

## THE LEGAL STATUS OF DIGITAL BANKS IN INDONESIA

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### *Abstract*

*The bank digital concept is designed so the customer can independently do the transaction, make an online account, get online information, close the account, and so forth. Norm text wise, digital bank is not present in the positive law of banking in Indonesia. So, the problem is about the legal basis of digital banks in the country. The researchers discuss the problem by applying normative juridical method with statute and analytical approaches. The primary law sources are from the laws and regulations, the court's transcript of proceedings, and the court decision. The secondary sources are previous research results and legal articles. The analysis technique of legal sources implements systematic interpretation. The results show that the legal basis for digital banks in Indonesia is implicitly written on Banking Law and POJK No. 12/POJK.03/2021 concerning Commercial Banks. Digital banks must be an Indonesian legal entity bank and acquire a license from the OJK. Digital banks should be clearly differentiated with other Indonesian legal entities by applying a better and more complete regulation to give legal certainty, protect the customer's personal data, and avoid data leakage. This article hopefully can be a reference for regulating digital banking in Indonesia.*

*Konsep bank digital dirancang agar nasabah dapat melakukan transaksi secara mandiri, membuka rekening online, memperoleh informasi online, menutup rekening dan kebutuhan lainnya. Bank digital secara teks norma tidak terdapat dalam hukum positif perbankan di Indonesia. Persoalan yang muncul adalah bagaimanakah dasar hukum pengaturan bank digital di Indonesia. Penulis melakukan pembahasan dengan menggunakan metode penulisan yuridis normatif dengan pendekatan perundang-*

*undangan dan pendekatan analitis. Bahan hukum utama yang digunakan meliputi peraturan perundang-undangan, berita acara persidangan, dan putusan pengadilan. Bahan hukum sekunder meliputi hasil penelitian dan artikel hukum. Teknik analisis bahan hukum menggunakan tafsir sistematis. Hasil penelitian menunjukkan bahwa dasar hukum bank digital di Indonesia secara implisit diatur melalui Undang-Undang Perbankan dan POJK No. 12/POJK.03/2021 tentang Bank Umum. Bank digital harus berbadan hukum Indonesia dan mendapat izin dari Otoritas Jasa Keuangan. Bank digital harus dibedakan secara jelas dengan badan hukum Indonesia melalui penggunaan payung hukum yang lebih baik dan lengkap guna memberikan kepastian hukum, terlindunginya data pribadi konsumen serta risiko kebocoran data. Artikel ini bermanfaat untuk dijadikan sebagai dasar rujukan pengaturan perbankan digital di Indonesia.*

*Keywords: application program interface, digital bank, legal status*

## Introduction

Banking is one of the most crucial components of a country's economy. It is referred to as an intermediary institution, as a sector with financial services that collects funds from the public in the form of deposits and then distribute them to the public in the form of credit and financing to improve people's living standards. Banks also typically offer various financial services such as fund transfers, clearing and Real Time Gross Settlement (RTGS), bank guarantees, internet banking, and so on. Among the products of banking business are those in the forms of institutions, business activities, as well as methods and processes for carrying out business activities. In banking law, there are two types of banks, (a) Commercial Banks, which are defined as a financial institution that conducts banking activity traditionally or according to Sharia principles; and (b) Rural Banks, which are bank entities that operate traditionally or according to Sharia principles but do not provide payment traffic services.<sup>1</sup>

Banking institutions, which take moneys from the public and then distribute them back to the community in the form of loans and suppliers of financial transaction services, are required to meet customers' financial needs. Customers not only enjoy the core bank products but also services supplied by other non-bank financial organizations such as insurance and securities businesses, such as credit, deposits, savings, and the like. They can also provide and offer novel products such as investment and insurance.<sup>2</sup> All of these requirements are easily met, because the

1 Law of the Republic of Indonesia Number 7 of Year 1992 on Banking as a mended by Law of the Republic of Indonesia Number 10 of Year 1998, Article 1 points (1-4).

2 Aad Rusyad Nurdin, "Kajian Peraturan Perlindungan Konsumen Di Sektor Perbankan", *Jurnal Hukum & Pembangunan, Fakultas Hukum, Universitas Indonesia*, Vol.48, No.2 (2018): 299-322. <http://dx.doi.org/10.21831/jhk.v48i2.12345>

development of the digital world today makes it easier for banks to provide their services quickly and efficiently. Those are also aided by the development of the industrial revolution 4.0, which has transformed human activities to digital form, that machines and technology can be linked via the internet or cyber system.

In the last decade, the condition of banking has evolved rapidly. Banking products and services has been developing to meet the customers' needs. Customers' perception of a bank as a "financial supermarket" has compelled banks to sell a wide range of products.<sup>3</sup> The advancement of the banking sector is also inextricably linked to current technology advancements. Banks began to offer digital services to customers. According to POJK No. 12/POJK.03/2018:

*"A Digital Banking is a service for Bank customers to obtain information, communicate, and conduct banking transactions through electronic media that was developed by optimizing the customer data in order to serve them more quickly, easily, and in accordance with their needs (customer experience). It can be done independently by the customer with high security."*

This differs from the features of internet banking (i-Banking) or mobile banking (m-Banking), which are semi-digital banking products with restricted services and operations. Customers, for example, must still be present at the bank office to verify documents in order to activate the mobile banking service while using the mobile banking function. Meanwhile, digital banking services may fulfill all banking needs online. They are more convenient and efficient because there is no need to physically visit the bank.<sup>4</sup>

Customers can take many benefits of digital banking services, (a) the services are online, so they can be accessed anytime and anywhere as long as they are connected to the internet network; (b) they are convenient in conducting and authorizing transactions; (c) they are fast and practical because customers do not require physical queues at bank offices; and (d) they have the potential to reduce operational costs. However, there are some disadvantages of digital banking services, such as the reliance on the internet network to access its services and ineffective security system that the data leakage sometimes can happen.

According to The Indonesia Financial Services Authority (OJK) Guidelines for the Implementation of Digital Branches by Commercial Banks, digital banking

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[org/10.21143/jhp.vol48.no2.1665](https://doi.org/10.21143/jhp.vol48.no2.1665)

3 Agus Sudiarto, *Arsitektur Perbankan Indonesia: Suatu Kebutuhan Dan Tantangan Perbankan Ke Depan*: Kompas June 5, 2003.

