

Legal Reconstruction of Indonesian Banking Laws: Challenges and Opportunities for Digital Bank Regulation

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ABSTRACT

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Digital banks in Indonesia are growing rapidly. This phenomenon has given rise to legal disharmony in laws and regulations, considering that banks are institutions with many regulations. Legal disharmony occurs because of the many weaknesses in the current banking regulations, which still focus on the Banking Laws. Law Number 10 of 1998 concerning banking was formed specifically to regulate conventional banking transactions, while the concept of digital banks in its implementation utilizes technology. This difference creates a gap leading to a legal vacuum. This article aims to determine whether Law Number 10 of 1998 concerning Banking is in accordance with the regulation of digital banks. This research uses a qualitative legal research method using normative or secondary data collected from the Banking Law. Essentially the contents of the banking law regulates banking concept of transactions carried out personally without digital platforms presence. Thus the banking regulation needs to be amended into a law that able to regulate digital banking transactions. Therefore, it is necessary to establish regulations for digital banks to provide legal protection and realize justice and legal certainty for the current and future development of the digital banking industry.

1. INTRODUCTION

Banking is one of the crucial elements in the development of the country's economy. The influence of digital transformation has changed the rules in various industries, including the banking industry.¹ This situation has disrupted various banking

¹ Lyubov Anatolyevna Petrova et al., "Digital Bank of the Future" 137 (2020): 57-60, <https://doi.org/10.2991/aebmr.k.200423.013>.

sectors; hence, banks need to accelerate digital transformation by optimizing real-time service performance and quick customer decision-making.²

Newer technology has spread much faster than the existing technology. In Bank 1.0, customers performed transactions through the bank cashier (teller), meaning they had to visit the bank office directly. However, the development of technology in the banking sector, especially in Bank 4.0, has given great hope to the banking world through advanced digital banks, making banking performance more efficient and effective by maximizing services for all levels of society in Indonesia. Even since 2011, digital banking activities have surged throughout Asia.³ As reported from Bank Indonesia data, digital banking transactions in 2020 amounted to IDR. 27,036 trillion and continued to experience growth in 2021. Banking dominance in the digital revolution resulted from the increased deployment of online and mobile banking platforms and online payment solutions among many smartphone and internet users.⁴

According to Sanjeev Jain, the pace of digitization acceleration in the Asia Pacific region can be realized if technological advances support it, indicating progressive regulations. Around 97% of Asia Pacific customers have stated that digital methods are the best way to conduct banking transactions. Before 2015, Indonesia was unfamiliar with digital banks due to the limited number of digital banks in Asia and was motivated by regulatory barriers. However, after 2015, several countries in the Asia Pacific, such as China, began to give five licenses to digital banks, which were then followed by several other countries, such as South Korea (two licenses in 2017), Taiwan (three licenses in 2019), and Hong Kong (eight licenses in 2017). Singapore established a licensing process for digital banking applications, and Malaysia issued a licensing framework. Meanwhile, regulators in Thailand and Pakistan announced plans to follow suit.⁵

The occurrence of banking digitalization is like two sides of a coin. On the one hand, it speeds up the transaction process; on the other hand, it can open a new 'door of risk' for banks and customers. Changes in the business system in the banking sector today have raised concerns about legal problems due to the use of digital banking transactions.

In 2021, there was a case of burglary of a Jenius digital bank customer account belonging to Bank BTPN. Ruby Alamsyah (Cyber Security Observer and CEO of Digital Forensic Indonesia) asserted that the fully digital is carried out using an online system starting from digital verification such as passwords, OTP, and other personal data. The initial model used by perpetrators was to use an intelligent open-source to obtain data on potential victims, followed by pretending to call them. Furthermore, the perpetrators

² Edy Purwo Saputro and Nur Achmad, "Factors Influencing Individual Belief on the Adoption of Electronic Banking," *Mediterranean Journal of Social Sciences* 6, no. 4 (2015): 442–50, <https://doi.org/10.5901/mjss.2015.v6n4p442>.

³ Sonia Barquin and Vinayak, "Digital Banking in Asia : What Do Consumers Really Want?," *McKinsey & Company*, no. March (2015): 1–12.

⁴ Luigi Wewege, Jeo Lee, and Michael C Thomsett, "Disruptions and Digital Banking Trends," *Journal of Applied Finance & Banking* 10, no. 6 (2020): 19.

