ANTI-TIPPING OFF PERSPECTIVE TO TARGET COMPANY BANK’S SUSPICIOUS TRANSACTION REPORT IN MERGER ACTIVITY

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Abstract: The purpose of this study is, to explain the legal concept and regulation of anti-tipping off in the banking sector, and to explore about the position of the Suspicious Transaction Report belonging to the target company bank in the merger activity based on anti-tipping off provisions. This is Normative legal Research with a statutory approach, a conceptual approach and a comparative approach. The background of the problem in this paper is, there is no strong legitimacy about definition and limitation of the meaning of the phrase ‘other parties’ in article 12 paragraph (1) Anti Money Laundering Law, which regulate about anti tipping off, wether the absorbing company bank is the ‘other parties’ of target company bank on the merger activity or not, when target company bank delivered it suspicious transaction reports to absorbing company bank prior to the merger. The results and discussion concluded that Anti-tipping off is a provision that prohibits tipping off. Tipping off itself is an action by a senior officer or Management or Employee of the Reporting Party (inter alia, Bank) to disclose facts related to a Suspicious Transaction Report that has been reported to Financial Intelligence Unit (in casu, PPATK). This is concrete and manifested in the provisions of Article 12 paragraph (1) of the Anti Money Laundering Law. Besides that, Viewed from the anti-tipping off perspective, all the rights owned by the target company Bank prior to the merger, ex officio, become the rights of the absorbing company, since the target company Bank legally merges into a part of the absorbing company. Based on that, it can be concluded that with respect to merger activities, the absorbing company banks are not ‘other Parties’ from the target company Bank.

Keywords: Anti Tipping Off; Bank Secrecy; compulsory laws.

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INTRODUCTION

According to the Article 1 Number 2 of Law No. 7 of 1992 jo Law No. 10 of 1998 concerning Banking (hereinafter referred to as the ‘Banking Law’), it is stated that Bank is a business entity that collects funds from the public in the form of savings and distributes it to the public in the form of credit and or other forms in order to improve the living standard of the people. Since it carries out activities to collect and distribute public funds, absolutely, the main foothold for each bank to continue to exist and develop is trust of customers in the bank. If a bank loses the trust of its customers, sooner or later, the bank will decline. In order to maintain customer trust in the bank, in the context of conducting banking affairs, the term of bank secrecy is known. Based on the provisions of Article 47 paragraph (2) of Banking Law, it is stated that the parties who are obliged to uphold the principle of bank secrecy are: (a) board members of bank commissioners; (b) board members of bank directors; (c) bank employees (all employees who have access or do not have access); and (d) other affiliated parties with the bank.

In all countries, there is a tendency that the provisions on bank secrecy are not absolute. This means that bank secrets can still be breached for a number of reasons or exceptions which are regulated in a limitative manner or upon orders stipulated in regulations or court decisions. In general, these regulations can be broken down in terms of:

(a) For tax purposes;
(b) For the purposes of the judiciary in criminal cases;
(c) In a civil case between a bank and its customer;
(d) In the context of exchanging information between banks;
(e) Customer approval;
(f) Compulsory laws, namely the existence of other provisions requiring disclosure of bank secrets;
(g) There is an obligation to prevent criminal acts (duty to the public to prevent fraud and crimes);
(h) There is a summon or examination by the Government; or
(i) There is a Federal Grand Jury Summon (Federal Grand Jury Subpoena).

One of the reasons that could lead to the breach of bank secrecy provisions is regarding compulsory laws, which is the existence of other provisions that require disclosing that bank secrecy. It is understood that the privacy right of everyone is a right that must be protected by the bank in conducting banking ac-

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tivities. However, if there are provisions in the law that require banks to break through these provisions, then this is not a violation.

