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The Urgency for Enactment of Digital Wallet Regulation (Study Case on South Korea Regulation)

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Abstract In the digital era, the payment system has experienced transformations. Currently, transferring money or payment can be conducted through online and online methods. A digital wallet offers a financial service through online methods. However, there is no designated law or act that regulates digital wallet services in Indonesia. Indonesia has regulated digital wallet services under the Bank Indonesian Regulation (central bank) and Financial Services Authority (OJK) Regulation. This study aims to examine and analyze the urgency for enacting digital wallet regulation in Indonesia and provide a precise regulation about digital wallets from South Korean regulations. This type of research is normative research using a statutory approach to examine the urgency of enacting digital wallet regulation in Indonesia and using a comparative approach to provide a

precise regulation about digital wallets from the study of South Korean regulations. The results of this study indicate that regulation at the law or act level concerning digital wallets is needed. There are several elements that must be governed in the digital wallet regulation, such as general provision; consumer protection; registration and license; supervision; obligations and prohibitions; and penalty provisions.

Keywords *Digital Wallet; Regulations; Indonesia; South Korea*

Abstrak Di era digital, sistem pembayaran telah mengalami transformasi. Saat ini transfer uang atau pembayaran dapat dilakukan melalui metode online dan offline. Dompet digital menawarkan layanan keuangan melalui metode online. Namun, belum ada undang-undang atau undang-undang khusus yang mengatur layanan dompet digital di Indonesia. Indonesia telah mengatur layanan dompet digital di bawah Peraturan Bank Indonesia (bank sentral) dan Peraturan Otoritas Jasa Keuangan (OJK). Penelitian ini bertujuan untuk mengkaji dan menganalisis urgensi pemberlakuan regulasi dompet digital di Indonesia dan memberikan regulasi yang tepat tentang dompet digital dari regulasi Korea Selatan. Jenis penelitian ini adalah penelitian normatif dengan menggunakan pendekatan statutoria untuk mengkaji urgensi pemberlakuan regulasi dompet digital di Indonesia dan menggunakan pendekatan komparatif untuk memberikan regulasi yang tepat tentang dompet digital dari kajian regulasi Korea Selatan. Hasil penelitian ini menunjukkan bahwa diperlukan pengaturan di tingkat undang-undang atau undang-undang tentang dompet digital. Ada beberapa unsur yang harus diatur dalam pengaturan dompet digital, seperti ketentuan umum; perlindungan Konsumen; pendaftaran dan lisensi; pengawasan; kewajiban dan larangan; dan ketentuan hukuman.

Kata kunci *Dompet Digital; Peraturan; Indonesia; Korea Selatan*

A. Introduction

Globalization impacts various aspects of human life, such as economic growth and technological development.¹ Nowadays, we can quickly get a piece of information from around the world because of the impact of globalization on the technology aspect.² The development of technology, information, and communication brings convenience to daily life.³ Along with the rapid growth of technology globally, the technology-based economy has also developed. The

¹ Harahap, M.A., & Adeni, S. (2020). Trend Penggunaan Media Sosial Selama Pandemi Di Indonesia. *Jurnal Professional FIS UNIVED*, 7 (2). 13-23. p. 15

² Chalimi, A.N.F., Herdinawati, Siti., Asadi. (2022). Faktor Kemajuan Teknologi dan Sumber Daya Manusia Terhadap Peningkatan Pendapatan Umkm Era Revolusi 4.0. *Jurnal Ilmu Manajemen dan Akuntansi*, 9 (2). 129-134. Doi: 10.33366/ref.v9i2.2758, p. 130

³ Putra, Setia. (2014). Hukum Perlindungan Terhadap Konsumen Dalam Transaksi Jual-Beli melalui E-Commerce. *Jurnal Ilmu Hukum*, 4 (2). 287-309, p. 288

existence of a technology-based economy provides opportunities for innovation, entrepreneurship, and a country's economic growth.⁴ Technological developments are expected to foster innovation and increase economic growth in a country.

One of the technological developments in the financial sector is financial technology or fintech. Fintech was born as the merger between the financial and technology industries. Fintech is one of the innovations in the financial industry that refers to a modern technology that aims to introduce practicality, ease of access, convenience, and low cost.⁵

The industrial revolution 4.0⁶ speed up the use of technology in the financial sector (fintech). An online payment application has been developed to make life easier.⁷ Nowadays, we can easily enjoy fintech products, which can be accessed through the website or by downloading specific applications. There are several products of fintech, such as e-money, payment systems, peer-to-peer (P2P) lending, etc. Fintech offered simple finance services without any burden of bureaucracy.⁸

The transformation from conventional to digital or digitalization has changed an aspect of human life, such as in the payment system sector.⁹ The development of technology has encouraged a change from cash to electronic money or e-money to fulfill the demands of society in the payment system concerning safety, fast, and efficient transactions.¹⁰

Electronic money (e-money) is a payment system concept without any physical money or cashless.¹¹ Nowadays, society is more likely to use e-money rather than physical money (cash).¹² The idea of e-money is that our money is stored

⁴ Clevalda, D.K. (2021). Perlindungan Hukum Terhadap Nasabah Dompot Digital Oleh Bank Indonesia. *Private Law*, 9 (1). 1-9. Doi: 10.0961/privat.v9i1.41483, p. 2

⁵ Ansori, Miswan. (2019). Perkembangan dan Dampak Financial Technology (fintech) Terhadap Industri Keuangan Syariah Di Jawa Tengah. *Wahana Islamika: Jurnal Studi Keislaman*, 5 (1). 32-45. Doi: 10.5281/wahanaislamika.v5i1.41, p. 32

⁶ The phrase Fourth Industrial Revolution was first introduced by a team of scientists developing research for the German government. The 4th industrial revolution or industrial 4.0 can be defined as a name for the current automation and data exchange trend in manufacturing technology, including cyber-physical systems, the internet of things, cloud computing, cognitive computing, and creating smart factories.

