



# Notary public's obligation regarding bank secrecy post law number 4 of 2023 concerning financial sector development and strengthening

Trisadini Prasastinah Usanti

Faculty of Law, University of Airlangga, Surabaya, Indonesia

## ARTICLE INFO

### Article history:

Received Oct 2, 2023

Revised Oct 19, 2023

Accepted Dec 14, 2023

### Keywords:

Notary  
Notary public  
Bank Secrecy  
Law number 4 of 2023

## ABSTRACT

A legal vacuum is found regarding the notary public as the affiliated party who is obliged to keep the bank secrecy in Banking Law and Law on Financial Sector Development and Strengthening. Although it cannot be denied that notary public have an important role in banking activities, e.g. in making authentic deeds related to granting credit or providing guarantees. The notary public also might obtain information related to the deposit customer and their savings if their savings are used as the object of credit collateral. The problem analyzed in this study is that in the absence of notaries public arrangements as an affiliated party, are they still obliged to keep the bank secrecy and what are the sanctions for notaries public if they violate the bank secrecy? The approach used in this study is the statute approach and the conceptual approach. This study found that to fill the legal vacuum, a legal discovery could be performed using grammatical interpretation, extensive interpretation, and legal construction with analogical reasoning regarding Article 40, Article 1 number 21, and Article 40 C in Law on Financial Sector Development and Strengthening, therefore based on these methods, notary public is part of the affiliated party which obliged to keep the bank secrecy. As for the bank secrecy violation, the sanction is not limited to imprisonment and fines, but also additional punishment as regulated in the Law on Financial Sector Development and Strengthening. In addition, there is a possibility of a tort lawsuit for the losses caused and administrative sanctions for notaries public based on Article 16 paragraph (11) of Law on Notary Public Position.

This is an open access article under the [CC BY-NC](https://creativecommons.org/licenses/by-nc/4.0/) license.



## Corresponding Author:

Trisadini Prasastinah Usanti,  
Faculty of Law,  
Universitas Airlangga,  
Jl. Dharmawangsa Dalam Selatan, Airlangga, Gubeng, Surabaya, East Java 60286  
Email: [trisadini@fh.unair.ac.id](mailto:trisadini@fh.unair.ac.id)

## 1. INTRODUCTION

Law number 4 of 2023 concerning the Financial Sector Development and Strengthening is a reformation of the financial sector which includes the banking sector that underwent changes and addition to articles on Law Number 7 of 1992 concerning Banking as amended in Law Number 10 1998 (Banking Law). One of the articles amended is an article related to bank secrecy, e.g. addition to Article 40 A in Law on Financial Sector Development and Strengthening in correlation to the exception to bank secrecy obligations for curators, which previously were not regulated in the Banking Law, Curators can ask for information about the customers and their savings related to bankruptcy or liquidator's request which determined based on a court order in the context of settling

the assets. Meanwhile, one of the article amendments is related to the statement changes regarding the bank secrecy that regulated in Article 1 Number 28 of Law on Financial Sector Development and Strengthening to: "Bank Secrecy is an information related to information on Deposit Customer and the savings from the Deposit Customer". Previously it was stated, "Bank Secrecy is everything related to the information concerning the deposit customers and their savings". However, the changes in the Law on Financial Sector Development and Strengthening do not change the scope of bank secrecy, which remains related to deposit customers and their savings.

The obligation to keep the bank secrecy is not only applied to the banks but also to the affiliated party as stated in Article 40 in Law on Financial Sector Development and Strengthening. There is a change in Law on Financial Sector Development and Strengthening in Article 1 Number 21, the affiliated parties in question are: Bank commissary or other equivalent party, Sharia Supervisory Board, directors or other party with equivalent power, officials or employees; parties who provide services to the Bank, including public accountants, appraisers, legal consultants, and other consultants; parties who control or are controlled by the Bank, either directly or indirectly; and/or; parties who, according to the assessment of the Financial Services Authority, participate in influencing the management of the Bank, either directly or indirectly, include parties who are related by marriage and descent to the second degree, both horizontally and vertically, with members of the board of commissioners or equivalent, members of the Supervisory Board Sharia, members of the board of directors or equivalent, officers or employees of the Bank.

