

Initiating the Establishment of Digital Banks in Indonesia: A Juridical Study

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ABSTRACT

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In the industrial era 4.0 as it is today, the ease and speed of getting something is highly sought after, including the ease and speed of obtaining financial services. The convenience of banking services is an advantage for consumers in choosing a service provided in the bank. This is what banks do to form services from conventional banks to open digital services. But it is felt that digital services are not enough to meet the needs of customers in carrying out all their transaction activities at the bank. With that, a digital bank service was opened. However, if viewed from the juridical aspect in Indonesia, there is no special regulation that regulates digital banks. As a country that adheres to a civil law system, it has become a real consequence that all applicable laws must be codified and regulated according to applicable laws. Problems arise when digital banks operate but there is no legal basis to specifically deal with it. This research uses a normative juridical method with a library approach. The findings obtained from this article are that there are no special rules governing digital banks in a law so that a special rule regarding digital banks is needed because there are significant differences with conventional banks.

Keyword: *Digital Bank, Regulation, Indonesia*

INTRODUCTION

Hearing the word bank is not foreign to us, especially those in urban and rural areas, and bank is a familiar and strange word. Mentioning the word bank, everyone always remembers it with money. So that there has always been an assumption that anything related to banks always has something to do with money. This is not wrong, because banks are financial institutions or companies engaged in finance. As a financial institution, banks provide a variety of financial services. In developed countries, banks are a major need for the community every time they make a transaction.

Bank is a business entity that collects funds from the public in the form of savings and distributes them to the public in the form of credit and/or other forms in order to improve the standard of living of the people at large. Banks play a key role in maintaining the stability of the country's economy. This is like the provisions stipulated in Article 23D of the 1945 Constitution, which reads that the state has an independent central bank and has separate authorities and responsibilities regulated in a law. In conducting its business, the bank is based on economic democracy by using the principle of prudence (Fahrial, 2018).

Rapid advancements in the world of technology have made many things in life change. Humans, along with the development of the times, produce many ideas that were unexpected before. One of the results of human thought in the current era is that there is a technology known as the internet. With the internet, the structure of life in society has experienced many shifts in culture, ethics and norms. It is undeniable that there are many benefits and conveniences that can be obtained from the internet, such as in carrying out long-distance communication, which can be carried out like without limits, in supporting daily life such as business activities. In addition, in the banking sector, technology is developing, giving rise to digital banks. This has encouraged conventional banks to change their marketing strategies from conventional ones which initially served day to day services through the buildings they have in every place as well as Automated Teller Machines (ATMs) to go digital so that they can increase literacy in digital banking services and speed up the process without having to face to face.

Technology apart from shifting the pattern of conventional banking services to digital, digital banks have also begun to emerge where they only have one office but are purely operational digitally. This Financial Services Authority Regulations (POJK) regarding Commercial Banks also reinforces the meaning of a digital bank, namely a bank that is currently digitizing products and services (incumbent), or through the establishment of a new bank that immediately has full digital banking status. However, the Financial Services Authority (OJK) does not make a dichotomy between banks that already have digital services, digital banks transformed from incumbent banks, or digital banks formed through the establishment of new banks (full digital banks).

With current technological advances, it is demanding that banks that are currently operating to provide digital services that function to serve customers who need these services. Therefore, the Financial Services Authority Regulation Number 12/POJK.03/2018 was issued concerning the

Implementation of Digital Banking Services by Commercial Banks. The digital services described in this Financial Services Authority regulation are defined as a special service in the digital field carried out by conventional banks as commercial banks. Meanwhile, this digital service is something that has developed quite rapidly lately, especially after the pandemic.

