

## DIGITAL BANK LEGAL CHALLENGES: SECURITY PROTECTION AND LEAKAGE OF CUSTOMER PERSONAL DATA

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### Abstract

Technology and digitalization are growing and affecting various economic and industrial fields, one of which is banking industry. The presence of technology and the phenomenon of digitalization has directed this industry to a digital transformation process through digital banking. Digital banking was developed to serve customers faster, easier, and in accordance with customer experience, it can be done completely independently by customers while still paying attention to security aspects through optimizing digital technology systems. 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 customers trust banks as a one-stop service for their financial needs. However, the problem faced in the digital banking era is how far digital banking can be done by improving the quality of service to customers while paying attention and without compromising transaction security. In addition, there are cyber security issues related to consumer data protection, which until now do not have special regulations to provide legal certainty. The urgency of consumer protection for digital banking services will be assessed using legal research methods with a doctrinal approach contained in primary and secondary legal materials. The purpose of this study is to examine and analyze the developments and legal challenges of digital banking consumer protection in Indonesia. Basically digital banking in Indonesia has regulations but only limited to two things, namely digital banking services and regulations regarding the legal status of the existence of digital banks in Indonesia. For digital banking services, it is regulated in POJK No.12/ POJK.03/2018. Meanwhile, the legal status of the existence of digital banks in Indonesia is regulated in POJK No.12/POJK.03/2021. The challenge of implementing digital banking includes 6 (six) aspects, one of which is customer protection of personal data and the risk of data leakage that does not yet have specific regulations governing it. The principle of effective customer protection in banking law is for common goals and can be implemented, so that each banks can serve and protect customers better without harming other parties.

**Keywords:** Digital, Legal, Protection

## INTRODUCTION

The presence of digital banking technology, both digital banking services and the existence of digital banks, is both an opportunity and a challenge in the digital economy ecosystem. Especially with the momentum of the transition situation from the pandemic to the Covid-19 endemic which has brought changes to customer transaction habits, as well as experienced a shift in transaction patterns from conventional to digital. Due to this condition, Indonesia's digital economy is projected to continue to grow

This happened because of Indonesia's potential to develop a digital-based financial industry. One of the factors is the demographic factor, which is known that Indonesia has a large population. Based on data published by the Population Administration (Indonesian Population Administration) as of June 2022, the total population of Indonesia is 272,229,372 people, and most of the population or the majority of Indonesian people are internet users. Internet users in Indonesia reached 212.35 million as of March 2022. It is also known that the Indonesian people own quite a few gadgets.

Based on these opportunities, digital transformation in the banking sector has become a 'wetland'. This can be seen from the rise of banking transactions conducted through mobile applications and other digital banking services known as "delivery channels" as referred to in Article 3 and Elucidation of Article 3 of the Financial Services Authority Regulation Number 12/POJK.03/2018 concerning the Implementation of Digital Banking Services By Commercial Banks. Some of them mentioned in the explanation are "Automated Teller Machine (ATM), Cash Deposit Machine (CDM), phone banking, Short Message Services (SMS) banking, Electronic Data Capture (EDC), Point of Sales (POS), internet banking, and mobile banking".

Based on POJK No.12/POJK.03/2018 defines digital banking services as: "electronic banking services developed by optimizing the use of customer data so that they can serve customers quickly, easily, and according to customer experience, and can be done online, completely independently by customers by paying attention to security aspects.

Based on the definition above, it is revealed that the main thing that is considered here is service to customers or consumers. The banking industry continues to innovate. and adapt to continue to provide the best service for the community. One of the efforts made is to carry out digital transformation to improve service quality. The existence of digital transformation has also helped many banks establish themselves as digital banks. Article 1 number (24) of POJK No.12/POJK.03/2021 states: "Digital Bank is an Indonesian Legal Entity Bank that provides and carries out business activities primarily through electronic channels without a physical office other than the Head Office or using a limited physical office."

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, of course this has an effect on the banking world, due to technological developments. One of them is the relationship between the bank and its customers which will be truly individualized customer centered banking, through the process of adopting this technology. As a result, connectivity makes it easier for customers to access banking services through their gadgets, which is no longer focused on financial products but on contextual financial services that adapt to the lifestyle and needs of today's customers. Massive system automation makes customers trust the bank. With the existence of digital banking services, a digital bank was born where the bank has a super app that allows banking services and other financial services to be integrated in one platform.