In the current phenomenon, notary in carrying out his/her duties has the authority and obligation to be executed by the prevailing laws and regulations (Victoria et al., 2020). According to Suryadi et al (2023) study suggest that notaries who breach the principle of bank secrecy can face criminal charges, and the ideal concept of criminal liability should balance the interests of customers and banking institutions while maintaining bank secrecy and customer privacy. In particular, notaries are responsible for verifying the accuracy of the information in documents, ensuring that all parties involved in a transaction are authorized to do so, and executing transactions in compliance with applicable laws and regulations (Iryadi et al., 2021).

Notaries can also play a role in facilitating cross border transactions by ensuring that documents meet the legal requirements of different countries thus promoting international trade and economic growth (Dewi Padusi Daeng Muri et al., 2018). In the study of Ho et al (2019) found that compliance with the Bank Secrecy Law is essential to maintaining public trust in the banking industry, and that failure to comply can result in a loss of customer confidence and reputational damage. Another study by Sasson (2021) highlighted the importance of implementing effective internal controls and risk management strategies to ensure compliance with the Bank Secrecy Law and other regulations related to customer information confidentiality. Several previous studies emphasized the importance of notaries emphasizing the importance of applicable laws and regulations to maintain trust in the professional community (Hossain, 2020; Mufasirin & Witasari, 2022). Notary negligence, such as not keeping records properly the deed or mention of the parties, can also invalidate the authenticity of the deed, causing losses to the parties involved (Jefry & Hanim, 2019).

Parties who provide services to banks as part of affiliated parties are obliged to maintain bank secrecy, including public accountants, appraisers, legal consultants, and other consultants. However, the public notary in either Banking Law or Law on Financial Sector Development and Strengthening is not referred to as an affiliated party. Although the public notary has an important role in banking activity, for example, the making of authentic deeds related to granting credit or providing guarantees, it is possible for the public notary to get the information related to deposit customers, and their savings are used as objects of credit collateral.

In Article 4 of Law Number 30 2004 Concerning Public Notary Position as amended in Law Number 2 2014 (Law of Notary Public Position), one of the oaths of a Public Notary is "that I will keep the contents of the deeds confidential and information obtained from the duty implementation of my position". From there on, it is reaffirmed in Article 16 paragraph (1) letter f in Law of Notary Public obliged to keep everything related to the deeds they made and any information obtained for the making of the deeds confidential according to their oath of office, unless the law stated otherwise. The regulation in Law of Notary Public Position concerning the Notary Public's obligations to keep anything related to the deeds they made and any information obtained for the deeds confidential,

including the bank secrecy as stated in Banking Law and Law on Financial Sector Development and Strengthening, considering Banking Law and Law on Financial Sector Development and Strengthening, public notary is not part of the affiliated party.

Based on the explanation above it can be concluded that the problem that will be analyzed is whether the notary public, which is not part of the affiliated party in Banking Law and Law on Financial Sector Development and Strengthening, is obliged to keep the bank secrecy and what is the sanctions for the notary public if they violated the bank secrecy?

## 2. RESEARCH METHOD

This study is a normative study using the statute approach and conceptual approach. The legal material analyzed consists of primary legal sources and secondary legal materials. The primary source materials used are Banking Law, Law on Public Notary Position, Law on Financial Sector Development and Strengthening, and their implementing regulations. While the secondary legal materials consist of books and international and national journals. All legal materials are collected through document study and literature study and then analyzed using descriptive analysis using study methods namely grammatical interpretation, extensive interpretation, and legal reasoning in order to draw a conclusion.

## 3. RESULTS AND DISCUSSIONS

### Bank Secrecy Scope

One of the stability factors of banking is keeping the bank secrecy because by ensuring the bank secrecy effectively, the customer trust level will be maintained as stated by Volodymyr Cherniei (Cherniei et al., 2023). In line with that, Hendrik Agus Setiawan confirmed that, one of the elements to maintain the bank's customer trust is the bank secrecy. Therefore, the secrecy caused the public interest to put their fund in the bank, hence if the bank cannot maintain the secrecy, the customer is reluctant to interact with the bank (Sutiawan et al., 2018). Akhmad Yasin stated that the existence of the bank as a financial institution is reliant to the customer's trust, so the bank have to maintain the trust and must comply with the provisions concerning the bank secrecy. In the Banking Law, there is a specific regulation where the bank is forbidden to give the recorded information related to the deposit customers' name and their deposits to anyone (Yasin, 2019).