4 Sikapi Uangmu, "Digital Banking: Permudah Akses Layanan Perbankan di Masa Pandemi", OJK. undated, accessed on October 7, 2021, <https://sikapiuangmu.ojk.go.id/FrontEnd/CMS/Article/40702>.

is a banking activity that involves the use of digital electronic facilities owned by service provider banks or digital media owned by potential bank customers or bank customers. Simply said, digital banking allows potential and existing bank customers to obtain information, communicate, register, open and close accounts, and conduct other banking transactions. They can also access non-banking transactions such as investments, e-commerce transactions, financial consulting, and other needs without having to visit a physical branch office. According to Bastian Muzbar Zams, The Deputy Director of Bank Indonesia's Payment System Policy Department, one of the supporting factors for banking digitalization and making banks the primary stakeholder in the digital financial economy is collaboration between bank institutions and fintech, specifically the Application Programming Interface (API). Bank Indonesia issued the National Payment Open API Standard (SNAP) in order to provide integrated services between digital banks and payment gateways and to regulate all of this.<sup>5</sup>

PT. Bank Neo Commerce Tbk. (BBYB) now has authorization from the OJK to use the Digital Customer Onboarding function or register new customer accounts online utilizing the neo+ app as a digital bank institution. Prospective customers can open Neo Commerce Bank accounts more conveniently and swiftly with this tool. The entire account making process is even done online through three stages in the neo+ app, namely filling in personal data and passwords, uploading an ID card or identity document, and finally the verification process by uploading a self-portrait (selfie), which takes only a few minutes. Neo Commerce Bank has declared its achievement of gaining over six million customers who have used the company's services. The results reflect the public's enthusiasm and trust, that can strengthen the company's fundamentals and technology systems since changing into a digital bank.<sup>6</sup>

Phone-transfer and Neo Journal function as customers assistance in managing their finances. The customers can interact with one another through chat-based technology in the neo+ app. Various promotions are given to attract customers' attention that have been incorporated into the app. Neo Commerce Bank will continue to offer a variety of appealing services and products, including Lifestyle services, Direct Debit, Direct Loan, Payment Point Online Banking (PPOB) Quick Response Code Indonesian Standard (QRIS), and others. Neo Commerce Bank expects that all customers would benefit from the existence of the bank as

5 <https://finansial.bisnis.com/read/20210913/90/1441401/bank-neo-bbyb-dapat-izin-digital-onboarding-ojk-jumlah-nasabah-melonjak> accessed on October 25, 2021

6 <https://finansial.bisnis.com/read/20210913/90/1441401/bank-neo-bbyb-dapat-izin-digital-onboarding-ojk-jumlah-nasabah-melonjak>., accessed on October 25, 2021.

a pioneer in digital banking in Indonesia as the bank always make innovations of the products and services. The bank also offers information about business ideas that was implemented in the second semester of 2021 on a regular basis.<sup>7</sup>

Customer behaviors, aspirations, and demands are changing at an increasing rate that is directly proportionate to technology. Customers primarily use technical tools to support their operations, including executing financial transactions through the use of digital banking services. As a bank that operates its services in the banking traffic in Indonesia, Neo Commerce Bank is required by law to offer security for the services given to customers. It is because the bank runs based on the approval of the OJK.

In 2021, the OJK issued POJK regulation Number 12/POJK.03/2021 concerning Commercial Banks, explaining that “Digital Bank is a Indonesian legal entity that provides and carries out business activities primarily through electronic channels without a physical presence”. This means that all banks in Indonesia can run the business through digital channels. However, according to this article, it will create uncertainty in their legal status because the legal implications of commercial and digital banks differ, with digital banks engaging in more complex business activities. They are vulnerable to digital crime. Hence, it is required to undertake study on the legal status of the Digital Bank in Indonesia. No other publications were identified to present the similar discussion based on the results of a prior library search on the legal status of Digital Bank.

The problem formulation is how to implement digital services in Indonesia and the legal framework in Indonesia to protect the implementation of banking services. According to the findings of this study, the implementation of digital banking services is governed by The POJK No.12/POJK.03/2018, which is a preventive measure for customer protection. With the said regulation, it is hoped that banks will always prioritize risk management in the use of information technology as digital banking service providers.<sup>8</sup> The previous study only discussed on the repressive protection as banks’ responsibility toward customers’ complaints when using digital banking services. Meanwhile, this research investigates the legal status of a specific digital bank.

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7 <https://keuangan.kontan.co.id/news/dapat-izin-dari-ojk-bank-neo-commerce-bbyb-bisa-membuka-rekening-online>, accessed on October 25, 2021.

8 See Herdian Ayu Andreana Beru Tarigan, Darminto Hartono Paulus, Faculty of Law, University of Muhammadiyah Surakarta, and University of Diponegoro conducted the first research. The study is titled “Legal Protection of Customers in the Implementation of Digital Banking Services.” Indonesian Journal of Legal Development, Volume 1, No. 3 (2019).

The second problem is how digital banking is legally regulated and what kind of legal protection that customers get when using digital banking. When banks begin to use information technology products in banking services as a substitute of traditional one, the legal dynamics of digital banking emerge. Customers no longer need to visit bank branch offices as they can conduct transactions on their own thanks to the use of information technology. The implementation of Digital Banking has resulted in fewer bank branch offices and bank employees.<sup>9</sup> Another study analyzed how the form of legal protection for digital bank customers is, which is also discussed here but will not be the main focus of the discussion. The primary focus of this article is the importance of regulating the implementation of the open API system in digital banks.

With this current study, the researchers intend to present the existence of Digital Banks in a juridical normative manner to find the answer of how to regulate Digital Banks in Indonesian positive law. Currently, there are several existing digital banks running their business activities even though the legal protection is yet concrete and clear.

### Research Methods

This study used normative juridical research method to examine the legal status of digital banks from the banking legal theory and other relevant regulations. The Statute Approach applied in this article is a kind of approach to regulations in the banking sector and the POJK, meanwhile, the Analytical Approach is an analysis of legal materials to find out the meanings contained in the terms used in regulations and conceptual legislation.<sup>10</sup> The primary legal materials include the Banking Law, the OJK Law, the Indonesian POJK No. 12/POJK.03/2021, the Indonesian POJK No. 13/POJK.03/2021, and the Indonesian POJK No.12/POJK.03/2018. The secondary legal materials are legal journals and articles related to research topic. The Big Indonesian Language Dictionary (KBBI), Legal Dictionary, and various other literatures are considered the tertiary sources to support this research. The method for finding legal materials used literature studies as this article analyzed all legal materials. The procedure covered identifying theory systematically, discovering literatures, and analyzing relevant documents or information. The Legal Material analysis technique used in this study is Methodical

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9 See Djuwita N. Gaib of Sam Ratulangi University's Faculty of Law. The study's title is "The Legal Dynamics of Digital Banking in Indonesia." *Lex Et Societatis* Vol. VII No. 11 (2019).

10 Jhony Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif* (Malang: Banyumedia Publishing, 2006), 310.



Interpretation where the researchers reinterpreted law as part of the overall legal system, without ignoring the applicable laws and regulations.

## Discussion

### **Juridical Analysis of the Banking Law Regarding the Legal Status of the Establishment of Neo-Bank as a Digital Bank**

Digital Banks referred to as digital banking services are defined as services through bank offices using electronic/digital facilities owned by banks. It is carried out independently by customers that enable prospective customers or bank customers to obtain information, communicate, register, make/close accounts, do transaction, and obtain other information outside of banking products, including financial advisors (financial advice and opinions), investments, e-commerce transactions and others. In this case the bank operates through branch offices and sub-branch offices which are scattered in remote areas to meet customer needs. Meanwhile, digital banking is a banking service through bank-owned electronic or digital facilities, where the customers are able to conduct banking activities independently.

Digital banking makes it possible for customers to do activities in digital platform such as making accounts, deposits and investments that normally can only be done through bank branch offices. Digital banking is different from internet and mobile banking which are limited to banking transactions such as fund transfers or balance checks, as they still have to do other conventional banking activities by visiting branch offices.

The difference between digital banking and mobile banking lies in the features provided through one application. Mobile banking allows customers to carry out transactions similar to 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 making new accounts, opening deposit accounts, investing, filling out e-wallets, and so forth.