The presence of lifestyle integration, automation in banking services is an important aspect that needs attention. Security and consumer trust are important things for banks, so that customers trust banks as a one stop service for their needs. However, the problem faced in this digital banking era is how far digital banking can be implemented by improving services to customers but without compromising the security of customer transactions. In addition, cyber security issues related to the protection of consumer data, which until now have not had specific regulations to provide legal certainty. Publication of previous research results was available in 2019. The research was conducted by Herdian Ayu Andreana Beru Tarigan and Darminto Hartono Paulus, which aims to provide an overview of the implementation of digital banking services and customer protection against risks of digital banking services. Publication of other research results in 2021 by Muh Akbar Fhad Syahril, which aims to find out and analyze how responsibility and legal protection are for customers in ATM transactions and legal remedies that can be taken by customers who use ATM cards in obtaining their rights in terms of losses using ATMs (MAF, 2021). Then the results of research conducted by Yudi Kornelis which aims to analyze the development of digital banks in Indonesia.

Based on the description of the problem and the description of several previous research objectives, the focus of this research is to examine the legal challenges of digital banks in relation to protecting customer data security based on legal protection theory.

## RESEARCH METHOD

Contemporary legal issues are evolving day by day. Contemporary legal issues arise as a form of reaction or as a result of developments in information technology (IT). Therefore, scientific activities are needed as a process in solving existing problems. What is meant by scientific activity here is research as part of scientific development activities to educate mankind. Existing knowledge is essentially built, studied and developed for the benefit of humanity in order to create a dynamic and harmonious life order. Likewise with the science of law, which must also be studied and utilized through the research process so that it can contribute to science and human values.

Legal research is a process or activity to identify and examine laws, regulations, and court decisions that apply to the problem under study. In general, the purpose of legal research is to seek support for a particular legal issue or decision. In conducting this research there is an important aspect used, namely the method. Legal research methods are techniques by which one obtains legally relevant information, analyzes, interprets and applies it to solve problems and present findings. The legal research method used in this research is normative juridical research, with a doctrinal approach. This doctrinal research uses secondary data obtained indirectly, which is divided into primary and secondary legal materials.

Primary legal material is legal material that is authoritative, meaning that it has authority consisting of laws and regulations, official records and judge's decisions. While secondary materials are all forms of publication. These publications include books, research, theses, legal dictionaries, and opinions on court decisions as well as writings by scholars who are relevant or involved in this research.

## RESULTS AND DISCUSSION

### Legal Challenges of Digital Bank Implementation in Indonesia

The development and creation of a digital ecosystem certainly raises various challenges. In the field of digital banking itself, both in terms of digital banking services and digital banking, there are several challenges that have arisen as a reaction to the development and existence of this technology. Below are some of the challenges from a legal perspective. Innovative and Safe Business.

The first digital banking legal challenge is the extent to which the digital banking system can be implemented while maintaining 2 (two) important aspects at once, improving customer service through innovative business models and continuing to provide security for customer transactions, without warming customers due to the implementation of the digital banking system. In this case, the existence of the Financial Services Authority Regulation/POJK (Indonesian Financial Services Authority Regulation) must be strengthened by more specific laws and regulations regarding digital banking consumer protection.

Currently, there are no further regulations regarding this matter. Regulations provided by Indonesia in the field of digital banking are very limited. There are 2 (two) regulations from the OJK that regulate the existence of digital banking and digital banking services, namely POJK No.12/POJK.03/2018 which regulates digital banking services carried out by banks before the advent of digital banks with full digital services and POJK No.12/ POJK.03/2021 which provides a legal basis for the existence of a digital bank, but does not regulate in detail its implementation and further arrangements. Prudential and Sustainable Digital Banking Business.

All banks in carrying out their business must always maintain the principle of prudence or also known as the principle of prudence, this is as stipulated in Article 2 of the Indonesian Banking Law which reads: "Indonesian banking in carrying out efforts based on economic democracy by using the precautionary principle. The precautionary principle means that in managing and carrying out its business activities, the bank must apply it carefully for the purpose of maintaining the health of the bank. This is mandatory, bearing in mind that banks are institutions of public trust that function to maintain a country's monetary stability through sound financial transactions.