⁷ Jefry Tarantang et. al. (2019). Perkembangan System Pembayaran Digital Pada Era Revolusi Industri 4.0 Di Indonesia. *Jurnal Al Qardh*, 4 (1). 60-75 Doi: 10.23971/jaq.v4i1.1442, p. 62-63.

⁸ Winasis, Shinta., & Riyanto, Seyo. (2020). Transformasi Digital di Industri Perbankan Indonesia: Impak pada Stress Kerja Karyawan. *Iqtishadia Jurnal Ekonomi dan Perbankan Syariah*, 7 (1). 56-64. Doi: 10.19105/iqtishadia.v7i1.3162. p. 57

⁹ Jafry Tarantang, et. al., *Loc. Cit.*

¹⁰ Candrawati, Ni Nyoman Anita. (2014). Perlindungan Hukum Terhadap Pemegang Kartu E-Money Sebagai Alat Pembayaran Dalam Transaksi Komersial. *Jurnal Magister Hukum Udayana*, 3 (1). 1-16. Doi: 10.24843/JMHU.2014.v03.i01.p03, p. 1-2

¹¹ Naomi, F.P., & Priyanto, I Made. (2020). Perlindungan Hukum Pengguna E-Wallet Dana Ditinjau Dari Undang-Undang Perlindungan Konsumen. *Jurnal Kertha Semaya*, 9 (1). 24-33. Doi: 10.24843/KS.2020.v09.i01.p03, p. 25

¹² Bodhi, S., & Tan, D. (2022). Keamanan Data Pribadi Dalam Sistem Pembayaran E-Wallet Terhadap Ancaman Penipuan Dan Pengelabuan (cybercrime). *UNES Law Review*, 4 (3). 297-308. Doi: 10.31933/unesrev.v4i3.236, p. 298

electronically, divided into two types, namely, cards or chips and servers.¹³ E-money, based on cards or chips, allows users to conduct transactions in an offline system by card. However, e-money based on servers needs the internet or an online system to complete transactions.

The other famous fintech is the e-wallet or mobile wallet or digital wallet (hereinafter called as digital wallets). A digital wallet is an electronic-based media container that stores electronic money as a payment method.¹⁴ Digital wallets are an innovation in the financial sector with cashless methods to facilitate online payment systems. Digital wallets enable their users to conduct financial transactions by scanning quick response (QR) codes without any presence of physical money.¹⁵

Recently, digital wallets have emerged and become a trend in Indonesia due to increasing internet and smartphone users who connect to digital wallet applications. Indonesia digital wallets are dominated by OVO, ShopeePay, LinkAja, GoPay, and Dana. Based on the research, the total number of digital wallet users in Indonesia is recorded as much as 63.6 million.¹⁶ The number is predicted to reach 202 million users by 2025.¹⁷ The digital wallet users are nearly ¼ of the Indonesian population.

India-based marketing consultancy, RedSeer, estimate the value of digital wallet transactions in Indonesia is projected to reach US\$ 70.1 billion or IDR 1 trillion by 2025, which covers 55% of the total value of digital wallet transactions in the Asia Pacific region.¹⁸ To make a clear explanation, refers to the chart below.

On the one hand, technological development offers convenience in the field of the digital payment system: on the other hand, it also causes problems for customers, such as one of the cases related to the Gojek¹⁹ customer using Go-Food²⁰ services complained about the loss of Go-Pay²¹ balances on their account. This case happened to the Indonesian music producer, Maia Estianty.²² In this case, she wants to order some food through the Gojek application. However, the driver said that his

¹³ Naomi, F.P., & Priyanto, I Made, *Loc. Cit.*

¹⁴ *Ibid.*

¹⁵ Bodhi, S., & Tan, D., *Op. Cit.*, 299.

¹⁶ "Survei: OVO Rajai Pangsa Pasar E-Wallet Indonesia Pada 2020 | Databoks," accessed May 16, 2022, <https://databoks.katadata.co.id/datapublish/2021/07/14/survei-ovo-rajai-pangsa-pasar-e-wallet-indonesia-pada-2020>.

¹⁷ *Ibid.*

¹⁸ "Pasar E-Wallet Indonesia Diproyeksikan Capai US\$70 Miliar Pada 2025 | Databoks," accessed May 8, 2022, <https://databoks.katadata.co.id/datapublish/2022/03/21/pasar-e-wallet-indonesia-diproyeksikan-capai-us70-miliar-pada-2025>.

¹⁹ Gojek is an Indonesian on-demand multi-service platform and digital payment technology group based in Jakarta.

²⁰ Go-Food is one of Gojek services in food delivery.

²¹ Go-Pay is a digital wallet service in Gojek.

²² "Saldo GoPay Maia Estianty Dikuras Hingga Penipu Bobol Akun Pribadi Lainnya Halaman All - Kompas.Com," accessed May 8, 2022, <https://www.kompas.com/hype/read/2019/12/28/091946566/saldo-gopay-maia-estianty-dikuras-hingga-penipu-bobol-akun-pribadi-lainnya?page=all>.

motorcycle was broken and needed to change the driver. The driver asks Maia to click a specific number and code, enabling the driver to access Maia's phone data. Then, the driver took all of Maia's Go-pay balances. The driver also deleted particular applications on Maia's phone, such as WhatsApp and Tokopedia. The driver tried to use Maia's Credit Card to buy a phone but failed because Maia asked the customer service to block its access.