Competition in the financial services industry is getting higher, thus encouraging banks to improve the quality of service to customers more effectively and efficiently and create continuity of services. This is one of the efforts to increase bank capabilities, utilize information technology developments more optimally to support bank's service innovation. In this case, banks need to provide easy access to information technology-based banking services without limitations of place and time to encourage better customer financial management. Service innovation and

strategic alignment in the use of information technology encourage the banking industry to enter the era of digital banking services. In addition, the provision of digital banking services can have an impact on increasing risks, especially operational risk, strategic risk, and reputation risk, so it is necessary to increase the application of risk management in the effective use of information technology by banks.

The rapid development of the digital financial industry does not only provide convenience. Behind all the digital facilities offered, there are several risks that must be accepted. The harmful risk must be minimized by both parties, namely customers and digital banking business operators. In the midst of the bright prospects for the Indonesian banking industry in today's digital era, there are a number of challenges and risks that are ready to lurk at any time that banking players need to be aware of, starting from customer data leakage to the risk of cyber-attacks. According to the OJK's explanation in the Banking Digital Transformation Blueprint, there are a number of digital potentials and opportunities for banking in this 4.0 industrial revolution era. First, Indonesian demographic structure is dominated by Generation Z (estimated age now 8-23 years), Millennial Generation (24-39 years), and Generation X (40-55 years), who are considered digitally literate.<sup>11</sup>

Second, Indonesia digital economy potential is growing and it is the country with the largest digital economy development in the Southeast Asia region. The transaction value of Indonesia's digital economy is the highest in the ASEAN region, reaching USD 44 billion. The value of Indonesia's digital economy is predicted to reach USD 124 billion in 2025. Third, the potential for internet use. According to data from We Are Social and Hootsuite (2021), internet user in Indonesia has reached 202.6 million or 73.7% in January 2021. This figure has increased by 15.5% from January 2020. Fourth, it is regarding the population of people who do not have bank accounts (unbanked) and have limited access to financial services (underbanked) in the ASEAN region.<sup>12</sup>

Protection of privacy and personal data greatly influences the development of the digital economy in a country, and Indonesia is no exception. This protection is a determining factor for online trust, which is important in digital transactions. Privacy and personal data are important because users on the network will not carry out a digital transaction if they feel the security of their privacy and personal data is threatened. One of the protections of personal data concerns on how the personal data will be processed, including sensitive data from users which, if distributed to

11 <https://www.cnbcindonesia.com/market/20211103113315-17-288645/hati-hati-ini-risiko-mengintai-bank-digital-di-masa-depan/1>, accessed on January 29, 2022.

12 <https://www.cnbcindonesia.com/market/20211103113315-17-288645/hati-hati-ini-risiko-mengintai-bank-digital-di-masa-depan/1>, accessed on January 29, 2022.



irresponsible parties, will have the potential to cause financial loss, even threaten the security and safety of the owner. The threats that arise from weak protection of privacy and personal data have a straight-line correlation with economic growth resulting from transactions in the network (online).<sup>13</sup>

A personal data is related to a person, so that it can be used to identify the person, namely the data owner.<sup>14</sup> An identifiable person is someone who can be identified directly or indirectly based on an identification number or based on one or more specific factors of physical, psychological, mental, cultural or social identification. Entities protected in the personal data protection mechanism are “natural person” not “legal entities”.<sup>15</sup> Thus, individuals are the primary owners of personal data protection rights, in this case banking customers.<sup>16</sup>

Protection of personal data in the banking sector is regulated in Article 40 of Law of Republic of Indonesia Number 10 of 1998 concerning Banking. Based on these provisions, banks are required to keep information about depositors and their deposits confidential. However, there are some exceptions to this protection, namely: 1) in the field of taxation, the Minister of Finance orders banks to disclose information and show documentation and written letters to tax officials regarding the financial status of certain depositors; 2) the leader of Bank Indonesia gave authority to officials of the State Receivables and Auction Agency/Committee for State Receivables Affairs to obtain information from the bank; 3) in criminal cases, the management of Bank Indonesia authorizes the police, prosecutors or judges to obtain information from the suspect’s savings in the bank for the benefit of the court; 4) in the context of exchanging information between banks, bank directors may notify other banks about the customer’s financial condition; 5) banks are required to provide information about customer’s deposits at the bank concerned at the request, approval or written authorization of the depositing customer; and 6) if the deposit customer dies, the legal heirs have the right to obtain information about the deposits.

Public trust or bank customer is a big capital for a bank. Without public trust, the bank will definitely not be able to carry out its business activities properly.

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13 Sinta Dewi Rosadi, Garry Gumelar Pratama, *Perlindungan Privasi dan Data Pribadi Dalam Era Ekonomi Digital di Indonesia*, *Jurnal VEJ* Vol.4 No.1 (2018), 89.

14 European Union Agency for Fundamental Rights and Council of Europe, *Handbook on European Data Protection Law* (Belgium: European Union Agency for Fundamental Rights, 2014), 36.

15 Regarding the term “legal entity”, Article 1653 of the Indonesian Civil Code states: Apart from true civil companies, associations of persons as legal entities are also recognized by law, whether the legal entity was established by public authority or recognized as such, whether the legal entity is accepted as permissible or has been established for a specific purpose which is not contrary to law or decency.

16 European Union Agency for Fundamental Rights and Council of Europe, 37.

Hence, banks must maintain the trust by providing legal protection to gain the society's interests, especially since digital banks are new banking institutions that are trying to gain customer trust properly. This principle is regulated in Article 29 paragraph (4) of the Banking Law, that the principle of trust is underlying the relationship between a bank and a customer. Banks have public funds saved based on trust so that every bank needs to maintain the health of its bank while maintaining public trust.

Therefore, to maintain trust and protect costumers, banks must use the principles of prudence, in accordance with the Article 2 of the Banking Law, "Indonesian banking in carrying out its business is based on economic democracy by using the precautionary principle". Regarding what is meant by the precautionary principles, there is no official explanation, but we can argue that banks and the people involved, especially in making policies and carrying out their business activities, are obliged to carry out their duties and authorities in a careful, thorough and professional manner so as to gain the public's trust. As a trusted institution, banks are required to always pay attention to the interests of the community in addition to developing its business.

Based on Article 1 number (16) of the Banking Law, what is meant by a customer is a party that uses bank services. In the world of banking, customers must get good services and have a very important role in the life of a bank. It is not a surprise that customer's trust in bank sometimes disappears. It can be affected mainly due to banking crime, one of which is account burglary. Perpetrators of banking crimes can be divided into two groups: people outside the bank, such as: hackers and robbers, also people inside bank (employees).

### **Juridical Analysis of The Indonesian POJK for Digital Bank Implementation Services by Commercial Banks**

There are several challenges for digital banking transformation, starting from the protection of personal data and the risk of data leakage, the risk of cyber-attacks, the low digital financial literacy, to the uneven distribution of information technology infrastructure in Indonesia. All of these potentials are closely related to the legal status of digital banks. The Indonesian POJK Number 12 /POJK.03/2021 concerning Commercial Banks defines a Digital Bank as an Indonesian Legal Entity that provides and carries out business activities mainly through electronic channels without a physical office or not limited to physical office activities.

The OJK regulation for commercial banks states that Indonesian legal

bank entities (conventional banks) can operate as digital banks. There is an interpretation gap in this clause, that the innovation of Indonesian legal bank entity to be digital banks is not clearly separated, even though it is known in the POJK on commercial banks that the process for administering legal bank entity and digital banks is different. Digital banks should be regulated separately in a complex norm so that their legal status is clear and their implementation will be far from risks that can harm customers.