This precautionary principle also applies to the Digital Bank system which is regulated in Article 24 letter (b). POJK No.12/POJK.03/2021 which essentially stipulates that banks that run business as digital banks must have the ability to manage digital businesses that implement precautionary and sustainable principles. However, even though it has been regulated, the provisions contained in the POJK are still incomplete, so in order to apply 'binding' and mandatory, it is necessary to provide 'prudent' parameters, criteria and measures and how to apply the precautionary principle in the digital banking system.

The aspect of risk management according to the juridical definition can be seen in Article 1 number (3) in POJK No.18/POJK.03/2016 (Financial Services Authority Regulation Number 18) concerning the Application of Risk Management for Commercial Banks which reads: "Risk Management is the preparation methodologies and procedures used to identify, measure, map, and control risks arising from all business activities of the Bank". Its application is mandatory for all banks in Indonesia, in order to minimize risks that can cause losses to banks.

According to Adiwarman Karim in his book "Islamic Banks: Fiqh and Financial Analysis", the purpose of implementing risk management is divided into several things, namely: "(1) Providing information about risks to regulators; (2) Ensure that banks do not experience unacceptable losses; (3) Minimizing losses from uncontrollable risks; (4) Measuring risk exposure and concentration; (5) Allocating capital and limiting risk."

Implementation obligations also apply to digital banks. This can be seen in Article 24 letter (c) UUPOJK No.12/POJK.03/2021 (Financial Services Authority Regulation Number 12) which requires adequate risk management for banks that carry out business as digital banks. Risk management here is the process of assessing and fairness of transactions related to customer transactions. The focus of risk management as referred to in Article 24 letter (c) UUPOJK No.12/POJK.03/2021 is the standard for evaluating and qualifying digital transactions for which regulations have not been issued, either in the form of laws and guidelines. It was reported from Online Law, that the purpose of implementing adequate risk management is so that banking transactions can run without harming both customers and the bank itself, so that even though it is carried out digitally, the banking intermediary function can still be maintained.

Digital banks in carrying out their business must meet one of the requirements related to governance and competency requirements in the field of IT for digital bank directors. This is stated in Article 24 letter (d) POJK No.12/POJK.03/2021. This obligation is a challenge because the OJK itself, as the institution overseeing the financial industry in Indonesia, which is tasked with conducting fit and proper tests for directors of the banking industry, has not issued specific regulations regarding the application and passing standards of fit and proper tests for candidates for the main director of digital banks. In this case, it is clear that the graduation standards between conventional banks and digital banks cannot be equated, considering that both conventional banks and digital banks have different governance. Conventional banks themselves already have standards and fit and proper tests regulated by POJK No.27/POJK.03/2016 (Financial Services Authority Regulation Number 27). The absence of regulations and standards for digital banks can certainly raise questions about the credibility and ability of directors to run digital banks, as well as increase the risk of chaos and customer distrust of the bank's ability to run its business.

### Legal Protection of Customer Data Security

Trust is the basis and main foundation in the banking industry. In order to maintain it, in addition to sound banking and banking intermediation functions, another important aspect is the legal protection of personal data. Customer personal data is important because online users will not carry out digital transactions if they feel the security of their personal data is being threatened. One of the protections for personal data relates to how customer data will be discussed, including sensitive data from customers or exchanged with irresponsible parties that will cause financial losses for Bank customers.

Based on Article 24 letter (e) regarding POJK No.12/ POJK.03/2021 it states that the operation of a digital bank is necessary to protect the security of customer data. Indonesia has not issued regulations or laws relating to personal data protection, so it can be said that there is a recht vacuum. However, it is known that Indonesia is trying to process the preparation of the Personal Data Protection Bill/RUU PDP (Indonesian Bill on Personal Data Protection). This absence of regulation poses threats to privacy and management of personal data, such as data leakage. This will certainly cause fatal and destructive things if the regulations do not exist.

Throughout 2022 to May 2023 in Indonesia, a series of cases related to data leaks and illegal data access occurred, the parties who experienced them varied from e-commerce platform companies to government agencies. The following are data leak cases that occurred in Indonesia in 2022-2023.

