

Comparative Study of Bank Secrecy Principle in Indonesia and Singapore in Relation to the Prevention of Money Laundering

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ABSTRACT

Bank secrecy is commonly a pillar of banking principle, which is promised by banks and governments to customers. However, given the prevalence of money laundering, terrorism financing and other criminal activities, governments and supranational organizations have started piercing the veil of bank secrecy in the name of public interest. With Indonesia's recent removal from the Financial Action Task Force (FATF) blacklist, this paper explore the new initiative of the Indonesian government in keeping up with their established ASEAN neighbor, such as Singapore. This research analyzes and compares the difference and similarities of the regulations on banking secrecy principle in Indonesia and Singapore in an attempt to provide some form of reasoning to why Indonesian citizen prefer to safeguard their wealth in Singapore rather than home. Additionally, considering the newly installed banking secrecy laws based on the FATF recommendation, this paper evaluates how the aforementioned countries attempt to prevent money laundering while still maintaining bank secrecy provisions.

The form of this research is as a normative legal research as it will be conducted through the examination of existing literary materials. As well as empirical research as interviews with banking professionals will be conducted. Based on the manner of this research, primary legal materials, such as laws and regulations applicable in Indonesia and Singapore, and secondary legal materials as well as tertiary legal materials will be analyzed to support the fulfillment of this research.

The result of this research conveys that although Singapore and Indonesia have different legal systems, it was found that it does not have significant impact as both countries implements written laws and regulations while still respecting relative theory of bank secrecy. It was also conveyed that the current legislation for bank secrecy in both countries in attempting to prevent money laundering appears to be approximately the same level given the participation of both countries in the FATF. In analyzing the levels of bank secrecy in such countries, as well as the granted exceptions that legally allow the intrusion of bank secrecy it becomes apparent that governments may sacrifice banking secrecy in the interest of another priority.

Keyword: Bank Secrecy, Money Laundering, Comparative Law.

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Perbandingan Studi Mengenai Prinsip Kerahasiaan dalam Bank di Indonesia dan Singapura dalam Pencegahan Tindak Pidana Pencucian Uang

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INTISARI

Prinsip kerahasiaan adalah salah satu prinsip yang sangat penting di dalam dunia perbankan, yang dijamin oleh pihak bank dan pemerintah kepada pelanggan. Namun, mengingat banyak terjadinya tindak pidana pencucian uang, pendanaan terorisme, dan tindak pidana lainnya, pemerintah dan organisasi internasional perlahan mulai membatasi penggunaan prinsip kerahasiaan demi kepentingan publik. Dihapusnya Indonesia dari daftar hitam Financial Action Task Force (FATF) Penelitian ini menganalisa dan membandingkan persamaan dan perbedaan undang-undang dan peraturan mengenai prinsip kerahasiaan di Indonesia dan Singapura, guna menjawab mengapa Warga Negara Indonesia lebih memilih untuk menyimpan aset dan uangnya di Singapura. Selain itu, penelitian mengevaluasi bagaimana negara-negara tersebut mencoba untuk mencegah praktek pencucian uang dengan tetap menjaga peraturan rahasia bank.

Penelitian ini menggunakan metode penelitian normatif yang dilakukan melalui analisis dan tinjauan pustaka. Metode empiris juga akan dilakukan dengan mewawancarai profesional di bidang perbankan. Literatur yang digunakan dalam penelitian ini adalah literatur primer, yakni peraturan dan undang-undang yang berlaku di Indonesia dan Singapura, dan juga literature sekunder dan tertier yang akan digunakan untuk melengkapi penelitian ini.

Hasil penelitian ini menunjukkan bahwa meskipun Singapura dan Indonesia memiliki system hukum yang berbeda, tidak ada dampak yang signifikan dalam regulasi mengenai rahasia bank karena kedua negara tersebut menerapkan undang-undang dan hukum tertulis, dan kedua negara tersebut menerapkan teori relatif kerahasiaan bank. Telah ditemukan juga bahwa undang-undang kerahasiaan bank dalam pencegahan pencucian uang di kedua negara ini ada di tingkat yang sama karena partisipasi negara tersebut di FATF. Dalam menganalisis tingkat kerahasiaan bank di kedua negara tersebut, pengecualian hukum diberikan untuk intrusi kerahasiaan bank. Dari situ bisa dilihat bahwa pemerintah dapat mengorbankan kerahasiaan bank demi kepentingan lain.

Kata kunci: Rahasia Bank, Pencucian Uang, Perbandingan Hukum.

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