The massive development of digital wallets does not follow by the strengthening of legal protection. Indonesia does not have a fintech special law but is only technically regulated under Bank Indonesia (BI) and Financial Services Authority (OJK) regulations.²³ Currently, fintech (specifically about digital wallets) is regulated under Bank Indonesia Regulation Number 18/40/PBI/2016 concerning Payment Transaction Processing Operations, Bank Indonesia Regulation Number 20/6/PBI/2018 concerning Electronic Money, Bank Indonesia Regulation Number 19/12/PBI/2016 concerning Financial Technology Operations, and Financial Service Authority Regulation Number 13/POJK.02/2018 concerning Digital Financial Innovation.

During the first quarter of 2021, the South Korean (hereinafter Korea) start-up business was booming, with the companies raising a total of over 1 trillion won.²⁴ Korea can be said as a startup-friendly nation. It cannot be separated from the enactment of the Ministry of SME and Startups in 2017. The Ministry of SMEs and Startups (MSS) is a government organization whose objective is to strengthen competitiveness and support the innovation of Small and Medium-sized Enterprises (SMEs) and Micro Enterprises (MEs).²⁵

For several years, there has been active development of the fintech industry in South Korea. fintech companies in Korea have been actively pursuing simple payment services to improve their services. Fintech is regulated under Electronic Financial Transaction Act ("EFTA") which was enacted on Apr. 28, 2006. EFTA has been amended several times, the last amendment on Jun. 9, 2020 (Act No. 17354).

The Financial Service Commission ("FSC") is the government regulatory authority responsible for rulemaking and licensing fintech businesses.²⁶ FSC is in the process of amending the Electronic Financial Transaction Act to comprehensively repair the regulatory system relating to the electronic financial market, including simple payment services.²⁷ Besides FSC, Korea also has Financial Supervisory

²³ Yukung, A.S. (2019). Urgensi Peraturan Perlindungan Data Pribadi Dalam Era Bisnis Fintech. *Jurnal Hukum dan Pasar Modal*, 8 (16). 1-27, p. 4-5

²⁴ "Korea Fintech Landscape and Opportunities - Swissnex," accessed May 31, 2022, <https://nexttrendsasia.org/korea-fintech-landscape-and-opportunities/>.

²⁵ "Ministry of SMEs and Startups," accessed May 31, 2022, <https://www.mss.go.kr/site/eng/01/2010100000002019110619.jsp>.

²⁶ "Fintech Laws and Regulations | Korea | GLI," accessed June 1, 2022, <https://www.globallegalinsights.com/practice-areas/fintech-laws-and-regulations/korea>.

²⁷ "Fintech Report 2021-2022 Korea," accessed May 30, 2022, <https://iclg.com/practice-areas/fintech-laws-and-regulations/korea>.

Services (“FSS”). The FSS conducts supervision of banks, non-bank financial companies, financial investment services providers, and insurance companies.²⁸ The FSS also performs capital market supervision, consumer protection, and other supervision and enforcement activities as delegated by the FSC.²⁹

Korea also adopted a regulatory sandbox under the Special Act on Support of Innovation of Finance (“Financial Innovation Act”) on Dec 31, 2018 (Act No. 16183). Korea’s regulatory sandbox scheme was launched on Apr. 1, 2019. This scheme allows relaxed regulatory standards for those financial services designated as ‘innovative financial services’ by the government and ensures that such designated financial companies can enjoy the benefit of receiving expedited confirmation by FSC as to which law, regulation, or license would be applicable to such companies.³⁰ 139 FinTech projects were selected for inclusion in the regulatory sandbox.³¹

Korea also secure the personal information of digital wallet users by the three major data privacy laws—Personal Information Protection Act (“PIPA”), Act on the Promotion of Information and Communication Network Utilization and Information Protection (“Network Act”), and Credit Information Use and Protection Act (“Credit Information Act”). In accordance with these standards, processing personal data requires the explicit prior approval of the data subject, and this consent requirement is strongly enforced.³²

Korea was crowned as the cashless country in Asia by GlobalData payment analyst Vlad Totia.³³ Mobile payments are booming in Korea, and the citizens prefer to use digital wallets. Digital Payments are becoming a ‘mainstream’ payment method in Korea. GlobalData’s 2021 Financial Service Consumer Survey, which was carried out in Q1 and Q2 of 2021, indicated that 62.7% of respondents had a mobile wallet and had used it in a shop or store.³⁴

Korea is a well-developed economic country that has widespread and growing digital wallets. GlobalData estimates that the value of digital wallet transactions in Korea will double from \$181.6bn in 2020 to \$503.5bn by 2024.³⁵ It is in line with the increase in digital wallet users. According to Mobile wallets report 2021, Korean

²⁸ “What We Do | About FSS |,” accessed June 3, 2022, <https://www.fss.or.kr/eng/main/contents.do?menuNo=400023>.

²⁹ *Ibid.*

³⁰ Jung Min Lee et. al. (2021). South Korea. at The Financial Technology Law Review. Thomas A Frick (Editor). London: Law Business Research, p. 260

³¹ *Ibid.*

³² Fintech Report 2021-2022 Korea, *Loc. Cit.*

³³ “South Korea and China Are Asia’s Cashless Leaders | Asian Banking & Finance,” accessed June 1, 2022, <https://asianbankingandfinance.net/financial-technology/news/south-korea-and-china-are-asias-cashless-leaders>.

³⁴ “Mobile Wallets Go Mainstream in South Korea Consumer Payments Market, Observes GlobalData - GlobalData,” accessed June 1, 2022, <https://www.globaldata.com/media/banking/mobile-wallets-go-mainstream-south-korea-consumer-payments-market-observes-globaldata/>.