⁵ Raphael Bick et al., "Joining the Next Generation of Digital Banks in Asia," *McKinsey.Com*, no. January (2021).

would ask for the customers' data to change them. Then, the perpetrators provided a website address containing an online form and asked the customers to fill out questions about their data. Armed with the data obtained, the perpetrators began to launch their actions by breaking into the victims' accounts and stealing their money.⁶

In this incident, it was not only the customers who lost but also the bank and the government. The level of trust (online trust) in digital banks is the key to success of the sustainability of digital banks. Another digital bank problem has also been experienced by the largest e-commerce company in China, which has also developed its digital bank business called MyBank. The concept of MyBank is a fully digital bank with a period of seven years since its establishment in 2015. MyBank has evolved into large banking in China.⁷

However, MyBank has also faced a problem in that the Chinese government has conceded the regulation regarding monopolistic practices in the bank's digital payments and only raised problems with anti-monopoly after Alibaba dominated the Chinese market. Reflecting on the above incident, the government must anticipate the risks of implementing digital banks that keep lurking. Regulations regarding digital banks that have not been established have become a legal loophole for the government in protecting the public from legal uncertainty.⁸

Many digital banks operate, but only some have received permission from the Financial Services Authority (OJK), and most have not. Legal issues arise from regulations no longer relevant to overshadowing digital banks. The uniqueness possessed by digital banks is an important key in making separate laws relevant to their forms and services. For instance, when the economic crisis hit Indonesia, Islamic banking proved its ability to survive in an economic downturn even though, at that time, there were no regulations to protect the systematics of Islamic banking in Indonesia specifically and perfectly accommodated in Law Number 10 of 1998 concerning banking. Thus, it differs highly from conventional banks, such as applying Sharia principles. The government and Bank Indonesia began to draft a law regarding Sharia banking, later ratified on July 16, 2008, the birth of Law Number 21 of 2008 concerning Sharia banking.

The first research was conducted by Djuwita N. Ghaib in 2019 entitled *Legal Dynamics of Digital Banking in Indonesia*. Researching the legal dynamics of digital banking arises when banks begin to use Information Technology-based products in services as a substitute for conventional services. This replacement has a positive side in the form of customers being able to transact independently and not having to come to the branch office, on the other hand, this also has an impact on reducing bank branch offices for bank employees.⁹ The second research was conducted by Herdian Ayu Andreeena

⁶ Novina Putri Bestari, "Ramai Bank Digital Di RI Waspada Rampok Hacker Mengintai," CNBC Indonesia, 2021.

⁷ Bestari.

⁸ Dina Miryanti Hutauruk, "Aturan Bank Digital Harus Ada Sebelum Bertambah Banyak Pemainnya," *Keuangan.kontan.co.id*, 2021.

⁹ Djuwita N Gaib, "Dinamika Hukum Perbankan Digital Di Indonesia," *Lex Et Societatis* 7, no. 11 (2019): 23–32.

Beru Tarigan and Darminto Hartono Paulus in 2019 entitled *Legal Protection of Customers for the Implementation of Digital Banking Services*. Mencba examined digital banking services functioned to optimize customer data utilization. The utilization of customer data is intended to serve customers more quickly, easily, and according to customer needs, and can be done independently by customers, the implementation of this needs to pay attention to security aspects including preventive protection and repressive protection. This protection can be carried out with the enactment of the Banking Law and the Consumer Protection Law and OJK Regulations on the Implementation of Digital Banking Services by Commercial Banks.¹⁰ The third research was conducted by Nur Kholis in 2018, entitled *Banking in the New Digital Era*, which examines conventional banking services that require high costs and fintech (financial technology) which takes the position of banking has not been able to run well. While the difference from this research is that it tries to see whether Law Number 10 of 1998 concerning Banking is still relevant to the implementation of digital banks today.¹¹

The rapid movement of making special regulations for Islamic banking no longer occurred when digital banks were born and started operating. Digital banks refer to the information technology to perform financial transactions. Hence, it is different from the concept of conventional banks. The rising trend of digital banks is due to several factors, such as a stable and affordable internet connection and the Covid-19 pandemic, causing restrictions on mobility. Law Number 10 of 1998 concerning banking, the only digital bank regulation, is no longer relevant to current digital banks. Digital bank transactions utilize more efficient services called artificial intelligence or AI technology. Digital banks are designed to fully operate digitally to meet customer needs and do not have a physical branch office; they only have one head office. Thus, digital bank regulations must be specifically stipulated in laws. Given that the banking industry is the most regulated institution (fully regulated institution), the existing digital bank regulation is limited to POJK, far from the law and considered insufficient to provide a regulatory power at the level of the act. Establishing regulations of laws can provide certainty and legal force for digital banks and assist the community in a problem that arises in the future. This article aims to observe how is the construction of new banking laws based on the challenges and opportunities of digital bank regulations?

2. RESEARCH METHOD

This research employed the normative juridical method, a legal research method that bases analysis on laws and regulations relating to the object or problem being

¹⁰ Herdian Ayu Andreana Beru Tarigan and Darminto Hartono Paulus, "Perlindungan Hukum Terhadap Nasabah Atas Penyelenggaraan Layanan Perbankan Digital," *Jurnal Pembangunan Hukum Indonesia* 1, no. 3 (2019): 294–307, <https://doi.org/10.14710/jphi.v1i3.294-307>.

¹¹ Nur Kholis, "Perbankan Dalam Era Baru Digital," *Economicus* 12, no. 1 (2020): 80–88, <https://doi.org/10.47860/economicus.v12i1.149>.

studied.¹² This study utilized both primary legal materials, such as Law Number 10 of 1998 and Regulation of the Financial Services Authority, as well as secondary legal materials, such as law books and legal journals. The data were obtained by searching the literature and then analyzed using a descriptive-analytical approach.

