CHAPTER II

LITERATURE REVIEW

A. General Review on Bank

Bank is the important and main element in the financial system of a country. Bank is a financial institution which become a place for individual, private enterprises, and state-owned enterprises, even the government institution to save their owned funds. Through the activity and many services that given, bank serves the financing and smoothens the mechanism of payment system for all sectors of economy.[8]

In Black's Law Dictionary, the bank definition is formulated as an institution, whose business is to receive money on deposit, cash, checks or drafts, discount commercial paper, make loans, and issue promissory notes payable to bearer known as bank notes. Not far from the above definition formulation, according to the *Kamus Besar Bahasa Indonesia*, bank is a business in the field of financial which collect and issue the money in society, especially gives credit and services in the payment traffic and money circulation. To put it in a simple way, bank is financial institution that has main activity of collecting fund from the society and channeling the fund back to the society and also give other bank services.[9]

[8] Hermansyah, 2013, *Hukum Perbankan Indonesia*, Jakarta, Kencana Prenada Media Group, p.7.
[9] Sentosa Sembiring, 2008, *Hukum Perbankan*, Bandung, Mandar Maju, p.3.

In Indonesia, the regulation related to the bank was regulated in Law Number 7 of 1992 as amended by Law Number 10 of 1998 on Banking. In Article 1 Point 1 of Law Number 7 of 1992 on Banking, it is formulated that Bank is an enterprise that collects money from the society in the form of savings, and channels it to the society in order to increase the standard of living.

While in Article 1 Point 2 of Law Number 10 of 1998 on Amendment of Law Number 7 of 1992 on Banking formulate the definition of bank as an enterprise that collects the fund from the society in the form of savings and channels to the society in the form of credit and/or other forms in order to increase the standard of living of the society.

From the above description, it can be explained that bank is company that run in the field of finance; it means that the banking business is always related to the problem of finance. So, it can be concluded that the banking business covers the three main activities, they are:

1. collecting fund;
2. channeling fund; and
3. giving other bank services.

Based on the Article 1 Point 1 of Law Number 10 of 1998 on the amendment of Law Number 7 of 1992 on Banking, it can also be formulated that the definition of banking is everything related to the bank, covering the institutional, business activity, and the method and process in running its business activity. Based on that definition, it can also be said that the Banking

System is a system that is related to the bank, covering the institutional, business activity, and the method and process of running its business activity overall.

Bank has a very important role to push the economics of a country because bank is a financial institution, money maker, collector of fund and distributor of credit, implementers of traffic of payment, monetary stabilizer, and also dynamist of economic growth.[10] The first element is that bank is a financial institution. It has meaning that bank is a business entity that its wealth is especially in the form of financial assets and is motivated in profit and also social. The second element is bank is creator of money which means that bank creates demand deposit money and distribute real money. The creator and distributor of real money is the single authority of central bank, while the demand deposit money is created by general bank. The third element is bank is collector of money and distributor of credit. It means that bank in the operation collects funds from society and channels it in the form of credit.

Bank as the implementer of payment traffic means that bank becomes the implementer of payment settlement of commercial or financial transaction from the payer to the receiver. The traffic of payment is interpreted as settlement process of commercial and/or financial transaction from the payer to the receiver through medium of bank. This traffic of payment is very important to push the progress of trading and economy globalization, because the payment of transaction is safe, practical and economical.

---

[10] Malayu S.P. Hasibuan, 2001, *Dasar-Dasar Perbankan*, Jakarta, Bumi Aksara, p.3.

Bank as the monetary stabilizer is interpreted that the bank has an obligation to follow in stabilizing the exchange value of *rupiah*, exchange rate, or the goods' price is relatively stable or constant, either directly or through mechanism of Rupiah and Foreign Currency Statutory Reserve Requirement of bank, open market operation or discount policy. While bank as the dynamist of economy means that the bank is the center of economy, source of fund, implementer of payment traffic, produce savings, and push the progress of national and international trading. Without the role of a bank, it is impossible to have economy globalization.