³⁵ “Mobile Wallet Payments in South Korea to Surpass US\$500bn in 2024, Reveals GlobalData - GlobalData,” accessed June 1, 2022, <https://www.globaldata.com/mobile-wallet-payments-south-korea-surpass-us500bn-2024-reveals-globaldata/>.

digital wallet users are 38.2M in 2020 and will increase to 52.3M in 2025.³⁶ Korean digital wallets are dominated by Kakao pay, Naver pay, Toss, and Payco.

Korean fintech, especially digital wallets experience massive development in recent years. It is no wonder that digital wallets growing rapidly in Korea. The Government support and competitive market can be the reasons. These conditions are different in Indonesia. Even though digital wallet industry is rapidly growing, several problems still occur. The lack of legal protection can be the main problem.

Based on the explanation above, this research will explain the urgency for enacting digital wallet regulation in Indonesia and the regulation about digital wallets which can be adopted by Indonesia from the study of Korean regulations. The author wants to emphasize the need for a law or act about digital wallets in Indonesia and provide a precise regulation about digital wallets from the study of Korean regulations.

B. Method

This article adopted normative legal research with a statutory and comparative approach. Normative legal research is a method to examine the legal issue through laws and regulations, and find the legal sources through literature.³⁷ Statutory approach is carried out by reviewing laws and regulations related to the legal issue.³⁸ Comparative approach is carried out by comparing the legal system or law among the countries on the same matter, including court decisions.³⁹ The data used are literature data obtained from primary legal materials, such as laws and regulations, and secondary legal materials, such as books and journals.

C. Results and Discussion

In Indonesia, the fintech sector especially digital wallets have a promising business opportunity. However, the legal vacuum makes it difficult to develop and protect its consumers. There are certain reasons for enacting regulation at the law or act level concerning digital wallets which will be examined below.

Overview of Bank Indonesia and Financial Service Authority Regulations concerning Digital Wallet

The development of technology and information encourages innovation to fulfill society's demands, including payment systems. To make sure safety and efficiency of payment systems, regulations are needed. Bank Indonesia and Financial Service

³⁶ "Mobile Wallets Report 2021: Global, Regional & Country-Level Insights," accessed June 1, 2022, <https://fortumo.com/blog/mobile-wallets-report-2021-global-regional-country-level-insights/>.

³⁷ Made Diantha, I. (2016). *Metodologi Penelitian Hukum Normatif Dalam Justifikasi Teori Hukum*. Jakarta: Prenada Media Grup, p. 12

³⁸ Muhaimin. (2020). *Metode Penelitian Hukum*. NTB: Mataram University Press, p. 56

³⁹ *Ibid*, 57.

Authority have the authority to issue specific regulations in the banking and finance sectors.

Bank Indonesia and Financial Service Authority have issued certain regulations in the fintech sector, especially concerning digital wallets. The regulations concerning digital wallets are stipulated under Bank Indonesia Regulation Number 18/40/PBI/2016 concerning Payment Transaction Processing Operations, Bank Indonesia Regulation Number 20/6/PBI/2018 concerning Electronic Money, Bank Indonesia Regulation Number 19/12/PBI/2016 concerning Financial Technology Operations, and Financial Service Authority Regulation Number 13/POJK.02/2018 concerning Digital Financial Innovation in the Financial Sector.

Based on the Bank Indonesia regulation, a digital wallet is defined as:

“An electronic service for storing data on payment instruments, including payment instruments using cards and/or electronic money, which can also accommodate funds, to make payments.”⁴⁰

Bank Indonesia Regulation Number 18/40/PBI/2016 concerning Payment Transaction Processing Operations governs the operator in a payment transaction, licensing, payment transaction processing organization, digital wallets, consumer protection, report, supervision, prohibition, and administrative sanction.

Bank Indonesia also provide differentiation between electronic money and digital wallet. Electronic money is defined as a non-cash payment instrument issued on the basis of the value of money that is deposited in advance to the issuer and then stored electronically in a media server or chip. Whereas, a digital wallet or electronic wallet is defined as an electronic service to store data on payment instruments such as debit cards, credit cards, and electronic money for making payments and is not a non-cash payment instrument.⁴¹ Digital wallets also can store a fund for payment purposes.⁴²

Bank Indonesia Regulation Number 20/6/PBI/2018 concerning Electronic Money primarily regulates electronic money licensing, approvals, requirements, procedures, policies, and other aspects. Even though regulation is similar to digital wallets, a specific regulation is required since digital wallets and electronic money is different.

Bank Indonesia Regulation Number 19/12/PBI/2017 concerning Financial Technology Operations is the first fintech regulation enacted by Bank Indonesia. This regulation governs the licensing of fintech businesses, regulatory sandbox, administrative sanctions, and prohibition of used virtual currency.⁴³

⁴⁰ Article 1 (7) Bank Indonesia Regulation Number 18/40/PBI/2016 concerning Payment Transaction Processing Operations.

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ Virtual Currency means digital money issued by parties other than the monetary authority which obtained by mining, purchasing, or reward.

Besides that, Financial Service Authority also enacted Financial Service Authority Regulation Number 13/POJK.02/2018 concerning Digital Financial Innovation in the Financial Sector. The Financial Service Authority Regulation governs the various types of fintech in the form of registration method, legal entity form, implementation records, sandbox regulation, registration of digital financial innovation organizers, monitoring, reporting, governance, data protection and confidentiality, and consumer education and protection. This regulation regulates the governance and administration of fintech; however, the legal protection aspect for fintech consumers is still inadequate.