The research was conducted in two stages, beginning with interpreting the law. Interpretation is a way to find the meaning of statutory regulations. At this stage, the articles in the legislation were interpreted to determine the actual meaning. This stage sought to apply general principles regarding legal interpretation and then interpret them following the principles of legal discovery to realize an interpretation to create justice. The subsequent stage was legal reconstruction, a path in rearranging the legal structure, legal substance, and legal culture for the better. It attempted to rebuild or rearrange ideas or concepts about the law.

3. RESULTS AND DISCUSSION

3.1. Legal Disharmony on Banking Law

Many regulations often can cause problems in terms of quality and quantity. The fairly large number of regulations (overregulated) will certainly affect the quality of the regulations and lead to disharmony, overlapping, and conflicts between regulations. If there is a conflict between regulations or legal conflicts, the cause arises because of legal substance. It is dynamic and complex. Legal substance means all legal principles, legal norms, and legal rules, both written and unwritten. Dynamic means that the law is required to adapt to the development of people's lives, while complex means that the law covers a wide scope of regulation. Emanuela Carbonara and Francesco Parisi, in their article, "The Paradox of Legal Harmonization," state that legal harmonization from sharing conflicting regulations will lead to disharmony. It is the background of the importance of legal interpretation to be carried out, not only legal harmonization.¹³

Legal disharmony of Law Number 10 of 1998 concerning banking with digital development is occurring and needs to be resolved. A legal disharmony is an event of inconsistency between two regulations with the same content in the hierarchical order of laws and regulations. Steps in preventing legal disharmony are through legal interpretation and construction, as well as legal reasoning and legal argumentation. Consequently, the disharmony of regulations results in the law being unable to function properly. Prevention of legal disharmony can be carried out by considering existing legal regulations and legal developments.

Disharmony in the act occurs because these regulations are no longer relevant to the times. Regulators often make new regulations but find some provisions contradicting

¹² Ishaq, *Metode Penelitian Hukum Dan Penulisan Skripsi, Tesis, Serta Disertasi* (Bandung: Alfabeta, 2017).

¹³ Emanuela Carbonara and Francesco Parisi, "The Paradox of Legal Harmonization," *Public Choice* 132, no. 3–4 (2007): 367–400, <https://doi.org/10.1007/s11127-007-9162-0>.

the previous ones. Law Number 10 of 1998 concerning banking has experienced disharmony throughout the increasingly rapid development of digital banking.

Table 1. Articles in Law Number 10 of 1998 In Compatible by Definition and the Development of Digital Banks

No	Articles in Law Number 10 of 1998 In Compatible by Definition and the Development of Digital Banks	Legal Approach	Interpretation
	Article 3		
1	<i>“The main function of Indonesian banking is as a collector and distributor of public funds.”</i>	Textualist approach (focus on text)	- Authentic - Systematic - Sociological/Teleological
	Article 1, Number 19		
2	<i>“A bank office is directly responsible to the head office of the bank concerned with the clear address of the business place.”</i>	Textualist approach (focus on text)	- Authentic - Systematic - Sociological/Teleological
	Article 8, Number 1		
3	<i>“In giving credit or financing based on sharia principles, commercial banks must have faith based on the depth of the analysis, intention, and customer ability to pay off the debt as stated in the agreement.”</i>	Textualist approach (focus on text)	- Authentic - Systematic - Sociological/Teleological

Source: Analysed from the primary source.

3.2. The Term of Fund Channeling

The phrase “fund channeling” was interpreted using a legal textualist approach (focus on text) to understand its textual meaning. Provisions regarding banking functions are regulated in Article 3 of Law Number 10 of 1998 concerning banking, which states, “the main function of Indonesian banking is to collect and distribute public funds” (Table 1). This article is specific by appointing two main functions of a bank: (1) collecting funds and (2) channeling funds. This legal approach implies that the textual meaning of the phrase “fund channeling” is the activity of selling funds collected from the community. The distribution of funds by banks can be carried out because of community participation. It describes the meaning of “community” in this context. The banking law does not define the meaning of the community. Thus, the article can be interpreted that the distribution of funds carried out by banks is an activity of providing funds to the public previously obtained from fund-raising activities. Meanwhile, the public receiving the funds must return them following what has been stated and agreed between the two.

After taking a legal approach using a textual approach, the phrase “fund channeling” was interpreted using an authentic, systematic, and sociological legal interpretation. Authentic interpretation utilizes the limits that the legislator has determined. The phrase “fund channeling” is interpreted in Law Number 10 of 1998

concerning banking as an activity to channel funds to the public through credit and other forms. The scope of the phrase “fund channeling” in this article is given to commercial banks by dividing it into two forms: credit and financing. Commercial banks carry out the distribution of funds as an obligation. The distribution of funds in banking, intended for the public, is a part of bank service products. Conventional banks call channeling funds as lending, while Islamic banks name it financing.

