

## Optimization of Legal Protection For Laku Pandai (Branchless Banking) As A Micro Business Empowerment Effort By OJK in The Central Region

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### Abstract

The Laku Pandai Program is a manifestation of OJK's commitment to support the Indonesian Government's programme of launching the National Strategy for Financial Inclusion, a part of which is branchless banking. Laku Pandai envisages provision of banking and / or other financial services not through an office network, but through cooperation with other parties and needs to be supported by the use of information technology facilities. Based on OJK data, the Laku Pandai programme has progressed; however, the Laku Pandai empowerment policy is still the focus of OJK in 2019-2020, because there are still several obstacles to its implementation. The Laku Pandai agent, as a micro business actor, needs empowerment. This study aims to examine legal protection, constraints, benefits and empowerment of the implementation of Laku Pandai. The research method used was normative and sociological juridical by the use of secondary and primary data, and data analysis using the normative qualitative method. The results of the study show that legal protection is not optimal, that there are several obstacles to the implementation of branchless banking from both agents and banks and that empowerment of micro branchless banking agents is very useful in achieving Government goals for the realization of inclusive finance in Indonesia.

**Keywords:** Laku pandai, Legal Protection, Empowerment

### Abstrak

*Laku Pandai Program merupakan wujud komitmen OJK untuk mendukung program Pemerintah Indonesia dalam meluncurkan Strategi Nasional Inklusi Keuangan, yang sebagian adalah branchless banking. Laku Pandai membayangkan penyediaan perbankan dan/atau jasa keuangan lainnya bukan melalui jaringan kantor, tetapi melalui kerja sama dengan pihak lain dan perlu didukung dengan penggunaan fasilitas teknologi informasi. Berdasarkan data OJK, program Laku Pandai mengalami kemajuan; namun, kebijakan pemberdayaan Laku Pandai masih menjadi fokus OJK pada 2019-2020, karena masih ada beberapa kendala pelaksanaannya. Agen Laku Pandai, sebagai pelaku usaha mikro, membutuhkan pemberdayaan. Penelitian ini bertujuan untuk mengkaji perlindungan hukum, kendala, manfaat dan pemberdayaan pelaksanaan Laku Pandai. Metode penelitian yang digunakan adalah yuridis normatif dan sosiologis dengan menggunakan data sekunder dan primer, dan analisis data menggunakan metode kualitatif normatif. Hasil penelitian menunjukkan bahwa perlindungan hukum tidak optimal, bahwa terdapat beberapa hambatan pelaksanaan branchless banking baik dari agen maupun bank serta pemberdayaan agen perbankan non branchless mikro sangat berguna dalam mencapai tujuan Pemerintah demi terwujudnya keuangan inklusif di Indonesia.*

**Kata kunci:** Laku pandai, Perlindungan Hukum, Pemberdayaan

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## Introduction

The term Laku Pandai has been granted official recognition since the issuance of OJK Regulation No.19 / POJK.03 / 2014 concerning Officeless Financial Services in the Context of Financial Inclusion (laku clever) and OJK Circular No. 6 / SEOJK.03 / 2015 concerning Officeless Financial Services for Financial Inclusion by Banks. The Laku Pandai programme itself is a manifestation of the commitment of the Financial Services Authority (OJK), which supports the Indonesian Government programme launching the National Strategy for Financial Inclusion

(SNKI), of which branchless banking is a part. Laku Pandai is the activity of providing banking and / or other financial services, carried out not through an office network, but through cooperation with other parties; it needs to be supported by the use of information technology facilities.

It is hoped that through Clever behavior that utilizes information technology facilities such as cellular telephones, Electronic Data Capture (EDC) and / or internet banking that supports financial services by banks through agents, people in remote and / or low-income areas can be reached, with simple characteristics making it easier to understand. It is also expected to increase public awareness of the importance of financial management. If this awareness is expanded and strengthened at every level of society, it will support the realization of Financial Inclusion in Indonesia. Branchless banking program has also been implemented in the UK, Europe and North America, because of this form of electronic growth (Willis, 2001).

According to OJK, going forward, there are seven policy directions for supporting Indonesia's economic growth. The direction of this policy is the focus of the OJK in 2019-2020, and the third OJK policy is the empowerment of ultra-micro, micro, small and medium enterprises (MSMEs), such as government program People's Business Credit (KUR), Micro Waqf Bank (BWM), and branchless banking. Smart behaviour as a micro business needs empowerment in 2019-2020, according to OJK policy. Community empowerment is an effort to provide power or strengthening to the community; an empowerment process consists of a series of activities to strengthen weak groups in society, including individuals experiencing poverty problems. The Laku Pandai community includes people who carry out activities providing banking and / or other financial services not through office networks, but through cooperation with other parties. Given that the Laku Pandai community is classified as ultra- micro or micro enterprises, it is considered a weak group and needs to be strengthened or empowered.