B. General Review on Bank Indonesia

1. Definition of Bank Indonesia

The establishment of Bank Indonesia is mandated by the provision in Article 23D of 1945 Constitution which said that the state shall have a central bank, the structure, composition, authorities, responsibilities and independence of which shall be regulated by law. Regulation on Bank Indonesia was regulated in Law Number 23 of 1999 as amended by Law Number 3 of 2004 and amended again by the Government Regulation in Lieu of Law Number 2 of 2008 which has been enacted to be the Law. Based on Article 4 paragraph 1 of Law Number 3 of 2004 on Bank Indonesia *juncto* Law Number 6 of 2009 on The Stipulation of Government Regulation in Lieu of Law Number 2 of 2008, it is mentioned that Bank Indonesia is the Central Bank of Republic of Indonesia.

Based on the explanation of Article 4 paragraph 1, central bank is state institute that has the authority to issue the valid payment tools of a country, to formulate and implement the monetary policy, to regulate and maintain the continuity of payment system, to regulate and supervise the bank, and also to run the function as the lender of the last resort. Central bank has aim to reach and maintain the stability of *rupiah* and not doing the intermediation activity like the bank in general. In order to support its duties, the central bank is able to conduct the banking activity that considered as needed. In Indonesia, there is only one of central bank which suits the Article 23D of 1945 Constitution which said that state has one central bank that the structure, position, authority, responsibility, and its independent are regulated with the Law.

Through the development of role as described above, central bank is no longer identical with the commercial bank or other financial institutions. Central Bank is built as a regulator and a policy maker to reach a certain social economic objective related to the national interest.

2. Goals and Duty of Bank Indonesia

The Objectives of Bank Indonesia are mentioned in Article 7 paragraph 1 and 2 of Law Number 3 of 2004 on Bank Indonesia, they are:

a. The Objective of Bank Indonesia is to reach and to maintain the stability of *rupiah*.

b. In order to reach the objective as mentioned in paragraph (1), Bank Indonesia conduct the monetary policy continually, consistently, transparently and has to consider the general policy of government in the field of economy.

The stability of *rupiah's* value is the stability of *rupiah* toward the goods and service, as well as towards the other country's currency. The stability of *rupiah* towards the goods and services is measured by or reflected from the development of inflation acceleration. The stability towards the other country's currency is measured by or reflected from the development of the exchange value of *rupiah* to the other country's currency. The stability of *rupiah's* value is very important to support the economic development continually and to improve the people welfare. In order to reach that objective, Bank Indonesia need to direct its policy to balance the internal economic condition, especially the balance between the demand and offer aggregation, with the condition of external economy that is reflected in the process of payment.

The realization of the internal balance is the maintained inflation in the low level, while from the external side is the maintained exchange value of *rupiah* in the strong enough and stable level of development. So, Bank Indonesia has to consider and conduct coordination with the government so that the policy taken is inline and supports each other with the other fiscal and economic policies.[11] This single objective formulation is aimed to make clear the target that has to be achieved by Bank Indonesia and also the border of the responsibilities. So, whether the objective of Bank Indonesia is achieved or not can be measured easily.

In order to reach the above objectives, Article 8 of Law Number 23 of 1999 on Bank Indonesia *juncto* Law Number 6 of 2009 stated the 3 duties of Bank Indonesia, they are:

a. Determine and implement the monetary policy;
b. Regulate and maintain the fluency of payment system;
c. Regulate and supervise the bank.

In the explanation of the Law Number 23 of 1999 *juncto* Law Number 6 of 2009, the implementation of the duties as meant by the Article 8 has interconnection in the achieving the *rupiah's* value stability. The duty for determining and implementing the monetary policy done by Bank Indonesia such as through the controlling of the number of the circulated money and the rate of interest. The effectivity of the execution of this duty need the support from efficient, fast, safe, and reliably payment system which become the target of the execution of the duty of regulating and maintaining the fluency of the payment system. The efficient, fast, safe and reliably payment system need a healthy banking system, which become the target of the regulating and supervising the Bank. Furthermore, the banking system

[11] Neni Sri Imaniyati, 2010, *Pengantar Hukum Perbankan Indonesia*, Bandung, Refika Aditama, p.70.

will support the monetary control considering the important implementation of the monetary done through the banking system. So, the implementation of those three above duties has relationship and because of that it must be done by supporting each other in order to reach Bank Indonesia's objectives effectively and efficiently.