In addition to the existence of digital services, the need for digital-based banking is then realized by the emergence of several types of digital banks. This digital bank is regulated in the Financial Services Authority Regulation number 3 of 2021. This Financial Services Authority Regulation is the basis for digital banks to be able to operate in Indonesia for now. By looking at the rules in the Financial Services Authority Regulation 3 of 2021 that this digital bank has a legal basis in the form of a Financial Services Authority regulation, this makes the rules regarding banking different. Conventional banking was previously regulated in Law Number 7 of 1992 concerning Banking as amended by Law Number 10 of 1998. These banking regulations are specifically regulated in the law. However, this banking law is not complete enough and not capable enough to regulate the specifics that exist in the implementation of digital banking. Therefore, in this article the author tries to see how digital banks are regulated. This is because a digital bank is an institution that should be regulated in a specific regulation which has equal regulatory power with the law. However, what we currently have are the rules in the Financial Services Authority Regulation.

PROBLEM STATEMENT

Based on the description as explained above, it is possible to identify the problem raised in this paper, namely that there is no specific rule governing the existence of a digital bank. Banking is only regulated in the Financial Services Authority Regulations, it should be regulated at the level of law because there are significant differences between conventional banks and digital banks.

RESEARCH METHOD

The research specifications are analytical descriptive. The type of research used is normative juridical, with data collection techniques using the library study method. The data analysis method used in this research is by using qualitative methods.

DISCUSSION

Regulations Concerning Conventional Banks in Indonesia

Bank is a business entity that collects funds from the public in the form of savings and distributes them to the public in the form of credit and/or other forms in order to improve the standard of living of the people at large as stipulated in Article 1 Number 2 Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking. Then, so that people want to save their money in the bank, the banking sector provides a stimulus in the form of remuneration that will be given to the depositor (Kasmir, 2015). Bank is a financial institution that is a place for individuals, private business entities, state-owned enterprises, and even government institutions to store their funds (Hermansyah, 2013).

In Indonesia, until now there have been several conventional banks that operate according to the functions that are either owned by the state or included in the type of private bank. These conventional banks can be classified into the types of commercial banks. As stated in Article 1 point 3 of the Law on Banking, that a commercial bank is a bank that carries out business activities conventionally and/or based on sharia principles with its main activity providing services in payment traffic. In carrying out its activities, commercial banks are supervised by the Financial Services Authority. Banking in carrying out its business activities is supervised by the Financial Services Authority. The Financial Services Authority is an institution that oversees financial services such as the banking industry, capital markets, mutual funds, finance companies, pension funds and insurance. The existence of the Financial Services Authority as a financial sector supervisory institution in Indonesia needs to be considered, because everything must be properly prepared to support the existence of the Financial Services Authority (Sundari, 2011). Article 1 point 1 of Law No. 21 of 2011 stated:

“The Financial Services Authority, hereinafter abbreviated as OJK, is an independent institution and free from interference from other parties, which has the functions, duties and authority to regulate, supervise, examine and investigate as referred to in this Law.”

Banks can only be established and carry out business activities with a license from the Financial Services Authority (Otoritas Jasa Keuangan, 2016). In establishing a Conventional

Bank which in this case is included in the category of Commercial Bank, in general it has been regulated in banking laws and regulations of the Financial Services Authority. There are several requirements that must be met by the founder of the bank including paid-up capital of at least IDR 3 trillion, and can only be established and/or owned by:

1. Indonesian Citizens and/or Indonesian legal entities; or
2. Indonesian citizens and/or Indonesian legal entities with foreign citizens (WNA) and/or foreign legal entities in partnership

According to the Banking Law contained in Article 16 paragraph (2) which reads :

“In order to obtain business licenses for Commercial Banks and Rural Banks as referred to in paragraph (1), the following requirements must be met, at least:

- a. organizational structure and management*
- b. capital*
- c. ownership*
- d. skill*
- e. eligibility work plan”*

In carrying out its business activities, a bank must have an organizational structure which includes external banking organizations and internal banking organizations. External banking organizations are banking organizations covering all issues regarding the structure of the world of banking, both individually and within a country. External organizations discuss the overall banking structure, both regarding the structure, ownership and business fields of banks in a country. The internal banking organization varies greatly from one to another, due to differences in the bank's size and the history of its development. The internal bank organization can be seen from the types of bank office networks, namely:

