

CHAPTER IV

FINDING AND ANALYSIS

A. The Review on Electronic Money (E-Money)

1. Regulation on Electronic Money (E-Money)

Electronic money is defined by Stephen J. Kobrin as units or tokens of monetary value that take digital form and are transmitted over electronic networks. Digital value Units are the basic units of denomination of electronic money; they may or may not correspond to units of national currency.²⁸ Then e-money is defined as referring to a variety of retail payment mechanisms which are operated through electronic devices.²⁹ The electronic value is acquired using conventional money and is loaded onto electronic device.

While electronic money is defined by Soefianto as payment tool that has following characteristics: issued based on the value of money that is deposited firstly, the value of money saved electronically in a medium like server or chip, used as the payment tool to the merchant which is not the issuer of the electronic money, an also the electronic money that deposited by the holder and managed by the issuer are not a deposit which is meant by

²⁸ Stephen J. Kobrin, "Electronic Cash and the End of National Markets", *Foreign Policy*, No. 107 (Summer, 1997), DOI: 10.2307/1149333, <http://www.jstor.org/stable/1149333>, accessed on March 5, 2018 at 11.12, p. 70

²⁹ Maphuti D. Tuba "The Technology-Neutral Approach and Electronic Money Regulation in the EU: Identifying the Promises and Challenges for Future Regulation in South Africa." *The Comparative and International Law Journal of Southern Africa*", Volume 47 Number 3, (2014), pp. 372–400. *JSTOR*, www.jstor.org/stable/43894815, accessed on March 5, 2018 at 12.05.

the law that regulate on the banking.³⁰ The development of electronic money which categorized as a new product in Indonesia is supported by Bank Indonesia to achieve the Indonesian society as cashless society where the economic activities are done by society without using cash money but in the form of card or done electronically in the future.

The e-money was also included in the payment tool using card. The e-money issue was regulated in the Bank Indonesia Regulation Number 11/12/PBI/2009 amended by Bank Indonesia Regulation Number 16/8/PBI 2014 on Electronic Money. If we look at the media that used, there are two types of e-money, they are:

1. Prepaid card/electronic purses with the characteristics:
 - a. Value of money is converted into electronic value and is stored in a chip (integrated circuit) which is planted in a card.
 - b. Mechanism of fund transfer is done by putting the card in a card reader.
2. Prepaid software (also known as digital cash) with the characteristics:
 - a. Values of money is converted into electronic value and is stored in a hard disk of computer which is contained in a Personal Computer (PC).

³⁰ Habsari Candraditya and Idris, "Analisis Penggunaan Uang Elektronik (Studi Kasus Pada Mahasiswa Pengguna Produk Flazz BCA di Fakultas Ekonomika dan Bisnis Universitas Diponegoro)", *Diponegoro Journal Of Management*, Volume 2 Number 3 (2013), e-ISSN 2337-3792, <https://ejournal3.undip.ac.id/index.php/djom/article/view/3210/3145>, accessed on March 16, 2018 at 22.12, pp. 1-2.

- b. Mechanism of fund transfer is done online through a communication network such as internet, at the moment of conducting the payment.

Then in the Circulation Letter of Bank Indonesia Number 11/11/DASP dated 13 April 2009 on the Electronic Money (E-Money) we can see the types of the electronics money including their similarities and differences, they are:

Table 1. Similarities and Differences of Electronic Money in the Type of Registered and Unregistered.

| No. | Similarities and Differences | Registered | Unregistered |
|-----|----------------------------------|---|---|
| 1. | Recording of the holder identity | Holder of electronic money card identity data are recorded on the issuer. | Identity data of the electronic money card holder is not recorded on the issuer / does not have to be the customer of issuer. |

| | | | |
|----|--|--|--|
| 2. | Amount of the electronic money that is saved | Maximum limit of the electronic money value that is saved in the medium of chip/server is IDR 5.000.000.000,- (five millions rupiah) | Maximum limit of the electronic money value that is saved in the media chip/server is IDR 1.000.000,- (one million rupiah) |
| 3. | Limit of transaction value | In 1 (one) month for every electronic money totally determined for the maximum amount of transaction for IDR 20.000.000,- (twenty millions rupiah) | In 1 (one) month for every electronic money totally determined for the maximum transaction amount for IDR 20.000.000,- |
| 4. | Transaction type that can be used | Including the payment transaction | Including the payment transaction, fund transfer, and other transaction |

| | | | |
|--|--|--|---|
| | | | facilities that are provided by the issuer. |
|--|--|--|---|

Source: Bank Indonesia Circulation Letter Number 11/11/DASP

dated April 13th, 2009 on Electronic Money

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 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 that 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 attached with 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.