C. General Review on E-Money

Firstly, E-money is commonly known as the stored value card that is a card that has function to save value that has been deposited. The function is most similar with debit card, but the stored value card did not save the identity of the user or the holder of the card (anonymous). The number of value saved in the stored value card named as electronic money or e-money. The electronic money was regulated in the Bank Indonesia Regulation Number 11/12/PBI/2009 on the Electronic Money. Electronic Money is a means of payment that fulfilled the elements as follow:[12]

1. Issued based on the money that is deposited firstly by the holder to the issuer;
2. Money value is saved in electronically in a medium such like server or chips;
3. Used as the means of payment to the traders which is not the issuer of that such electronic money;

[12] Article 1 point 3 of Bank Indonesia Regulation Number 11/12/PBI/2009 on the Electronic Money

4. The value of electronic money deposited by the holder and managed by the issuer is not a savings as meant in laws that regulate on banking.

If we look to the medium that are used, there are two types of electronic money products, they are[13]:

1. Prepaid Card, with the characteristics:
   a. The value of money was converted into the electronic value and saved in a chip (integrated circuit) that is planted in the card;
   b. The mechanism of the transfer of the value is done by entering the card into a card reader;
2. Prepaid Software (also called as digital cash), with the characteristics:
   a. The value of money is converted into electronic value and is saved in a hard disk of computer that is found in the Personal Computer (PC);
   b. The mechanism of the transfer of the value is done online by a communication network such as internet, at the moment of paying.

The issuer can issue the type of electronic money that obliged the registration of the identity of the holder (registered) and the type which does not

---

[13] Siti Hidayati *et al*, 2006, "Operasional E-Money", Jakarta, Bank Indonesia, https://www.bi.go.id/id/publikasi/sistem-pembayaran/riset/Documents/4a79ad4a8dbe4ebca2c0f86a5a2f1c69KajianEMoney.pdf, accessed on March 5th, 2018 at 13.45, pp. 6-8.

need the registration of the identity of the holder (unregistered). The record of the identity of the holder at least contains the name, address, birthdate, and other data found in the identity book of the holder. The acquiring of the data of the holder's identity is done by preparing the medium or application form that has to be fulfilled by the holder applicant followed by the copy of the holder's identity. The need of the data fulfillment is addressed to the holder who proposed as the holder for the first time and the issuer does not have the complete, true, and accurate data regarding to the holder's identity.

There are many benefits for the using of e-money compared to the cash money or other non-cash payment means, such as:

1. Faster and more comfortable than the cash money, especially for the transaction in the small amount (micro payment), because the customer does not need to provide fixed amount of money for a transaction or has to save the change money. Besides that, the fail in the change money counting does not happen if using the e-money.
2. The time that is needed to settle a transaction with e-money can be done in short compared to transaction with a credit or debit card.
3. Electronic value can be refilled in the e-money card by many facilities that has been provided by the issuer.

In the Article 1 point 2 of Law Number 19 of 2016 on amendment of Law Number 11 of 2008 on Information and Electronic Transaction, it defined that the electronic transaction is legal action which is done by using computer,

computer network, and/or other electronic mediums. Based on the definition of transaction electronic, the transaction which is done by using e-money is also considered as the electronic transaction.

D. General Review on Financial Services Authority

Financial Service Authority is new institution which is established based on the Law Number 21 of 2011. This institution was established to conduct the supervision on the financial service industries in an integrated manner.[14] The law on the Financial Service Authority was established based on the Article 34 of Law Number 3 of 2004 on Amendment of Law Number 23 of 1999 on the Bank Indonesia *juncto* Law Number 6 of 2009 on The Stipulation of Government Regulation in Lieu of Law Number 2 of 2008 on the Second Amendment of Law Number 23 of 1999 on Bank Indonesia which said that:

1. The task of supervision on the bank will be done by the supervision institution in the sector of financial service which is independent and is established by the law.
2. The establishment of the supervision institution as meant in the paragraph (1) will be implemented at least on 31 December 2010.