The POJK for commercial banks also provides requirements for Indonesian legal bank entities that provide digital banking services to:<sup>17</sup> a) have a business model using innovative and safe technology to serve customer needs; b) have the ability to manage a prudent and sustainable digital banking business model; c) have adequate risk management; d) fulfill governance aspects including the fulfillment of directors who have competence in the field of information technology and other competencies in accordance with the POJK regarding fit and proper test for the main parties of financial service institutions; e) carry out the protection of customer data security; and f) provide efforts that contribute to the development of a digital financial ecosystem and/or financial inclusion. In an effort to prevent risks that can harm customers, digital banks, which are permitted by the POJK for commercial banks, will require adjustments to risk management. Digital banks do not have a special legal umbrella that is quite complex. The regulation of digital banks is still based on the POJK of commercial banks, and their implementation also offers the same banking products as commercial banks.

The Bank ensures that the implementation of risk management, governance and internal control over the implementation of bank products is an integral part of the implementation of risk management, governance, and internal control in general.<sup>18</sup> Banks are required to have policies and procedures to manage the risks related to the products. The procedure policy at least covers the following aspects including: a) systems and procedures as well as authority in managing bank products; b) identification of all risks attached to bank products; c) risk measurement and monitoring methods for bank products; d) the method of accounting record for bank products; e) analysis of legal aspects of bank products; and f) transparency of information to customers in accordance with the POJK concerning customer protection in the financial services sector.

In implementing bank products, banks must pay attention to customer needs, capital adequacy, readiness of supporting infrastructure, readiness of human resources, customer education, and compliance with statutory provisions.

17 Article 24 of POJK concerning Commercial Banks.

18 Article 6 of POJK No.13/POJK.03/2021 concerning Commercial Banks.

The aspect of human resources is crucial in implementing digital banking, in this case the digital bank itself. Digital banks prioritize easy access and performance efficiency in running their services. However, these aspects are contradictory. On one hand, banks must pay attention to the readiness of human resources; on the other hand, digital banks are expected to minimize aspects of human resources that are replaced by digital systems.

The above contradictions then make the legal status of digital banks must be clarified, differentiated and separated from conventional/public/Indonesian legal bank entity. Legal status is very significant in impacting economic benefits, juridical benefits and customer security. The bank customer protection is an interesting topic because in reality, they are the ones who are disadvantaged. The relationship between the bank and the customer is an unequal relationship because the bank has stronger bargaining power so that the customer is given the option of “take it or leave it”. With this unequal relationship, the protection of customers as bank consumers is very important.<sup>19</sup>

The POJK concerning Commercial Banks was issued with the spirit and aim of making Indonesian banks more competitive, adaptive and contributing to the national economy. It also encourages the banking industry to achieve higher, more efficient levels of economies of scale, and can serve as a guideline in the development of the banking industry, especially those related to aspects of banking institutions.<sup>20</sup> Provisions regarding the establishment of bank and/or digital banks apply to the establishment of Indonesian Legal Bank Entity which is carried out after the implementation of the POJK on Commercial Banks. The minimum paid-up capital to establish Indonesian Legal Bank Entity is IDR 10,000,000,000,000.00 (ten trillion rupiah). Yet, this can be determined differently depending on certain factors. Indonesian Legal Entity is established and/or owned by Indonesian citizens (WNI) and/or Indonesian legal entities, or in cooperation with foreign nations and/or foreign legal entities.

The licensing process for the establishment of Indonesian Legal Bank Entity is divided into two stages, namely principal approval and business license. The enforcement of the minimum amount of paid-up capital in the establishment of a Indonesian Legal Bank Entity and/or digital bank is much higher than the transformation from a Indonesian Legal Bank Entity to a digital bank. The OJK considers that the readiness of capital strength for new digital banks must be

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19 Sutrisno Fernando Ngiu, Perlindungan Hukum Terhadap Nasabah Bank Sebagai Subjek Hukum Menurut Undang-Undang Nomor 10 Tahun 1998 Tentang Perbankan, *Jurnal Lex Privatum*, Vol.III No. 1 (2015), 241.

20 Summary of the Indonesian POJK No. 12/POJK.03/2021 concerning Commercial Banks.

able to overcome all risks of potential losses that are very likely to occur. This arrangement is also a form of preventive legal protection for customers in the era of the digital financial industry.<sup>21</sup> However, the enactment of these minimum requirements does not explain logical legal considerations, so if the content of these norms cannot be implemented, it is not impossible that it will actually erode the digital financial industry itself. Normative legal certainty is when a regulation is made with certainty because it regulates clearly and logically. Clear in the sense of not causing doubts (multiple interpretations) and logical.<sup>22</sup> Consideration of the application of a minimum capital amount must be stated so that potential losses that may arise can be predicted that it will encourage a better climate for the digital financial industry.

The legal status of establishing a digital bank is closely related to legal aspects that intersect with the existence of a digital bank. Issues that intersect with the existence of digital banks lead to several potential legal issues that may occur. Therefore, a special legal umbrella is urgently needed by digital banks, because there are several potential risks to the legal status of establishing a digital bank, including:<sup>23</sup> an innovative and secure banking business model; prudent and sustainable digital banking business model; the implementation of digital banking must have adequate risk management; governance and technological competence for directors of digital bank companies; the implementation of digital banking must be able to provide efforts that contribute to the development of a digital financial ecosystem and/or financial inclusion. This issue is the extent to which digital banking can be carried out by improving services to customers but without compromising the security of customer transactions (both depositors and financing customers). In this case, future regulations regarding digital banking must be strengthened by special rules (*lex specialis*) that regulate the protection of digital banking customers.

The development of the digital economy era, telecommunication infrastructure and activities are the result of the ongoing exchange of information and electronic transactions between communities. Indonesia already has Law Number 36 of 1999 concerning Telecommunications. These regulations also have rules relating to personal data. Article 40 of the said law regulates the prohibition of wiretapping

21 <https://finansial.bisnis.com/read/20211102/90/1460930/aturan-pendirian-bank-digital-mulai-berlaku-simak-syaratnya#:~:text=Dalam%20ketentuan%20tersebut%2C%20salah%20satunya,yang%20dirilis%20pertengahan%20Agustus%20kemarin,> accessed on January 30, 2022.

22 CST Kansil, Christine, S.T Kansil, Engeliën R, Palandeng dan Godlieb N Mamahit, *Kamus Istilah Hukum* (Jakarta: Pustaka Sinar Harapan, 2009), 385.

23 Article 24 of the Indonesian POJK No.13/POJK.03/2021 concerning Commercial Banks.

activities. Everyone is prohibited from carrying out wiretapping activities on information channeled through telecommunication networks in any form.

The existence of this prohibition is a positive thing for the protection of privacy and personal data. Customers conducting economic transactions certainly make profit while remaining within the security corridor as the main consideration. Security issues are an important issue in the functioning of the economic mechanism. Legal issues remain as objects that are constellation (arranged, built, associated) with basic economic concepts, reasons and economic considerations. The aim is to be able to position the nature of legal issues so that the flexibility of legal analysis (not economic analysis) becomes more elaborated. In this regard, the economic analysis of law is built on the basis of several general concepts in economics, one of which is maximum utilization while still providing a sense of security.

