

THE IMPLEMENTATION OF AGENCY PRINCIPLES IN BRANCHLESS BANKING SERVICES

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ABSTRACT

The main function of Indonesian banking is accepting deposit and lending loans to support the implementation of national development in order to improve economic growth and national stability. In order to achieve the main objective of banking, bank as the agent of development and service agents should maximize its role that provide excellent service to the community. One of the bank services is to provide the convenience of banking facilities through banking agents, which is an extension of the bank. The regulation concerning branchless banking services are Indonesia Financial Authority Regulation No. 19/POJK.03/2014 concerning Smart Act Branchless Banking Service for Financial Inclusion and Indonesia Financial Authority Circular Letter No. 6/SEOJK.03/2015 concerning Smart Act Branchless Banking Service for Financial Inclusion. However, the presence of these branchless banking services agents is not followed by clear definition of agent/agency and adequate regulation so there is no standard in implementing agency law. This article examines further the implementation of the agency principles in banking agency agreement by taking the example of branchless banking services agency agreement between Bank Negara Indonesia with Arindo Pratama by limiting on the implementation of the basic principles of agency in branchless banking services agency and the relevance of the implementation of agency principle within branchless banking agency agreement.

Keywords: Agent; Agency; Branchless Banking; Financial Inclusion

ABSTRAK

Fungsi utama perbankan Indonesia adalah menerima deposit dan pemberian pinjaman untuk menyokong pelaksanaan pembangunan nasional untuk meningkatkan pertumbuhan ekonomi dan kestabilan negara. Untuk mencapai matlamat utama perbankan, bank sebagai agen ejen pembangunan dan perkhidmatan perlu memaksimumkan peranannya yang memberikan perkhidmatan terbaik kepada masyarakat. Salah satu perkhidmatan bank menyediakan kemudahan perbankan melalui ejen perbankan, yang merupakan lanjutan dari bank. Peraturan perbankan tanpa cawangan adalah Peraturan Pemerintah Indonesia No. 19 / POJK.03 / 2014 tentang Laku Pandai Layanan Perbankan Tanpa Cabang Untuk Kemasukan Keuangan dan Pekeliling Otoritas Lembaga Keuangan Indonesia Nomor 6 / SEOJK.03 / 2015 tentang Laku Pandai Layanan Perbankan Tanpa Cabang untuk Kemasukan Kewangan. Walau bagaimanapun, kehadiran ejen perkhidmatan perbankan tanpa cawangan ini tidak diikuti oleh definisi ejen / agensi yang jelas dan peraturan yang mencukupi supaya tidak terdapat undang-undang dalam melaksanakan undang-undang agensi. Artikel ini akan mengkaji lebih lanjut pelaksanaan prinsip-prinsip agensi dalam perjanjian agen perbankan dengan mengambil contoh perjanjian lembaga perbankan cabang perbankan antara Bank Negara Indonesia dengan Arindo Pratama dengan membatasi pelaksanaan prinsip-prinsip dasar lembaga di lembaga layanan perbankan tanpa cabang dan kaitan penerapan prinsip agensi dalam perjanjian perbankan cabang tanpa cabang.

Kata Kunci: Ejen; Agensi; Perbankan Tanpa Cawangan; Inklusi Kewangan

INTRODUCTION

Nowadays, economic activity is inseparable from the banking activities where the velocity of money related to economic growth. In order for economic activities to run properly, a financial institution is required to maintain economic stability. One of them is a banking institution that is the core of a country's financial system (Hermansyah, 2014).

Bank has an important role in the state financial system, as an agent of economic development, in which the bank as an institution that mobilizes funds for the economic development of a country by deposits and granting loans that are necessary for economic activity in the real sector (I. B. Indonesia, 2013). Indonesia Banking Statistic as per February 2017 by Financial Services Authority of Indonesia (Indonesian: Otoritas Jasa Keuangan or OJK) showed the development of branch offices based on bank location did not grow significantly (Keuangan, 2017). Only around 22% of Indonesians are connected to formal financial institutions. The inclusiveness of our financial sector needs to be improved (K. Indonesia, 2017).