The phrase “fund channeling” was also interpreted using a systematic interpretation by linking one regulation to another. Law Number 10 of 1998 concerning banking, specifically in Article 1 Number 11, explains that distribution of funds, referred to as credit (lending), is “the provision of money or claims that can be equated with it, based on a loan agreement or agreement”. It describes the meaning of the phrase “fund channeling”. In short, it refers to borrowing between banks and other parties that require the borrower to repay the debt after a certain period with interest. Meanwhile, POJK No. 12/POJK.03/2021 does not clearly state the phrase “fund channeling” in digital banks because, in the definition, it only mentions digital banks run their business activities” without any further explanation.

Suppose it is broken down based on the credit elements contained in Law Number 10 of 1998 concerning banking. In that case, the elements include (1) trust—the bank believes that the money lent will be returned along with interest according to the agreed period, (2) time—the addition of period, (3) risk—the level of risk that will be faced based on the effect of the period on the achievements received by the debtor and the return agreed, and (4) achievement—an object or something obtained by the debtor if there is an agreement or credit agreement between the bank and the debtor. If the lender and the borrower agree on the credit, it must be stated in a credit agreement.

The banking function is formed with a purpose. Using the sociological interpretation in defining the phrase “fund channeling” has a social purpose by paying attention to societal developments. As contained in the Elucidation of Law Number 10 of 1998 concerning banking, “in order to create a prosperous society based on Pancasila and the 1945 Constitution, the implementation of development must pay attention to harmony and balance in the elements of development, including in the economic and financial fields”.

The development of a country cannot be separated from the role of banks in encouraging and strengthening the banking function as agents of development. Thus, banks must support economic improvement toward enhancing people’s living standards through credit. Banks are obliged to function as financial institutions in distributing public funds. Banks as intermediary institutions do not merely carry out fund-raising activities. According to Kasmir, banks refer to financial institutions that carry out business activities of collecting funds from the public and channeling these funds to the public, and providing other bank services.¹⁴

¹⁴ Kasmir, *Dasar-Dasar Perbankan* (Jakarta: PT. Raja Grafindo Persada, 2018).

Jenius, the first digital bank in Indonesia, has issued products in savings, transactions, and cards. Over time, the development of digital banks makes them compete in innovation. Some digital banks solely plan to expand their business into credit service products. However, the available services are still limited to raising funds in savings. Although it has been going on for quite a while, it cannot be ruled out, considering that legally, banking has the main functions of its business activities. In short, the operation of a bank under the laws and regulations must fulfill its two main functions. The distribution of funds or credit at digital banks, for example, Jenius, can only be submitted by selected customers. Jenius provides this credit service through “Flexi Cash”. This “Flexi Cash” usage model is a standby fund that can only be submitted through the Jenius application. Jenius applies several provisions for late bill payments called a penalty. This penalty has different interest details depending on the delay, calculated based on the day:

1. First month (1 day) IDR. 50,000,-
2. Second month (30 days) IDR. 75,000,-
3. Third month (60 days) IDR. 150,000,-
4. Fourth month (90 days) IDR. 175,000,-¹⁵

However, digital banks providing credit were still limited, one of which was Jenius. As for other digital banks trying to explore credit services, Bank Neo Commerce and Bank Jago have planned to release credit features in their applications in 2022. There was a reason behind it; the two banks have distributed credit through partners (partnerships) with third parties such as fintech and multi-finance.¹⁶ BCA Digital has also developed credit services with a channeling scheme in collaboration with acceleration. BCA Digital has planned to distribute credit in various product variants from short- to long-term tenors. Although some groups have welcomed the idea, it has certainly harmed the philosophy of banking functions if viewed from a legal perspective. Credit distribution should be conducted in bank business activities, inseparable from other functions such as fundraising and other services. According to Kasmir, providing credit has the following objectives:¹⁷

1. Gaining profits in interest. It is a form of remuneration and credit administration fees that customers must provide to banks.
2. Assisting in launching customers’ business activities.
3. Assisting the government.

The benefits obtained by the government from the distribution of credit are as follows:

1. Tax revenues from profits received by banks and customers.
2. The opening of job opportunities.
3. Increasing the number of goods and services.

¹⁵ Jenius, “Flexi Cash Dana Fleksibel Untuk Memudahkanmu,” n.d.

¹⁶ Anna Suci Perwitasari, “Bank Digital Siapkan Layanan Kredit Lewat Aplikasi,” 2022.

¹⁷ Kasmir, *Dasar-Dasar Perbankan*.

4. Increasing the country's foreign exchange in terms of export needs of products financed on credit.¹⁸

As Prof. G. M Verryn Stuart defined, "a bank is an entity that aims to satisfy credit needs, either with its means of payment or with money obtained from other people, anywhere by circulating means of exchange and demand deposits".¹⁹ Thus, a bank is an entity that aims to distribute and provide other services related to meeting credit needs with funds obtained from collecting funds belonging to other people.