Regarding to the profile of the electronic money, it contains the information of:

1. Brand name that is used;
2. Technical specification which at least contain the information related to the saving media of electronic data and security features;

3. The mechanism of the electronic money management which contains the information regarding to the issuance, top up, redeem, and billing by the merchant.

The electronic money must contain the transparency of products. The issuer has to give the written information to the holder on the issued electronic money. That information is obliged to be delivered with Indonesian Language which is clear and easy to understand, written in the letter and number that are easy to be read by the card holder. That information is appropriate with the Circulation Letter Number 11/11/DASP on the electronic money which contains matters as follows:

1. Information that electronic money is not a saving as it is meant by the law on the banking, so the value of the electronic money is not guaranteed by the Indonesia Deposit Insurance Corporation (IDIC).
2. The procedure and the way order to use the electronic money, facility that is attached to the electronic money such as the top up, value transfer, cash withdrawal, and redeem and also the risk that may rise from the use of electronic money.
3. Rights and Obligation of the Holder include:
 - a. Important things that must be noted by the holder in the use of the electronic money such the validity period of the electronic money media, if exist, and the rights and also the obligations

of the Holder on the expiration of the validity period of the electronic money media.

- b. The rights and the obligations of the Holder if there is something that cause the loss for the Holder and/or Issuer, either caused by the system failure or other causes; and
 - c. Types and the number of cost that is used.
4. Procedures of the submission of complains that are related to the use of electronic money and estimation time for the handling of the complaint.
 5. Procedures and consequences of the use of product including the procedures of returning of all value of electronic money that is left in the electronic money at the time when the Holder ends the use of the electronic money (redeem).

The issuer can determine the validity period of the electronic money media such as by the consideration on the limit of technical age of the electronic money media that are used. By the end of the validity period of the electronic money media, the value of electronic money that is left in that media is not immediately being erased. The holder has the rights of bill on the rest of that electronic money that is saved in that media until the expiration period as regulated in the Civil Code, as long as the rest of money is exist in the electronic money, and this can be done in many ways such as transferring the rest of value on the new media. The fulfillment of the right

of bill can be reduced by the administration fee that is imposed by the issuer to the holder of the electronic money.

2. E-Money Transaction Process

Appropriate with the Bank Indonesia Regulation Number 11/12/PBI/2009 on the electronic money as amended by the Bank Indonesia Regulation Number 16/8/PBI/2016 then we can look to the parties who are involved in the transaction of e-money, they are:

1. Principal

Bank or other institution which is not a bank that is responsible for the system management and/or network between their members, either who has role as issuer and/or acquirer, in the electronic money transaction that has cooperation with other member is based on a written agreement.

2. Issuer

Bank or other institution which is not bank that issue the electronic money.

3. Acquirer

Bank or other institution which is not bank that conduct cooperation with the merchant which able to process the data of electronic money that issued by other party.

4. Holder

Party who uses the electronic money

5. Merchant

Seller of goods and/or service that receive the transaction payment from the holder.

6. Clearing Organizer

Bank or other institution which is not bank that calculate the financial rights and duties of each issuer and/or acquirer in the context of electronic money transaction

7. Clearing Settlement Organizer

Bank or other institution which is a not bank that conducts and is responsible for the final settlement on the rights and duties of each issuer and/or acquirer in the context of electronic money transaction based on the result of the calculation and clearing organizer.

What meant by the Bank is General Bank and Rural Bank as mentioned in the Law Number 10 of 1998 on the Banking, including the branch office of Foreign Bank in Indonesia and Sharia General Bank and Sharia Financing Bank as mentioned in the Law Number 21 of 2008 on the Sharia Banking. Institution besides bank is business entity which is not a bank in the form of legal entity and is established based on the Indonesian Law.

Bank or other institution besides bank that propose the permit to become the Principal, Issuer or Acquirer is obliged to get permit from Bank Indonesia. The application is proposed in written form and appropriate with the Circulation Letter of Bank Indonesia Number 11/11/DASP on the

Electronic Money, for the Principal, it has to contain the information of type of electronic money activity that will be held, time plan when the activity will be started, and name of network that will be used. For becoming the issuer, it has to contain the information on the activity type of electronic money that will be held; time plan of the commencement of activity; and the product name that will be used. The application of permit to be the Acquirer contain the information of time plan of the commencement of activity, name and the number of Principal; Issuer; Clearing Organizer; Final Settlement Organizer; and/or other party that work together; and name and the number of Merchant that will cooperate. The application of permit to be the Clearing Organizer and/or Final Settlement Organizer contain information of the time plan of the commencement of activity as the Clearing Organizer and/or Final Settlement Organizer; name and number of Principal, Issuer, Acquirer and/or other party that will cooperate; and also name or trademark that will be used.