However, the number of banking customers in Indonesia, it is expected that banks can meet these needs, thus encouraging economic growth and equitable development among regions in Indonesia. One of the bank's efforts to fulfil the community's need for banking services is to work collectively by appointing others to do certain work for and on behalf of the employer and under the supervision of the employer, this type will be subject to the provisions relating to agency law. Agency defined as fiduciary relationship between two parties in which one (the agent) is under the control of (is obligated to) the other (the principal), the agent is authorized by the principal to perform certain acts for and on behalf of the principal. The principal is bound by the acts of the agent, performed in carrying out entrusted duties and within the scope of agent's authority (Santoso, 2015).

Nowadays in banking systems, agency becomes one of the options that banks use to continue to function as agents of services that provide the best service to customers and prospective customers. For instance, in Kenya, banking agency is governed by the Prudential Guideline on Agent Banking issued by the Central Bank of Kenya (CBK) and which became operational on 1st May 2010. In February 2011, the Central Bank of Kenya released regulations allowing banks to offer services through third party agents approved by the CBK. The use of the agency banking model by banks has continued to improve access of banking services since its launch in 2010. As at 30th June 2013, CBK had authorized 13 commercial banks to offer banking services through third parties (agents). Since 2010, a total of 19,649 agents had been contracted facilitating over 58.6 million transactions (Charles Gitonga Ndungu, 2014).

Banking Agency in Indonesia known as Laku Pandai (Smart Act Branchless Banking Service for Financial Inclusion) to fulfil the conditions of Indonesia where 203 million people earning under \$4.50 a day, most of who don't have access to formal banks 56.57 Micro, Small, Medium Enterprises (MSMEs), generating an estimated 57% of the nation's GDP. 79% of these MSMEs do not have access to any type of formal financial services and 2558 million people or 80% of the population do not have formal bank accounts (K. Indonesia, 2017). Regarding Laku Pandai regulated in Indonesia Financial Authority Regulation No. 19/POJK.03/2014 concerning Smart Act Branchless Banking Service for Financial Inclusion and Indonesia Financial Authority Circular Letter No. 6/SEOJK.03/2015 concerning Smart Act Branchless Banking Service for Financial Inclusion. Laku pandai under those regulation is parties (individuals and/or legal entities) in collaboration with the Organizing Bank of Smart Accounts and become an extension of the bank to provide banking services and other financial services as agreed to the public in the framework of inclusive finance.

Currently, there are 17 (seventeen) banks that have registered license to open branchless banking services. Based on business law perspective, Laku Pandai is form of agent which refers to the agency law (Authority, 2017). Particularly in the field of banking services, the regulations specifically regulating agency are Indonesia Financial Authority Regulation No. 19/POJK.03/2014 concerning Smart Act Branchless Banking Service for Financial Inclusion and Indonesia Financial Authority Circular Letter No. 6/SEOJK.03/2015 concerning Smart Act Branchless Banking Service for Financial Inclusion.

This article examines further the implementation of the agency principles in banking agency agreement by taking the example of branchless banking services agency agreement between Bank Negara Indonesia with Arindo Pratama by limiting on the

implementation of the basic principles of agency in branchless banking services agency and the relevance of the implementation of agency principle within branchless banking agency agreement.

METHOD AND MATERIAL

This article analyzes the implementation of basic principles of agency law in Indonesia in branchless banking services agency through Indonesia Financial Authority Regulation No. 19/POJK.03/2014 concerning Smart Act Branchless Banking Service for Financial Inclusion and Indonesia Financial Authority Circular Letter No. 6/SEOJK.03/2015 concerning Smart Act Branchless Banking Service for Financial Inclusion under doctrinal legal research or pure legal research method. The doctrinal legal research method is a legal research that relies on bibliography or secondary data (Mamudji, 2004). Hutchinson defined doctrinal research as a research which provides a systematic exposition of the rules governing a particular legal category, analyses the relationship between rules, explains areas of difficulty and, perhaps, predicts future development (Hutchinson, 2012). All illustrations including figures, charts and graphs, must be labelled and supplied on pages separate from the text.

RESULTS AND DISCUSSIONS

A. Implementation of Agency Principles in Branchless Banking Services Agency

Technology advancements have been able to make tremendous changes including the business world the need for various services has been completed in a shorter, accurate, precise time because it uses technological means. In banking world, one of the sectors that are highly dependent on modern technology to speed up transactions and to reach a wider range of services to customers around the world, such as automatic teller machine facility, mobile banking and branchless banking. Branchless banking services are new tool in the banking world whose presence requires the assistance of others who work with the organizing bank, the agent. During this time banks are able to handle all the tasks and functions of the bank independently without the help of others. Nevertheless, today's development demands a diverse range of banking services that society needs as well as the desire to extend the reach of financial services to almost all levels of society, in that context, the need for other parties to assist in the realization of financial services for the wider society is needed. During this time most agents are identified with his services in the sale of products in the form of goods.