Channeling funds through credit is an intermediation function of banks to benefit them. The more funds collected from the public, the greater the distribution of funds.²⁰ The obligation to channel funds also applies to digital banks. From the legal approach and interpretation in implementing the legal reconstruction of the phrase "fund channeling," it is understood that digital banks do not carry out banking functions as mandated in Law Number 10 of 1998 concerning banking. The aftermath of legal reconstruction using a legal approach and interpretation under Article 3 of Law Number 10 of 1998 concerning banking reveals that this article is inappropriate for application in current digital bank operations. So far, only one digital bank, Jenius, through the "Flexi Cash", has carried out the function of disbursing funds.

3.3. The Presence of Branch Office

The phrase "branch office" was interpreted using a legal textualist approach (focus on text) to determine its textual meaning. The provisions regarding branch offices are regulated in Article 1 Number 19 of Law Number 10 of 1998 concerning banking, stating that a branch office is a "bank office directly responsible to the head office of the bank concerned, with a clear address of the place of business". The textual approach unveils that the article is textually general by designating the "branch office" object. After using a legal approach, then, it was interpreted using an authentic legal interpretation, based on the limits put forward by the legislators. Hence, a "branch office" is defined as an office with the same role as the head office in providing customer banking services. The scope of the phrase "branch office" is given to banks as an office formed to conduct business activities by improving economic performance in each region.

The next phrase is "responsible," obligated to bear all the activities. According to Burhanuddin,²¹ responsibility is the ability to set an attitude toward actions or tasks and take the risk of the actions. The phrase "responsible" has an important function as a form

¹⁸ Ninuk Dwiastuti, "Pengaruh Kredit Perbankan Terhadap Pertumbuhan Ekonomi Dan Hubungannya Dengan Kesejahteraan Masyarakat Kabupaten/Kota Di Provinsi Kalimantan Barat," *Prosiding Seminar Akademik Tahunan Ilmu Ekonomi Dan Studi Pembangunan 2020*, 2020, 78.

¹⁹ Hermansyah, *Hukum Perbankan Nasional Indonesia*, IX (Jakarta: Prenadamedia Group, 2005).

²⁰ Agus Murdiyanto, "Faktor-Faktor Yang Berpengaruh Dalam Penentuan Penyaluran Kredit Perbankan Studi Pada Bank Umum Di Indonesia Periode Tahun 2006 - 2011," *Conference In Business, Accounting, And Management (CBAM)* 1, no. 1 (2012): 61-75.

²¹ Salam Burhanuddin, *Etika Individual : Pola Dasar Filsafat Moral* (Jakarta: Rineka Cipta, 2000).

of a legal relationship between the head office and branch offices. Suppose a common thread is drawn from this phrase. In that case, the branch office continues to carry out operational activities like the head office. Moreover, the responsibility for a branch office is borne both individually and as a legal subject for implementing banking business activities because in carrying out its operations, the branch bank is still led by the head of the office.

A systematic interpretation was applied to define the law based on the phrase “branch office” by linking one regulation to another. Law Number 10 of 1998 concerning banking explains that the opening of a conventional bank branch office must also meet the requirements, encompassing (a) a consolidated financial report detailing the quality of productive assets for the last two months before the date of the application letter, (b) operational preparation plans for the opening of a branch office, and (3) results from the feasibility study containing at least the economic potential, market opportunities, level of fair competition between banks, the saturation level of the number of banks, monthly cash flow projections for 12 months, and branch office work plan for at least 12 months.

When reviewed based on Article 26 of POJK Number 12/POJK.03/2021, the provisions regarding digital bank branch offices are “if Bank BHI, which operates as a digital bank through the establishment of a new Bank BHI, as referred to in Article 25 letter a, will open an office network other than the head office in the form of branch office and functional office conducting activities other than operational, it can provide Electronic Banking Terminal (TPEs)”. Branch offices in the article are “offices that carry out service and operational activities to customers by using electronic channels and providing TPE in whole or in part”. TPEs in digital banks are grouped into various electronic devices such as Automated Teller Machines (ATMs), Cash Deposit Machines (CDMs), Cash Recycler Machines (CRMs), Electronic Data Capture (EDC), and Self Service Banking Terminals (SSBTs), which aims to serve banking transactions. A branch office is defined as a TPE, where the branch office is in the form of an ATM and the like, which is then referred to as a digital branch office.

The interpretation of the article then cannot be considered based on only one regulation. However, Article 18 of Law Number 10 of 1998 states that the payment point, car cash, and automated teller machines (ATMs) are called other offices under the branch office. Branch offices carry out physical operations, while ATMs and others cannot be called branch offices. Thus, it is clear that regulations at the level of law and lower, such as POJK, often have different interpretations and experience disharmony. The emergence of vertical inconsistencies in regulatory format, where lower laws and regulations conflict with higher regulations (the *Lex Superior Derogat Legi Inferiori* principle), has made regulations governing banking, especially digital banks, need legal reconstruction. It is a note for regulators to be more careful in regulating existing regulations and form new regulations if needed.²²

²² Nurfaqih Irfani, “Asas Lex Superior, Lex Specialis, Dan Lex Posterior,” *Jurnal Legislasi Indonesia* 16, no. 3 (2020): 305–25.