The relationship between the Issuer, Holder and Merchant was the most important relationship in the electronic money transaction. The value of electronic can be gained by exchanging a number of cash money or through debiting of account in the issuer bank and then is saved in the form of e-money card. The transfer of electronic value happened if there is a transaction of payment that done by the merchant through a special machine for the card (card reader).

E-Money was different from a credit card or debit card, although in the beginning e-money was included in the payment tool using the card. There are some differences between e-money and other payment tool using the card. The differences are explained as follows:

Table 2. Differences between e-money and Credit/Debit Card

| No. | Differences | Electronic Money | Card Payment |
|-----|---------------------------|---|---|
| 1 | Safety | Not Using Personal Identification Number (PIN). | Use the Personal Identification Number (PIN). |
| 2 | Issuer | Can be issued by a Bank or other institutions. | Can be issued by a Bank or other institutions. |
| 3 | Holder Information | The information could be there or not. | There is information on the card holder. |
| 4 | Transaction Authorization | No need either a PIN or the signature of the card holder/ | Need a PIN or the signature of the card holder. |
| 5 | Misusing Risk | The e-money card holder is fully responsible for all of the risk. | For some misusing, Bank could be responsible |

| | | | |
|----|---|---|---|
| 6 | Status of Holder | Can be the customer or not the customer of the issuer Bank | Have to be the Bank customer. |
| 7 | Transaction Type | Prepaid, which means the transaction can be done online or offline. | Access which means that the transaction have to be done online. |
| 8 | Place of Fund | Saved in the media of fund saving. | Saved in the issuer Bank account. |
| 9 | Transaction Process | Direct, without any authorization | Have to get the authorization from the customer's account. |
| 10 | Legal Relationship between Card Holder and Issuer | Sell and purchase. | Money saving. |

Source:

https://id.wikipedia.org/wiki/Uang_elektronik#Perbedaan_dengan_APMK

B. E-Money Top-Up Fee as Enacted Policy by Bank Indonesia

The Bank Indonesia also issued the regulation on determination of top-up fee to ensure that the top-up fee that is charged by issuer and imposed to the

e-money card holder has uniform price and limited.³¹ The scheme of top-up fee of e-money was regulated in Board Governors Member Regulation Number 19/10/PADG/2017 on the National Payment Gateway. The top-up fee only imposed to the chip-based e-money. The price scheme of top-up is divided into two, they are:

1. Top Up On Us

The transaction of top-up on us is top-up transaction done through the same payment channel of Issuer. The amount of top-up on us fee that can be imposed is as follows:

| Amount of Top Up | Charge |
|------------------|-----------------------------|
| ≤ IDR 200.000,- | Free of charge |
| > IDR 200.000,- | Maximum charge of IDR 750,- |

2. Top Up Off Us

The transaction of top up off us is the top-up transaction done through other party that cooperated with the Issuer and/or use the other party's payment channel. The charge amount of top up off us that can be imposed is as follows:

³¹ Desi Aditia Ningrum, "Ini alasan BI kenakan biaya isi ulang e-money", <https://www.merdeka.com/uang/ini-alasan-bi-kenakan-biaya-isi-ulang-e-money.html> accessed on March 19, 2018 at 13.38.

| Type of Top Up | | Charge | Distribution of Top-Up Fee | | |
|-----------------------|---------------------------|------------------------------|----------------------------|----------|-----------------------|
| | | | Issuer | Acquirer | Switching Institution |
| Off us electronic (1) | | Maximum charge of IDR1.500,- | 32% | 53% | 15% |
| Partners (2) | a) Issuer payment channel | | 100% | | - |
| | b) Other payment channel | | 7% | 78% | 15% |

Explanation:

- (1) Top up off us electronic is a transaction of top up using the card and payment channel from the different Issuer without partner.
- (2) Method of top up partners is transaction of top up which done in the partner merchant.
 - a. Method of top up partner with issuer payment channel is transaction of top up done by card and the same Bank payment channel through partner.
 - b. Method of top up partner with other issuer payment channel is transaction of top up which is done by card and different Bank payment channel through partner.

Those above price scheme for the top up charge of e-money come into force 1 (one) month after the Board Governor Member Regulation Number 19/10/PADG/2017 was applied.