Indonesia Financial Authority (Indonesian: Otoritas Jasa Keuangan or OJK) enacted Indonesia Financial Authority Regulation No. No. 19/POJK.03/2014 concerning Smart Act Branchless Banking Service for Financial Inclusion to supervise the financial services, especially agent in relation to providing access to financial services for unbanked people. The implementation of Indonesia Financial Authority was stipulated in cooperation agreement between bank and parties who provided branchless banking (as an agent). In accordance with the Indonesia Financial Authority regulation, the legal relationship between the organizing bank and the third party in assisting the branchless banking made into a written agreement, one of which is Bank Negara Indonesia. There are some basic principles that require more in-depth study comparing with Indonesia Financial Authority Regulation No. 19/POJK.03/2014 concerning Smart Act Branchless Banking Service and cooperation agreement between organizing bank with the agent. Those basic principles are:

1. Understanding of Agency and Agent

Pursuant to Indonesia Financial Authority Regulation No. 19/POJK.03/2014 concerning Smart Act Branchless Banking Service for Financial Inclusion the other party appointed to perform branchless banking known as agent that defined as parties cooperating with bank and becomes an extension of the bank to provide branchless banking services to the community for inclusive finance as agreed. In fact, there is different meaning of agent in banking services agreement between Bank Negara Indonesia and Arindo Pratama, which defined agent as second parties (without explained that agent as the extension of the bank) to provide branchless banking.

In academic perspective, definition of agent in agency agreement between Bank Negara Indonesia and Arindo Pratama did not reflect the understanding of the agent and had not fulfilled the basic principles as an agent. To be able to give sufficient restrictions to the agent must be given the first understanding of what the agency (Agency), it is because the notion of new agents appears after the first known underlying legal relationship. Black's Law Dictionary defined agency as: "a relationship between

two persons, by agreement or otherwise, where one (the agent) may act on behalf of the other (the principal) and bind the principal by words and actions. Relation in which one person acts for or represents another by letter's authority, either in the relationship of principal and agent, master and servant, or employer or proprietor and independent contractor. It also designates a place at which business of company or individual is transacted by an agent. The relation created by express or implied contract or by law, whereby one party delegates the transaction of some lawful business with more or less discretionary power to another, who undertakes to manage the affair and render to him an account thereof. Or relationship where one person confides the management of some affair, to be transacted on his account, to other party. Or where one party is authorized to certain act for, or in relation to the rights or property of the other. But means more than tacit permission, and involves request, instruction, or command. The consensual relation existing between two persons, by virtue of which one is subject to other's control (Black, 1991).

Based on the understanding in the Black's Law Dictionary, it can be concluded that the agency is a relationship between two parties as outlined in the form of agreement, in which either party (called the agent) is authorized to perform actions for on behalf of others (the principal) and the action of the agent will bind the principal either because it is poured in the agreement or caused by the action. The action of a person acting on behalf of another person is usually expressed in a written letter of authorization or delegation, as in the relationship between principal and agent, between master and servant, between employer and employee. The agency relationship pattern can be used for individual or corporate purposes. The agency relationship may be clearly stated in the contract or not expressly stated in the contract or may also occur due to regulatory provisions, in which a person delegates to another party to conduct a business transaction that is not prohibited by law on the other with little or no authority to do discretion in doing a delegated act, the most important of all is that the work of an agent is under the supervision of the principal.

Furthermore, agency defined as the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act (Black, 1991). Thus the agency is a relationship based on a full trust which is a manifestation of the agreement of the parties to which a person agrees to perform certain acts or legal actions for and on behalf of others, and under the supervision and approval of others. Another definition of agency is relation which one person, the agent act on behalf of another with the authority of the latter, the principal; "a fiduciary relation which results from the manifestation of consent by one person that another shall act on the former's behalf and subject to his control, and consent by the other so to act, the act of the agent will be binding on his principal (Gifis, 1984).

