for the Personal Data Breach Incident

As most highly regulated industry, bank as a part of financial services industry have several regulators to ensure bank operates based on prudential principle and highly standard manner in their activity. For the time being, the regulator that regulate bank related personal data is OJK, Bank Indonesia, Financial Transaction Reports and Analysis Centre (PPATK), Indonesia Deposit Insurance (LPS), Ministry of Communication and Digital Affairs (Komdigi), Indonesian National Police (Polri), and National Cyber and Crypto Agency (BSSN). From the regulators as mentioned before, OJK is the main regulator also the supervisor of the bank based on OJK Law. Indonesia is a relatively new country to have an OJK (Financial Services Authority), although the idea has been arise around since 1999, however the law wasn't enacted until 2011, and the OJK was fully established until 2012. OJK Law required the creation of a new institution (OJK) to oversee and regulate financial institutions.[32] Based on explanatory section on OJK Law, the purpose of OJK establishment is to ensure the financial services held in an orderly, fair, transparent, and accountable manner, as well as capable of realizing the growth of financial system that grows in is a sustainable and stable, and able to protect the interest of customers and public. OJK Law has been amended by PPSK Law. In PPSK Law, the function of OJK's function has addition with role to maintaining financial system stability and providing protection for customers and the public. This indicates that the OJK's

[30] Raymond Wacks, *Understanding Jurisprudence: An Introduction to Legal Theory*, 3. ed (Oxford Univ. Press, 2012), 50.
[31] *Teratas di Industri Keuangan, BRI Jadi Bank Terbesar Versi Fortune Indonesia 100 dan Fortune Southeast Asia 500 Tahun 2024*, 20 Agustus 2024, https://www.bri.co.id/web/ppid/detail-news?title=teratas-di-industri-keuangan-bri-jadi-bank-terbesar-versi-fortune-indonesia-100-dan-fortune-southeast-asia-500-tahun%202024.
[32] Agus Riyanto dkk., "UU P2SK DAN PENGARUHNYA TERHADAP MODEL PENGAWASAN OJK: TWIN PEAKS SEBUAH ALTERNATIF," *Mimbar Hukum* 35 (Desember 2023): 257–84, https://doi.org/10.22146/mh.v35i0.11458.

function is not only as a supervisor, but also as a maintainer of stability and protection. This change places the OJK in a more powerful position than before, as the additional functions impact its activities. In its implementation, the OJK groups the concept of consumer education and protection in the financial services sector into two categories: preventive in the field of education and consumer protection carried out by preventive measures in the form of regulations and implementation. OJK also have obligation to ensure that product and services provided by financial services institution must fulfilled 5 principles of consumer protection, namely: transparency; fair treatment; firmness; confidentiality and security of consumer data/information; and handling complaints and resolving consumer disputes directly, wisely, and cost-effectively.[33]

Based on that sample, the questions that arise is which government body that have authority to take action on incident. For answer that question, first come first is to referred to Law No 9 of 2016 concerning the Prevention and Handling of Financial System Crises (KSK Law). In KSK Law mentioned that Banks, as entities that play a crucial role in national development, because bank are the gateway to systemic risk. This is understandable, since Capital Markets and Non-Bank Financial Institutions (IKNB) sectors inevitably involve banks in their activities, whether as creditors or debtors. Therefore, preventing and managing systemic risk in the banking sector will impact other sectors. In the context of the development of financial services sector regulations and policies, particularly at the global level, this bank-centric approach is a supervisory model that utilizes interconnectedness analysis, namely through the connections or linkages between banks, other financial services sector institution, or other banks operating in the financial system, and the contagion effect, and to link the impact of systemic risk to the economy and loss of confidence.[34] With consider the systemic effect, so the imposition of sanction must be carried out carefully, including if there is found a violation of the PDP Law. Based on that consideration, need specific regulator that know well about the industry, in line with this OJK Law clearly mentioned that OJK has authority to supervisor all activities in the financial services sector, it means every single incident in banking area, should be the scope of OJK authority. In other hand, article 59 PDP Law already stated that agency shall carry out supervision on the organization of Personal Data Protection. With this complexity, interpretation approach should be use is "lex specialis derogate legi generali". PDP Law must be constellation as lex generali, because PDP Law is applicable for all industry or all segment, whereas if the incident happened in banking sector, therefore OJK has authorized to decide on similar problem that involving overlapping authority between OJK and other institutions. This opinion also supported by the provision of article 248 Law 4 of 2023 that stipulated that legislation concerning customer protection in the financial sector is specific to the provisions of legislation concerning customer protection outside the financial sector.

Conclusion

The Bank's obligation to maintain customer confidentiality is inevitable and cannot be separated from the bank's business and operational activities. Business development and banking digitalization have led changes in regulations that require banks not only maintain confidentiality, but also to serve and protect their customers and their data. Since 2022, Indonesia enters a new regime regarding Personal Data Protection (PDP) that must comply to any parties, including bank. PDP is like "cherry on top" to complete Bank Secrecy with balancing the Personal Subject Data Rights. The difference between bank secrecy and Personal Data Protection is bank secrecy is focus on non-disclosure, whereas PDP cover the legality of personal data processing. When bank comply to the PDP law, it means bank protect the customers right in favor of customer protection also. Implementation PDP in Indonesia still has lot of challenge, one of most challenge is the Government Regulation as implementing regulations not yet enacted and Personal Data Protection Agency (PDP Agency) as regulator and administrator of Personal Data Protection is not yet

[33] Mochammad Rizaldy Insan Baihaqqy, "Dampak Undang-Undang Nomor 4 Tahun 2023 tentang Pengembangan dan Penguatan Sektor Jasa Keuangan (P2SK) terhadap Tugas dan Fungsi Pengawasan Otoritas Jasa Keuangan," *Co-Value Jurnal Ekonomi Koperasi dan kewirausahaan* 14, no. 6 (2023), https://doi.org/10.59188/covalue.v14i6.3972.

[34] Tri Handayani dan Lastuti Abubakar, "PERKEMBANGAN HUKUM SEKTOR JASA KEUANGAN DALAM UPAYA PERCEPATAN PERTUMBUHAN EKONOMI NASIONAL," *De Lega Lata* 2, No 2, no. 2017 (2017): 418–44, https://doi.org/10.30596/dll.v2i2.1220.

formed until this day. Without clear implementation regulation it is create potential free interpretation regarding prevailing regulation. Other than that, legal enforcement also raised ambiguity of authorized institution to impose sanction for financial services industry if PDP Agency establish for PDP enforcement, however banking business has complexity and potential systemic threat, therefore OJK should be the authorized institution to impose sanction for banking industry based on prevailing regulation.

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