Regarding to the position of Bank Indonesia in the Constitution, there is another aspect which have to be concerned, that is regarding to the position of Bank Indonesia Regulation in the hierarchy of legislation. The explanation of Article 4 paragraph (3) of Law Number 3 of 2004 stated that Bank Indonesia is a public legal body which is authorized to determine the regulation and to impose sanction in its authorization limit. There are 4 (four) types of regulation which are issued by Bank Indonesia, they are:³²

a. Bank Indonesia Regulation

Bank Indonesia Regulation is the legal provision which enacted by Bank Indonesia and bind every individual or body and loaded in the gazette.³³

b. Board Governor Regulation

Board Governor Member Regulation is the legal provision enacted by the Board of Governor containing the internal regulations such as regarding to the code of conduct of implementation of duties and authorities of Board of Governor, staffing, and organization of Bank Indonesia

c. Board Governor Member Regulation

³² Article 4 of Bank Indonesia Regulation Number 18/42/PBI/2016 on Formulation of Regulation in Bank Indonesia

³³ Article 1 point 8 of Law Number 23 of 1999 *juncto* Law Number 3 of 2004 *juncto* Law Number 6 of 2009 on the Bank Indonesia.

Board Governor Member Regulation is legal provision enacted by the Board Governor Member as the implementing regulation of Bank Indonesia Regulation and bind every individual or body.

d. Intern Board Governor Member Regulation.

Intern Board Governor Member Regulation is legal provision which is enacted by the Board Governor Member which contains the intern regulation of Bank Indonesia as the implementing regulation of Bank Indonesia Regulation and/or Board Governor Regulation.

So, we can see that the Bank Indonesia Regulation and Board Governor Member Regulation bind every individual or body, while the Board Governor Regulation and Intern Board Governor Member Regulation just bind the internal of Bank Indonesia.³⁴

In the Law Number 23 of 1999 *juncto* Law Number 3 of 2004 *juncto* Law Number 6 of 2009 at least there are 11 (eleven) Articles which firmly mandate that certain matters were regulated by the Bank Indonesia Regulation.³⁵ For example Article 2 paragraph (3) which state “every conduct which use the money or having purpose of payment or obligation

³⁴ Agus Santoso and Anton Purba, “Kedudukan Bank Indonesia dalam UUD Negara Republik Indonesia Tahun 1945 (Amandemen Keempat) dan Usulan Komisi Konstitusi dalam Konsep Amandemen Kelima UUD Negara Republik Indonesia Tahun 1945”, *Buletin Hukum Perbankan dan Perbansentralan*, Volume 4 Nomor 2 (Agustus 2006), ISSN 1693-3265, p.12

³⁵ Badan Pembinaan Hukum Nasional Kementerian Hukum dan HAM RI, 2010, “Laporan Akhir Pengkajian Hukum Tentang Eksistensi Peraturan Perundang-undangan di Luar Hierarki Berdasarkan UU No. 10 Tahun 2004 Tentang Pembentukan Peraturan Perundang-undangan, Pusat Penelitian dan Pengembangan Sistem Hukum Nasional”, p. 58. http://www.bphn.go.id/data/documents/eksistensi_peraturan_perundang-undangan.pdf, accessed on April 20, 2018 at 15.40.

which has to be fulfilled by money if done in the Republic of Indonesia territory shall use the rupiah money, unless determined other by Bank Indonesia Regulation. This matter is in line with the authority of Bank Indonesia to issue regulation and authority to impose sanction.³⁶

Specifically, Bank Indonesia has duty to regulate and maintain the smoothness of payment system.³⁷ In the regulating duty is in the form of Bank Indonesia regulation which bind the parties of the payment system. Regarding to the position of Bank Indonesia Regulation as the implementing regulation, it should be noted that the Bank Indonesia is very important in determining the achievement of the goals and the implementation of Bank Indonesia's duties. This thing also related to the position of Bank Indonesia as the independent state institution.³⁸

Hendra Nurtjahjo stated that Bank Indonesia Regulation has binding characteristic as it is directly mandated by the law or government regulation which directly mandate that matter to Bank Indonesia. In this context, we can say that Bank Indonesia can become the Self-Regulatory Body responsible to the House of People Representative.³⁹

The existence of Bank Indonesia Regulation actually has been recognized in the Law Number 12 of 2011 on the Establishment of

³⁶ Ashinta Sekar Bidari, "Kedudukan Bank Indonesia (BI) Setelah Terbentuknya Otoritas jasa Keuangan (OJK)", *Ratu Adil*, Volume 3 Number 1 (2014), ISSN 2549 1350, p.4

³⁷ Article 8 of Law Number 23 of 1999 on Bank Indonesia

³⁸ Agus Santoso and Anton Purba, *Ibid.*

³⁹ Hendra Nurtjahjo *et al.*, 2002, *Eksistensi Bank Sentral dalam Konstitusi Berbagai Negara (Pembahasan Kemandirian dalam Perspektif Hukum Tata Negara)*, Jakarta, Fakultas Hukum Universitas Indoneisa p. 95.