Related to definitions of agent, Black Law Dictionary defined agent as a person authorized by another (principal) to act for or in place of him; one intrusted with another's business. One who represent and acts for another under the contract or relation of agency. A business representative, whose function is to bring about, modify, affect, accept performance of, or terminate contractual obligations between principal and third person. One who undertakes to transact some business, or to manage some affair, for another, by the authority and on account of the letter, and to render an account of it. One who acts for or in place of another by authority from him; a substitute, a deputy, appointed by principal with power to do the things which principal may do. One who deals not only with things, as does a servant, but with a person, using with own discretion as to means, and frequently establishing contractual relation between his principal and third persons. One authorized to transact all business of principal, or all principal's business of some particular kind, or all business at some particular place (Gifis, 1984).

The relationship between the two parties is made in a written agreement known as the agency agreement; however, it does not mean that the agency relationship is a contractual relationship because the agency relationship can occur without any compensation received by the agent (gratuitous agent, voluntary without compensation in the form of payment). But the rights and duties inherent in the agent as well as the agent who gets paid for the work he does.

2. Identifying: General Agent or Special Agent under Indonesia Financial Authority Regulation in Branchless Banking Services?

Article 19 Indonesia Financial Authority No. 19/POJK.03/2014 concerning Smart Act Branchless Banking Service for Financial Inclusion regulated agent in banking services as follows:

- a) The agent serves customers and/or prospective customers in accordance with the scope of services specified in the cooperation agreement;
- b) The scope of services as referred to in section (1) consists of:
 1. saving transactions with basic services account characteristics, including the opening of accounts, depositing and withdrawing cash, book-entry, bill payment, fund transfer, checking balance, and or closing of accounts;

2. transactions related to credit or financing to micro-customers including receipt of application documents, disbursement, collection or receipt of installment payment and/or principal redemption;
 - a. transactions related to savings other than savings with the characteristics of basic services account include withdrawals and cash withdrawals, book-entry, payments, and or transfers;
 - b. transactions related to other services or financial services in accordance with applicable regulations.

Article 19 Indonesia Financial Authority Regulation concerning Smart Act Branchless Banking Service does not expressly mention whether the agent belongs to a general agent or is included in a special agent. In agency relations, there can be a general agent or special agent. The difference between the two is actually only a matter of the degree of delegated matter. Special agents are appointed to conduct a single transaction or some simple transactions, as well as the timeframe is limited and often unsustainable. While general agents are paid by principals to conduct a series of transactions for long periods of time. In addition, authority and a number of discretion acts can also be distinguished between special agents and general agents. The general agent has more authority to exercise discretion, the right to choose one consideration among the various alternative considerations it has, rather than the special agent.

Black's Law Dictionary defined General agent as one who authorized to act for his principal in all matters concerning particular business or employment of particular nature. Whereas, special agent is one to employed conduct a particular transaction or piece of business for his principal or authorized to perform a specified act. An agent authorized to conduct a single transaction or a series of transaction not involving continuity of service (Black, 1991). Based on theoretical analysis, can be concluded that the written contract made between the Bank Negara Indonesia (organized bank) with Arindo Pratama is not a cooperation agreement but attorney agreement because there is authorization given by principal to the agent to perform certain legal actions. Thus the power of attorney agreement does not place the position of the parties must be equal or equal, in contrast to the cooperation agreement that places the position of the parties in a balanced

3. Fiduciary Duties Principles in Branchless Banking Services Agency

Neither the Indonesian Financial Authority Regulation nor agency agreement between Bank Negara Indonesia and Arindo Pratama in terms of the agent of branchless banking services are not based on fiduciary duties principle in agency law. The notion related to fiduciary duties is not found in the article formulation in Indonesian Financial Authority Regulation No. 19/POJK.013/2014 concerning Smart Act Branchless Banking Service for Financial Inclusion as well as in the contract made by Bank Negara Indonesia with agent. Fiduciary duties implemented when a person delegates or authorizes others to perform certain legal acts for and on behalf of and for the benefit of the authorizing party. These legal relationships create a moral obligation to be interconnected, known as the fiduciary duties principle.