Our research indicated that Indonesia does not have a law (act) governing digital wallets. The Digital Wallet is only regulated under Bank Indonesia and Financial Service Authority Regulations. This regulation can be said only regulates technical matters about the digital wallet.⁴⁴ These regulations only provided an administrative sanction and did not provide a criminal sanction to the perpetrators who violate the regulations. The law enforcement and legal protection cannot be applied optimally because the sanctions are only administrative.⁴⁵ Bank Indonesia and Financial Authority Regulations overlap each other, making them difficult to interpret and apply in practice.

The regulation at the law or act level concerning digital wallet is needed. The regulation is expected to provide legal protection to the digital wallet users and promote the development of digital wallets industry in Indonesia.

The Position of Bank Indonesia and Financial Service Authority Regulations

Indonesia adopted civil law system, which means the specific laws are methodically codified (gathered) and then interpreted by the law enforcement in their application.⁴⁶ Indonesia recognizes the hierarchy of law consisting of the highest law, the 1945 Constitution of the Republic of Indonesia, the Decree of People's Consultative Assembly, Law (Act) or Government Regulations in Lieu of Law (Perppu), Government Regulations, President Regulations, and Local Government Regulations.⁴⁷ To make a clear understanding, refers to the pyramid below.

Chart 2

Hierarchy of Law in Indonesia⁴⁸

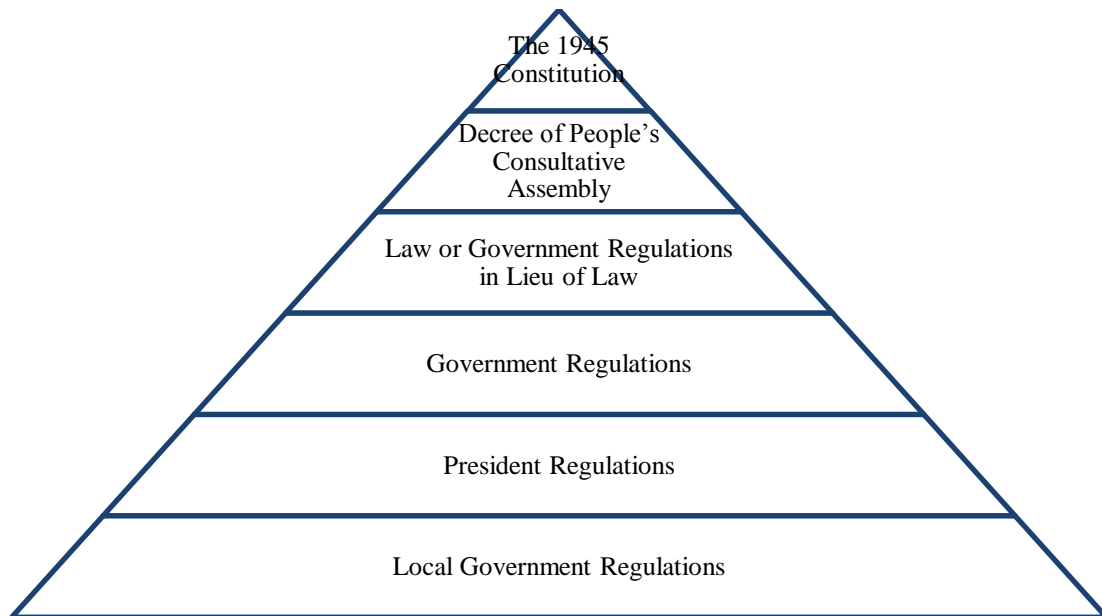
⁴⁴ Yuking, A.S., *Loc. Cit.*

⁴⁵ Didik Irwansah et. al. (2021). Urgensi Pembentukan Undang-Undang Fintech Di Indonesia: Harapan Dan Relita Di Era Pandemic Covid-19. SASI, 27 (4). 532-548. Doi: 10.47268/sasi.v27i4.581, p. 540-541

⁴⁶ Nurhardianto, Fajar. (2015). Sistem Hukum dan Posisi Induonesia. Jurnal TAPis, 11 (1). 35-45. Doi: 10.24042/tps.v11i1.840, p. 42-43.

⁴⁷ Article 7 of Law Number 12 of 2011 concerning the Establishment of Legislation.

⁴⁸ *Ibid.*



None of them (“the chart 2”) regulates specifically the digital wallet. Indonesia did not have a law or act about digital wallets. The digital wallet is only explicitly mentioned in the Indonesian Central Bank (Bank Indonesia) Regulation and Financial Service Authority Regulations.

Both Bank Indonesia and Financial Service Authority are independent institutions, which means they are outside executive, legislative, and judicative. The independence of this institution has a logical juridical consequence in that Bank Indonesia has the authority to regulate the implementation of the law (act).⁴⁹ As an independent institution, Financial Service Authority also has the authority to enact specific finance regulations.⁵⁰

Based on the scholars, the ministerial-level officials, such as the Governor of Bank Indonesia, the Chief of Indonesia Police, and the Indonesian Army Leader, have the authority to enact specific regulations.⁵¹ The form of regulations enacted by Independent Institutions cannot be categorized as general regulations which obey the hierarchy of laws principle as stated above (“the chart 2”).⁵²

For example, the Governor of Bank Indonesia has the same level as a ministry; however, the Governor of Bank Indonesia enacted regulations that have the same level as government regulations.⁵³ The hierarchy of regulations enacted by

⁴⁹ Explanation Article of Bank Indonesia Law (Law Number 23 of 1999 concerning Bank Indonesia).

⁵⁰ The Independency of the Financial Service Authority can be found in the Financial Service Authority Law (Law Number 21 of 2011 concerning Financial Service Authority).

⁵¹ Asshiddiqie, Jimly. (2006). *Perihal Undang-Undang*. Jakarta: Konstitusi Press, p. 210-211

⁵² Ni'matul Huda and R. Nazriyah, “*Teori & Pengujian Peraturan Perundang-Undangan*”, Nusa Media, Bandung, 2011, 89-91.