Legislation, especially in Article 8 paragraph (1) which said that the other type of legislation as mentioned in the Article 7 paragraph (1) covers the regulation which is enacted by the People Consultative Assembly, House of People Representative, People Representative Council, Supreme Court, Constitutional Court, Audit Board, Judicial Commission, Bank Indonesia, Ministry, body, institution, or commission with the same level established by the Law or Government based on the mandate of Law, Regional House of People Representative of Province, Regional House of People Representative of Regency/City, Regent/Major, Village Chief or others with the same level. Then in the second paragraph, it is said that the Legislation as meant in the paragraph (1) is recognized and has legal power of binding as long as it is mandated by the higher legislation or established based on the authority.

So based on the above explanation, it can be concluded that Bank Indonesia action for issuing the regulation on the top-up fee of e-money is in line with its authorities and duties which already contained in Article 4 of Law Number 23 of 1999 *juncto* Law Number 3 of 2004 *juncto* Law Number 6 of 2009 on Bank Indonesia. The regulating on the payment system was in the scope of Bank Indonesia's authorities. Even the determination on the price scheme of top up fee of e-money is purposed to ensure the consumer protection and make the uniform price of top up fee.

C. Supervision on the Regulation of Top-Up Fee of E-Money

In terms of banking supervision, every country concerns and puts big attention to the function and the role of bank supervisory which have to be done by the government. The purpose from the supervision is basically to achieve the healthy banking business and based on the principle of caution, and able to muffle to as small as possible any risks from the banking business, and also realize the safety and stability of banking system.⁴⁰

According to the Banking Law, it is mentioned that the task of regulation is defined by the guidance which is the effort to create regulations concerning the institutional aspect, ownership, management, business, reporting, and other aspects related to the bank's operational activities. By the establishment of the FSA, the bank supervision system was fully already become the FSA's authority, and Bank Indonesia is expected to still have the discretion to the banking data access quickly and accurately.⁴¹

Concept of the establishment of the supervision institution in Indonesia is the full authority. The supervision authority against the banking, capital market, and the non-bank financial institution was held by one institution, so those three-supervision authorities which are capital market, banking and non-bank financial institution will be joined into one independent authority. It means that Bank Indonesia only has monetary policy without having the authority to

⁴⁰ Metia Winati Muchda, Maryati Bachtiar and Dasrol, "Pengalihan Tugas Pengaturan dan Pengawasan Perbankan dari Bank Indonesia Kepada Otoritas Jasa Keuangan Berdasarkan Undang-Undang Nomor 21 Tahun 2011 tentang Otoritas Jasa Keuangan", *Jurnal Ekonomi*, Volume 22, Number 2 (Juni, 2014), ISSN 0853-7593, p. 78.

⁴¹ Zulfi Diane Zaini, "Hubungan Hukum Bank Indonesia sebagai Bank Sentral dengan Otoritas Jasa Keuangan (OJK) Pasca Pengalihan Fungsi Pengawasan Perbankan", *Jurnal Media Hukum Universitas Muhammadiyah Yogyakarta*, Volume 20 Number 2, (2015), ISSN 0854-8919, p. 374.

conduct the bank supervision. But the transferring of the regulation and supervision duties on the banking to the FSA did not make Bank Indonesia completely free from the bank regulatory and supervisory interest.⁴² In the explanation of Article 7 of FSA Law, it is mentioned that the regulation and supervision that are done by FSA regarding the institutional, health, prudential aspects, and bank checks are the scope of microprudential regulation and supervision. The scope of regulation and supervision of macroprudential are regulation and supervision beside the matters that are set in Article 7 which contains the authority of FSA in carrying out the regulation and supervision duties in the banking sector, is the duty and authority of Bank Indonesia.

According to Bismar Nasution, macroprudential supervision is directing and pushing the bank, as well as monitoring them in order to play a role in the program of achieving macroeconomic goals, whether it is related to general policies to push the economic growth, balance of payments, expansion of employment, monetary stability, equal distribution of income and business opportunity. While the aim of the microprudential supervision is to strive for each bank to be individually healthy and secure, and also the overall banking industry become healthy and able to maintain the trust of society. It means that every bank, since the beginning, has to be avoided from any risks that will rise.

