



Comparative Study on The Legal Protection for Digital Wallet Users between Indonesia and South Korea

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ABSTRACT

The Digital wallet has developed rapidly in recent years. The number of users of digital wallets has been increasing significantly over several years. However, the financial accident related to digital wallets occurred and caused damage to the users. This study aims to analyze and determine the legal protection of digital wallet users for loss of e-money in Indonesia and Korea, and the legal issue from the Korean digital wallet regulation that can be harmonized in Indonesian's regulation. This type of research is normative research using statutory and comparative approaches. The results of this study indicate that Indonesia carried out the legal protection for digital wallet users by prohibiting several actions, responsible for the loss of e-money by the provider unless the fault comes from the users, and sanctions. Korea carried out the legal protection for digital wallet users by ensuring the users safety, prohibition against electronic infringement, responsible for the loss caused by all types of electronic infringement, and sanctions. Then, several lessons can obtain to harmonize the digital wallet regulation in Indonesia, including the adoption single codified law, the responsible of the digital wallet provider and compensation for damage, and the response to the financial accident.

ABSTRAK

Dompet digital telah berkembang pesat dalam beberapa tahun terakhir. Jumlah pengguna dompet digital telah meningkat secara signifikan selama beberapa tahun. Namun, terjadi kasus yang terkait dengan dompet digital dan menyebabkan kerugian pada pengguna. Penelitian ini bertujuan untuk menganalisis dan mengetahui perlindungan hukum pengguna dompet digital atas kehilangan uang elektronik di Indonesia dan Korea, serta permasalahan hukum dari regulasi dompet digital Korea yang dapat diselaraskan dalam regulasi di Indonesia. Jenis penelitian ini adalah penelitian normatif dengan menggunakan pendekatan perundang-undangan dan komparatif. Hasil penelitian ini menunjukkan bahwa Indonesia melakukan perlindungan hukum bagi pengguna dompet digital dengan melarang beberapa tindakan, bertanggung jawab atas hilangnya uang elektronik oleh penyedia kecuali kesalahan berasal dari pengguna, dan sanksi. Korea melakukan perlindungan hukum bagi pengguna dompet digital dengan memastikan keamanan pengguna, larangan pelanggaran elektronik, bertanggung jawab atas kerugian yang disebabkan oleh semua jenis pelanggaran elektronik, dan sanksi. Kemudian, beberapa pelajaran yang dapat diambil untuk menyelaraskan regulasi dompet digital di Indonesia, antara lain penerapan undang-undang kodifikasi tunggal, tanggung jawab penyedia dompet digital dan ganti rugi kerusakan, serta penanggulangan kecelakaan finansial.

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I. INTRODUCTION

Fintech (financial technology) is one of the innovations in the financial industry that refers to modern technology that aims to introduce practicality, ease of access, convenience, and low cost (Ansori, 2019). The existence of fintech provides convenience to its users, which allows them to make financial transactions electronically. 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 (Winansis & Riyanto, 2020).

Nowadays, society is more likely to use electronic money or e-money rather than physical money or cash (Bodhi & Tan, 2022). The idea of e-money is that our money is stored electronically, divided into two types, namely, cards or chips and servers (Naomi & Priyanto, 2020). E-money is a payment system concept without any physical money or cashless.

Digital wallets are the one of fintech service in electronic payment systems. The digital wallets are electronic-based media container that stores e-money as a payment method (Namoni & Priyanto 2020). 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 (Bodhi & Tan, 2022).

The Indonesian digital wallets industry is dominated by OVO, ShopeePay, LinkAja, Go-Pay, and Dana. Based on the research, the total number of digital wallet users in Indonesia is recorded as much as 63.6 million and it predicted to reach 202 million users by 2025 (Databoks, 2022). 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 (Databoks, 2022).