Fiduciary duties derived from Roman Law that defined: a person holding the character of trustee, or a character analogous to that of a trustee, in respect to the trust and confidence involved in it and the scrupulous good faith and candour with it requires. A person having duty, created by his undertaking, to act primarily for another's benefit in matters connected with such undertaking; or "person having duties involving good faith, trust, special confidence, and candour towards another. A fiduciary "includes such relationships as executor, administrator, trustee, and guardian (Black, 1991). Davidson defined fiduciary duty as the legal duty to exercise the highest degree of loyalty and good faith in handling the affairs of the person to whom the duty is owned (Knowles, 1997). Violation of fiduciary duties by an agent may result in the cancellation of the contract by the principal. In addition, the agent will be liable for any errors he or she has made, or is also liable for the contracts void by mistake.

4. Supervision Principle by Principals

Indonesia Financial Authority regulation and internal agency agreement between Bank Negara Indonesia and Arindo Pratama not clearly mentioned regarding the authority of principal to supervise the agent. Indonesia Financial Authority Regulation in Article 1 regulated that: agent is a parties cooperating with bank and becomes an extension of the bank to provide branchless banking services to the community for inclusive finance as agreed. Based on the regulation, there no specific clause indicates the authority of principal to supervise the agent. The regulation defined agent as parties cooperating not parties cooperating under supervision of the principal. The impact of unclearly definition about the authority caused the private regulation among Bank Negara Indonesia and Arindo Pratama did not regulated about the supervision principle by principals. Authority to supervise is

an indicator of the agency relationship between the parties. The absence of authority to supervise the agents eliminated the legal relationship of agency.

The philosophy of agency is *Qui facit per alium facit per se* (he who acts through another acts himself) (Charles F. Hemphill, Jr., 1994). United States of America in Restatement (Second) of Agency (Restatement Agency are treaties that summarize detailed recommendation of what the law should be on particular subject. Restatements are not legislature or court made law, they become part of legal precedents when court rely on them and incorporate them into court decisions) stated that the basic concept of agency are: (Knowles, 1997)

- a. Relationship on the basis of trust which is a manifestation of mutual agreement of the parties agreeing that either party will perform certain legal acts for and on behalf of other parties and subject to the supervision and approval of others;
- b. Authorized to act on behalf of another (Principal);
- c. Person (an agent) is authorized to act or conduct business for another party

Thus the character attached to the agency are:

- a. A set of contractual, quasi-contractual and non-contractual fiduciary relationships that involve a person, called the agent, that is authorized to act on behalf of another (called the principal) to create legal relations with a third party
- b. Legal relations between agent and principals is based on written agreement;
- c. Agent act under principal supervision;
- d. Agent has a different position with employee.

Agency is legal concept appears on basic principles of delegation of authority and agreement between agent and principal. Control or supervision from principal is the important element in agency. There are three part of control in agency: (Kleinberger, 2008)

1. Control as element of servant
2. Control as consequence, control is done based on agency status, the principal has the right to supervise the actions of his agent, the principal has the authority to control the details of each agent's actions.
3. Control as substitute method for establishing agency status

5. The Principal Liability

This part discusses regarding the liability of the parties under Article 20 Indonesia Financial Authorization Regulation No. 19/POJK.03/2014 concerning Smart Act Branchless Banking Service comparing with the agency contract between Bank Negara Indonesia and Arindo Pratama regarding branchless banking services. Article 20 Indonesia Financial Authority not regulated the limitation of each party liability like common agency contract (agreement). For that need to be re-emphasized on several things, concerning authority and principal liability.

There are three legal relations regarding the liability of principal to third party:

- a. The employer/master- employee/servant relationship;
- b. The employer – agent relationship;
- c. The employer-independent contractor relationship.

Based on respondent superior doctrine, a party is responsible for (has vicarious liability for) acts of their agents (John Kaplan, Robert Weisberg, 2012). Respondent superior doctrine s not based on an idea that the principal has made a mistake, but this is a peculiarity of a strict liability doctrine, that the responsibility for an adverse action is based solely on the occurrence of a particular act or action rather than based on an error done by the person who has to compensate for certain acts. The superior doctrine response is applied to the agent and cannot be applied to the agent, since the principal has no control over the non-agent.

The principal responsibility for the actions of the agent is basically based on authority (authority is an agent's ability to affect his principal's legal relation) on the actions of the agent. This means that the actions of the new agent will bind the principal if the agent's actions fall within the authority given by the principal. Authority is the ability possessed by the agent to influence the legal relationship of the principal, meaning the legal relationship between agent and third party, which should be the responsibility of the agent itself, because the authority given by the principal to the agent, resulting in the transfer of responsibility to the principal. Thus not all agency actions are principal responsibility.