The task of the supervision by Bank Indonesia against the banking in the macroprudential scope is that Bank Indonesia conduct direct inspection to the

⁴² Metia Winati Muchda, Maryati Bachtiar and Dasrol, *op.cit*, pp. 82-83.

certain bank which is rated in Systemically Important Bank and/or other bank appropriate with Bank Indonesia in the scope of macroprudential. Then Bank Indonesia also can conduct steps of recapitalization to the bank that undergoing difficult of liquidity or the health condition which is going to be bad. This thing is mentioned in Article 41 paragraph (2) of FSA Law which said: “In the case of OJK indicating that certain banks are experiencing liquidity difficulties and / or worsening soundness, OJK will immediately inform the Bank of Indonesia to take steps in accordance with the authority of Bank Indonesia.” The steps in accordance with the authority of Bank Indonesia is the giving of short-term financing facility in running the Bank Indonesia function as the lender of the last resort. This is also included in the Bank Indonesia duty in the macroprudential scope.

If we look at the law that regulate the electronic money issue which is regulated in Bank Indonesia Regulation Number 11/12/PBI/2009 which has got amended by Bank Indonesia Regulation Number 16/8/2014 and Bank Indonesia Regulation Number 18/17/PBI/2016 although the amendment did not make any changes on the Chapter V on Supervision, which means that the supervision on the implementation of electronic money is still held by Bank Indonesia. The Articles that regulate on it are Article 22 and 23. In Article 22 Bank Indonesia could hold supervision to the Parties that are involved in the implementation of electronic money such as Principal, Issuer, Acquirer, Clearing Organizer and/or Clearing Settlement Organizer. In the next paragraph it is mentioned that Bank Indonesia was able to hold consultative meeting with those parties.

The more specific and technical matters on the implementation of e-money including its supervision are regulated in the Bank Indonesia Circulation Letter Number 16/11/DKSP, especially in the sub chapter VIII. The supervision on the e-money is purposed to make sure that the implementation of e-money is done efficiently, quickly, safely, and reliably by concerning the principle of consumer protection, anti-money laundering, and prevention of terrorism funding. The supervision against the e-money implementation is focused the:

1. Practice of risk management aspect;
2. Obedience to the policy and prevailing legislation, including the truth and accuracy on the information and report delivery, practice the anti-money laundering and prevention the terrorism funding, principle of healthy competition, fund transfer and other legislations;
3. Practice on the consumer protection aspects.

Specifically, the supervision to the implementation of electronic money done by Bank Indonesia through:

1. Research, analysis and evaluation which are based on the periodic report, incidental report, data and/or other information obtained by Bank Indonesia from the other parties, and discussion with the organizers;
2. On site visit to the organizers which is done in order to:
 - a. Make sure the fulfillment of the implementation of electronic money policies.

- b. Make sure the truth of the report and data that are delivered;
 - c. Check the physical means, system, supporting application, and database; and
 - d. Check the activities of e-money implementation if there is report or allegation of fraud, money laundering and terrorism funding in the Organizers. If it is needed, the on-site visit can be done to the parties who cooperate with the Organizers;
3. Consultation meeting with the organizers to get the organization information and to deliver the recommendation; and
 4. Coaching to the organizers including to conduct change or to repair in organizing the electronic money.

Regarding to the supervision, the Organizers are also obliged to give:

1. Information and/or data which are related to the Electronic Money implementation, either in the form of hard copy or soft copy; and
2. Access to Bank Indonesia to conduct on site visit to the implementation of Electronic Money including the physical means, system, supporting applications, and database.

Besides that, if there is an error on the system, the Organizer of Electronic Money has to deliver the incident report to Bank Indonesia, that is the report on the system error and effort that has been done to settle it, such as:

1. The existence of network failure in processing the electronic money transactions;

2. Failure of data center and disaster management center; and/or
3. Fraud which happen at least covering the information regarding:
 - a. Chronology
 - b. Loss impact that caused by it.

There is a special provision which allows Bank Indonesia to order another party to conduct on site visit against the Organizers. What is meant by another party is the public accountant or information technology consultant as regulated in the Article 22 of Bank Indonesia Regulation on Electronic Money. The amendment of Bank Indonesia Regulation Number 16/8/PBI/2014 on the Electronic Money, also gives Bank Indonesia authority of giving sanctions to the Organizer of electronic money; they are principal, issuer, acquirer, clearing organizer, and final settlement organizer. The sanctions are:

1. Administrative Sanctions:
 - a. Reprimand;
 - b. Fine;
 - c. Temporary termination of part or entire electronic money activities.
2. Sanctions of Electronic Money Organizer License Revocation.