On the other hand, the development of technology causes problems for customers, such as one of the cases related to the Go-Jek costumer using Go-Food services complained about the loss of Go-Pay balances on their account (Kompas, 2019). In this case, the customer wants to order some food through the Go-Jek application. However, the driver said that his motorcycle was broken and needed to change the driver. The driver asks the customer to click a specific number and code, enabling the driver to access phone data. Then, the driver took all of customer's Go-Pay balances. The driver also deletes particular applications, such as WhatsApp and Tokopedia. The driver tried to use customer's Credit Card to buy a phone but failed. Go-Jek, after receiving a complaint, immediately followed up on the problem and returned the balance (Kompas, 2019).

The case of financial accident also happened to one of the Korean famous electronic financial company, namely Toss (토스). Toss announced that there had been an illegal payment of 9.38 million won at three affiliated stores in the name of eight customers (Tax Finance Newspaper, 2020). Toss received complaints about fraudulent payments from the customers. Toss directly blocked the account and investigate the payment history. Finally, Toss refunded 9.38 million won in damages to eight customers (Tax Finance Newspaper, 2020). After this incident, the Financial Supervisory Service (금융감독원) took the position of conducting an overall inspection targeting the fintech company.

Based on the case mentioned above, the digital wallet industry is concerned about the protection of its consumer or users from the loss of their e-money because of the action or crimes from a third party. In Indonesia, digital wallet is regulated under the several regulations, such as Law No. 19 of 2016 concerning the amendment of Law No. 11 of 2008 concerning Information and Electronic Transactions (ITE Law), Bank Indonesia Regulation No. 18/40/PBI/2016 concerning Payment Transaction Processing Operations, Bank Indonesia Regulation No. 20/6/PBI/2018 concerning Electronic Money. In addition, Indonesia also have Consumer Protection law. On the other hand, Digital wallet in South Korea (Korea) is regulated under the Electronic Financial Transaction Act (EFTA).

Both Korea and Indonesia are adopted civil law system (Dezalay and Garth, 2010). The presence of laws and regulations becomes essential for the countries which adopted civil legal

systems because court decision is based on codified law (Nurhardianto, 2015). The Korean legislative system consists of the Constitution as the principle law, Acts to realize the constitution notions, and administrative legislation, including Presidential Decrees, Ordinances of the Prime Minister, Ordinances of Ministries, and others. Indonesia recognizes the hierarchy of law, the highest law is the 1945 Constitution of the Republic of Indonesia.

Besides these similarities, Indonesia and Korea have certain similarities in the business models of digital wallets in general. Indonesia have many fintech companies that offer payment services, such as OVO, ShopeePay, LinkAja, GoPay, Dana, etc. While Korea have Kakao Pay, Naver Pay, Toss, Payco, etc. The Korean digital wallet's value of transactions is bigger than Indonesia, even though, the number of users is lower than Indonesia. Korea digital wallet transaction is recorded as much as \$181.6 billion, and it will be \$503.5 billion in 2024 (GlobalData, 2021). Then, the users of digital wallet are 52.3 million (Lips, 2021).

This research will explain the legal protection of digital wallet users for loss of e-money in Indonesia and South Korea and the legal issue from the South Korean digital wallet regulation that can be harmonized in Indonesian's regulation.

II. RESEARCH METHOD

This research will adopt normative legal research, namely a method to examine the legal issue through laws and regulations, and find the legal sources through literature (Diantha, 2016). The approach of this research is the statutory approach and comparative approach. The statutory approach is carried out by reviewing laws and regulations related to the legal issue (Muhamimin, 2020). The comparative approach is carried out by comparing the legal system or law among the countries on the same matter, including court decisions (Muhamimin, 2020). The research data was gathered by a literature review, in which data was gathered by collecting legal papers, including laws and other research-related sources. Analysis of the legal materials obtained from the secondary data then complied systematically and analyzed qualitatively. The qualitative analysis includes activities of data classification in the form of narration and conclusion-making.

III. RESULT AND DISCUSSION

1. The Legal Protection of Digital Wallet User for Loss of E-Money Based on Indonesian and Korean Perspective

The utilization of digital wallets is governed by a number of laws and regulations in Indonesia, namely Law No. 11 of 2008 concerning Information and Electronic Transaction and its amendment Law No. 19 of 2016 (ITE Law), Bank Indonesia Regulation No. 18/40/PBI/2016 concerning Payment Transaction Processing Operations, and Bank Indonesia No. 20/6/PBI/2018 concerning Electronic Money. Besides these regulations, Indonesia also has Law No. 8 of 1999 concerning Consumer Protection.