Digital banks that carry out banking functions in general are required to carry out their services in a prudent manner and pay attention to the principles of healthy banking management. In developing a digital financial ecosystem and/or financial inclusion, there are important aspects that can be used as indicators for evaluating whether a banking product is healthy or not.<sup>24</sup> The real sector will certainly move forward or grow from time to time. Banks have a big responsibility towards economic development. This responsibility comes from his duties and functions to save community's funds and to distribute it.<sup>25</sup>

An example of a case in the implementation of digital banking is the digital account experienced by one of the customers of PT. Bank BTPN Tbk., who used a *Jenius* account.<sup>26</sup> It was stated that a customer named Anggita Wahyuningtyas experienced a burglary with an amount of more than IDR 50,000,000 (fifty million rupiah). The burglary started with a telephone call from a fraudster who pretended to be a *Jenius* call center on September 7, 2020. The contents of the call stated that there had been a system update and an ATM card replacement, which made the victim gave her personal data to the caller. In just a few minutes, the criminal was able to take the victim's money and transfer it to another *Jenius* account under the name of Lutfi Putri Mardiana. After being traced, it turned out that the owner of the account lived in Lampung and admitted that her account was being hacked by an unknown person. On the same day, Anggita's stolen money

24 Article 29 of the POJK No.13/POJK.03/2021 concerning Commercial Banks.

25 Bukit, A.N., "Pertanggungjawaban Bank Terhadap Hak Nasabah Yang Dirugikan Dalam Pembobolan Rekening Nasabah (Studi di PT. Bank Rakyat Indonesia TBK. Kantor Cabang Medan Gatot Subroto)," *Jurnal Ius Constituendum* Vol. 4 No.2 (2019), 183.

26 M. Richard, "Ada Pembobolan Rekening Digital, Ini Kata BTPN Soal Keamanan Akun Jenius," dalam <https://finansial.bisnis.com/read/20200921/90/1294614/ada-pembobolan-rekeningdigital-ini-kata-btpn-soal-keamanan-akun-jenius>.



was transferred to two other accounts. The victim has reported this to BTPN, the Financial Services Authority (OJK) and the police. However, the criminals have not been able to be traced and arrested.

The above case illustrates that not all digitalized systems will be safe from all forms of crime. In the past, people felt that keeping money in a bank was a solution for securing money rather than keeping it at home due to fear of a robbery. Today, technology makes it easier and makes the world of banking more complex. However, it creates a new problem, namely security that threatens not only property but also privacy. Strict and complex regulations are indispensable for the existence of digital banks. These regulations are needed to ensure that customers are safe in making transactions.

Certainty is a statement that has conditions or provisions. The law essentially must be certain and fair as a guideline because the code of conduct must support an order that is considered reasonable. Legal certainty is a question that can only be answered normatively, not sociologically.<sup>27</sup> The use of IT aims to increase the speed and accuracy of transactions and services to customers. However, its implementation also poses a high level of risk such as operational, reputational, legal, compliance and strategic risks. Therefore, every bank must have integrated risk management to identify, measure, monitor and control risks.

Bank Indonesia as the supervisory bank has made rules for risk management for the use of IT in commercial banks. This rule must be applied to each bank, which can then be adjusted for risk parameters for the business activities of each bank. The following are regulations issued by Bank Indonesia through Bank Indonesia Circular Letter Number: 9/30/DPNP December 12, 2007 (PBI, 2009; BI, 2007).

*First*, report on the use of information technology, including: IT Management; Application and Development; Information Technology Operations; Communication network; Information Security; Business Continuity Plan; End User Computing; Electronic Banking; Information Technology Audit (IT Audit); Implementation of IT by other parties. *Second*, plans for fundamental changes in the use of IT, including: Transactional Electronic Banking Issuance Plan; Plans for Organizing Data Centers and/or Disaster Recovery Centers by Other Parties in the Country; Plans to Organize Data Centers and/or Disaster Recovery Centers by Other Parties Overseas; Plans for Processing of Information Technology-Based Transactions by Domestic Other Parties; Plans for Processing of Information Technology-Based Transactions by Other Parties Overseas. *Third*, Report on

<sup>27</sup> Dominikus Rato, *Filsafat Hukum Mencari: Memahami dan Memahami Hukum* (Yogyakarta: Laksbang Pressindo, 2010) 59.

the Realization of Fundamental Changes in the Use of Information Technology, including: Realization of Transactional Electronic Banking Issuance; Realization of Implementation of Data Centers and/or Disaster Recovery Centers by Other Parties in the Country; Realization of Implementation of Data Centers and Disaster Recovery Centers by Other Parties Overseas; Realization of Implementation of Information Technology-Based Transaction Processing by Domestic Other Parties; Realization of Implementation of Information Technology-Based Transaction Processing by Other Parties Overseas. *Fourth*, Annual reports on the use of Information Technology, including: Reports of Critical Incidents, Misuses and/or Crimes in the Implementation of Information Technology (IT); Application for Re-approval of Data Center and/or Disaster Recovery Center Operations by Other Parties Overseas for Foreign Bank Branch Offices.

Even though it has advantages and convenience, all business transactions have risks. We cannot avoid these risks, but we can prevent them to minimize the threat of loss. The risks can affect both the bank and the customer. The current customer orientation in using digital bank services is the convenience offer. These conveniences include at least transactions, access, and security. In order to meet customer needs, banks certainly organize a payment system in their banking services. The implementation of the Payment System aims to create a system that is fast, easy, inexpensive, safe and reliable, while taking into account the expansion of access and customer protection.<sup>28</sup>

Customer satisfaction is the level of satisfaction one feels after comparing the perceived performance or results with their expectations. Customers of a bank are referred to as customers in the banking industry. Customer satisfaction can be defined as the magnitude of the customer's feelings towards the bank after comparing the bank's perceived performance with expectations before using the services. Corporations can create customer satisfaction by providing the best products and services to their customers. Through customer satisfaction and loyalty, the capacity to provide high quality service can enhance a company's image, retain customers, and attract new potential customers.<sup>29</sup>

OJK has implemented regulations regarding how banks can apply risk management in the delivery of banking services. Banks are required to implement Risk Management effectively, both for individual banks and for those in consolidation with the subsidiaries. The implementation of Risk Management should at least include:<sup>30</sup> active supervision of the Board of Directors and Board

28 Article 2 of the Bank Indonesia Regulation No. 22/23/PBI/2020 concerning Payment System.

29 Kotler and Keller, *Manajemen Pemasaran* (Jakarta: Erlangga, 2009), 410.

30 Article 2 of the POJK No. 18 /POJK.03/2016 concerning The Implementation of Risk Management

of Commissioners; adequacy of Risk Management policies and procedures as well as setting Risk limits; adequacy of the processes of identification, measurement, monitoring, and risk control, as well as risk management information systems; and comprehensive internal control system.

In times of economic crisis, every organization faces greater challenges to survive and grow. As external conditions become increasingly difficult to predict and control, the internal management of organizations, especially empowering the potential of human resources, becomes critical. Existing human resource management methods must be able to support the development of positive work attitudes and behaviors by relying exclusively on the intrinsic knowledge and abilities that employees bring with them when they join the organization. Internal company practices that aim to increase the capacity (skills and abilities) of employees, increase employee motivation in exercising discretion, and provide complete opportunities for the use of knowledge, skills, and various other attributes in their work are required. Such an environment reinforces employees' opinions of how well existing policies and procedures enable the execution of exceptional customer service. Furthermore, the perception of service quality anticipated by the organization, as well as management support and appreciation for employee performance.<sup>31</sup>

According to Schneider and Bowen, research on organizational practices in various banks reveals a very high relationship between Human Resource Management (HR) practices and organizational outcomes in service organizations. Product quality in manufacturing companies is directly affected by technology investment or manufacturing process control. As a result, employee work behavior has little impact on quality. However, this is not the case for service businesses, which, even when assisted by technology, cannot replace face-to-face employee-customer interactions.<sup>32</sup> Human interaction is very important in the banking industry because this relationship will also play a role in assessing whether the banking business being carried out is truly customer oriented or not.