Based on OJK data of March 2019, the implementation of smart behaviour has been done in 26 conventional commercial banks and 4 Islamic commercial banks, with the number of agents increasing from 3,734 to 1,073,134, the number of outstanding accounts from 35,984 customers to 23,340,281, and the amount of outstanding savings from a mere Rp2.9 billion to Rp2.51 trillion. This indicates that the Laku Pandai programme has indeed progressed. However, the policy of empowering smart behaviour is still the focus of the OJK in 2019-2020. This is because, inter alia, it is reported, based on the results of a survey from the Institute for Economic and Community Research (LPEM)

(Faculty of Economics and Business, University of Indonesia), that many people are still unaware of the cleverness program and digital financial services.

Existing branchless banking needs to be developed, to enable banking and other financial services to reach all levels of society throughout Indonesia. In addition, several obstacles related to Laku Pandai need to be addressed. These include security issues, including the low credibility and trust in providers and the services provided, so that supervision needs to be focussed on, to increase customer protection. Another legal problem that has arisen regarding Laku Pandai is the lawsuit against Bank Sahabat Sampoerna (BSS) filed by Bambang Widodo and Endang Trido over the Tasaku program, as an attack on the Laku Pandai promoted by the government.

This research will provide important support OJK's policies, in an effort to empower Laku Pandai agents as micro-entrepreneurs, by identifying and assessing the problems of and protection for Laku Pandai laws. This research will also identify and examine the constraints faced by and the benefits of implementing Laku Pandai and the efforts to empower Laku Pandai agents as micro-entrepreneurs, to achieve the ultimate goals of the National Strategy for Financial Inclusion (SNKI).

## Research Problems

1. What are the problems and optimization of legal protection related to Laku Pandai?
2. What are the constraints in and benefits of Laku Pandai implementation and efforts to empower Laku Pandai agents as micro-entrepreneurs?

## Research Method

The approach method in this research is normative and sociological juridical. The data in this study were sourced from secondary data in the form of laws and regulations, literature, scientific papers, and primary data obtained from resource persons from banks, Laku Pandai agents and the OJK. Data obtained were analysed with qualitative normative.

## Discussion

### 1. Problems and optimisation of legal protection related to Laku Pandai

According to POJK No. 19 / POJK.03 / 2014, the legal relationship between the Bank as the organizer of Laku Pandai and the Laku Pandai Agent is based on the cooperation agreement with the Laku Pandai Agent in the form of an individual and / or a legal entity.

According to Article 1313 of the Civil Code, an agreement is an act (law), by which one or more people bind themselves to one or more people (or both parties bind themselves to each other). Judging from the arrangement of an agreement, a named contract and an innominate contract can be distinguished. The former is an agreement that is named and gets a special arrangement in a law, while an anonymous / innominate contract is an agreement where there is no specific arrangement in the law, arising based on the freedom of the contract, with the naming of the agreement, by the maker (Article 1319 of the Civil Code).

The question arises as to which category the cooperation agreement between the bank and the agent belong, considering that such a contract reflects three types of agreement, viz., agency agreement because it uses the term agent, agreement granting power of attorney because there is power given by the bank to the agent, and cooperation agreement because the agreement is titled as a cooperation agreement.

According to Ari Wahyudi Hertanto, an agency agreement has the following elements: a. Parties who sell goods or services for and on behalf of the principal; b. Income received is in the form of a commission based on the amount of goods or services sold to consumers; c. Goods are sent directly from the principal to the consumer, if the agent and consumer reach an agreement; d. Payment for goods received by consumers goes directly to the principal, not through the agent (Wahyudi, 2007). Based on the cooperation agreement between PT. Bank Rakyat Indonesia (Pesero) Tbk Purwokerto Branch Office with the agent regarding BRILink Services (the agreement the author is researching) there is an element of an agency agreement, because the agent sells Bank products such as savings, submits BRI's Kupedes, cash deposits, deposits loans and other claims, withdrawals and other financial services. Services rendered by the agent for selling the Bank's products are rewarded in the form of a BRILink Agent sharing fee, a fee sharing for each BRI Link Agent transaction. According to Muhamad Absar, an agency agreement can be realized only when it meets the requirements in Permenperindag No.11 / 2006. In an agency agreement, the Agent acts in the interest of the principal. The agent is not responsible for losses incurred by consumers due to the use of goods and services produced by the principal (Absar, 2014).