The ITE Law stipulated the liability of responsibility of the electronic system operators. The responsibility of the electronic system operator is stipulated in Article 15 of ITE Law. the digital wallet operator's duty as an actor that arranges an electronic payment system to fulfill its commitment to offer a reliable electronic service system. The digital wallet operator is obligated for any mistakes or omissions that occur as a consequence of the operation of the electronic system, unless the fault is the result of an error, coercion, or negligence on the part of the user himself (Tektona et.al., 2020). However, there are no legal consequences that come about as a result of the electronic system operator failing to fulfill their responsibilities, being unable to fulfill their responsibilities, or being unwilling to fulfill their responsibilities as stipulated in article 15 of ITE Law.

The ITE Law also stipulated the prohibition actions which are outlined in article 30 of ITE Law. the prohibition including the person who illegally accesses another person's computer and/or

electronic system to gain electronic information and/or documents. This crime might include stealing data, theft, destruction, cheating, and other harmful crimes used to gain a profit (Suseno & Barmawi, 2004). There are several criminal sanctions, under Article 48 of ITE Law, subjected to the person who fulfills the elements of Article 30. With respect of article 30 of ITE Law, the meaning of this article might be interpreted in a variety of ways. This article did not make any direct reference to the fact that a cybercrime resulted in the theft of electronic money (e-money). Nevertheless, the information presented in these articles covers a wide range of cybercrimes that have occurred in Indonesia. It can be seen from the scope of ITE Law. Electronic transaction is described as any act of exchanging information that is carried out through an electronic network can be said an act of an electronic transaction, and all acts of exchanging information obey the ITE Law (Pratama, 2017).

Moreover, Indonesia recognizes two financial institutions that have the authority to conduct supervision, these institutions namely Bank Indonesia (Indonesian Central Bank) and Financial Service Authority (Otoritas Jasa Keuangan). Bank Indonesia has the authority to handle fintech that provides a service in the payment system, such as companies that provide payment gateway, remittance, digital wallets, switching, and other related services (Pakpahan et. al., 2020). On the other hand, the Financial Service Authority has the authority to handle fintech, such as those that provide services in peer-to-peer (P2P) lending/ financing, insurance, and other related services (Pakpahan et. al., 2020). Since Bank Indonesia has the authority to handle the digital wallet, there are several regulations enacted by Bank Indonesia in relation to the digital wallet including Bank Indonesia Regulation No. 18/40/PBI/2016 concerning Payment Transaction Processing Operations, and Bank Indonesia No. 20/6/PBI/2018 concerning Electronic Money.

Both BI Regulations above did not stipulate the responsibility or the circumstances when the digital wallet provider is liable for the loss of e-money of the users. In relation to the loss of the digital wallet user's e-money, Bank Indonesia No. 20/6/PBI/2018 concerning Electronic Money only mentioned that the digital wallet provider must provide its customers a way to receive compensation if they suffer a loss that was not the customer's fault. Both BI Regulations are considered administrative in nature, in the case that violation happens, the consequences which may be enforced in compliance with these regulations cannot safeguard the customer's rights (Irwansah et. al., 2021). Due to the fact that the regulations established by Bank Indonesia do not include criminal punishments or fines in the case of violation, the maximum sanctions that have been given are revocation of registered marks and cancellation of license (Irwansah et. al., 2021).

In addition, Indonesia has a consumer protection law stipulated in Law No. 8 of 1999 concerning Consumer Protection (UUPK). The obligations of the business actors are reaffirmed in Articles 19 (1) and (2) of the UUPK. Based on Articles 19 (1) and (2) of UUPK, the digital wallet operators are responsible for providing compensation for damage in the form of an e-money refund or replacement of service in case of losses caused by the consuming services provided by the digital wallet operators. The burden of responsibility should be given to the digital wallet operator as the result of negligence and the alleged default (Naomi & Priyanto, 2020). In connection with Article 19 of the UUPK, the business actors who violate this article may be imposed administrative sanctions. However, the UUPK was enacted long time ago before digitalization, so it has not been fully able to guarantee consumer rights in digital business (Novita & Santoso, 2021). The UUPK did not provide the legal protection to the digital wallet user in case the harmed caused by the unauthorized third party. Additionally, the UUPK did not provide the protection for the confidentiality of the personal data, including the personal data of sellers and buyers. The protection of personal data is important for security and convenience of the parties and to avoid fraudulent acts in form of misused of personal data (Simanullang, 2017).