In the context of the enforcement of the Law No. 8/2010 concerning the Prevention and Eradication of Money Laundering (hereinafter referred to as the “Anti Money Laundering Law”), there are provisions regulating breaches of banking secrecy. Among them, Article 45 of the Anti Money Laundering Law states that “In conducting its authority as referred to in this Law, Indonesian Financial Intelligence Unit (PPATK) does not apply provisions of laws and regulations and code of ethics regulating confidentiality”. In the elucidation of this Article, it is stated that “What is meant by “confidentiality” includes but is not limited to bank secrets, non-bank secrets, and so forth.” This means that in order to carry out the Bank’s obligations to the PPATK, the provisions of confidentiality do not apply to it, including bank secrecy.

Article 17 paragraph (1) letter a number I of the Anti Money Laundering Law stipulates that a Bank is a reporting party. The Reporting Party itself is Every Person (Individual or Corporation) who according to the Anti Money Laundering Law is obliged to submit a report to the PPATK (vide Article 23 paragraph (1) of Anti Money Laundering Law). The logical consequence of the bank position as the Reporting Party, results in obligations for it, based on the Anti Money Laundering Law, which must be implemented in the context of the Prevention and Eradication of Money Laundering, namely implementation of the know your customer principle, and reporting obligations. The obligation to apply the know your customer principle is regulated in Article 18 of the Anti Money Laundering Law. The obligation to submit reports to PPATK is contained in Article 23 of the Anti Money Laundering Law.

The Bank, as the Reporting Party Financial Services Providers, in the context of reporting obligations to Financial Intelligence Unit (PPATK), has at least 3 reporting obligations, namely: (a) Suspicous Transaction Report (STRs); (b) Cash Transaction Report (CTRs); and (c) International Fund Transfer Instruction (IFTI) (vide See Article 23 paragraph (1) of Anti Money Laundering Law). If the Bank does not fulfill its obligations, then it will be subject to administrative sanctions (vide Article 30 jo Article 25 paragraph (4) of Anti


7 Based on Article 18 Paragraph (5) of Law No. 8/2010 concerning the Prevention and Eradication of the Money Laundering, it is explained that the know your customer principle contains at least: (a). Service User identification; (b). Service User verification; and (c). Service User Transactions monitoring.

8 Based on the provisions of Article 23 paragraph (1) of Law No. 8 of 2010 concerning the Prevention and Eradication of the Money Laundering, it is stated that financial service providers as referred to in Article 17 paragraph (1) letter a are required to submit reports to PPATK which include: (a). Suspicious F Transactions; (b). Cash Transactions in an amount of at least IDR 500,000,000.00 (five hundred million rupiah) or in foreign currencies of equivalent value, which are conducted either in one Transaction or several Transactions within I (one) working day; and/ or (c) Financial transactions transfer of funds to and from abroad.

Money Laundering Law).

In the dynamic of economic movement of bank companies, it is possible for banks to rejuvenate the company, including making efforts, covering: merger, consolidation or acquisition. According to the Government Regulation No. 28 of 1999 concerning Bank Merger, Consolidation and Acquisition, the following matters are explained:

a. Merger is an incorporation of 2 (two) or more banks, by maintaining the establishment of one bank and dissolving the other bank without liquidating firstly.

b. Consolidation is an incorporation of 2 (two) or more banks by establishing a new bank and dissolving the banks without liquidating firstly.

c. Acquisition is a takeover of a bank which results in the transfer of control over the bank.

Particularly in the context of a merger in a banking company, there will be consequences on, among others, the transfer of data/documents belonging to the target company/absorbed company bank, prior to the merger, to the bank absorbing company (the company that accepts the merger). Among the data or documents that reap discourse when there is a merger between 2 (two) or more bank companies, there is a problem with the Suspicious Transaction Report data/documents that have been previously reported by the target company to the PPATK. In this case, regarding the act of submitting Suspicious Transaction Report documents from the target company to the absorbing company, when the merger occurs, whether this constitutes a violation of bank secrecy provisions regarding suspicious transactions that have been reported to PPATK, or not.