The quality of service offered to banks engaged in services, where elements of society interact with customers, cannot be separated from the role of employees who are the human resources. How, intensity and attitude produce high-quality services that are strategically directed by existing HR management practices and

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for Commercial Banks

31 Tri Wikaningrum, *Praktek Dan Kebijakan Manajemen Sumber Daya Manusia Pada Perbankan Syariah*, *Jurnal Siasat Bisnis*, Vo.15 No.1 (2011), 99.

32 Tri Wikaningrum, *Praktek Dan Kebijakan Manajemen Sumber Daya Manusia Pada Perbankan Syariah*, 100.

rules. It is therefore permissible that an organization's internal processes, including human resource management practices and policies, can have an impact on organizational performance.<sup>33</sup>

Advances in information technology have contributed to the challenges faced by banks. The development of information technology has led to the rapid development of business types and the complexity of bank products and services, so that the risks that arise are bigger and more varied. In addition, competition in the banking industry, which tends to be global in nature, has also resulted in increasingly fierce competition between banks, so that national banks must be able to operate more efficiently with information technology. Therefore, besides taking advantage of these new opportunities, banks must identify, measure, monitor and control risks with the principle of prudence.

Table 1: the comparison between commercial bank and neo bank in Indonesia

Comparison	Commercial Banks	Neo-Bank
Establishment	<p>The POJK No. 12/POJK.03/2021 states that the establishment of Digital Banks must meet the following requirements:</p> <ol style="list-style-type: none"> <li>1. to have an innovative and secure business model in serving customer needs;</li> <li>2. to have the ability in managing a prudent and sustainable digital banking business;</li> <li>3. to have adequate risk management;</li> <li>4. to fulfill aspects of governance, fulfillment of directors who have competence in the field of information technology and other competencies in accordance with the OJK regulations.</li> <li>5. to guarantee the customers' data protection.</li> <li>6. to contribute to the development of the digital financial ecosystem.</li> </ol>	<p>Neo bank was formerly a bank under the name PT Bank Yudha Bhakti. In 2020, it changed to PT. Bank Neo Commerce and transformed into a digital bank.<sup>1</sup></p>

<sup>33</sup> Tri Wikaningrum, *Praktek Dan Kebijakan Manajemen Sumber Daya Manusia Pada Perbankan Syariah*, 101.

Capital	The POJK Number 12 of 2021 concerning Commercial Banks states that the minimum core capital for establishing a digital bank is IDR 10 trillion.	Neo bank is a conversion from a commercial bank to a digital bank, so the required capital is IDR 3 trillion <sup>2</sup>
Form of Legal Entity	Indonesian legal bank entity carries out banking business activities in the form of an Indonesian legal entity. Article 21 Paragraph (1) of the Banking Law states that the legal entity form of a commercial bank can be: <sup>3</sup> <ol style="list-style-type: none"> <li>a. Limited liability company.</li> <li>b. Cooperative, or</li> <li>c. Regional Company.</li> </ol>	PT. Bank Neo Commerce Tbk.
Physical Office Establishment	using electronic channels without a physical office other than the head office or using a limited physical office.	Bank Neo Commerce uses physical offices and branch offices located in several regions

Source: research results

Table 1 presents that the establishment of a third-party bank and/or a commercial bank that carries out business activities by means of digital services has met the requirements of the POJK. It is also important to emphasize the legal status of digital banks by being given a special legal umbrella so that in the process, it does not cause losses for customers, and unequal profits for entrepreneurs in the banking world. The government, in this case, needs to make consistent efforts to encourage technological progress that provides convenience but also has an ideal

legal status and is not floating. The ideal legal status would be linear with law enforcement efforts that are based on legal certainty.

### **Juridical Implications on Legal Status of the Digital Banks Establishment in Indonesia**

This technological development has positive impacts on business actors, some of which are reducing operational costs, increasing market exposure, increasing customer loyalty, and expanding marketing outreach. Current technological developments are capable of bringing innovation to world banking and have a significant impact on the efficiency and effectiveness of show banking. Banks can easily collect public funds by providing services in the form of raising funds or channeling them back to the community. This is in line with the understanding of banks in general—banks are defined as business entities that provide services, especially those related to finance.<sup>34</sup>

Technological developments have also directed the banking industry to further improve services through digital banking.<sup>35</sup> This is done so that banks can maximize their services to customers and improve the quality of operations. Thus, it is hoped that banks can develop digital banking properly through the existence of digital banks. The concept of a digital bank is designed so that customers can carry out transactions independently and take actions related to banking, such as making accounts online, obtaining online/digital information, making transactions (money transfers), closing accounts and other customers' needs.<sup>36</sup>

One of the reasons for the development of digital banking is to attract new potential customers, especially those familiar with the digital products such as the so-called millennials and also people who are able to adapt to digitalization. More than 70% of Indonesian population is in the productive age range (15 to 64 years), meaning that the demographics are dominated by digital savvy, who are none other than Generation Z, Millennial Generation, and Generation X which are the most prospective customer segments. Thus, this group becomes a new target audience and market share for industrial banking.<sup>37</sup>

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34 Disemadi, H. S., & Prananingtyas, P., Perlindungan hukum terhadap nasabah perbankan pengguna CRM (Cash Recycling Machine). *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*, Vol.8 No. 3 (2019), 286-402.

35 Gaib, D. N., Dinamika Hukum Perbankan Digital di Indonesia. *Lex Et Societatis*, Vol.7 (2020), 11.

36 Vebiana, V., Perbankan Digital, Pengalaman Pelanggan, dan Kinerja Keuangan Bank Syariah. In *Prosiding Industrial Research Workshop and National Seminar*, Vol.9 (2018), 747-751.

37 Mutiasari, A. I., Perkembangan Industri Perbankan Di Era Digital. *Jurnal Ekonomi Bisnis Dan Kewirausahaan*, Vol. 9 No.2 (2020), 32-41.



The demand for digitization in the banking industry is reinforced by various factors such as digital opportunities, digital behavior, and digital transactions. This situation arises because the Indonesian economy has great potential to absorb digitalization flows. Technological developments in the banking sector can be seen from the production of various forms of services or channel delivery. There are many digital banking service products that are managed and introduced by banks which show digitalization in Indonesia. In addition, it is important to note that digital banking developments are growing in terms of the number of users. In 2017 to 2020 period, the digital banking transactions, e-commerce transactions, and electronic money transactions have increased significantly. This is in line with the decline in the number of bank office buildings in Indonesia due to the raise of people using digital transactions in the span of four to five years. In addition, the development of digital banking can also be proven from a different perspective, namely the value of digital banking transactions.

This achievement is projected to grow by 43.04% every year reaching IDR 39,130 trillion for the whole of 2021. As well as the development of digital banking services, in the same industry and in the digital ecosystem, the concept of digital banking has also emerged.<sup>38</sup> Digital Banks here are like banks in general, but this type of bank provides and runs its business through digital channels/delivery channels without physical offices other than the head office, or using physical offices but with a limited number. Digital banks themselves can run their business in two ways, through new companies and by transforming from existing banks into digital banks (Table 2).