Authority occurs through two main forms, there are actual authority and apparent authority. Both are based on a clear statement of the principal's consent that agents are permitted to take certain actions and bind principals. For the actual authority the consent statement of the principal must be communicated to the agent. As for the apparent authority, the consent of the principal must be communicated to a third party. Actual authority divided into two forms, namely: express authority and implied authority. Actual authority is specific powers, expressly conferred by a principal (often an insurance company) to an agent to act on the principal's behalf. This power may be broad, general power or it may be limited, special power, also known as 'express authority' (School, 2017). Implied authority is an agent with the jurisdiction to perform acts which are reasonably necessary to accomplish the purpose of an organization. Under contract law, implied authority figures have the ability to make a legally binding contract on behalf of another person or company.

Sometimes an agent does not have an actual authority but can still give the impression that an agent has an authority and that it is trusted by a third party. To protect third parties in such situations the agency rules still allow principals to bind principally to the apparent authority. Apparent authority refers to a situation where a reasonable third party would understand that an agent had authority to act. This means a principal is bound by the agent's actions, even if the agent had no actual authority, whether express or implied (Garner, n.d.).

6. Agent Liability under Bank of Indonesia Regulation No. 13/25/PBI/2011 on Precautionary Principle to Delegate Part of Commercial Bank Works to Third Parties

Delegating authority to another party does not mean that the loss of responsibility in providing protection to the rights and interests of customers. The Bank remains liable if in case the third party commits any action that harms the customer. The Bank should ensure the quality of third parties and conduct regular monitoring to minimize risks arising from third parties, so that the transferred authority remains in place and the interests of customers are protected.

In the submission of financial activities in *laku pandai*, the implementation of its activities shall be submitted by the organizing bank to the agent directly. In practice, the agent will know the customer data directly. This should be closely monitored by the organizing bank because it has a high risk. Emphasized in Article 29 Act No. 10/1998 on Banking, the implementation of *laku pandai* by agent should get extra supervision from the organized bank because the bank should maintain customer trust as the basis of customer relationship with the bank concerned. The organizing bank should monitor and should notify the risks and explain about basic saving account, Smart Claim system, prudential principles and all aspects of banking to the agent and ensure that the agent communicates to the customer.

The Bank shall explain and emphasize the importance of its precautionary principle and its risks to the relevant agent, in order to ensure that the principles of prudence are met. In addition, agent have the right to receive education in provided branchless banking services under Indonesia Financial Authority Regulation No. 19 / POJK.03 / 2014 concerning Smart Act Branchless Banking Service for Financial Inclusion.

B. The Relevance of Agency Principles in Branchless Banking Services Agency Agreement and Indonesia Financial Authority Regulation No. 19/POJK.03/2014 concerning Smart Act Branchless Banking Service

Regulation concerning Smart Act Branchless Banking Service for Financial Inclusion is Indonesia Financial Authority Regulation No. 19/POJK.03/2014 concerning Smart Act Branchless Banking Service then followed up by a cooperation agreement between the bank and parties assisting the implementation of branchless banking services. The cooperation agreement between bank and parties known as agency agreement which can be seen in the general provisions of Article 1 (4) Indonesia Financial Authority regulation that provide the definition of an agent. Thus Indonesia Financial Authority, as the holder of financial services supervision authority in Indonesia, has determined that the agent is the correct format and suitable for the operation of branchless banking services. Nevertheless, no firm definition of agency, unclear rights and obligations of principals and agents, no limitation of liability of each party, make agency law considered not well understood.

Some identified issues about agents and agencies that have not been formulated properly under Indonesia Financial Authority Regulation are:

- a. Definition of agent;
- b. Definition of agency;
- c. Basic principles of fiduciary duties;
- d. Rights of control of principal;

- e. Rights and obligation of the parties;
- f. Parties liability;
- g. Liability to third parties; and
- h. Termination of agency