If Law Number 10 of 1998 is used as the basis for forming digital bank regulations, the phrase “branch office” cannot be applied because digital banks are extremely different from conventional banks. Digital banks refer to a technology concept used to carry out banking activities. In other words, digital banks can be defined as a technology that performs the role of banks, a unique combination of technology and financial companies. Artificial Intelligence (AI) technology in digital banks is intended to replace or add value in producing better services by increasing the speed²³ accuracy and efficiency of the system bank performance.²⁴ Conventional or commercial banks carry out functions or adopt technology to support banking activities. Conventional banks using digital technology and digital banks cannot be equated.

To understand the social objectives of establishing a “branch office,” it was interpreted using a sociological interpretation by considering societal developments. As contained in Law Number 10 of 1998 concerning banking, “The role of the national banking system needs to be increased under its function in collecting and distributing public funds by paying more attention to the financing of national economic sector activities with priority to cooperatives, small and medium-sized entrepreneurs, as well as various levels of society without discrimination to strengthen the structure of the national economy. Likewise, banks need to pay greater attention to improving economic performance in the area of operation of each office.”

The establishment of a “branch office” based on the objectives contained in Law Number 10 of 1998 concerning banking has none other than the function of implementing economic equity, whereas if it is related to the definition of a digital bank that does not have a branch office, it is not following what is contained in Law Number 10 of 1998 concerning banking. In other words, Article 1 Number 19 of Law Number 10 of 1998 concerning banking is incompatible or irrelevant to the current development of digital banks. It is due to the adoption of technological developments by digital banks that have eliminated or changed the definition, function and purpose of branch offices.

3.4. The Term Know Your Costomer

The word “analysis” was interpreted using a legal textualist approach (focus on text) to understand its textual meaning. The provisions regarding “analysis” are regulated in Article 8 Point 1 of Law Number 10 of 1998 concerning banking, which states that “In providing credit or financing based on sharia principles, commercial banks are required to have confidence based on in-depth analysis or the intention and ability of the debtor customer to repay the debt or return it following the agreement.” The textual approach generally interprets “analysis” as an activity to analyze seriously by the bank. According

²³ Suparna Biswas et al., “AI-Bank of the Future: Can Banks Meet the AI Challenge?,” *McKinsey & Company*, no. September (2020): 3.

²⁴ Orçun Kaya, “Artificial Intelligence in Banking Industry,” *DB Research Management*, 2019, 327–48, <https://doi.org/10.1002/9781119710301.ch19>.

to Husein Umar, understanding analysis is a work process from a series of stages of work before research is documented through the writing stage report.²⁵

After taking a legal approach using a textual approach, the word “analysis” was interpreted using an authentic, systematic and sociological legal interpretation. Authentic interpretation utilizes the limits that the legislator has determined. The word “analysis” was interpreted in Law Number 10 of 1998 concerning banking as an activity carried out by the bank to assess before extending credit to customers. According to Legal Expert Wahyuni, understanding credit analysis is a process of conducting credit assessment by looking at all aspects, including financial and non-financial.²⁶

Banks must analyze before giving credit to prospective debtors. As explained in Article 8, the bank must carefully assess the debtor’s customer’s character, ability, model, collateral, and business prospects to obtain confidence. Furthermore, the assessment in question is an in-depth intention analysis called credit analysis. Banks must consider several things related to good faith (willingness to pay) and the ability to pay loans and interest. Article 2 of Law Number 10 of 1998 concerning banking stipulates that banks carry out their business activities based on economic democracy using the precautionary principle. The principles of prudence, or so-called prudential banking, must be contained in all banks in Indonesia.

Moreover, the principles of character, capacity, capital, collateral, and condition (5C) as well as personality, party, purpose, prospect, payment, profitability, and protection (7P) are part of the prudential principles implemented through accurate and in-depth analysis. The prudential principles are the realization and fulfillment of the principles of economic democracy as the basis for banking in conducting business activities. The word “analysis” was also interpreted using systematic interpretation by linking one rule to another. Before the credit is given, the credit analyst should perform a credit analysis first. This credit analysis is based on the 5C and 7P principles.²⁷

Concerning the 5C principles, (1) character is the personality characteristics of the person given credit; (2) Capacity is the ability of prospective debtors to repay loans (credit); (3) Capital means funds owned by prospective debtors to develop their business; (4) Collateral means wealth used as collateral for loans obtained; (5) Condition of the economy affects the debtor’s business activities to calculate future economic conditions. Subsequently, regarding the 7C principles, (1) personality refers to the characteristics of the prospective debtors (personal self, education, family, experience, work, hobbies, social standing or association in society); (2) Party means group or classification of debtors based on capital, loyalty and character; (3) Purpose is the purpose of applying for credit; (4) Prospect means the bank’s assessment of the customers’ business, judging by the prospect of whether it will generate profits; (5) Payment means measuring the

²⁵ Syafnidawaty, “ANALISIS - UNIVERSITAS RAHARJA,” 2020.