Table.2. Types of digital banks<sup>39</sup>

No.	Bank Names	Digital Bank Application
1.	Bank BTPN	Jenius
2.	Bank Jago	Jago
3.	Bank Seabank Indonesia	SeaBank
4.	Bank UOB	TMRW
5.	Bank BCA	Blu
6.	Bank Neo Commerce	Neobank

38 Walfajri, M. (2021). BI: Transaksi Digital Banking Meningkat 46,72% Yoy Sampai September 2021, Kontan, <https://newssetup.kontan.co.id/news/bitransaksi-digital-banking-meningkat-4672-yoy-sampai-september-2021>, diakses pada 11 Maret 2022.

39 Rizki, A. (2021). Masih Bingung Pilih Bank Digital? Ini Daftarnya, Finansial.Bisnis, 2021, <https://finansial.bisnis.com/read/20211101/90/1460505/masihbingung-pilih-bank-digital-ini-daftarnya>, diakses pada 11 Maret 2022.

7.	Bank DBS Indonesia	Digibank
8.	Bank Bukopin	Wokee+

Source: finansial.bisnis.com

This shows that digital banking services have developed and will play an important role in creating a digital ecosystem in the future. However, the development and creation of a digital ecosystem will definitely cause various challenges, especially in the legal field. The legal consequences not only affect the bank as the services provider, but also the customers. The consequence will even be greater if the banking institution has no legal basis.

### Customers' Rights as a Result of Juridical Implications of the Legal Status of Digital Banks

Due to the fierce competition in the Indonesian banking market, several banks have been working hard to increase the level of service for their customers. To encourage effectiveness and efficiency in customer service, banks must strengthen their skills, followed by a more focused alignment of business objectives.<sup>40</sup> According to the POJK No.12/POJK.03/2018, banks that can provide digital banking services are commercial banks as referred to Law No.10 of 1998 concerning Banking and sharia commercial banks as referred to Law of Republic of Indonesia No. 21 of 2008 concerning Sharia Banking. Customer protection for the deployment of digital banking services can be carried out by preventing or overcoming unexpected problems through laws and regulations. This is called a preventive protection.<sup>41</sup> Then, there is customer protection for unwanted conditions that have occurred and harmed the customer, therefore, some actions are needed to fix the problem. Repressive protection is defined as protection which purpose is to resolve difficulties or differences of opinion.<sup>42</sup>

The requirements imposed on banks by laws and regulations for digital banking services are: a provision of information regarding possible losses for customers connected to digital banking services, a design to access information

40 Dendhana, Toto O. Penerapan Prudential Banking Principle dalam Upaya Perlindungan Hukum Bagi Nasabah Penyimpan Dana. *Lex et Societatis*, Vol. 1 No. 1 (2013), 40-53.

41 Candrawati, Ni Nyoman A. Perlindungan Hukum Terhadap Pemegang Kartu E-Money Sebagai Alat Pembayaran Dalam Transaksi Komersial. *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*, Vol. 3 No.1 (2014), 1-16.

42 Jahri, A. Perlindungan Nasabah Debitur Terhadap Perjanjian Baku Yang Mengandung Klausula Eksonerasi Pada Bank Umum Di Bandar Lampung. *Fiat Justitia Journal of Law*, Vol. 10, No.2 (2016), 125-148.

regarding business activities and bank conditions; an openness which guarantees transparency; a bank secrecy, which is intended to foster public trust if the bank guarantees that customers' personal data in digital banking services will not be misused; and every bank is required to establish a Deposit Insurance Corporation to guarantee customer funds that utilize digital banking services kept at the bank.<sup>43</sup> Settlement of customer complaints is one method of customer protection that guarantees customer rights. Customer concerns that are not immediately addressed have the potential to increase bank reputation risk in the long run, thereby reducing public trust.<sup>44</sup>

Digital banking services are very vulnerable to potential violations by banks against customers in terms of resolving disputes over losses experienced by customers. Arrangements for settlement of customer complaints are also regulated in the OJK Circular Letter No. 2/SEOJK.07/2014 concerning Service and Settlement of Customer Complaints to Financial Services Businesses. This regulation states that in resolving complaints, banks must be accompanied by a statement of apology and an offer of compensation (Redress/Remedial) if the customer suffers a material loss. Regarding efforts to protect customers who use digital banking services carried out by banks as service providers, it is actually a form of bank responsibility to customers who experience losses.<sup>45</sup>

The presence of both digital banking services and the existence of digital banks, is both an opportunity and a challenge in the digital era of the economic ecosystem. It is especially due to the momentum of the Covid-19 pandemic situation, which changed customer habits in transactions, and a shift experience in transaction patterns from conventional to digital. Under these conditions, Indonesian digital economy is projected to continuously grow<sup>46</sup> since the country is interested to develop a digital-based financial industry.<sup>47</sup> One of the factors is demographic since Indonesia has a large population. Based on data published by the Population Administration as of June 2021, the total population of Indonesia is 272,229,372 people<sup>48</sup>, and most of the population or the majority of Indonesian

43 Rani, M. Perlindungan Otoritas Jasa keuangan Terhadap kerahasiaan dan keamanan data pribadi Nasabah Bank. *Jurnal Selat*, Vol. 2 No.1, (2017), 168.

44 Astrini, Dwi A. Perlindungan Hukum Terhadap Nasabah Bank Pengguna Internet Banking dari Ancaman Cybercrime. *Lex Privatum*, Vol. 3 No.1 (2015), 149.

45 Talumewo, F. Pertanggungjawaban Bank Terhadap Nasabah Yang Menjadi Korban Kejahatan Informasi Dan Transaksi Elektronik (ITE). *Jurnal Lex Crime*, Vol.II No.1 (2013), 17.

46 Prastyaningtyas, E. W., Dampak ekonomi digital bagi perekonomian Indonesia. In *seminar nasional manajemen, Ekonomi, Akuntansi*, Vol. 1 No. 1 (2019), 103-108

47 Kholis, N., Perbankan Dalam Era Baru Digital. *Economicus*, Vol.12 No.1 (2018), 80-88.

48 Dukcapil Kemendagri, *Distribusi Penduduk Indonesia Per Juni 2021: Jabar Terbanyak, Kaltara Paling Sedikit*, 2021, <https://dukcapil.kemendagri.go.id/berita/baca/809/distribusi->

people are internet users. Based on these opportunities, digital transformation in the banking sector has become a 'wetland'. This can be seen from the rise of banking transactions carried out through mobile applications and other digital banking services known as "delivery channels" as referred to Article 3 and the Explanation of Article 3 of the POJK Number 12/POJK.03/2018 concerning the Implementation of Digital Banking Services by Commercial Banks. Some transactions mentioned in the regulations are: Automatic Teller Machines (ATM), Cash Deposit Machines (CDM), telephone banking, Short Message Service (SMS) Banking, Electronic Data Capture (EDC), Point of Sales (POS), internet banking, and mobile banking. This takes various forms of delivery channels because the existence of digital banking has an impact on people's behavior, which now rarely goes to bank offices.