On the other side, Korea regulate digital wallet under the Electronic Financial Transaction Act (EFTA). The EFTA provides the liability to the digital wallet provider in the event that their user experiences a loss of e-money. It's stipulated under Articles 9 and 10 of the EFTA. Article 9 of the EFTA, the provider of the digital wallet is responsible for the loss of e-money of its users that caused

several events, such as a forged or altered method of access, a problem in electronically transmitting or processing a contract or transaction request, and an occurrence caused by fraudulent or unauthorized access to electronic financial transactions. Since the introduction of Article 9 (1) subparagraph 3 of the EFTA, all types of electronic financial fraud, such as hacking into personal information, phishing, pharming, etc. are considered to be covered by this subparagraph (Kang & Lee, 2014). Article 9 (2) of the EFTA provides that if the victim has intentional or gross negligence, the victim may be held fully or partially responsible for the incident, depending on the terms of the preceding agreement (Choi, 2015). As suggested by the Supreme Court, there are a number of measures in order to determine users' gross negligence, such as the specific background of financial accidents (e.g. forgery of local media), the contents of counterfeiting and other methods, the public's awareness of the methods, the occupation of users, and the history of financial transaction users (Kang & Lee, 2014). In addition, Article 10 of the EFTA separately stipulated liability for damages caused by the use of stolen or lost access media. In this case, the financial institution may provide compensation to the victim from the notified time pursuant to Article 10 of the EFTA (Kang & Lee, 2014).

Furthermore, the EFTA provides the guarantee of the users' security and safety of electronic financial transactions. Based on Article 21 of the EFTA, there are several actions to guarantee the safety and reliability of electronic financial transactions. First, the concept of good faith becomes important for the performance of obligations. Second, a digital wallet operator must comply with the FSC standards. Third, the digital wallet operator must annually prepare a strategy for the information technology sector. First, a person with or without access to electronic financial infrastructure who falsifies, deletes, hides, or leaks stored data outside the scope of his or her authority. Second, installing programs, such as computer viruses, logic bombs, or mail bombs, with the intent of damaging the data of electronic financial infrastructure or hindering its functioning. Third, sending mass signals, high-powered electromagnetic waves, or data simultaneously or processing false orders to disrupt electronic financial infrastructure. Then, Article 21-4 of the EFTA provided prohibition actions in relation to electronic infringement. The EFTA also regulate several sanctions in Chapter VII.

2. The Legal Issue from Korean Digital Wallet Regulation that can be Harmonized in Indonesian Regulation

The Indonesian legal basis for digital wallets is not comprehensive and spread over several regulations, such as the ITE Law, Bank Indonesia Regulation No. 18/40/PBI/2016 concerning Payment Transaction Processing Operations, and Bank Indonesia No. 20/6/PBI/2018 concerning Electronic Money (Laksana & Harja, 2020). The ITE Law provides a broad scope of application, and it can be multi-interpretation (Wulandari et. al., 2021). Then, the BI Regulations only regulate the administrative matters, the legal protection provided by these regulations is not strong enough. Indonesia needs a special arrangement at the law or act level regarding digital wallet, in order to secure safety of transaction and provide legal protection to the consumers (Tan & Disemadi).

On the other hand, Korea regulates the issue regarding the digital wallet on a single act which is outlined in the Electronic Financial Transactions Act (EFTA). The scope of EFTA is limited only to certain financial institutions pursuant to Article 2 of the Enforcement Decree of the EFTA. The material of the EFTA is specified on the issue related to electronic financial transactions, including ensuring the safety of transactions, registration, permission, and supervision (Jung, 2008).