The provision which referred in that explanation is an Article 12 paragraph (1) of the Anti Money Laundering Law which states “Directors, commissioners, management or employees of the Reporting Parties are prohibited from disclose to Service Users or other parties, either directly or indirectly, in any way regarding Suspicious Transaction Report that are being prepared or have been submitted to PPATK.”. This provision itself is referred to as Anti Tipping Off, based on the Elucidation of Article 12 paragraph (1) of the Anti Money Laundering Law. Whereas if the Reporting Party (inter alia, Bank) violates these provisions, then they may be subject to criminal sanctions under Article 12 paragraph (5) of the Anti Money Laundering Law. Violation of the provisions of Article 12 paragraph (1) is called the crime of tipping off. The aforementioned provisions clearly prohibit Reporting Parties (inter alia, Banks) from disclosing to Service Users (Customers) or to Other Parties of Suspicious Transaction Report that have been reported to Financial Intelligence Unit (PPATK).

The existence of the phrase “other party”


10 The scope of the Anti-tipping off Provisions in Indonesia is the parties that are in the STR, either those that are being drafted or those that have been submitted to Financial Intelligence Unit (vide Article 12 paragraph (1) Anti Money Laundering Law of Indonesia). Meanwhile, if it compared with Malaysia, it is a little different. In Malaysia, the scope of the anti-tipping off provisions is against parties who are under investigation or are suspects of money laundering (vide Article 35 Anti Money Laundering Act of Malaysia, 2001). See also: Norhashimoh Md. Yasin, “The Impact of Money Laundering Legislation on Advocates and Solicitors,” INSAF: Malaysian Bar Journal XXXIII, no. 1 (2004): 53,
is the basis for the discourse on the transfer of data or documents from the target company to the absorbing company in the occurrence of a merger whether an absorbing company, in that case, can be categorized as “other party” in the anti-tipping off provisions of the Anti Money Laundering Law or not. This raises dialectical questions regarding the position of the Suspicious Transaction Report that has been reported by the target company to PPATK prior to the merger; whether this violates the anti-tipping off provisions or not if it is submitted/shown to the absorbing company at the time of the merger process.

What is meant by Suspicious Transaction Report based on Article 1 point 5 of the Anti Money Laundering Law are: (a) Financial Transactions that deviate from the profile, characteristics, or habits of the Transaction pattern of the Service User concerned; (b) Financial Transactions by Service Users that are reasonably suspected of being carried out with the aim of avoiding reporting of the Transaction concerned which must be carried out by Reporting Parties in accordance with the provisions of this Law (c) Financial Transactions conducted or cancelled using assets suspected of originating from the proceeds of crime; or (d) Financial Transactions requested by the PPATK to be reported by the Reporting Party because they involve assets that are suspected to be the proceeds of crimes.

As far as the author’s personal identification, there are at least several banks that have merged; among them are HSBC Bank (absorbing company) with Ekonomi Raharja Bank (target company) in April 2018, Danamon Bank Indonesia (absorbing company) with Nusantara Parahyangan Bank (target company) in May 2019, and between BRI Syariah Bank (absorbing company) and BNI Syariah Bank and Mandiri Syariah Bank (target company), which subsequently changed their name to Bank Syariah Indonesia, on February 1, 2021. Definitely, these banks have experienced problems regarding Suspicious Transaction Report that have been reported by the target company to the absorbing company to PPATK, prior to the merger. On those cases, all absorbing company banks, in the merger activity, accept and fully control to the Suspicious Transaction Reports delivered by target company bank. But, the problem is, those banks (target company and absorbing company) don’t know and understand about limitation of the meaning of the phrase ‘other parties’, on the Article 12 Paragraph (1) of Anti Money Laundering Law, which regulate about Anti Tipping Off.