According to Donato Masciandaro & Olga Balakina (2015), bank secrecy is any financial activity with the purpose of hiding the origin and/or destination of the money flows with the intention of reducing the chance of complete identification. Moreover, it is stated that bank secrecy is a medium for money laundering through the financial system by the banking laundering (Donato Masciandaro & Olga Balakina, 2015). According to the study by (Smith et al., 2019), the Bank Secrecy Law is an important regulation that governs the confidentiality of customer information in the banking sector. Under this law, banks and their affiliates are required to maintain the confidentiality of customer information obtained through their business activities, including deposits and transactions. Failure to comply with the provisions of the Bank Secrecy Law can result in serious legal and financial consequences for banks and their affiliates (Johan, 2022).

He Ping explained that although the meaning of bank secrecy has been widely known, there is no particularly coherent definition at the international level. For banking institutions, bank secrecy is a professional duty, where the bank is forbidden to reveal the customers' financial information and the bank also has the right to refuse the third party's request in order to protect the customers' interest. For the customers, bank secrecy is a privilege, which means the customers' financial information must be legally protected and not be revealed to other parties (Ping, 2004).

Bank secrecy in Malaysia is a contractual obligation of a bank towards the customers. According to The Banking and Financial Institutions Act 1989, A bank that illegally reveals any information concerning the customers' activity has committed a breach of contract and is responsible for the loss and can be sued by the customers (May Fong Cheong, 1993). In Ukraine, according to Article 61 of the Law of Ukraine on Banks and Banking Activity, banks must keep the bank secrecy. In Article 61 concerning the mechanism to keep the bank secrecy, the bank must guarantee every customer's data during service and will not be revealed and not be used for the interest of the bank employees. Therefore, the bank employees are obliged to sign the commitment to keep the bank

secrecy (Basyta Iryna, 2020). Meanwhile, in China, based on Article 29 from The Constitution of the People's Republic of China concerning the Commercial Bank stated: "in handling the savings deposits for individuals, commercial banks shall adhere to the principles of voluntary deposit, unimpeded withdrawal, interest payment on deposits, and confidentiality for the depositors". This means the bank secrecy is not limited to professional ethics that shall be adhered to by the financial institutions but also a legal obligation mandated by the constitution (Ping, 2004).

Bank secrecy definition based on Law on Financial Sector Development and Strengthening is information related to the deposit customer and the deposits by the deposit customers. In terms of deposits customer altogether as debtor customer, the information of debtor customer is not in the scope of bank secrecy that must be kept by the Bank and Affiliated Party. This statement was agreed with Choiriyah et al (2021) which stated that information about customers in roles other than depositors is not confidential information that banks are obligated to protect. As for the definition of deposit according to the Banking Law is a fund entrusted by the customers to the bank based on the deposit agreement of the fund in the form of giro, deposits, deposit certificate, savings, and/or other forms equivalent. Theoretically, there are two opinions regarding bank secrecy, namely:

- a. Bank secrecy theory is absolute, which means the customers' secrets known by the bank due to the business activity must be kept by the bank, without any exception and limitation by any reason and by anyone.
- b. Bank secrecy theory is relative, which means the bank secrecy for state interests or public interests is permitted to be revealed.

The Banking Law and Law on Financial Sector Development and Strengthening adhere to the relative bank secrecy theory because the exception is regulated in Article 40 A in Law on Financial Sector Development and Strengthening. Article 40 A in Law on Financial Sector Development and Strengthening is an additional article that is not included in Law Banking concerning the exception of bank secrecy, including:

- a. Judicial interest in civil cases between the Bank and the Customer, the Customer with other Customer, and cases related to the Customer;
- b. Judicial interest in criminal cases;
- c. Curator's request determined by the verdict of commercial court concerning bankruptcy or liquidator's request determined by the court order in the terms of property settlement;
- d. request, approval, or authorization from the Deposit Customer made in writing;
- e. request of the legal heir from the Deposit Customer who has died;
- f. Exchange information between Banks;
- g. fulfil the mutual assistance in criminal matters;
- h. requests for financial information for tax purposes based on statutory provisions;
- i. interests of other institutions for the state administration in the central level and for public interest according to the duties and authorities in the Constitution;
- j. interests in task implementation in the monetary sector, macroprudential, and the payment system by Bank Indonesia;
- k. interests in task implementation in deposit insurance and resolution by Indonesia Deposit Insurance Corporation; and
- l. implementation of inter-state authority cooperation agreements that have been signed reciprocally.