- 1) Head Office: Responsible for controlling the planning, operation and supervision of all business activities carried out by all branch offices.
- 2) Full Branch Office: Running all types of business at its head bank and administering its own administration.
- 3) Sub-Branch Office: In charge of providing services on a limited basis.
- 4) Cash Office: This is the smallest service unit

Current Digital Service Arrangements in Indonesia

At first the internet was only used in the college environment. Then around 1995, the internet began to be familiar among the wider community. To make it easier for people to access information via the internet, Tim Berners-Lee developed the World Wide Web (www) application (Arief Mansur & Gultom, 2005). Currently the scope of the internet has covered almost the entire world. In 1998 it was estimated that there were more than one hundred million people using the internet and in 1999 that number had doubled. Monitor data estimates in 2005 more than 300 million people (Sitompul, 2004). The evolution of digital banking has existed when the internet appeared. From the 1980s in America, associations, although in practice, were quite different from digital banking in today's era, digital banking became increasingly known in 1994 in America, associations, namely Stanford Credit Union, began to offer banking services through their website where 100,000 households began to access bank accounts online, and since then digital banking has developed rapidly in the United States alone in 2001 which has reached 20 million users (James, 2016).

The technology that is currently developing has resulted in many changes in many aspects and one of them is in the banking aspect. Conventional banks that initially only provided conventional services have now made the transition by providing digital services but still have head offices and branches that still provide conventional services. With changes in the pattern of banking services driven by the internet connection, digital services are needed by conventional banks.

The use of technology such as digital banking in service innovation to meet customer needs is best understood in terms of the relationship between using the service and how they can experience the service (Yusif, 2012). Digital banking has begun to be implemented by banks in Indonesia. Its development started with banking services without branch offices (branchless banking) and Digital Financial Services (LKD).

Digital banking is a service orientation, this results in service marketing theory being something crucial in its conceptualization (Mbama & Ezepue, 2018). However, digital services have not been able to optimally meet the needs of customers. With that, a digital bank service was opened. In digital banking, a new model is needed, because the customer's priority in receiving exclusive services may not apply, for example courtesy, friendliness and hands-on care. Therefore, new service quality measures that moderate customer satisfaction in digital

banking already exist (Minjoon & Sergio, 2016). However, when viewed from a juridical aspect in Indonesia there is no specific regulation governing digital banks. In addition, almost all of the rules that apply to banking refer to general regulations made by the Financial Services Authority, whereas the rules of the Financial Services Authority do not explain in detail regarding the development of digital banks.

Regulations regarding conventional banks that perform services digitally can be seen from the Financial Services Authority Regulation No. 12/POJK.03/2018 concerning Implementation of Digital Banking Services by Commercial Banks. Furthermore, it has been explained that banks can provide digital banking services, which is stated in the Financial Services Authority Regulation No. 12/POJK.03/2018 explained that (Tarigan & Paulus, 2019):

- 1) Banks can provide electronic banking services or digital banking services.
- 2) Banks that provide electronic banking services or digital banking services are required to implement risk management, prudential principles and comply with the provisions in this Financial Services Authority Regulation.

The implementation of electronic banking services by banks can utilize distribution channels (delivery channels) (Palilati, 2017). Then the forms of services that can be provided by conventional banks as commercial banks in providing digital services have also been regulated in POJK No. 12/POJK.03/2018. The services that may be provided are in the form of :

- a. Account administration
- b. Transaction authorization
- c. Financial management and/or
- d. Other financial product services based on the approval of the Financial Services Authority

Examined more deeply regarding the Financial Services Authority Regulation No. 12/POJK.03/2018, according to Antonius Harie, states that the Financial Services Authority only allows Business Group Commercial Banks (BUKU) II, III and IV to be able to apply digital banking rules. This means that banks with core capital below IDR 1 trillion cannot

implement digital banking (Amrillah, 2020). Along with technological developments, digital banking always colors every customer's financial activity. Digital banking services (digital banking) are expected to provide convenience at a higher level compared to existing services. The convenience provided makes customers feel benefited, but on the other hand, these services will also increase the risks faced by banks, especially regarding operational risk and reputation risk if there are problems regarding the digital banking (Kholis, 2018).