So that, to ensure that if target company bank delivered the Suspicious Transaction Reports to absorbing company bank when the merger activity occurs, they don’t understand whether this is violated or did not violated the anti-tipping off provisions, because there is no strong legitimacy about that. As for the meaning of ‘other parties’, on the Article 12 Paragraph (1) Anti Money Laundering Law itself has not been regulated, both in law and other law and regulations. That problem makes the meaning of anti-tipping off provision become unclear on the transfer of suspicious transaction reports information from target company bank to absorbing company bank in merger activity.

Based on the things mentioned above, the author arranges writing entitled with “Anti-Tipping Off Perspective to Target Company Bank’s Suspicious Transaction Report in Merger Activity”.

Regarding the things that have been described before, the purpose of this paper is: to explain the legal concept and regulation of anti-tipping off in the banking sector; and to explore about the position of the Suspicious Transaction Report belonging to the Target Company Bank in the merger activity based on anti-tipping off provisions.

METHOD

This research is a normative research with a conceptual approach, statutory approach and comparative approach. This research refers to the conceptual study of anti-tipping off and merger in legal perspective, and the law and regulations that applies to the issues discussed, and also the comparative study with related provisions in Malaysia, based on secondary data (legal materials) as a main literature and using deductive thinking methods. Source of secondary data (legal materials) in this study which are:


b. Secondary legal materials are legal materials in the form of text books, legal journals and legal expert opinions relevant to the subject matter in this research.

The data/legal materials collection technique used in this research is a document study. That is the technique of collecting data by recording documents originating from secondary data (legal materials) related to the problems studied, then analyzed to describe the object of this research.

In order to analyze the data/legal materials, this research was using a prescriptive research, by identifying the scope of anti-tipping off contained in the law and regulation status quo, and then analyzing the legal issues that arise around the position of Suspicious Transaction Reports belonging to the target company bank when a merger occurs, in an anti-tipping off perspective, and a comparison is also made with the legal system in Malaysia. Furthermore, a normative provisions, based on related doctrines, theories and legal concepts, and also legal comparison from another country (in casu Malaysia) are reviewed, and provide insight in the form of concepts that need to be adopted in order to overcome these problems.

ANALYSIS AND DISCUSSION

Legal Concept and Regulation of Anti-Tipping Off in the Bank Sector

Bank is a financial institution which has activities include activities to collect funds (funding) from the public in the form of savings, channeling funds (lending) from the public, in the form of providing credit loans or providing funds for people in need, and providing other bank services, such as money delivery (transfers), letter of credit, safe deposit box, and other services. Because of this role, Bank has a very important role in encouraging the development of the national economy.

In banking law of Indonesia, there are several main principles that become the guide in


carrying out its role, namely:  
(1) fiduciary relation principle, based on the provisions of Article 29 paragraph (4) of the Banking Law; 
(2) prudential principle, based on the provisions of Article 2 and Article 29 paragraph (2) of the Banking Law; 
(3) secrecy principle, based on the provisions of Articles 40 - 47A of the Banking Law; and 
(4) Know Your Customer Principle, based on the provisions of Article 18 of the Anti Money Laundering Law.

Based on the description above, it is known that one of the fundamental/basic principles of conducting banking affairs is the principle of confidentiality (secrecy principle). Although it is also understood that there are exceptions to this principle, such as in the provisions of Article 45 of the Anti Money Laundering Law which states that “In realizing its authority as referred to in this Law, towards PPATK (Financial Intelligence Unit), it does not apply the provisions of law and regulations and code of ethics which regulates confidentiality”.