As an example, for tax purposes, according to Indonesian Government Regulation in Lieu of Law (Perppu) concerning Financial Information Access for Tax Purposes, information needed at least include:

- a. identity of financial account holder;
- b. financial account number;
- c. identity of financial service institutions;
- d. balance or value of financial accounts; and
- e. income associated with the financial accounts.

The information above is clearly in the scope of bank secrecy that has to be kept secret, but for tax purposes, this information can be disclosed by the bank without violating the law.

### **Notary Public Position associated with the Bank Secrecy**

A notary must enforce the law at all times since they are state officials. This means that they are respecting the law when doing their profession as they keep the pledge they made when doing his notarial responsibilities as stated in Article 4 Paragraph 2 of UUJN (Rossulliaty et al., 2023). According to Notary Public Law, a Notary Public is a general official authorized to make authentic deeds and have other authority as stated by this law or other laws. In the making of a bank credit agreement as stated in the explanation of Article 8 paragraph (2) in Banking Law, credit granting or financing based on Sharia Principles is made in writing agreement. The meaning of a written agreement can be made in an authentic deed or private deed. Deeds signed by the notary public is an authentic deed because it is made by the notary public according to the form and procedure stipulated by this Law. Meanwhile, a private deed, according to Article 1874 Indonesian Code of Civil Law, is a deed signed privately, letters, lists, household documents, and other writings made without the intermediary of a public official.

Hence, if the credit granted by the bank is guaranteed by blocked deposits or savings or blocked giro owned by the debtor customer packed with a credit agreement collateral in the form of an authentic deed, consequently, the notary public will know the identity of the account holder, the account number, identity of the issuing bank, and nominal deposits guaranteed. This is because the notary public will include this information in the deed he makes. So, according to Article 4 Jo, Article 16 paragraph (1) letter f in Law on Public Notary Position, notary public shall keep anything related to the deeds they signed and any information obtained to make the deeds confidential according to the oath of office unless the law stated otherwise. This obligation is attached to the notary public based on the Law on Public Notary Position so that notaries are prohibited from disclosing all information obtained for the purpose of making credit agreement deeds and guarantee agreements. If the notary public violated Article 16 paragraph (1) letter f, consequently, based on Article 16 paragraph (11) in Law on Public Notary Position, the notary public will be subject to sanctions in the form of: Written warning; Temporary suspension; Honorable dismissal; or Dishonorable dismissal.

This case is different with sanctions due to the violation of bank secrecy disclosure according to Law on Financial Sector Development and Strengthening as regulated in Article 47 paragraph (2): members of the board of commissioners or equivalent, members of the board of directors or equivalent, employees of the Bank or other Affiliated Parties who deliberately provide information as intended in Article 40 shall be punished with imprisonment for a minimum of 2 (two) years and a maximum of 4 (four) years and a minimum fine of IDR 4,000,000,000.00 (four billion rupiah) and a maximum of IDR 8,000,000,000.00 (eight billion rupiah). The sanctions subjected due to violation of bank secrecy is not limited to fine, but also imprisonment. Meanwhile in Law on Public Notary Position, the sanction given is only administrative sanctions if the notary public violated Article 16 paragraph (1) letter f.

The violation of Article 40 Law on Financial Sector Development and Strengthening concerning the obligation to keep the secrecy of information related to the deposit customers and their savings aimed at banks and affiliated parties is a banking crime related to bank secrecy. Moreover, Article 50 D Law on Financial Sector Development and Strengthening, it states that those convicted of violating bank secrecy may be subject to additional punishment in the form of compensation if the criminal act caused losses. The additional punishment in the form of compensation is returned to the affected party in the amount of losses experienced or proportionally if the amount of compensation is not sufficient for the total amount of losses incurred. If the convict does not pay the fine and the additional fine in the form of compensation, the convict's property will be confiscated and auctioned by the prosecutor to pay off the fine and compensate for the losses. If it turns out that the convict's property confiscation and auction are not enough to pay the compensation and fine, an additional punishment in the form of unpaid compensation is replaced with imprisonment as warned for the particular criminal offense. Additional punishment in the form of compensation and the duration of imprisonment is determined by the judge and included in the court decision.