Digital Bank Regulations in Indonesia

The development of digital services is very encouraging for customers, making the banking business in Indonesia now easier to access. Apart from that, digital services alone are felt to be insufficient to be able to accommodate the conveniences desired by customers. Therefore, then an idea began to emerge to establish a digital bank.

Digital banking services can be realized from the start of the business relationship between the customer and the bank to the end, such as the process of opening an account to closing an account by utilizing information technology (Hamin, 2017). Therefore, along with the rise of digital banks or digital banks, regulations have been enacted regarding the establishment and space for digital banks to operate. Arrangements regarding the establishment of digital banks in Indonesia are contained in the Regulation of the Financial Services Authority of the Republic of Indonesia Number 12/Pojk.03/2021 concerning Commercial Banks. In this Financial Services Authority Regulation there is no rigid definition of a digital bank. The difference between digital banks as digital banks and conventional banks in the Financial Services Authority Regulation Number 12/Pojk.03/2021 concerning Commercial Banks can be seen from the meaning stated in Article 1. Article 1 point 1 states that:

“Commercial Banks, hereinafter referred to as Banks, are Banks that carry out conventional business activities, which in their activities provide services in payment traffic”

Whereas in article 1 number 22 of this Financial Services Authority Regulation it is explained that:

“Digital Bank is an Indonesian Legal Entity Bank that provides and carries out business activities mainly through electronic channels without physical offices other than the head office or using limited physical offices.”

When viewed from the meaning in article 1 number 1 and number 22, it can be said that a conventional bank is a bank that carries out activities conventionally as digital banks are included in digital banks with Indonesian legal entities.

Furthermore, regarding the establishment of a digital bank, there are several requirements that must be met, including those stated in Article 23 which reads as follows:

“(1) Bank BHI can operate as a Digital Bank.

(2) Bank BHI as referred to in paragraph (1) is required to have 1 (one) office as Head Office.

(3) Digital Banks carry out business activities through electronic channels without physical offices other than the Head Office as referred to in paragraph (2), or may use limited offices.”

Then in Article 24 paragraph (1) it is also explained regarding other conditions that must be met in order to be able to set up a digital bank, namely:

- a. having a business model using innovative and safe technology to serve customer needs;
- b. having the ability to manage a prudent and sustainable digital banking business model;
- c. having adequate risk management;
- d. fulfilling governance aspects including the fulfillment of Directors who have competence in the field of information technology and other competencies in accordance with the provisions of the Financial Services Authority regarding the fit and proper test for the main parties of financial service institutions;
- e. carrying out the protection of customer data security; and
- f. providing efforts that contribute to the development of a digital financial ecosystem and/or financial inclusion

Furthermore, the characteristics of digital banks in general Digital banking has its own characteristics as digital banking. The characteristics of digital banking itself are (The Development Bank of Singapore, n.d.) :

- a) Digital banking no longer requires branch offices

In a conventional bank, a bank usually operates through branch offices and sub-branch offices spread across the regions to meet customer needs. Meanwhile, digital banking

is a banking service through bank-owned electronic or digital facilities, where bank customers can later carry out banking activities independently. Digital banking makes it possible for customers to be able to carry out activities such as opening accounts, deposits and investments that normally can only be carried out through bank branch offices digitally. Digital banking is different from internet banking or mobile banking which is limited to banking transactions such as fund transfers or balance checks, so that customers still must carry out various other conventional banking activities by managing them at branch offices.