The agreement to grant power or *lastgeving* is regulated in Articles 1792-1819 of the Civil Code. Article 1792 of the Civil Code reads: The granting of power is an agreement whereby a person gives power to another, who receives it, to carry out an affair on his behalf. The elements of the agreement granting power of attorney in Article 1792 of the Civil Code consist of the authoriser gives power to the power

of attorney, to carry out an affair on behalf of the authoriser. The cooperation agreement between the Agent and Bank Rakyat Indonesia fulfils the elements of the power of attorney agreement, because based on the agreement, the Bank appoints a BRILink Agent and authorises the BRILink Agent to act on behalf of the Bank in implementing BRILink services at the BRILink Agent's place of business.

The agreement between the Agent and Bank Rakyat Indonesia is a cooperation agreement, as its very title indicates, with the background to the agreement calling it a written agreement to carry out cooperation as set out in the Cooperation Agreement on BRILink Services.

Thus, in the cooperation agreement between PT. Bank Rakyat Indonesia (Pesero) Tbk, Purwokerto Branch Office and the agent indicated above, there are elements of agency, power- granting and cooperation, all combined in a single agreement, which is based on the principle of freedom of contract (Article 1338 Civil Code). Hence, by signing the agreement, the parties are subject to it, based on the *pacta sunt servanda* principle. In terms of Article 1319 of the Civil Registry, agreement includes an anonymous agreement. Thus, in the event of a dispute between the Agent and the Bank, rules used as a legal basis for resolving it are the agreements they make themselves, based on the *pacta sunt servanda* principle and the general provisions in Chapters I, II, IV of Book III of the Civil Code.

Based on the cooperation agreement, the Agent is obliged to report to the Bank if a customer is suspected of being linked to crime, terrorism, distribution of illegal drugs, etc. The Agent must keep all information regarding customer data and deposits confidential, including those on transaction receipts and is obliged to educate new customers about the benefits and risks associated with savings, applicable terms and conditions for opening an account, etc. The Agent must maintain the confidentiality of username and password. This means that agents, in performing bank product services, must comply with the provisions of banking legislation, based on the principle of prudence, maintaining the confidentiality of customer data and providing legal protection to customers, just as a bank in a legal relationship with its customers must do in compliance with the banking law and implementing regulations.

Based on the author's research at the Bank BNI Purwokerto Branch Office (KC), in the smart behaviour programme launched in 2016, there are 1,107 individual agents as at July 2020. The problem that occurs in general is that when an Agen46 is not transacting / passive / dormant and is not interested in reactivating the Agen46 system, BNI ends the legal relationship with the agent concerned, which has happened in 37 cases. When BRI began launching the Branchless Banking program between 2015 and 2019, there were 1,736 individual

agents, but as of 23rd August 2020, there were only 1,276. The reduction was due to some agents not reaching the specified target, leading to ending of legal relations with the relevant BRILink Agents.

Problems that generally arise in an Agent-Customer relationship include transaction incompatibility, because the Customer and Agent forget the details of the transaction carried out, while the Bank includes detailed proof of the transaction, so that it can address any problems. Problem solving is usually done informally, as between members of a family. If there is a mistake in entering the account number due to negligence of the Agent, then the Agent is responsible. For misusing the customer's Username and password the Agent must be responsible, and if there is an indication of fraud by the Agent, the Bank will immediately close the system.

Branchless banking programme, which is regulated by OJK REGULATION No. 19 / POJK.03 / 2014, requires Banks to report programme details to OJK. This obligation is one of the methods of indirect supervision by OJK, while direct supervision is carried out by them through periodical checks on banks that operate branchless banking programmes.

The essence of supervision is to prevent irregularities, waste, diversions, obstacles, mistakes and failures in achieving goals and objectives and the implementation of organizational tasks as early as possible (Lembaga Administrasi Negara Republik Indonesia, 1997). According to Tatiek Sri Djatmiati, in the study of administrative law, supervision is part of the aspect of legal enforcement and consists of 1. Supervision and 2. Sanctions. Supervision is carried out on the compliance of community members so that mandatory or prohibited provisions are not violated. As sanctions are also an instrument of imposition, the formation of rules containing sanctions must be by a body with authority to make laws and regulations (*Algemeen Verbindende Voorschriften*) (Djatmiati, 2004).