In the Anti Money Laundering Law itself, the things that become the obligations of the reporting party (in casu, the bank) to PPATK are: to applying the know your customer principle and to submitting the transaction reports to PPATK as required by the Anti Money Laundering Law. Between these 2 (two) obligations, there is a very close interconnection, as stated in the Interpretive Note to recommendations 10 FATF Recommendations which states that:  
If, during the establishment or course of the customer relationship, or when conducting occasional transactions, a financial institution suspects that transactions relate to money laundering or terrorist financing, then the institution should: 
(a) normally seek to identify and verify the identity of the customer and the beneficial owner, whether permanent or occasional, and irrespective of any exemption or any designated threshold that might otherwise apply; and 
(b) make a suspicious transaction report (STR) to the financial intelligence unit (FIU), in accordance with Recommendation 20.

Based on these provisions, approximately, it can be understood that applying the know your customer principle is an absolute obligation that must be carried out by Financial Institutions (inter alia, Bank) to its customers. Meanwhile, when it turns out that in the implementation of the principle of know your customer, there is a suspicion that the bank to its customer of suspicious transactions related to money laundering or terrorism financing, the bank prepares and submits a suspicious transaction report to the Financial Intelligence

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Because the Suspicious Transaction Report is strictly confidential information, the security of this information must be safeguarded and no leakage of the information may occur. In fact, any party who has committed an act of leaking information on the Suspicious Transaction Report can be punished under Article 12 of the Anti Money Laundering Law. The provisions referred to in Article 12 of the Anti Money Laundering Law are referred to as anti-tipping off provisions (vide Elucidation of Article 12 Paragraph (1) of Anti Money Laundering Law).

In the guidance for the implementation of the international anti-money laundering regime, namely the FATF (Financial Action Task Force) Recommendations, it is explained in Recommendations 20 FATF Recommendations that the scope of anti-tipping off is as follows:

Financial institutions, their directors, officers and employees should be:

(a) protected by law from criminal and civil liability for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, if they report their suspicions in good faith to the Financial Intelligence Unit, even if they did not know precisely what the underlying criminal activity was, and regardless of whether illegal activity actually occurred; and

(b) prohibited by law from disclosing ("tipping-off") the fact that a suspicious transaction report (STR) or related information is being filed with the FIU. These provisions are not intended to inhibit information sharing under Recommendation 18.

Based on this explanation, an explanation can be drawn that the Senior Officers or Employees of Financial Institution as a Reporting Parties (inter alia, Bank) are protected by law in order to submit Suspicious Transaction Report (STRs) to Financial Intelligence Unit (PPATK). However, simultaneously, Reporting Parties (inter alia, Bank) are prohibited from disclosing facts related to Suspicious Transaction Report submitted to Financial Intelligence Unit (tipping off). Meaning, what is meant by anti-tipping off in this case is the prohibition against tipping off. Tipping off itself is an action by a senior officer or Management or Employee of the Reporting Party (inter alia, Bank) to disclose facts related to a Suspicious Transaction Report that has been reported to the Financial Intelligence Unit (PPATK).

The explanation mentioned above is further concrete and manifested in the provisions of Article 12 paragraph (1) of the Anti Money Laundering Law which states that Directors, commissioners, management or employees of Reporting Parties are prohibited from no-


17 There are two aspects to this immunity. First, the law requiring the suspicious transaction reports should make it clear that those making the reports are exempt from legal requirements of professional secrecy and confidentiality. Second, persons making the required reports in good faith should also be protected against potential liability to the persons named in the reports, who, they were to learn of the disclosure, might attempt to recover damages from the persons who made the reports. See: International Monetary Fund, “Financial Intelligence Unit: An Overview”, (Washington DC: Financial Market Integrity Div. World Bank, 2004), 53.

tifying Service Users or other parties, either directly or indirectly, in any way regarding Suspicious Transaction Report that are being prepared or have been submitted to PPATK. In this context, this provision indicates that the subject of the anti-tipping off provision is ‘Directors, Commissioners, Management, or Reporting Party Employees (Bank)’. Furthermore, the action/object prohibited in the anti-tipping off provision is ‘notifying Service Users or other parties regarding Suspicious Transaction Reports that are being prepared or have been submitted to the Financial Intelligence Unit (PPATK)’. However, the provisions themselves are not absolute to all parties. There are provisions for exceptions to the prohibition, based on Article 12 Paragraph (2) of the Anti Money Laundering Law, namely to the Supervisory and Regulatory Agency of the Reporting Party. In the context of a bank as a reporting party, the Supervisory and Regulatory Agency is the Financial Services Authority (OJK).\textsuperscript{19}