b) Digital banking is more than just a banking application

The difference between digital banking and mobile banking lies in the features provided through one application. Mobile banking allows customers to carry out transactions like what can be done through an ATM, such as transferring funds, paying bills, buying credit vouchers and the like. Meanwhile, digital banking allows customers to carry out banking activities that are usually carried out through sub-branch offices, such as opening new accounts, opening deposit accounts, investing, filling out e-wallets and others.

c) Based on Indonesian e-KTP biometrics

The biometric technology in e-KTP is used for civil registration and as a database in the banking industry. Through biometric technology in the form of fingerprints, verification and security data, each customer has been registered and integrated, thus shortening the time for customers to register accounts and verifying data when logging in or making transactions. In addition, this reduces human errors that are generally found during logins or transactions, such as forgetting your Personal Identification Number (PIN). In contrast to mobile banking and internet banking services that use

Personal Identification Number method when logging in and making transactions, customers are very vulnerable to forgetting their Personal Identification Number.

Based on the provisions referred to above, the difference in the procedures for establishing between conventional and digital banks can be seen. In the case of establishing a digital bank, even though it is done digitally, it is still required to have one head office or have a physical office that is limited in carrying out operations. The establishment of a digital bank as a digital bank can be done without having to form a conventional bank first. Vice versa, if a conventional bank wants to transform into a digital bank, this can be conducted. Provisions regarding the establishment of new digital banks and the transformation of conventional banks into digital banks can be regulated in Article 25 of the Financial Services Authority Regulation Number 12/Pojk.03/2021. In general, conventional banks that transform into digital banks must still meet the specified requirements as are the requirements for establishing a new digital bank.

In addition to the requirements as stipulated in the Financial Services Authority Regulation, the establishment of a digital bank must still meet the core requirements, namely being in the form of a legal entity. The legal form of a bank must be clear, in order to obtain certainty regarding separate assets, legalization of its establishment, and management authorized to represent the bank. There are several legal forms of a bank, which are adjusted to the type of banking institution to be established. The provisions for digital banks as commercial banks that require a legal entity are contained in Article 21 of Law No. 7 of 1992 as amended by Law No. 10 of 1998 stipulating the legal form of a bank, the legal form of a commercial bank can be:

- 1) Limited Liability Company
- 2) Koperasi Cooperative
- 3) Regional Company

According to Zaeni Asyhadie Limited Liability Company, it is a form of business with a legal entity, originally known as Naamloze Vennootschap (NV). The term “limited” in a Limited Liability Company refers to the responsibility of shareholders which is limited to the nominal value of all the shares they own. Meanwhile, according to Abdulkadir Muhammad the term “company” refers to how to determine capital, namely for shares, and the term

“limited” refers to the limit of shareholder responsibility, which is limited to the nominal number of shares owned. Limited Liability Company is a legal entity association company (Muhammad, 2004).

Provisions in Article 21 of the Banking Law, it can be seen that not all types of business entities known in the legal system in Indonesia can carry out banking business activities, forms of business entities other than those mentioned above, it is not possible to carry out banking business activities, such as individual business forms, firms, *Commanditaire Vennootschap* (CV) and including state-owned companies.

From the increasingly rapid development of technology, it can also cause security problems and problems to become quite significant complaints, for example when a customer transfers money but the money does not come in or has not reached the intended customer. In addition, the most common crime that occurs is identity theft or phishing. Phishing (password harvesting fishing) is a crime of fraud by utilizing fake e-mails or fake websites that aim to trick other users. The use of fake emails or fake websites is intended to obtain user data. The use of user data is often to send emails that appear to come from an official company, for example a bank with the aim of obtaining someone's personal data, for example User ID, PIN, account number, credit card number and so on (Hamzah, 2005).