Article 1 point 1 of Law Number 21 of 2011 on the Financial Service Authority defines that Financial Service Authority hereinafter shall be abbreviated to OJK, which shall be the independent agency of which is free

---

[14] Hermansyah, *Op.Cit.,* p.221.

from the intervention from whatsoever party, which has function, assignment, and control authority, supervision, investigation as set forth herein.

Khatibul Umam explained that the vision of FSA is to become the trusted financial service industries supervisory institution, protect the interest of consumer and society and also to be able to create the financial service industries which become the national economic pillar which has global competitiveness and is also able to improve the general welfare.[15] The objectives of FSA are:[16]

1. Create the implementation of all activities in the financial service regularly, justly, and accountably;
2. Create financial system which grow continually and stable;
3. Protect the interest of consumer and society.

With these objectives, FSA was expected to support the interest of national service sector, so it will increase the national competition capacity. Besides that, FSA has to be able to keep the national interest, such as the human resources, management, control, and ownership in the financial service by considering the positive aspect of globalization.[17]

Financial Service Authority has function to implement the regulation and supervision system in the sector of financial service. The duties of FSA are

[15] Neni Sri Imaniyati, *Op.Cit.*, p. 194
[16] Article 4 of Law Number 21 of 2011 on Financial Service Authority
[17] Neni Sri Imaniyati, *Loc Cit.*

appropriate with the Article 6 of Law on the Financial Service Authority, namely conducting the task of regulating and supervising against:

1. Activities of financial service in the banking sector;
2. Activities of financial service in the capital market sector;
3. Activities of financial service in the sector of insurance, pension fund, financing institution and other financial services.

In order to conduct the duties of regulating and supervising the activities of financial service in the banking sector, FSA have authorities in:

1. Regulating and supervising the banking institution including:
   a. Permission for the establishment of the bank, opening of bank office, statutes, working plan, ownership, management and human resources, merger, consolidation, and acquisition of bank, and also the revocation of bank business license.
   b. Bank business activity such as fund source, fund supplying, hybridization products, and activities in the service field.
2. Regulating and supervising on the health of bank that covers:
   a. Liquidity, profitability, solvency, asset quality, minimum capital adequacy ratio, maximum credit limit, loan to deposit ratio, and bank reserves.
   b. Bank report regarding to the health and the performance of bank.
   c. Information system of debtor.
   d. Credit testing.

e. Banking accounting standards.

3. Regulating and supervising regarding to the aspect of carefulness of bank including:
   a. Risk management;
   b. Bank governance;
   c. Principle of knowing the customer and anti-money laundering;
   d. Prevention on the terrorism funding and bank crime.
4. Bank checks

In order to run the duties and authorities of FSA, FSA needs to consider the following principle:[18]

1. Independency Principle, which means independence in the taking of decision and implementation of the functions, duties, and authorities, appropriate with the prevailing legislation;
2. Certainty of law, that is principle in the rule of law country which place the law and the provision of legislation as well as the justice in every policy of Financial Service Authority;
3. General Interest Principle, that is principle which defend and protect the consumer and society interest and also increase the general welfare;
4. Openness Principle, that is principle which exposes to the society rights for acquiring the right information, honest, and not

[18] General Part of Explanation of Law Number 21 of 2011 on Financial Service Authority.

discriminative to the implementation of Financial Service Authority, with considering the protection on the private and organization rights, and also state secret, including the secret as regulated in the law.

5. Professionality principle, that is principle which prioritizes the skill in the execution of the duties and authorities of financial service authority by keeping grounded to the code of ethics and the provision of the legislation.
6. Integrity principle, that is principle which holds on firmly to the moral values in every action and decision that is taken in the implementation of financial service authority.
7. Accountability principle, that is principle which determines that every activity and final result of the activities of the implementation of Financial Service Authority has to be accountable to the public.