The temporary termination, license revocation, and cancelation of electronic money activities organizer regulated in the Article 47 of Bank Indonesia Regulation that is based on the sanctions that are given can be temporary termination, revocation of license that has been given to the Bank or

Other Institution aside Bank as principal, issuer, acquirer, clearing organizer and/or final settlement organizer, and cancellation of permission which has been given in terms of:

1. There is court decision which has legally binding which order the bank or other institution beside bank which have done the activities such as principal, issuer, acquirer, clearing organizer and/or final settlement organizer to stop their activities;
2. There is recommendation from the supervision authority which authorized among other regarding to the worsening finances and/or weak of bank risk management or other institution beside bank. The recommendation from the authorized authority can be from bank supervisor, supervisor of payment system, or supervisor from the other institution beside bank;
3. There is written demand or recommendation from the supervision authority which authorized to the Bank Indonesia to temporarily terminate the activity of principal, issuer, acquirer, clearing organizer and/or final settlement organizer;
4. Supervision authority which authorized has revoked the business license and/or stopped the bank activities or other institution beside bank that conduct the activities as principal, issuer, acquirer, clearing organizer and/or final settlement organizer;

5. There is cancellation petition that is proposed by the bank or other institution beside bank that has gotten the permit from Bank Indonesian.

Bank Indonesia has also established a special division to handle the payment system service consumer protection that is Division of Payment System Service Consumer Protection since August 1, 2013. The establishment of this division is based on the background of the increasing of transaction in the payment system and as the concern to the entire consumer of payment system including the payment system using electronic money. The function of this division is education, consultation, and facilitation. The Division of System Service Consumer Protection at the end can help the consumer who want to ask information and/or handle the problem on payment system.

If we talk about the supervision on the financial sector, we have new but rather old institution that take the authority of supervision of Bank Indonesia since 2013, that is Financial Service Authority. FSA takes the duties of supervision of Bank Indonesia. The supervision cannot be separated from the legal protection to the electronic money user. The Legal protection for the holder of e-money can be done through 2 (two) ways, they are:

1. Preventive legal protection

The protection that is given by Bank Indonesia through the supervision to the activities of electronic money transaction to prevent the violations.

2. Repressive legal protection

The protection which is aimed to settle the dispute that rises because of the different interest.

The form of legal protection is basically an effort of legal enforcing. Factors that need to be considered in the legal enforcing is the legal factor itself, means or legal enforcing supporting facility factors, society factor which is where the law is applied.⁴³ The form of preventive legal protection for the e-money card holder can be realized through the regulation to the provisions on the use of standard agreement which is more detail regarding to the nature, character, distribution of rights and obligations which is poured in the form of law which gives the shelter place for the card holder through the regulation of the clauses in the standard agreement of requirements and provision of card holder. Standard agreement is agreement where the provision and the requirements are already prepared and determined unilaterally by the user and binds other parties. That other parties cannot change or negotiate to change it.⁴⁴

The form of repressive legal protection can be done by the parties, either the issuer or the holder of card through the dispute settlement pattern which can be divided into 2 (two), they are:

1. Through the court (litigation)

⁴³ Johanes Ibrahim, 2005, Dilematis Penerapan Undang-Undang Nomor 24 Tahun 2004 tentang Lembaga Penjamin Simpanan, Antara Perlindungan Hukum dan Kejahatan Perbankan, *Jurnal Hukum Bisnis*, Volume 24 No. 1 (2005), ISSN 1411-1128, p. 43

⁴⁴ Djoni S. Gazali and Rachmadi Usman, 2012, *Hukum Perbankan*, Jakarta, Sinar Grafika, p. 321

2. Alternative dispute resolution (dispute settlement outside the court or non-litigation) which covers:
 - a. Consultation
 - b. Negotiation
 - c. Mediation
 - d. Conciliation

When there is complaint as the effect of the service use of business actor on the financial service, the consumer can make the complaint directly to the concerned business actor. Article 32 paragraph 1 of FSA Regulation Number 1 of 2013 on the Consumer Protection on Financial Service Sector said that business actor on the financial service must have and implement the mechanism of service and settlement of complaint for the consumer. The complaint from that consumer is in the form of when there is a trouble or error which happen either from the system or the parties in the electronic money transaction. When there is error that happens in the financial service sector, the business actor obliged to report the consumer complaint to the FSA.

If there is complaint from the customer (holder of e-money) which caused by the business actor in the financial service sector the FSA has authority to conduct supervision in the financial system in Indonesia and give the rights to the e-money holder to be able to make complaint directly to the bank or business actor that has issued the e-money because it has been regulated in Article 32 paragraph 1 of FSA Regulation Number 1 of 2013 on the Consumer Protection on Financial Service Sector which said that the business actor is

obliged to have and implement the mechanism of settlement and complaint treatment for the consumer and the business actor obliged to report continually on the existence of consumer complaint and obliged to follow up the service and settlement of the consumer complaint, complaint from the business actor is reported to the FSA which has authority in supervising the financial service sector.