The Exclusion Provisions also emphasize that with the exception of the anti-tipping off provision, it cannot be interpreted that there will be a violation of the confidentiality principle,\textsuperscript{20} but in the view of the authors, it only makes an expansion of the subjects or the parties that can gain access to information on Suspicious Transaction Report data/documents in the context of data/document integrity control reported to PPATK. Whereas if the Supervisory and Regulatory Agency or PPATK that receives the Suspicious Transaction Report information or data/documents leaks it or discloses it to a party who is not authorized to obtain the information, then the party who leaked it from the Supervisory and Regulatory Agency or the PPATK has violated the provisions of anti-tipping off, and may be subject to criminal offenses under Article 12 paragraph (5) of the Anti Money Laundering Law.

If traced systematically, from the explanation above, it can be understood that the only party allowed to receive information on the Suspicious Transaction Report that has been reported by the Reporting Party to PPATK is the Regulatory Supervisory Agency, namely Financial Services Authority (Otoritas Jasa Keuangan/OJK). Meanwhile, parties that are clearly prohibited from obtaining such information are “Service Users” and ‘other parties’. The question that then arises is who the other party is? When there is a merger between the target bank and the absorbing company, will the absorbing company be positioned as the “other party” or “not the other party” from the target company? Given, when a merger occurs, there will be a transfer of rights and obligations, including information, data or documents from the target company to the absorbing company. Moreover, how to mitigate if there are Directors, Commissioners, Management or Employees of the absorbing company that have been reported by the target company to the PPATK or vice versa.

\textsuperscript{19} For each Reporting Party for Bank Financial Service Providers, the Supervisory and Regulatory Institution is the Financial Services Authority (OJK) as stipulated in Article 6 letter a of Law No. 21 of 2011 on Financial Services Authority which states that “OJK carries out regulatory and supervisory duties on: a. financial service activities in the banking sector”.


The Position of Suspicious Transaction Report Belonging to Target Company Bank in Merger Activities Based on Anti-Tipping
Off Perspective

Based on the provisions of Article 1 point 25 of the Banking Law, a merger in the banking sector is an incorporation of two or more banks by maintaining the existence of one bank and dissolving the other banks with or without liquidating. Furthermore, in the provisions of Article 1 number 2 of Government Regulation Number 28 of 1999 concerning Merger, Consolidation and Bank Acquisition, which states that a Merger is an incorporation of 2 (two) Banks or more, by maintaining the establishment of one of the Banks and dissolving the other banks without first liquidating. In this regard, Adrian Sutedi stated that the merger in the banking sector can be carried out at the initiative of the bank concerned, the request of Bank Indonesia (the status quo of its authority has shifted to the OJK), or the initiative of a special temporary agency in the context of banking restructuring. So far, the banks identified by the author who carried out the interbank merger include, HSBC Bank (as an absorbing company) with Ekonomi Raharja Bank (as a target company) in April 2018, Danamon Bank Indonesia (as an absorbing company) with Nusantara Parahyangan Bank (as a target company) in May 2019, and between BRI Syariah Bank (as an absorbing company) with BNI Syariah Bank and Mandiri Syariah Bank (as a target company), which subsequently changed its name to Bank Syariah Indonesia, on February 1, 2021. Those banks are known to have merged the initiatives of the respective banks in planning to restructure the bank.