⁵³ *Ibid.*

Independent Institutions can be seen as specific regulations (*lex specialis*).⁵⁴ These regulations applied the principle of *lex specialis derogate legi generali*.⁵⁵

Bank Indonesia and Financial Service Authority, as independent institutions, have the authority to enact some specific regulations; however, the regulations are not strong enough as law (act). The level of its regulations can be said to be the same as government regulations.

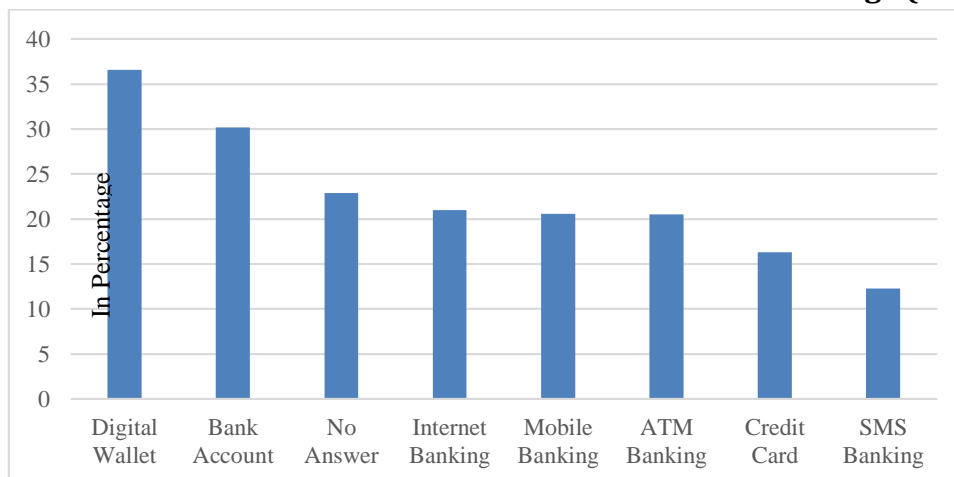
Data Protection Concerns

As the financial services industry grows rapidly reliant upon electronic data, legal systems, and emerging fintech so that the sector becomes increasingly concerned with security and resilience.⁵⁶ The use of information and technology is the core business of fintech, including digital wallets.

The society, as digital wallet consumers, needs to get protection for the confidentiality of consumer information. Consumer data, especially related to personal information, is very vulnerable to being misused by irresponsible parties. Based on the research from Katadata Insight Center (KIC) and the Ministry of Communication and Informatics indicated that the majority of the public considers that the digital wallet is the most vulnerable financial product to personal data leakage with a percentage reaching 36.6%.⁵⁷ To make a clear explanation please refers to the chart below.

Chart 3

Financial Institutions or Product Vulnerable to Data Leakage (2021)⁵⁸



⁵⁴ *Ibid.*

⁵⁵ *Lex Specialis Derogat Legi Generali* means the special law derogates from the general law.

⁵⁶ “Fintech: Cybersecurity Risk Management for Financial Institutions and Technology Vendors | White & Case LLP,” accessed May 29, 2022, <https://www.whitecase.com/publications/article/fintech-cybersecurity-risk-management-financial-institutions-and-technology>.

⁵⁷ “E-Wallet, Produk Keuangan Yang Paling Rentan Kebocoran Data | Databoks,” accessed May 29, 2022, <https://databoks.katadata.co.id/datapublish/2021/12/09/e-wallet-produk-keuangan-yang-paling-rentan-kebocoran-data>.

⁵⁸ *Ibid.*

The numbers of threats and theft of consumers' data are beyond the company's negligence, which can result in poor data privacy protection systems implemented by business actors in the digital wallets industry.⁵⁹ Threats also can be carried out by the actors or workers at fintech companies who have the intention to take the users' personal data for their benefit.

Currently, Indonesia does not have a comprehensive law regarding the protection of personal data. Personal data protection is still scattered at various levels of laws and regulations. It is separated depending on each sector. Below are the lists of laws and regulations relating to personal data protection in Indonesia.

Table 1
Regulations Concerning Personal Data Protection⁶⁰

No	Product of Law	Number of Articles (which regulate Personal Data Protection)
1.	Bill of Personal Data Protection* (not yet approved)	48 Articles
2.	Minister of Communication and Information Regulation Number 20 of 2016 concerning Protection of Personal Data in Electronic System	37 Articles
3.	Government Regulation Number 37 of 2007 concerning the Implementation of Law Number 23 of 2006 concerning Population Administration	13 Articles
4.	Law Number 23 of 2006 concerning Civil Administrations	8 Articles
5.	Government Regulations Number 82 of 2012 concerning the Implementation of Electronic Systems and Transactions	6 Articles
6.	Government Regulation Number 83 of 2012 concerning Amendment of Government Regulation Number 5 of 2009 concerning Financial Aid to Political Parties	6 Articles
7.	Law Number 24 of 2013 concerning Revision of Civil Administrations	4 Articles

⁵⁹ Didik Irwansah et. al., *Op. Cit.*, 543-544.

⁶⁰ "Ini Berbagai Peraturan Perlindungan Data Pribadi Di Indonesia - KlikLegal," accessed May 29, 2022, <https://kliklegal.com/ini-berbagai-peraturan-perlindungan-data-pribadi-di-indonesia/>.