Apart from the increasingly complex problems related to the operationalization of digital banks because of technological developments, on the other hand there are problems regarding the legal basis that can be used as a basis in dealing with current developments in the banking world. In Indonesia, it can be said that there is still a lack of legal basis that can be used as a basis for the development of the banking world, especially digital banks. The only regulation regarding banking that currently exists is Law No. 7 of 1992 as amended by Law No. 10 of 1998 concerning banking. If we look at the formation of regulations and the content of the current banking legislation, it can be said that the banking law is old enough and not sufficient to accommodate the changes that are occurring in the banking world today. Especially with the emergence of a digital bank which, if examined in the banking law, there are no article provisions that can be used as the basis for the establishment and operation of digital banks.

This is a serious concern considering that in reality many digital banks have emerged in Indonesia but there is no legal basis on which to base their implementation. Indonesia as

part of a country that has agreed to the existence of digital banking needs to be able to see the characteristics of a digital bank itself, so that it can be known from which nomenclature is authorized to regulate, where the regulations are located, and then what regulations this digital banking will be subject to. Apart from the significant differences between conventional banks and digital banks, the complexity of the problems that will arise as explained above can become the basis for establishing a higher regulation than the Financial Services Authority regulations or equivalent to laws and regulations. This is because the existing Financial Services Authority Regulations still do not fully regulate digital banks. So that these laws and regulations can accommodate the establishment and implementation of digital banks.

As a country that adheres to the civil law system, it has become a real consequence that all applicable laws must be codified and regulated in accordance with applicable laws. The conception of a rule of law state desired by the founding fathers since the beginning of the struggle for independence was clearly seen by the inclusion of the basic ideas in the opening of the 1945 Constitution, namely independence, justice, humanity and the statement that the state government is obliged to protect the whole nation and all of Indonesia's bloodshed and to promote the general welfare. This provides direction and hope that the law will protect all people, all individuals from unfair treatment and arbitrary actions. The law will protect every citizen of the nation so that their rights as citizens and human rights are guaranteed (Mattalatta, 2009).

According to Sri Soemantri, law is one of the essential elements in the life of the state, that a state that is categorized as a rule of law must have the following elements (Erwinskyahbana & Syahbana, 2018):

1. The government in carrying out its duties and obligations must be based on laws or statutory regulations;
2. There is a guarantee of human rights (citizens);
3. There is a division of power within the state; and
4. There is oversight from the judiciary (*rechtterlijke controle*)

CONCLUSION

Based on the explanation described above, it can be concluded that there are differences between conventional banks and digital banks in terms of their establishment. If a conventional bank has several things that must be met, one of which is the need to have a Head Office, Full Branch Offices, Sub-Branch Offices. Meanwhile, in the establishment of digital banks, legal instruments regarding the establishment of digital banks in Indonesia can currently be found in the Financial Services Authority Regulation Number 12/Pojk.03/2021 concerning Commercial Banks. As for the requirements for establishing a digital bank, it must be in the form of a legal entity in the form of a limited liability company, cooperative or regional company. In addition, if you want to establish a digital bank, you are required to have 1 (one) office as the head office or have a limited office and fulfill the conditions specified in Article 24 of the Financial Services Authority Regulation Number 12/Pojk.03/2021 concerning Commercial Banks that is : a) having a business model with the use of innovative and safe technology in serving customer needs; b) having the ability to manage a prudent and sustainable digital banking business model; c) having adequate risk management; d) fulfilling governance aspects including the fulfillment of Directors who have competence in the field of information technology and other competencies in accordance with the provisions of the Financial Services Authority regarding fit and proper test for the main parties of financial service institutions; e) protecting the security of customer data; f) providing efforts that contribute to the development of a digital financial ecosystem and/or financial inclusion. Until now, the regulation regarding the establishment of a new digital bank is in the regulations of the financial services authority and there are no higher regulations such as statutory regulations. However, the reality is that there are already many digital banks operating in Indonesia, even though there are no regulations on which to base their establishment. This is contrary to Indonesia which adheres to a civil law system where it is a consequence that every applicable law must be codified. A higher legal codification is needed than just a Financial Services Authority Regulation that regulates digital banks.

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