Furthermore, in the provisions of Article 1 number 9 of Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as the “Limited Liability Companies Law”) it is explained that a Merger is a legal act committed by one or more companies to merge with other existing companies which results in the assets and liabilities of the merging Company being transferred due to the law to the Company accepting the merger and subsequently the status of the merging Company legal entity ends due to the law. As for the provisions of Article 1 number 1 of Government Regulation Number 27 of 1998 concerning Merger, Consolidation and Acquisition of Limited Liability Companies, it is stated that a merger is “a legal act taken by one or more companies to merge with other existing companies and thereafter companies that merged were dissolved.” Therefore, a merger is the absorption of a company by another company. The company that took over (the absorbing company) continued to use its name and identity, while after

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22 Muhammad Djumhana, Hukum Perbankan Di Indonesia (Bandung: PT. Citra Aditya Bakti, 2006), 304.


the merger took place, the company that was taken over (target company) ceased to exist as an independent business entity.26

In the company’s business activities, a merger is a way of developing and growing a company.27 Through a merger, companies combine and share the resources they have to achieve common goals. The shareholders of the combined companies often remain in the position of co-owners of the combined entity.28 In the implementation of the merger, all assets, rights and obligations of the dissolved legal entity (target company) are not completely lost, but, it was taken over by a company that still exists (absorbing company).29

As Reporting Parties, both target companies and absorbing companies, based on the provisions of Article 1 number 11 of the Anti Money Laundering Law, are required to submit reports to PPATK as required by the Anti Money Laundering Law, including submitting Suspicious Transaction Report (vide Article 17 paragraph (1) letter a number 1 jo Article 23 paragraph (1) Anti money Laundering Law). Thus, prior to the merger, both the target company bank and the absorbing company bank regularly and continuously report Suspicious Transaction Report to the PPATK.

When a merger occurs, based on the explanations regarding the merger above, it is necessary to emphasize that since the Bank’s target company has legally merged into a part of the Bank absorbing company through merger activities, since then, all assets, rights and obligations of the target company Bank are not completely lost. Instead, it is switched and taken over by the Bank absorbing company. Therefore, all matters which are the rights and obligations of the target company Bank prior to the merger will be transferred to and taken over by the absorbing company as the takeover company.30

Article 12 of the Anti Money Laundering Law has regulated anti tipping-off provisions. Where in Article 12 paragraph (1) of the Anti Money Laundering Law, it is clearly stated that the Directors, Commissioners, management or employees of the Reporting Party are prohibited from notifying Service Users or ‘other parties’, either directly or indirectly, in any way regarding the Suspicious Transaction Report is being drafted or has been submitted to the PPATK. Therefore, in reality, something that prohibited by the Anti Money Laundering Law from being disclosed is an information, data or documents on Suspicious Transaction Report which have been submitted to PPATK, to service users or other parties.

In the case of Bank Danamon Indonesia (absorbing company) with Bank Nusantara Parahyangan (target company) which have merged in May 2019, Bank Danamon Indonesia as an absorbing company banks, in the merger activity, accept and fully control to the Suspicious Transaction Reports delivered

by Bank Nusantara Parahyangan as a target company bank, as based on the merger principle. But, the problem is, those banks don’t know and understand about the limitation of the meaning of the phrase ‘other parties’, on the Article 12 Paragraph (1) of Anti Money Laundering Law, which regulate about Anti Tipping Off, because there is the clearly definition about that in Anti Money Laundering Law or in the other Law and regulations.

So that, to ensure that if target company bank delivered the Suspicious Transaction Reports to absorbing company bank when the merger activity occurs, they don’t understand whether this is violated or did not violated the anti-tipping off provisions, because there is no strong legitimacy about that. As for the meaning of ‘other parties’, on the Article 12 Paragraph (1) Anti Money Laundering Law itself has not been regulated, both in law and other law and regulations. That problem makes the meaning of anti-tipping off provision become unclear on the transfer of suspicious transaction reports information from target company bank to absorbing company bank in merger activity. So that, the clearly definition and limitation about ‘other parties’, very needed.