Table 1. Data Leak Cases

1.	Tokopedia	Online Market	Leakage of user data and merchant data.
2.	BPJS Kesehatan	Government Institution	Population data leaks
3.	Bhinneka.com	Online Market	Customer data leaks

4.	Bawaslu	Government Institution	Population data leaks
5.	CreditPlus	Financing Platform	Customer data leaks
6.	Pay close attention	Fintech platforms	User data leak
7.	shopback	Online Market	Illegal access to user data
8.	RedDoorz	Online Hotel Booking platforms	User data leak

Source: OJK(2023)

Cases of data leaks can occur in any industry, including digital banking. Thus, the government and other parties must be aware of this problem. In addition, regulation on personal data protection must be in place in Indonesia soon. Reported from the Jakarta Post, Pratama Persadha, head of the Center for Communication and Information System Security Research/CISSReC (Indonesian Center for Communication and Information System Security Research), said digital banks must increase their vigilance and implement adequate mitigation systems to protect customers from online crimes. The ratification of the Indonesian Personal Data Protection Bill, he continued, remains important to ensure consumer data protection because it will enable consumers to hold financial institutions accountable as the organizers of the digital transaction system.

Efforts to Contribute Digital Banks in the Development of a Digital Financial Ecosystem as explained in Article 24 letter (f) POJK No.12/POJK.03/2021 that digital banks must be able to contribute to the development of a digital financial ecosystem and/or financial inclusion. Digital implementation with other supporting ecosystems, such as the use of e-money and integration of the use of digital banks for real trade/sector practices and e-commerce, to create a cashless and cardless society. As with previous issues, regulations still do not have projections and instructions for the implementation of this obligation.

Based on this explanation, the challenges in implementing digital banking cover 6 aspects, namely: innovative and secure business; prudent and sustainable digital banking business; adequate risk management aspects; governance requirements and IT capabilities for digital bank directors; customer protection for the security of personal data and the risk of data leakage; and the contribution of digital banks to the development of the digital financial ecosystem. Each aspect leads to the same thing, namely there are no specific regulations governing each of these aspects.

Basically, these aspects must be met in order to protect customer rights and legal protection. If no regulations are implemented, then the level of transaction risk will be high, which will lead to customer distrust of the banking industry in general and the digital banking industry in particular.

For the bank's efforts to protect customers who use digital banking services as a service provider, this is essentially a form of bank responsibility for customers who are harmed. This responsibility serves to protect the interests of customers in accordance with the Banking Law, the Consumer Protection Law and the ABK Ordinance 2014.12/POJK.03/2018. This obligation also aims to mitigate the risk of damaging a bank's reputation in the long term so as not to reduce trust in banks to provide digital banking services.

In addition, the support of the community, government and law enforcement is important. The development of digital facilities must be anticipated by increasing protection through laws and regulations. Thus, digital banking services can be carried out effectively and guarantee the security of customers' personal data.

## CONCLUSION

Digital banking and digital banking services have developed and will play an important role in creating a digital ecosystem in the future. This can be seen from the significant development of digital banking in Indonesia and the opportunities that exist. However, such a situation will create various challenges, particularly in the legal field. Basically digital banking in Indonesia has regulations but only limited to two things, namely digital banking services and regulations regarding the legal status of the existence of digital banks in Indonesia. For digital banking services, it is regulated in POJK No.12/POJK.03/2018. Meanwhile, the legal status of the existence of digital banks in Indonesia is regulated

in POJK No.12/POJK.03/2021. The challenges of implementing digital banking include 6 (six) aspects, one of which is customer protection of personal data and the risk of data leakage that does not yet have specific regulations governing it. Basically, these aspects must be fulfilled in order to maintain legal rights and protection for customers as banking consumers. If no regulations are applied, then the level of transaction risk will be high.

The principle of effective customer protection in banking law is for common purposes and can be applied, so that each bank can serve and protect customers better without harming other parties, as well as provide better service to each bank, and protect customers without harming banking. Basically, these aspects must be fulfilled in order to maintain legal rights and protection for customers as banking consumers. If no regulations are applied, then the level of transaction risk will be high. The principle of effective customer protection in banking law is for common purposes and can be applied, so that each bank can better serve and protect customers without harming other parties, and provide better service to each bank, and protect customers without harming banking. Basically, these aspects must be fulfilled in order to maintain legal rights and protection for customers as banking consumers. If no regulations are applied, then the level of transaction risk will be high. The principle of effective customer protection in banking law is for common purposes and can be applied, so that each bank can serve and protect customers better without harming other parties, as well as provide better service to each bank, and protect customers without harming banking.

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