²⁶ Niniek Wahyuni, “Penerapan Prinsip 5C Dalam Pemberian Kredit Sebagai Perlindungan Bank,” *Lex Journal : Kajian Hukum Dan Keadilan* 1, no. 1 (2017): 14.

²⁷ Rahmadi Indra Tektona and Qoriatur Risma, “Penerapan Prinsip Character Dalam Pelaksanaan Prinsip Kehati-Hatian Pada Analisis Pemberian Kredit Usaha Mikro,” *Batulis Civil Law Review* 1, no. 1 (October 2020): 7, <https://doi.org/10.47268/ballrev.v1i1.420>.

customers' steps in returning credit; (6) Profitability refers to the customers' expertise in generating profit; (7) Protection is efforts to protect the credit and get protection through goods or insurance guarantees.²⁸

Systematic interpretation compares the credit analysis process contained in Law Number 10 of 1998 concerning banking with the Regulation of the Financial Services Authority (POJK). Conventional commercial banks are carried out using a checking on the spot (COS) or the spot inspection system by account officers. Account officers are crucial in the credit analysis process. It is performed to make credit expansion profitable and not detrimental to the banks. COS is carried out to obtain data on the type of business owned by the prospective debtors to obtain a profit margin. Then, the profit margin results are combined with the interview results with the prospective debtors, and the account officer will assess the collateral that the prospective debtors will submit to the bank. If any doubts are found, re-verification will be carried out on the results of the taxation report, and if the report is approved, it will be submitted to the head of the branch/sub-branch office. Conventional banks usually use this flow in credit analysis by credit analysts. The importance of the checking on-the-spot process, in this case, is to ensure the data with the actual conditions provided by the prospective debtors is correct and appropriate. In addition, there is "trade checking" carried out by credit analysts simultaneously with checking on the spot. The function of trade Checking is to assess prospective debtors in carrying out their business activities directly. Checking on the spot and trade checking cannot be ignored because, in every credit analysis process, there is a content of each principle contained therein.²⁹

Unlike the case with digital banks, the use of AI and big data in processing data to perform banking services integrated into the credit analysis system certainly has its positive and negative sides. Digital banks adopt technology in both the model and the implementation of business activities, including the credit analysis process. Although, until now, digital banks operating in Indonesia have only planned to issue credit services, the use of AI and big data is projected to result in a more accurate and non-biased credit score.³⁰ Nevertheless, when viewed using the regulations contained in the Banking Law and provisions under laws such as POJK No.42/POJK.03/2017 concerning obligations to prepare and implement credit or bank financing policies for commercial banks, credit or financing analysis states that credit analysis must be carried out in writing by applying accurate and objective credit principles to minimize credit risk. According to Fikri, "no matter how great digital technology is, understanding risk is the main thing, so the customers' character is the most important factor".³¹

Thus, it is clear that regulations in laws with community development or community behavior often experience disharmony. If Law Number 10 of 1998

²⁸ Niniek Wahyuni, "Penerapan Prinsip 5C Dalam Pemberian Kredit Sebagai Perlindungan Bank."

²⁹ Tektona and Risma, "Penerapan Prinsip Character Dalam Pelaksanaan Prinsip Kehati-Hatian Pada Analisis Pemberian Kredit Usaha Mikro."

³⁰ Mulya Chandra, "Perbankan Digital: Yay Atau Nay?," CNBC Indonesia, 2021.

³¹ Tempo, "Nasabah Bank Milenial Tuntut Layanan Digital," Tempo.co, 2021.

concerning banking is used as the basis for the formation of digital bank regulations, then Article 8 of Law Number 10 of 1998 concerning banking must be corrected in terms of the method applied in the analysis because the risks present will be much more serious, greater than the risk of using conventional methods. Furthermore, implementing the principles of credit and financing and applying the precautionary principles contained in each stage of lending still underlies the basis of lending even though it employs the role of digital technology in its implementation.³²

By understanding the social objectives in the article and explanation of Law Number 10 of 1998 concerning banking using sociological interpretation, the social purpose of conducting this credit analysis is to convince the bank that the prospective debtors are truly trustworthy. The bank will bear greater credit risk if it does not perform credit analysis. Thus, this analysis will foster a sense of trust from customers in banking and vice versa. This trust is the basis or foundation for banking in carrying out banking functions because collecting and distributing funds to the public will encourage national economic growth as mandated in Pancasila and the 1945 Constitution. In short, Article 8 Number 1 of Law Number 10 of 1998 concerning banking is irrelevant to the current development of digital banks. The adoption of technological developments by digital banks has eliminated or changed the concept of credit analysis. Conventional banks attach conventional values such as checking on the spot and trade checking in the credit analysis process. If it is replaced with technology, it will shift the role of human understanding of risk. Although no matter how sophisticated and great the technology, it will be unable to replace the role of humans because, at every stage in credit analysis, credit principles are inseparable from one another.³³