In the case of Bank BNI KC Purwokerto, which launched the Branchless banking program in 2016, it was only in 2018 that the OJK made visits to several Agen<sup>46</sup> to confirm services and completeness of files relating to cooperation agreements, certificates and communication materials. This indicates that OJK has not carried out supervision through direct examination regularly. In the case of BRI KC Purwokerto, which launched the Branchless Banking program in 2015, supervision by OJK was limited to a sample check of documents. As the essence of supervision is to prevent irregularities and address the failure to achieve the goals and objectives of Branchless Banking as early as possible, OJK should carry out supervision of the implementation of the Branchless Banking programme at least once a year, in accordance with the provisions.

Another legal problem that has arisen related to Branchless Banking is the lawsuit against Bank Sahabat Sampoerna (BSS) filed by Bambang Widodo and Endang over the BSS Tasaku (Saku Savings) programme, which is deemed to have violated the copyright of Bambang Widodo and Endang, namely Tapi (Smart Child Savings). This lawsuit amounted to an attack on the implementation of Branchless Banking, which was promoted by the government. The Central Jakarta District Court rejected the lawsuit of Endang and Bambang, considering that the Tasaku product is a bankless savings program (Branchless Banking) launched by BSS in collaboration with the Alfa Group as a place to open accounts or accounts in accordance with OJK REGULATION No.19 / POJK.03 / 2014. In the decision, the defendants stated that they have accepted the exception or objection, which states that the claim was addressed to the wrong party or an error in persona.

According to Sulistyandari, legal protection is related to how the law provides justice, i.e. providing or regulating rights and obligations to legal subjects. It is also further related to how the law provides justice to legal subjects, whose rights have been violated, to defend their rights. The law in question can be in the form of statutory regulations that are generally binding, an agreement that binds the parties making it or a court decision that binds the disputing parties (Sulistyandari, 2012). Protection of Branchless Banking Agents takes the form of rights obtained from legislation such as the OJK Law, OJK REGULATION No. 19 / POJK.03 / 2014, the cooperation agreement between the Bank and the Branchless Banking Agent or a court decision in the event of a dispute. Based on the above, laws, agreements and court decisions in the case of Bank Sahabat Sampoerna (BSS) vs Alfamart Group Agents have provided legal protection to Branchless Banking Agents. However, as the supervision of Branchless Banking by OJK has not been carried out as required by law, it is necessary to optimize OJK supervision in the implementation of the Branchless Banking program, to provide it optimal legal protection.

## **2. Obstacles to and the benefits of implementing Branchless Banking and efforts to empower Branchless Banking agents as micro-entrepreneurs**

According to Article 1 number 3 OJK REGULATION No. 19 / POJK.03 / 2014, Officeless Financial Services for Financial Inclusion, hereinafter referred to as Branchless Banking, is an activity to provide banking and / or other financial services that are carried out not through office networks, but in cooperation with other parties and need to be supported by the use of information technology facilities. Other parties who carry out banking service activities are Branchless Banking Agents. According to Articles 17 and 18 of OJK

REGULATION No. 19 / POJK.03 / 2014, Branchless Banking agents can be individuals and / or legal entities.

Based on the research on agents, it is found that the following obstacles are encountered in implementing Branchless Banking. It is not easy to convince the public to become a Customer of a Branchless Banking Agent, because the Customer does not receive a physical savings book usually given by regular banks. Transactions are made through cell phone. The Branchless Banking business pattern is exposed to the risk of criminal acts such as theft or robbery, where the agent must face the risk, because the Agent holds and handles cash when putting through transactions for electricity, mobile phone purchases, money transfers and savings deposits from Customers. Banks, however, do not face the risk of losing money, because withdrawal or deposit transactions will be debited or credited to the Agent's account at the Bank. As per information obtained from the Bank, the main obstacle is information technology. While banking services through Branchless Banking agents use information technology facilities, generally, Agents in remote villages are less able to use information technology and explain its use to customers. There is a tariff war on transaction rates between banks, enabling agents to switch to other branchless banking banks.