With regard to the definition of ‘other parties’ in Article 12 paragraph (1) of the Anti Money Laundering Law, there is no juridical provision that clearly explains this matter. However, in the view of the authors related to this issue based on the explanation above, that, ‘other parties’ is the parties that are outside the entity, and/or parties that are members of 1 (one) entity but have no direct connection with the duties, functions, scope of implementation and realization of Anti Money Laundering and the Countering Financing of Terrorism (AML-CFT).

As previously explained, that in merger activities, the absorbing company Bank still uses its name and identity. After the merger took place, the target company bank ceased to exist as an independent business entity. This has consequences on, through merger activities. The target company bank merges into a part of the absorbing company Bank entity which takes over all the rights and the obligations from the target company bank prior to the merger. Therefore, if viewed from the anti-tipping off provisions, all rights owned by the target company Bank prior to the merger, ex officio become the rights of the absorbing company, since legally the target company Bank merged into the absorbing company. Based on this explanation, it can be concluded that with regard merger activities, absorbing company Banks are not:

a. the parties that are outside the entity of the target company and/or
b. the parties that are members of 1 (one) entity of the target company but have no direct connection with the duties, functions, scope of implementation and realization of Anti Money Laundering and the Countering Financing of Terrorism (AML-CFT).

Thus, in the event of a merger, the absorbing company banks are not other parties of the target company bank. As a result, if the target company submits the Suspicious Transaction Report document to the absorbing company since the merger has occurred legitimately, this is not a violation of the anti-tipping off provisions.

As for the merger, it is necessary to em-

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phasize that the absorbing company Bank is obliged to conduct data reconciliation with the target company Bank. This is necessary to do in order to make adjustments and reconcile data/documents/information on the STRs (Suspicious Transaction Report) that was reported by the target company Bank to PPATK prior to the merger with the absorbing company Bank. The data/document/information reconciliation process at least was also attended and discussed by the OJK (Financial Services Authority) as the Supervisory and Regulatory Agency and PPATK as the Recipient of STRs (Suspicious Transaction Report). So that, the data/documents/information of STRs did not have information manipulation and other deception, and did not cause conflict of interest concerns (for example, there were directors, commissioners, management or employees of an absorbing company bank that had been reported to PPATK by the target company bank in STRs or vice versa).

**CONCLUSION**

Anti-tipping off is a provision that prohibits tipping off. Tipping off itself is an action by a senior officer or Management or Employee of the Reporting Party (inter alia, Bank) to disclose facts related to a Suspicious Transaction Report that has been reported to PPATK. This is concrete and manifested in the provisions of Article 12 paragraph (1) of the Anti Money Laundering Law.

Viewed from the anti-tipping off perspective, all the rights owned by the target company Bank prior to the merger, *ex officio*, become the rights of the absorbing company, since the target company Bank legally merges into a part of the absorbing company. Based on this explanation, it can be concluded that with respect to merger activities, the absorbing company banks are not ‘other parties’ from the target company Bank. As a result, if the target company submits the STRs (Suspicious Transaction Reports) document to the absorbing company since the merger has occurred legitimately, this is not a violation of anti-tipping off provisions.

**Suggestions**

The PPATK and/or the Supervisory and Regulatory Agency (in casu, OJK) need to make clear and final regulations regarding the meaning of the phrase ‘other parties’ in the provisions of Article 12 Paragraph (1) of the Anti Money Laundering Law.

Furthermore, in the event of a merger between 2 (two) or more Banks, it is necessary to affirm that the absorbing company Bank is obliged to conduct data reconciliation with the target company Bank. The data/documents/information reconciliation process at least was also attended and discussed by the OJK (Financial Services Authority) as the Supervisory and Regulatory Agency of Financial Service Provider (inter alia Bank), and also PPATK as the Recipient of STRs (Suspicious Transaction Report).

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