8.	Minister of Communication and Information Regulation Number 11 of 2016 concerning the Classification of Electronic Interactive Games	3 Articles
9.	Law Number 19 of 2016 concerning Amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions	3 Articles
10.	Law Number 11 of 2008 concerning Information and Electronic Transactions	2 Articles
11.	Law Number 43 of 2009 concerning Record Management	2 Articles
12.	Law Number 56 of 1999 concerning Trained Citizen	2 Article
13.	Minister of Communication and Information Regulation Number 4 of 2016 concerning Information Security Management System	1 Article
14.	Minister of Communication and Information Regulation Number 36 of 2014 concerning Procedure for Registration of Electronic System Operators	1 Article
15.	Minister of Communication and Information Regulation Number 11 of 2010 concerning Provision of Internet Protocol Television Services	1 Article
16.	Law Number 36 of 2009 concerning Health	1 Article
17.	Law Number 11 of 2012 concerning Juvenile Criminal Justice Systems	1 Article
18.	Law Number 3 of 1997 concerning Juvenile Court	1 Article
19.	Law Number 10 of 2011 concerning Amendment of Law Number 32 of 2007 concerning Commodity Futures Trading	1 Article
20.	Law Number 32 of 2007 concerning Commodity Futures Trading	1 Article

Although, there has been Minister of Communication and Information Regulation Number 20 of 2016 concerning Protection of Personal Data in Electronic

Systems to provide data protection for the fintech industry, including the digital wallet industry, but the legal product is not strong enough.⁶¹ Therefore, comprehensive personal data protection is needed as legal protection for the digital wallet industry.

The Regulation about Digital Wallet which can be Adopted by Indonesia from South Korea Regulations

Korea has widespread and growing digital wallets across the nation. The government supports the Korean digital wallet industry through several regulations and policies. This part will be examined digital wallets in Korea and the lesson which can get to Indonesia.

Overview of Korean Regulation about Digital Wallets

Korean regulation about the digital wallet is stipulated in Electronic Financial Transaction Act ("EFTA"). The EFTA was firstly introduced on Apr. 28, 2006 (Act No. 7929), this Act has been amended several times, and the last amendment was on Jun. 9, 2020 (Act No. 17354). The purpose of this article is to ensure the safety and reliability of electronic financial transactions. This Act has 7 (seven) chapters and 51 (fifty-one) articles. There are several key points in this Act that will be examined below.

Chapter I concerns the general provisions. The EFTA provides a clear definition of an electronic financial transaction and electronic payment transaction. Based on EFTA, an electronic financial transaction is defined as:

"any transaction whereby a financial company or an electronic financial business entity provides financial products and services through electronic apparatus (hereinafter referred to as "electronic financial business") and users use them in a non-facing and automated manner without any direct contact with employees of the financial company or electronic financial business entity"⁶²

Then, EFTA is defined of an electronic payment transaction as:

"any electronic financial transaction whereby a person providing a payment (hereinafter referred to as "payer") requires a financial company or an electronic financial business entity to transfer money to another person receiving the payment (hereinafter referred to as "payee") by electronic payment means"⁶³

EFTA also defines the term of electronic infringement, which means "any attack on electronic financial infrastructure by means of hacking, computer virus, logic bomb, mail bomb, denial of service, high-powered electromagnetic wave, etc."

Chapter II concerns the rights and duties of parties to electronic financial transactions. This chapter explicitly mentions the liability of financial companies or

⁶¹ A.S. Yuking, *Op. Cit.*, 6

⁶² Article 2(1) of the Electronic Financial Transaction Act.

⁶³ Article 2(2) of the Electronic Financial Transaction Act.

electronic financial business entities. The financial company or electronic financial business entity shall be liable when the user suffers any loss due to:⁶⁴

- 1) An incident caused by the forgery or alteration of the means of access;
- 2) An incident caused in the course of electronically transmitting or processing the conclusion of a contract or a transaction request;
- 3) An incident caused by the use of a means of access acquired by fraudulent or other illegal means by invading electronic apparatus for electronic financial transactions or an information and communication network.

Chapter III relates to the ensuring safety of electronic financial transactions and protections of users. Financial companies shall ensure safety in handling electronic transactions.⁶⁵ To ensure safety and reliability, a financial company shall comply with the standards determined by the Financial Service Commission (“FSC”) such as human resources, facilities, electronic apparatus, and expenses for conducting electronic processes.⁶⁶

This chapter also provides a prohibition against electronic infringement. There are several acts which prohibited such as:⁶⁷

- 1) For anyone without access authority to access electronic financial infrastructure, or for anyone with access authority to fabricate, destroy, conceal or leak the stored data beyond his or her authority;
- 2) Installing programs, such as computer virus, logic bomb, or mail bomb, for the purpose of destroying data of electronic financial infrastructure or obstructing the operation of electronic financial infrastructure;
- 3) Causing errors or hindrance to electronic financial infrastructure by methods, such as sending mass signal, high-powered electromagnetic wave or data simultaneously or having fraudulent commands be processed, for the purpose of obstructing the stable operation of electronic financial infrastructure.

Article 26 of the Electronic Financial Transaction Act, prohibits anyone who recognizes the existence of any following matters relating to electronic financial transactions from providing or disclosing such information to the third party or using it for any purposes other than their duties without the consent of the user.⁶⁸

The settlement and mediation of disputes are also provided in chapter III. Article 27(2) provides a dispute settlement, such as compensation for losses, for mediation dispute with Financial Supervisory Service, the Korea Consumer Agency, etc.⁶⁹

⁶⁴ Article 9(1) of the Electronic Financial Transaction Act.

⁶⁵ Article 21(1) of the Electronic Financial Transaction Act.

⁶⁶ Article 21(2) of the Electronic Financial Transaction Act.

⁶⁷ Article 21-4 of the Electronic Financial Transaction Act.

⁶⁸ Article 26 of the Electronic Financial Transaction Act.

⁶⁹ Article 27(2) of the Electronic Financial Transaction Act.