In accordance with the policy direction being implemented to support Indonesia's economic growth, the focus of OJK for 2019-2020 is the empowerment of micro businesses including Branchless Banking Agents. Micro enterprises, according to Law No.20 of 2008 concerning Micro, Small and Medium Enterprises (MSMEs), are productive businesses owned by individuals and / or individual business entities that meet the criteria of Micro Enterprises, namely: a. net assets of not more than Rp.50,000,000.00 (fifty million rupiah) excluding land and buildings for business premises; or b. an annual sales revenue not exceeding Rp. 300,000,000.00 (three hundred million rupiah). Requirements to become a Branchless Banking Agent include having financial capacity (individual agent) or sufficient capital (legal entity agent), the main source of income being business and / or other permanent activities for at least 2 (two) years. Branchless Banking Agents who meet these criteria have the right to be empowered.

Empowerment is a process and a goal. As a process, it is a series of activities to strengthen the power or empowerment of weak groups in society, including individuals who experience poverty problems. As a goal, empowerment refers to the circumstances or results to be achieved by a social change. People who are empowered, have power or the knowledge and ability to fulfil their daily



needs, physical, economic or social, such as having self-confidence, being able to convey aspirations, having a livelihood, participating in social activities, and being independent in carrying out life tasks (Sipahelut, 2010).

Empowerment as a process in research is an activity to strengthen Branchless Banking agents who have a maximum capital of Rp. 50,000,000.00 as micro-entrepreneurs, so that there is an increase. A Branchless Banking Agent who previously lacked knowledge and ability, can be provided with information and training so that he acquires knowledge that could be used for doing business to increase his income. Based on the results of the research, empowerment as a process of activity for Branchless Banking Agents was carried out by BNI KC and BRI KC Purwokerto by providing KUR Mikro credit to Agen46 (10 Agents), based on applicable regulations, thus providing agendas for BRILink agents. Agen46 who carry out business activities in the environmental sector, such as “Agen46 Garbage Bank Srayan Makarya”, get a three-wheeled vehicle for collecting garbage from BNI through the Corporate Social Responsibility Program, and are provided information technology training. The Bank has observed that the provision of KUR, BRILink Agency Credit and garbage collection vehicles to Agen46 can be useful in helping their business and developing Branchless Banking services. Providing agents training in information technology will facilitate their provision of Branchless Banking activities and providing them information about the modes of fraud and criminal acts that are often carried out will enable them avoid crime.

Empowerment as a goal, a condition to be achieved for social change, (viz., Branchless Banking Agent as a strong business actor capable of providing banking and other financial services), is expected to increase public awareness of the importance of financial management. If this awareness expands and is strengthened at every level of society, it will support the success of Financial Inclusion in Indonesia. Based on the results of the research, with the activities carried out by the Bank as an empowerment process, the development of Branchless Banking service is beneficial to the surrounding community, especially in remote villages, because banking and other financial services such as providing credit, savings, payment for electricity, telephone, purchasing airplane tickets and other financial services, can be served by Branchless Banking Agents in the village. This would immensely help people in need, and enable cultivate public awareness of financial services, especially in remote villages. Benefits for Banks from the Branchless Banking programme include third party funds at the Bank (agent balances at the Bank), services at the bank

not being clogged due to accumulation at the counter, and rendered smoothly and expeditiously, with the assistance of Agents.

In view of the existence of the OJK policy to empower Branchless Banking agents, it is necessary to support the Bank as the organizer of Branchless Banking, in order to benefit the surrounding community who need banking and other financial services, so that the Government's goal of realizing Inclusive Finance in Indonesia will be achieved. The empowerment of micro Branchless Banking agents by banks still needs to be improved.

### **Conclusion**

Though cooperation agreements exist between the bank and branchless banking agents, as do laws and regulations (OJK Law, OJK REGULATION No. 19 / POJK.03 / 2014) in support thereof, and though the Court has handed down a good decision providing legal protection for branchless banking (Banks and Agents), the implementation of branchless banking, especially supervision by the OJK to provide legal protection for branchless banking, leaves a lot to be desired.

Though there are several obstacles to the implementation of smart behaviour for both Agents and Banks, empowering micro branchless banking is indeed beneficial to Agents, Banks and the surrounding community who need banking and other financial services, thus helping to achieve the Government's goals for the realization of inclusive finance in Indonesia.

### **Suggestions**

OJK's supervision of the implementation of branchless banking needs to be carried out regularly, so that legal protection for branchless banking will be optimal.

The Bank and Branchless Banking Agents must work together to minimize obstacles in implementing Branchless Banking. The empowerment of Micro Branchless Banking Agents needs to be improved by the Bank, because it has been responsible for creating awareness of banking and financial services, especially in communities in remote villages.

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