Legal interpretation methods were utilized to give meaning to statutory regulations. Sudikno Mertokusumo and Pitlo argued that interpretation is a method of legal discovery that provides a clear explanation of the text of the law so that the scope of the rules is in line with the occurrence of certain events. Others are complementary. Each method has its characteristics, so there is no basis or guide for determining which method should be used in a case.³⁴ This study employed several legal interpretations to understand and carry out legal reconstruction of the laws under study. According to Gadamer, interpretation is the process of understanding something or vice versa. Thus, within the scope of the law, it is by interpreting the law to understand it. The law can only be understood through interpretation so that a person can find the true meaning of the law.³⁵

³² Etty Mulyati and Fajrina Aprilianti Dwiputri, "Prinsip Kehati-Hatian Dalam Menganalisis Jaminan Kebendaan Sebagai Pengaman Perjanjian Kredit Perbankan," *Acta Diurnal Jurnal Ilmu Hukum Kenotariatan Dan Ke-PPAT-An* 1, no. 2 (2018): 134, <https://doi.org/10.24198/acta.v1i2.112>.

³³ Tarsisius Murwadi and Hagi Robby, "Edukasi Dan Penyehatan Koperasi Melalui," *Padjajaran Jurnal Ilmu Hukum* 4, no. 3 (2017): 454–72.

³⁴ Afif Khalid, "Penafsiran Hukum Oleh Hakim Dalam Sistem Peradilan Di Indonesia," *Al 'Adl* 6, no. 11 (2014): 9–36.

³⁵ Bernard Arief Sidharta, *Refleksi Tentang Struktur Ilmu Hukum : Sebuah Penelitian Tentang Fundasi Kefilsafatan Dan Sifat Keilmuan Hukum Sebagai Landasan Pengembangan Ilmu Hukum Nasional Indonesia* (Bandung: Mandar Maju, 1999).

Legal discovery, when viewed widely, can be performed by judges, lawmakers, and legal researchers. Judges conduct legal discovery to resolve a concrete or conflict event. The results of their legal discovery have binding power, are poured into a decision, and can be used as a reference for legal sources. Moreover, lawmakers perform the legal discovery even though they do not encounter concrete events or conflicts like judges. However, the results of their legal discovery can be used in solving abstract events (have not happened yet but can happen in the future), termed as prescriptive. The results of legal findings are called laws because they are stated in laws and become sources of law. Unlike the case with legal researchers, making the legal discovery is theoretical, not a law produced but a source of law in doctrine.³⁶

This study conducted legal interpretations for legal discovery, with the statutory system and social problems as the starting points. The law does not always answer the problems. Thus, its interpretation aims to become a proposal in the settlement or a guideline in legal discovery. The interpretation of Law Number 10 of 1998 has been guided by other regulations and the increasingly complex dynamics of digital banking development, which requires legal reconstruction. Legal interpretation, in this case, utilizes the principles of legal discovery and different methods of legal interpretation in each article. As explained earlier, this interpretive activity cannot be limited to only one method but rather tries to understand other methods of legal interpretation and the principles of legal discovery under the disharmonized articles. Ultimately, the banking law is deemed obsolete and it is necessary to amend this law to become a new banking law which facilitating the development of digital banks as a future of banking in Indonesia.

4. CONCLUSION

In conclusion, the enactment of Law Number 10 of 1998 concerning banking is irrelevant and incompatible with the development of digital banks. This research unveiled that in Law Number 10 of 1998 concerning banking, after legal reconstruction using an authentic, systematic, and sociological (theological) approach and legal interpretation, Article 3, Article 1 Point 19, and Article 8 Point 1 experienced the legal disharmony of the current definition and development of digital banks, described in detail in several issues. (1) The main function of banking, namely the distribution of funds, has not been fully implemented by digital banks because only one digital bank carried out the function of disbursing funds, Jenius, through Flexi cash services. (2) The phrase “branch office” has experienced inconsistency between Law Number 10 of 1998 concerning banking and POJK and the concept of digital banks, which only has one head office or physical office. The adoption of technological developments by digital banks has eliminated or changed

³⁶ Bambang Sutiyoso, *Metode Penemuan Hukum : Upaya Mewujudkan Hukum Yang Pasti Dan Berkeadilan* (Yogyakarta: UII Press, 2012).

the definition, function, and purpose of branch offices. (3) In-depth analysis of the intention and ability of debtor customers on credit service products by commercial banks contains several conventional procedures and values, such as checking on the spot and trade checking, which cannot be applied to digital banks today due to the adoption of technological developments by digital banks that have eliminated or changed the concept of credit analysis in conventional banks. If it is replaced with technology, it will shift the role of understanding risk. Sophisticated and great technology cannot replace the role of humans because, at every stage of credit analysis, the content in credit analysis includes credit principles inseparable from one another. Thus, the existence of irrelevant and outdated articles has created concerns that the current development of digital banks does not yet have strong and adequate regulations, creating risks in the future. An appropriate policy for establishing a Digital Bank Law is a step toward fully regulating the digital banking industry to prevent a legal vacuum.

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