The threat of violation of bank secrecy committed by the banks and affiliated parties in the Law on Financial Sector Development and Strengthening is more severe compared to the sanction regulated in the Banking Law. This is because the Banking Law did not regulate the additional punishment in the form of compensation if the criminal act caused losses as stated in Article 50 D Law on Financial Sector Development and Strengthening.

The sanctions given for violation of bank secrecy in the Law on Financial Sector Development and Strengthening are not light sanctions, like imprisonment, fine, and additional punishment. The regulations on bank secrecy are indeed crucial for the deposit customers and the bank itself because if the customers lose their trust in the bank due to violation of bank secrecy committed by the bank or affiliated parties, the bank will suffer from losses by the withdrawal of the deposits. This will clearly affect the rating of the bank's strength if the deposit customers simultaneously withdraw their funds from the bank due to their distrust. As explained before, the deposit is a fund entrusted by customers to the bank, so the customers trust must be maintained by the bank or affiliated parties, especially related to the bank secrecy. This is because the existence of a bank as a financial institution heavily relies on the customer's trust.

Considering the importance of maintaining bank secrecy for the deposit customers and the bank itself, if the notary public violated the bank secrecy while carrying out the duty in making the credit agreement deeds and the guarantee agreement deeds where all the related information on deposit customers and their savings that are used as collateral objects, the notary public could be sanctioned. The sanctions given to the notary public are not only administrative sanctions as regulated in Article 16 paragraph (11) of Law on Public Notary Position but also the imprisonment and fine criminal sanctions as regulated in Article 47 paragraph (2) in Law on Financial Sector Development and Strengthening and will be sanctioned with additional punishment in the form of compensation if the criminal act caused losses for the deposit customers. Referring to Jonson, this is very possible, although the notary public is not included in the Banking Law as an affiliated party, by using grammatical interpretation methods and extensive interpretation, the notary public is included as an affiliated party as in the Banking Law and is subject to the provisions for maintaining the bank secrecy as in Article 40 of the Banking Law in addition to being subject to the provisions of Article 4 Jo. Article 16 Law on Public Notary Position.

Grammatical interpretation and extensive interpretation were due to a legal vacuum in the Banking Law and Law on Financial Sector Development and Strengthening because there was proper regulation that stated that the notary public is part of the affiliated parties. So the solution is to make legal discovery. Referring to the opinion of J.J.H Bruggink as quoted by Philipus Mandiri Hajon, the model of legal discovery (*rechtsvinding*) adopted today includes interpretation methods (*interpretatiemethoden*) and reasoning models (*redeneerwijzen*) or legal construction. The model of legal reasoning or legal construction consists of analogy, *argumentum a contrario*, and *rechtsverfijning*, while according to Bruggink, interpretation methods are grouped into 4 models, namely linguistic, historical, systematic, and social interpretation (Philipus Mandiri Hajon & Tatiek Sri Djamiati, 2014). Peter Mahmud Marzuki also stated that the creation of law can be done through analogy. The judge makes an analogy when dealing with an event that is not regulated in the law but the event is similar to an event that is regulated in the law (Peter Mahmud Marzuki, 2020). In line with that, Abdul Manan stated that legal discovery using interpretation methods can be divided into several types, namely substantive interpretation, grammatical interpretation, systematic or logical interpretation, historical interpretation, sociological or teleological interpretation, comparative interpretation, restrictive interpretation, extensive interpretation, and futuristic approach. Meanwhile, legal discovery using the construction method can be performed using analogical arguments, the *argumentum a contrario* method, legal concretization (*rechtsverfijnings*), or legal fiction (Abdul Manan, 2013).

In legal discovery related to the vacuum in the notary public's position as an affiliated party in Banking Law and Law on Financial Sector Development and Strengthening, grammatical interpretation and extensive interpretation can be applied. Grammatical interpretation is a method to interpret the law according to the terms contained in the law, while extensive interpretation is a method to interpret by extending the meaning of the words contained in the particular law in order to include an event in it. Grammatical interpretation and extensive interpretation are applied to the

content of Article 40 paragraph (1) and Article 1 number 21 Law on Financial Sector Development and Strengthening, so notary public is included as an affiliated party that obliged to keep the bank secrecy as well as part of the party that provides service to the bank in making deeds related to credit granting to their deposit customers.