Article 35 paragraph 1 of FSA Regulation Number 1 of 2013 on the Consumer Protection in Financial Service Sector has regulated on the time period of complaint from the consumer or the e-money holder will be responded and processed; in this article, it is said that the financial service business actor is obliged to follow up and settle the complaint no later than 20 (twenty) working days after the date of the complaint received, but that time period can be extended for next 20 (twenty) days after the date of complaint received. As the form of quick respond on the complaint, the financial service business actor is obliged to have work unit and/or function to handle and settle the complaint that is submitted by the consumer.

The Financial Service Authority gives the protection to the consumer if the consumer suffers loss caused by the use of that service. The form of protection that is given by FSA is the chance to the consumer to conduct complaint until the dispute settlement. Article 40 paragraph 1 of FSA Regulation Number 1 of 2013 on the Consumer Protection on the Financial Service Sector said that consumer can deliver the complaint which indicates the dispute between the financial service business actor with the consumer to the

FSA. In Article 40 paragraph 2, it is also said that consumer and/or society are able to deliver complaint which indicates the violation of legislation in the financial service sector to the FSA. Regarding to the dispute settlement facility that is given by FSA, there are certain requirements that are contained in Article 41 letter a FSA Regulation Number 1 of 2013 on the Consumer Protection on Financial Service Sector, the granting of the facility for the settlement of Consumer complaint by the Financial Services Authority is given to complaints indicated as dispute in the financial services sector as referred to in Article 40 paragraph (1) and which fulfils the following conditions:

1. The Consumers suffer a financial loss caused by:
 - a. The Financial Service Business Operators in the sectors of Banking, Capital Market, Pension Funds, Life Insurance Company, Multifinance Company, Pawn Companies or Guarantee Companies, maximum IDR 500,000,000 (five hundred million rupiah);
 - b. The Financial Service Business Operators in general insurance Company is maximum IDR 750,000,000 (seven hundred and fifty million rupiah);
2. The Consumer submits a written application accompanied by the supporting documents related to the complaint;
3. The Financial Services Providers have made efforts to settle the complaint, but the Consumer cannot accept such settlement or has

passed the period as determined in this Financial Services Authority Regulation;

4. The complaint submitted is not a dispute in process or has been decided by an arbitration institution or court, or other mediation institution;
5. The complaint submitted is of civil nature;
6. The complaint submitted has never been facilitated by the financial services authority; and
7. The submission of the settlement of the complaint does not exceed 60 (sixty) business days after the date of the settlement of the Compliant issued by The Financial Services Providers to the Consumer.

The e-money holder has the right to get facility of complaint until the phase of dispute settlement, appropriate with Article 40 of FSA Regulation Number 1 of 2013, because the holder of electronic money has fulfilled the requirements as consumer who is able to continue the complaint until the dispute settlement phase. The consumer who is able to continue the complaint to the phase of dispute settlement, one of it is that the loss suffered by the e-money holder is not exceeding the amount that has been regulated in Article 40 paragraph 1 because the electronic money has maximum limit of IDR 5.000.000,- (five million rupiah) so if experiencing the complaint of harmed feeling in the use of electronic money service the consumer can make complaint

and get the facility of dispute settlement financial service business actor with consumer to the FSA.

So, regarding the issue on the supervision on the e-money implementation, Bank Indonesia has to coordinate with the Financial Service Authority in order to make sure that the electronic money activities were held properly based on the regulation. Bank Indonesia itself already conduct the supervision since the submission of documents as requirements of a company who want to be principal, issuer, acquirer, clearing organizer, and/or final settlement organizer. Before a company runs a role as a party in the electronic money implementation, Bank Indonesia has to review the requirements that have been submitted to Bank Indonesia as the permit giver. Before a company is able to run their business on the electronic money they have to get a permit from Bank Indonesia. This could be a preventive supervision by Bank Indonesia, even after the company runs the electronic money business activities, Bank Indonesia still has authority to supervise the business. This is based on the macroprudential supervision authority, which cause Bank Indonesia have authority of supervision on the macro-economy matters including the payment system.

On the other hand, the Financial Service Authority as supervision institution which has authority to supervise the implementation of financial service including bank and non-bank financial service institution has authority to make sure the consumer protection on the financial service sector which held properly, in case that there is a customer which suffered loss because of

financial institution, the FSA has authority to give dispute settlement between the consumer and the related financial institution.