The Electronic Financial Transaction Act provides permission, registration, and function of electronic financial under chapter IV. The person who intends to engage in a business issuing or managing electronic shall obtain permission from Financial Service Commission (“FSC”).⁷⁰ This chapter also mentioned about anyone who intends to obtain permission shall be a stock company⁷¹ with a capital of at least 5 (five) billion won.⁷²

Chapter V of the Electronic Financial Transaction Act regulates about supervision of electronic financial business. The financial companies or electronic financial entities are supervised by the Financial Supervisory Service (“FSS”).⁷³ Under the Article 41, the Bank of Korea may request the Financial Supervisory Service to inspect the electronic currency issuer and the financial company and electronic financial business entity, in case, when the Monetary Policy Committee deems it necessary for implementing monetary credit policies.⁷⁴

The financial company or electronic financial business’ permission or registration may be revoked by the Financial Service Commission (“FSC”) if it meets the certain requirement under Article 43 of the Electronic Financial Transaction Act.

The last chapter, chapter VII, regulates penalty provisions. The Electronic Financial Transaction Act prescribes administrative sanctions (e.g., administrative fines) and criminal penalties (e.g., fines and imprisonment).

The Future Digital Wallets Regulation in Indonesia

The regulation at the law or act level regarding digital wallets is needed. The policy for the formulation of law about digital wallets should at least contain legal protection for the digital wallet user and sanction for the perpetrator. We hope that the law regarding digital wallets can strengthen the consumers’ protection and promote the digital wallets industry. Several elements must be governed under the law regarding digital wallets, which we get from our study based on Korean regulation of the Electronic Financial Transaction Act.

The first element is the general provisions. The regulation shall mention a clear definition of digital wallets, the legality of digital wallets, the type of scoop of digital wallets, and legal business in Indonesia.⁷⁵

The second element is consumer protection. The regulation must be provided consumer protection to digital wallet users. In this part, the safety of electronic

⁷⁰ Article 28(1) of the Electronic Financial Transaction Act.

⁷¹ Stock Company means the shareholders of the corporation have limited liabilities, only liable to their capital investment. A stock company shall have a general meeting shareholders’, directors and the board of directors, and auditor.

⁷² Article 30(1) of the Electronic Financial Transaction Act.

⁷³ Article 39(1) of the Electronic Financial Transaction Act.

⁷⁴ Article 41(2) of the Electronic Financial Transaction Act.

⁷⁵ Didik Irawansah et. al. *Op. Cit.*, 545.

financial transactions and data privacy must be guaranteed. This regulation must be able to protect the users from cybercrimes and unauthorized parties.

The third element is registration and license. This part should explicitly mention the registration requirement and process to the company which wants to get permission in order to conduct the digital wallet business. The regulation also must mention the authorized party or parties which can issue and revoke the business permits. Bank Indonesia is authorized to issue and revoke the permits for digital wallets.⁷⁶

The fourth element is supervision. The regulation is supposed to give a mandate to the specific institution(s) to conduct supervision of fintech business. Bank Indonesia and the Financial Service Authority are the institutions that have an interest in financial sectors. This regulation must provide a clear division of roles and authorities to the two institutions to avoid overlapping and ensure intensive coordination among the institutions.⁷⁷ In addition, the role of the Ministry of Finance must be regulated here, because the Ministry of Finance has fiscal authority and represent the government.⁷⁸

The fifth element is obligations and prohibitions. This section should regulate the digital wallet service providers about the obligations and prohibitions, in a simple way, something that should and should not be done.⁷⁹

The sixth element is the penalty provision. The regulation should govern the sections given to anyone who violates or unable to carry out their obligations. This section shall provide a criminal penalty (e.g., fines, imprisonment) and administrative sanctions (e.g., administrative fines, special orders). This part is supposed to provide sanctions given to anyone who carries out the digital wallet business in illegal ways or without the permits.

Our research indicated that the digital wallet regulation in Indonesia should contain six important elements. The elements are general provisions, consumer protection, registration and license, supervision, obligations and prohibitions, and penalty provisions.

D. Conclusion

Based on our research and discussion, we can conclude that digital wallets in Indonesia have been regulated under Bank Indonesia and Financial Service

⁷⁶ Based on Bank Indonesia Regulation Number 20/6/PBI/2018 concerning Electronic Money, and Bank Indonesia Regulation Number 19/12/PBI/2016 concerning Financial Technology Operations.

⁷⁷ J . Ehrentraud et.al. (2020) Policy Response to Fintech: A Cross-Country Overview. Bank For International Settlement. Financial Stability Institute Insight on Policy Implementation. No 23. Available: <https://www.bis.org/fsi/publ/insights23.htm>, p. 23

⁷⁸ Batunanggar, S., (2019) Fintech Development and Regulatory Frameworks in Indonesia. Asian Development Bank Working Paper Series No 1014. Available: <https://www.adb.org/publications/fintech-development-regulatory-frameworks-indonesia>, p. 1-12

⁷⁹ Didik Irawansah et. al., *Loc. Cit.*

Authority regulations. The regulations issued by Bank Indonesia and Financial Service Authority have not been able to provide maximum legal protection for the implementation of the digital wallet industry. These regulations are not strong enough because the position of Bank Indonesia and Financial Service Authority regulations are below the law (act) or the same as government regulations. So, it is necessary to establish the regulation at the law or act level which regulate digital wallets in Indonesia.

The research indicated that Korea specifically regulates digital wallets under the Electronic Financial Transaction Act (“EFTA”). There are several elements that we can take from the EFTA. The digital wallet regulation in Indonesia must contain several elements, such as general provisions, consumer protection, registration and license, supervision, obligations and prohibitions, and penalty provisions. We believe that the new law can provide legal protection and bring new hope to the Indonesian digital wallets industry..

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