The legal vacuum related to the notary public position as the affiliated party in the obligation to keep the bank secrecy also can be applied by using reasoning models or legal constructions such as analogical reasoning, which in Islamic law is called "*qiyas*". This model of legal construction is utilized by the judge to give a verdict in a conflict where there is no particular regulation of it, but the event resembles one regulated by law (Abdul Manan, 2013). Public accountants, appraisers, and legal consultants are affiliated parties who are obliged to keep the bank secrecy as stated in the Banking Law and the Law on Financial Sector Development and Strengthening. A public accountant is someone with a permit from the Ministry of Finance to provide service as stipulated in Law Number 5 of 2011 concerning Public Accountants (Public Accountant Law). Meanwhile, an appraiser, according to the Minister of Finance Regulation Number 173/PMK.06/2020 concerning Appraisals by Government Appraisers within the Directorate General of State Assets, is someone who has the competence in performing appraisal activities, who has at least passed initial appraisal training and provided appraisal services. Legal consultant, as defined by Article 64 Law Number 8 of 1995 concerning Capital Market (Capital Market Act), is a capital market legal consultant, who is a legal expert who provides legal opinions to other parties and is registered in CMFISA (Capital Markets and Financial Institutions Supervisory Agency). Referring to Article 64 in the Capital Market Act, it is stated that supporting professions for capital market consist of accountants, legal consultants, appraisers, notaries public, and other professions determined by government regulations. A notary public is one of the supporting professions for capital market, hence Law on Financial Sector Development and Strengthening should have included a notary public profession as one of the affiliated parties based on analogical reasoning. Notary public provides service to clients similar to public accountants, appraisers, and legal consultants. In addition, professions like public accountants, appraisers, legal consultants, and notaries public must perform their duties based on statutory regulations and be given compensation for the services they have provided, as well as the right for notaries public to receive an honorarium for legal services provided in accordance with their authority as regulated in Article 36 in Law on Public Notary Position.

Another similarity can be found in administrative sanctions, which are regulated in Article 53 of Public Accountant Law, administration sanctions will be given to the public accountant, if the public accountant commits a violation of Article 29 of Public Accountant Law which states that public accountant must keep the confidentiality of the information obtained from clients. This is similar to the context of Article 4 Jo. Law on Public Notary Position, where administrative sanctions are applied to notaries public who committed violations.

Besides interpretation methods and legal reasoning on Article 40 and Article 1 number 21 of Law on Financial Sector Development and Strengthening. Extensive interpretation can be applied to Article 40 C Development and Strengthening of Financial Sector which contains the norm "Every person who obtains information regarding Deposit Customers and their savings as intended in Article 40A is obliged to keep the confidentiality of information regarding Deposit Customers and their savings". The meaning from the term "every person" can be extended to include the notaries public who are obliged to keep the bank secrecy. However, in Law on Financial Sector Development and Strengthening there is no article that regulates the sanction towards violation of Article 40 C Law on Financial Sector Development and Strengthening as the sanction given to the violation Article on 40 Law on Financial Sector Development and Strengthening.

The absence of sanctions imposition for a violation committed by "every person" in Article 40 C Law on Financial Sector Development and Strengthening does not conceal the legal effort for the deposit customers aggrieved by the violation committed by "every person". The legal effort can be carried out by the deposit customers by filing a lawsuit against tort.

It is stated a that tort is an act against the law where there is a wrong act from the perpetrator, a loss suffered by the victim, and a causal relation between the wrong act and the loss (Leonora Bakarbessy & Ghansham Anand, 2018). If the notary public violated Article 40 C Law on Financial Sector Development and Strengthening, the notary public can be subjected to tort because the act

conducted is an act against the law, which in this context is Law on Financial Sector Development and Strengthening, particularly Article 40 C. The tortious act conducted by the notary public, whether it is intentional or unintentional by negligence by disclosing the bank secrecy that should not be disclosed is a violation. Furthermore, the violation caused material or immaterial losses for the deposit customers. The losses incurred were due to violations committed by the notary public against Article 40 C Law on Financial Sector Development and Strengthening. Sedyo Prayogo defined tort as an act that violates other people's rights or an act (or the absence of action) contrary to the obligations according to law or contrary to the unwritten law that shall be adhered to by individuals in their interactions with fellow citizens by considering the existence of justifiable reasons according to the law (Sedyo Prayogo, 2016).