POJK No.12/POJK.03/2018 defines digital banking services as "electronic" banking services that are developed by optimizing the use of customer data in order to serve customers quickly, easily, and can be done online independently by customers, by taking into account the security aspect. Based on the definition above, it is revealed that the main thing considered here is service to customers. The banking industry continues to innovate and adapt to continue providing the best service for the community. One of the efforts made is to carry out digital transformation to improve service quality.<sup>49</sup> The existence of digital transformation has also made many banks establish themselves as digital banks. Article 1 Number (24) POJK No.12/POJK.03/2021 states "Digital Banks are Banks with Indonesian Legal Entities that provide and carry out business activities primarily through electronic channels without physical offices other than the Head Office or using limited physical offices."

Through digital transformation, it is hoped that banks can reach more customers. Digital transformation in the banking sector is driven by increasing levels of digital opportunities and digital habits. Indonesia is a country that is considered to have great potential, due to the high growth of e-commerce. Basically, this digital habit indicator is also quite high, and definitely affects the banking world, due to technological developments. One of them is the relationship between the bank and its customers who will be truly individual and bank-centered through this technology adoption process. As a result, connectivity makes it easier for customers to access banking services through gadgets, which are no longer focused

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pendudukindonesia-per-juni-2021 jabar-terbanyak-kaltara-paling-sedikit, diakses pada 10 Maret 2022.

49 Amrillah, M. U., Urgensi Pembentukan Undang-Undang Digital Banking Bagi Perbankan Syariah Di Indonesia. *Lex Renaissance*, Vol. 5 No. 4 (2020), 928-945.

on financial products but on contextual financial services that adapt to current customer lifestyles and needs. The massive system of automation makes customers trust the bank. With the existence of digital banking services, digital banks were born where banks have super applications, which allow banking services and other financial services to be integrated into one platform.

The presence of lifestyle integration, automation in banking services is an important aspect that needs attention. Security and customer trust are important for banks, so it provides a one-stop service for their needs. However, the problem faced in this digital banking era is the issue of how far digital banking can be carried out by improving services to customers as a form of fulfilling the rights to digital banking for customers without endangering the security of transactions. In addition, there are cybersecurity issues related to customer data protection, which until now has no specific regulations. The author will compare the existence of neo-banks with the implementation of the API system as a form of legal certainty for neo-bank customers so that their activities in using services are based on the applicable law.

Banking in general is a business activity that includes buying and selling currencies, securities and other tradable instruments. While juridically the definition of banking is contained in Article 1 of the Law Number 10 of 1998 on the amendment to Law Number 7 of 1992 concerning Banking, which states "Banking is everything related to banks, including institutions, business activities, and methods and processes in carrying out its business activities." Meanwhile the law governing banking is called banking law, it is a positive legal provision currently in force, and regulates banking as an institution, and aspects of its activities, the behavior of its officials, rights, obligations, duties and responsibilities of parties related to banking. Not only that, these provisions also regulate what banks may and may not do, the existence of banking, and other matters related to banking. For this reason, it is very important that what is the right of customers from digital banking is a guarantee of the security of financial transactions, guarantees of security of customer data leakage, and legal guarantees.

The growth of banking in Indonesia is increasing along with the source of income obtained by the bank itself. Sources of bank income can be in the form of margins from bank interest, fee-based income, and others. The highly developed customer needs have encouraged many business actors, such as banking institutions, to participate in developing technology and adapting to meet market needs.<sup>50</sup> Business actors are responsible for providing compensation for damage and customer losses

<sup>50</sup> Susilawaty, L., & Nicola, N., Pengaruh layanan perbankan digital pada kepuasan nasabah perbankan. *Jurnal Manajemen Maranatha* Vol. 19 No. 2 (2020), 179-190.

due to consuming goods or services that are produced or traded. In the realm of law, a person must be responsible for losses caused by the actions of other people who are against the law. In accordance with the application of Indonesian law, a customer who is harmed by a business actor, including a customer with a bank, can sue the party causing the loss of the product and service.

The customers in relation to banking services have two positions which can be alternated according to which side they are on.<sup>51</sup> Customers as users of banking services must also be protected in order to support equality (parallel) in legal relations with banks as business actors providing services. Therefore, protection and empowerment of customers who use banking services in order to guarantee customer rights in relation to banks still need to be reminded. Thus, increasing customer protection and empowerment is relevant to uphold the rights of customers in conducting legal relations with banks as business actors.

The customer protection is a demand that cannot be ignored because customer is an element that plays a very important role. The life and death of the banking world is based on the trust of the public or customers.<sup>52</sup> Based on this, what is the right of digital banking customers is to get protection when using digital banking services:<sup>53</sup> (1) preventive protection is the government's effort to protect banking customers, this is implemented with the information on the Banking Law and Customer Protection Law. On the other hand, the protection for customers who use digital banking services can be found in the POJK No. 12/POJK.03/2018 concerning the Implementation Digital Banking Services by Commercial Banks; (2) repressive protection is made in a legal dispute that has the potential to cause harm to the customer. One of these efforts is the responsibility of digital banking service providers in handling customer complaints and acts of compensation to customers if the bank negligence occurs.

Not only limited to the rights protection, but as a customer of bank, there are other valid rights:<sup>54</sup> the customer has the right to obtain detailed information about the banking products offered along with the transparency of the products, which means that customers have the right to obtain clear, detailed, easy-to-understand information about banking products, and a balance in the banking

51 Muhamad Djumhana, *Hukum Perbankan di Indonesia* (Bandung: Citra Aditya Bakti, 2003), 282.

52 Amrillah, M. U., Urgensi Pembentukan Undang-Undang Digital Banking Bagi Perbankan Syariah Di Indonesia, 946.

53 Darminto Hartono Paulus, Herdian Ayu Andreana Beru Tarigan, Perlindungan Hukum Terhadap Nasabah Atas Penyelenggaraan Layanan Perbankan Digital, *Jurnal Pembangunan Hukum Indonesia*, Vol. 1 No. 3 (2019), 305.

54 <https://sikapiuangmu.ojk.go.id/FrontEnd/CMS/Article/10438> diakses pada 05 juli 2022



agreement. The customer has the right to receive interest on savings and deposit products that have been agreed at the beginning of the transaction. The customer has the right to obtain facilities from banks such as ATMs, reports on transactions, collateral that has been guaranteed when the loan credit has been paid off, and has the right to receive a refund from the results of the collateral auction if the credit is not paid. The customer has the right to receive money in Rupiah in original condition, valid means of payment, suitable for circulation, and with a nominal type according to customer needs. The customer has the right to submit a complaint and must be followed up by the bank. The customer has the right to receive compensation and/or reimbursement for losses resulting from the use of the goods and/or services provided by the banks. Compensation must also be given if the goods or services received are not in accordance with the agreement as a form of obligation from the bank.

### Conclusion

Following identification and analysis, normative juridical issues regarding the legal status of Digital Bank institutions in Indonesia were discovered. These issues include Indonesian legal entity operations as a digital bank, which are not clearly separated even though the concept is different, but from a legal standpoint, digital banks that are licensed by the OJK are legal, however digital banks lack a special legal protection that is quite complex. As a result, digital bank regulations continue to rely on the POJK for Commercial Banks, which according to this article requires a specific legal protection that regulates Digital Banks due to the many issues that must be regulated. There are several things that need to be studied as material for consideration in the future in order to formulate the *ius constituendum*, such as business innovation and security, prudent and sustainable digital banking business, risk management aspects, governance requirements and IT capabilities for digital bank management, and customer protection of personal data and risk of data leakage. It is also critical to stress the significance of regulating the Open API concept in this Digital Bank service system.

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