In 2020, the case of the financial accident happened to one of Korea's biggest financial technology companies, namely Toss (토스). Toss is considering the possibility of fraudulent payment due to the loss of personal information. Toss received several complaints about fraudulent payments from the eight customers, blocked the account, and investigated the payment history. Toss announced that an unauthorized payment of 9.38 million won had been made in the name of eight consumers (Tax Financial Newspaper, 2020). This action taken by Toss is related to Article 21-5 of

the EFTA about notification of infringement incident. Based on this Article, the relevant financial company and electronic business entity shall inform the Financial Service Commission, analyze the causes, and take necessary measures to prevent the spread of damage.

Pursuant to Article 39 of the EFTA about the supervision and inspection, the Financial Supervisory Service (FSS) shall perform its duties to conduct an inspection. As the result of the investigation, the FSS concluded that there was no personal information leakage through Toss, but that it is extremely probable that a fraudulent payment was made using someone else's personal information acquired from other sources such as the dark web (Finance/Securities, 2020).

Since the beginning of the case, Toss claimed that it was not hacking by using the user's personal information and password (Tax Financial Newspaper, 2020). Toss did some investigating and discovered that a third party had made a payment using the user's personal information. The third-party accessed the customer's account using the customer's phone number, date of birth, and password.

Immediately after the accident, Toss refunded 9.38 million won in damage to eight customers (Tax Financial Newspaper, 2020). The action taken by Toss comes as the result of Article 9 of the EFTA about the liability of financial companies or electronic financial business entities and Article 10 of the EFTA about the liability for loss or theft of means of access. Based on these articles, the financial companies or electronic financial business entity is responsible for the loss caused by all types of financial fraud (Kang & Lee, 2014).

In this case, fraudulent payment was made by accessing personal information that had already been leaked from other sources. Toss can avoid responsibility for a financial accident caused by reasons other than defects in technical measures pursuant to Article 9 (2) of the EFTA (Hong, 2020). Nevertheless, Toss choose a method to protect financial consumers actively by providing compensation rather than choosing a lawsuit.

Based on the legal issue related to the digital wallet in Korea, several lessons can be obtained to harmonize the digital wallet regulation in Indonesia. First is the adoption of single codified law, which ensures the users protection, permission and registration, supervision, and sanctions. Korea regulates the digital wallet under the Electronic Financial Transactions Act (EFTA), which mainly regulate about the electronic financial transactions.

The second is the responsibility and compensation. Based on the EFTA, electronic financial businesses are liable to provide compensation for loss caused by all types of electronic infringement. For example, the compensation mechanism had carried out by the Toss company in the event of a financial accident in 2020, with the respect that the financial incident is caused by the leakage of personal data from other sources.

The third is the response to the financial accident. Based on the Toss financial accident above, immediately after the financial accident happens, the Toss company shall notify the accident to the relevant financial institution(s) and take specific measures to prevent the spread of the accident. Then, the financial institution takes an investigation process to determine the cause of the loss.

IV. CONCLUSION

The digital wallet service is governed by several regulations, such as ITE Law, BI Regulations, and UUPK. Then, the legal protection is carried out by prohibition accessing computer and/or electronic systems belonging to another person in any way; the digital wallet operators are responsible for any error or omission that occurred as a consequence of the operation of the electronic system unless the fault comes from the users; and providing sanctions. On the other hand, Korea provides legal protection to digital wallet users under the Electronic Financial Transactions Act (EFTA). Legal protection is carried out by ensuring the users' safety and the prohibition against electronic infringement; the digital wallet providers are responsible for the loss of users' e-money caused by all types of electronic infringement and unauthorized access by a third party; and providing sanctions.

Based on the issue related to the digital wallet in Korea, Indonesia can obtain several lessons to harmonize the digital wallet regulation in Indonesia. First is the adoption of single codified law which regulates the digital wallet industry more precisely. Second, the responsibility to the digital wallet operator and compensation for the damages. The digital wallet providers are liable to compensate their users if the loss happens. The third is the response to the financial accident. The related financial institutions should respond to financial accidents quickly and in line with the standards.

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