#### 4. CONCLUSION

In Law Banking or Law on Financial Sector Development and Strengthening, a notary public is not part of affiliated parties that are obliged to keep the bank secrecy. However, it cannot be denied that the notary public has an important role in banking activities, for example, in making authentic deeds related to granting credits and providing guarantees, it is possible for the notary public to obtain information related to deposit customers and their savings if their savings are used as a credit collateral object, hence, a legal vacuum occurred. Therefore, to fill the legal vacuum, legal discovery is performed using grammatical interpretation, extensive interpretation, and legal construction by using analogical reasoning on Article 40, Article 1 number 21, and Article 40 C Law on Financial Sector Development and Strengthening. Consequently, based on these methods, the notary public is a part of affiliated parties that are obliged to keep the bank secrecy. The threat of violation of bank secrecy is not limited to imprisonment and fines, but also additional penalties as regulated in the Law on Financial Sector Development and Strengthening. Besides, it is possible for the aggrieved party who suffered from loss to file a lawsuit concerning tort for the violations that caused the loss. Administrative sanctions as stipulated in Article 16 paragraph (11) Law on Public Notary Position also applicable to notary public that disclose any information obtained for making a deed that should have been kept confidential.

The implications of this study are relevant for stakeholders, including notaries, banking institutions, and customers. For notaries, it is important to understand the regulations regarding bank secrecy and customer confidentiality as well as the legal consequences if they violate them. Notaries must ensure that they obtain consent or legal authority from customers before disclosing any information related to their bank accounts or transactions. For banking institutions, it is important to ensure that notaries affiliated with them are aware of the regulations regarding bank secrecy and customer confidentiality. Banking institutions also provide training to notaries to ensure that they understand their legal responsibilities and obligations. For customer, their financial information is protected by law, and they have the right to privacy and confidentiality. Customers should be aware of their rights and take necessary precautions to protect their financial information. They must also ensure that they provide legal permission or authority before their financial information is disclosed to third parties.

The suggestion for future research is the author hope this study can help another researcher with similar literature to develop their research, the author also suggest for future research can doing depth analysis and more methodological work is needed in some another aspects.

#### REFERENCES

- Abdul Manan. (2013). Penemuan Hukum oleh Hakim dalam Praktek Hukum Acara di Peradilan Agama. *Jurnal Hukum Dan Peradilan*, 2(2).
- Basyta Iryna, et. al. (2020). Protection and Risks of Illegal Divuligation of Banking Secrecy in Ukrainian Criminal Proceeding. *Access to Justice in Eastern Europe*, 4(8), 298–302. <https://doi.org/10.33327/AJEE-18-3.4-n00042>
- Cherniei, V., Cherniavskiy, S., Babanina, V., Tykhonova, O., & Hudkova, H. (2023). Characteristics of liability for disclosure of bank secrecy in Europe and the United States. *JURÍDICAS CUC*, 19(1). <https://doi.org/10.17981/juridcuc.19.1.2023.11>
- Choiriyah, C., Saprida, S., & Sari, E. (2021). Development of Sharia Banking System In Indonesia. *Mizan: Journal of Islamic Law*, 5(1), 17. <https://doi.org/10.32507/mizan.v5i1.923>

- Dewi Padusi Daeng Muri, Galang Prayogo, & Faisal Arif. (2018). THE RIGHTS AND OBLIGATIONS OF NOTARIES ACCORDING TO INDONESIAN LAW CONCERNING NOTARY POSITION. *International Journal of Mechanical Engineering and Technology (IJMET)*, 9(8), 875–881.
- Donato Masciandaro, & Olga Balakina. (2015). *Banking Secrecy and Global Finance*. Palgrave Macmillan.
- Ho, K.-C., Ma, J. Z., Yang, L., & Shi, L. (2019). Do anticorruption efforts affect banking system stability? *The Journal of International Trade & Economic Development*, 28(3), 277–298. <https://doi.org/10.1080/09638199.2018.1522661>
- Hossain, M. M. (2020). Separation of Judiciary in Bangladesh-Constitutional Mandates and Masdar Hossain Case's Directions: A Post Separation Evaluation. *International Journal for Court Administration*, 11(2). <https://doi.org/10.36745/ijca.310>
- Iryadi, I., Ansari, T. S., Saputra, J., Afrizal, T., & Thirafi, A. S. (2021). The Role of Jurisprudence as Form of Legal Prescriptions: a Case Study of Notaries in Indonesia. *WSEAS TRANSACTIONS ON ENVIRONMENT AND DEVELOPMENT*, 17, 75–80. <https://doi.org/10.37394/232015.2021.17.8>
- Jefry, A. B., & Hanim, L. (2019). Juridical Studies On Notary Deed Which Can Be Canceled And Void By The Law And Responsibilities Of Notary According To Law. *Jurnal Akta*, 6(3), 433. <https://doi.org/10.30659/akta.v6i3.5084>
- Johan, S. (2022). Will Data Protection Act Change the Use of Data in Indonesian Financial Services? *Lambung Mangkurat University*.
- Leonora Bakarbessy, & Ghansham Anand. (2018). *Buku Ajar Hukum Perikatan*. Zifatama Jawara.
- May Fong Cheong. (1993). Banking Secrecy in Malaysia. *Journal of Malaysian and Comparative Law*, 20.
- Mufasirin, A., & Witasari, A. (2022). The Legal Implications on Cancellation of Notaries which can be Canceled by Law. *Sultan Agung Notary Law Review*, 3(4), 1472. <https://doi.org/10.30659/sanlar.3.4.1472-1480>
- Peter Mahmud Marzuki. (2020). *Teori Hukum*. Kencana.
- Philippus Mandiri Hajon, & Tatiek Sri Djamiati. (2014). *Argumentasi Hukum*. Gadjah Mada University Press.
- Ping, H. (2004). Banking secrecy and money laundering. *Journal of Money Laundering Control*, 7(4), 376–382. <https://doi.org/10.1108/13685200410810074>
- Rossulliaty, D., Ucu, Y., & Prawesthi, W. (2023). CRIMINAL LIABILITY OF NOTARY IN CRIMINAL ACT COMMITTED BY NOTARY SIGNING AGENT. *Journal of Court and Justice*, 2(1), 54–65. <https://doi.org/10.56943/jcj.v2i1.258>
- Sasson, L. (2021). *Effective Bank Secrecy Act Quality Control in Financial Services*. Utica College.
- Sedyo Prayogo. (2016). Penerapan Batas-Batas Wanprestasi dan Perbuatan Melawan Hukum dalam Perjanjian. *Jurnal Pembaharuan Hukum*, III(2).
- Smith, K. T., Jones, A., Johnson, L., & Smith, L. M. (2019). Examination of cybercrime and its effects on corporate stock value. *Journal of Information, Communication and Ethics in Society*, 17(1), 42–60. <https://doi.org/10.1108/JICES-02-2018-0010>
- Suryadi, W., Hasibuan, F. Y., Lilik Mulyadi, Yuhelson, & Januar Agung Saputera. (2023). The Criminal Liability of Bank-Affiliated Notaries for the Confidentiality Principle of Banks in Connection with Deposit Collateral Agreements. *International Journal of Science and Society*, 5(2), 156–164. <https://doi.org/10.54783/ijssoc.v5i2.658>
- Sutiawan, H. A., Mulyati, E., & Tajudin, I. (2018). PERLINDUNGAN NASABAH TERKAIT PRAKTIK PEMBUKAAN RAHASIA BANK OLEH PEGAWAI BANK DALAM PROSES PENEGAKAN HUKUM TINDAK PIDANA PENCUCIAN UANG DIHUBUNGKAN DENGAN ASAS KEPASTIAN HUKUM. *Jurnal Hukum & Pembangunan*, 48(3), 630. <https://doi.org/10.21143/jhp.vol48.no3.1758>
- Victoria, O. A., Ariyana, A. R., & Arifani, D. (2020). Code of Ethics and Position of Notary in Indonesia. *Sultan Agung Notary Law Review*, 2(4), 397. <https://doi.org/10.30659/sanlar.2.4.397-407>
- Yasin, A. (2019). Keterkaitan Kerahasiaan Bank dan Pajak: Antara Kepentingan Negara dan Pribadi. *Jurnal Konstitusi*, 16(2), 212. <https://doi.org/10.31078/jk1621>