Table 1: The Basic Principles of Agency Relevant to Branchless Banking Services

No	Indonesia Financial Authority Regulation No. 19/POJK 03/2014	Recommendation
1	Definition of Agent parties cooperating with bank and becomes an extension of the bank to provide branchless banking services to the community for inclusive finance as agreed	<p>Agent is not a cooperating party but a party that receives authority from the principal. The legal relationship is not cooperation but an authorization.</p> <p>Recommendation An agent is a party (individual or legal entities) person who receives authority to perform certain legal acts granted by a principal to perform certain legal acts for and on behalf of his principal. Agency is legal relationship between two parties which is made in written agreement. Agent is authorized to perform actions for and on behalf of principal</p> <p>The implication: The definition of agent in Indonesia Financial Authority Regulation No. No. 19/POJK.03/2014 is not agent and agency. Legal relationship formed are not agency but may be legal relationships between employer and employee</p>
2	Fiduciary Duties Principles	<p>Granting authority to another party to perform certain acts for and on behalf of the principal and for the principal's benefit creates a moral obligation to be obedient. The moral obligation involves two points, such as trust and confidence. Implications of fiduciary duties violations may canceled the contract The moral obligation in agency relations is based on the ancient Roman legal tradition: <i>Qui facit per alium facit per se</i> (He who acts through another acts himself) (Charles F. Hemphill, Jr., 1994)</p>
3	Principal Rights of Control	<p>The principal shall have the right to control over the actions of the agent. The right to control by the principal is one indicator of agency relationships. The absence of the principal authority to oversee the agency's actions hence the legal relationship is not a legal agency relationship.</p> <p>Implication: Definition of agent in Indonesia Financial Authority Regulation do not regulates concerning principal authority to control and supervise the agent. Conclusion: not agency relationship Contract was made by each parties which not eligible is void contract</p>
4	Parties liability	Indonesia Financial Authority Regulation No. 19/POJK.03/2014 and agency contract between Bank Negara Indonesia and Arindo Pratama, has been stated concerning rights and obligations of each

parties. However, there are some points which have not been stated in the contract. There are:

Agent Obligations

Duty of good faith;

Duty of loyalty;

Duty to obey instructions;

Duty to notify the principal;

Duties to account;

Duty to conduct business with reasonable skill and diligence;

Duty to communicate and obtain instructions in case of difficulty;

Duty to segregate funds;

Duty not to make any secret profit;

Duty not to delegate authority;

Duty not to use information obtained in the course of the agency against the principal.

Principal Obligations:

Compensation, the principal shall pay the agent of all services which have been made as agreed in the agency agreement. Thus compensation means principal payments to agents for services already provided to third parties (payment of service);

Compensation, customary compensation and commission;

Reimbursement, the principal shall reimburse all expenses incurred by the agent in relation to performing the principal's ordered work with the agent.

Indemnity, the agent has the right to be assured that all instructions given by the principal are in conformity with applicable law. The right of an agent to obtain assurance of protection for losses incurred in carrying out his duties from a principal is called indemnity.

Cooperation, the principal has an obligation to cooperate with his agent and assist the agent in performing the work delegated to him. Principals are not permitted to undertake actions that prevent the work delegated to their agents.

Save working condition, principals prepare the security of equipment to be used by agents and their employees and working conditions for agents and employees.

5 Limitations of liability in agency

Principal is liable for damages suffered by a third party for the act or action of an agent against a third party within the limits of the authority granted to him and in the event of any loss suffered by such third party occurs at the execution of the contract. Thus the indicator of the limits of liability of the parties is an act committed by the agent within the limits of authority given by the principal to the agent.

This indicator should be formulated on the definition of agency or agency as mentioned in Indonesia Financial Authority Regulation No. 19/POJK.03/2014 and contracts between bank and agent

6 Liability to third parties

The formulation which should be made to indicate the limit of liability to third party is related to disclosure information regarding principal as the form of the contract. Noted: Disclosed principal; Undisclosed principal; Partially disclosed principal

7	Termination of agency contract	<p>Indonesia Financial Authority Regulation No. 19/POJK.03/2014 concerning Smart Act Branchless Banking Service and the agency contract does not regulated in detail, such as: Lapse of time; Purpose achieved; Occurrence of a specific event; Mutual agreement; Termination by one party</p> <p>Termination of agency contract between principal could be made by death or insanity; Impossibility; change circumstances; bankruptcy</p> <p>Generally, the termination of agency agency can be implemented due to the applicable legal provisions, it is not required any notice to a third party. However, if the expiry of the agency relationship is due to the actions or actions of the parties in the agency, the agency relationship will continue between the principal and the agent, until the notice of the termination of the agency relationship by the principal, which cancel or revoke the authority given to the agent, or notice of termination of the agency relationship comes from the agent, releasing or rejecting the authority given by the principal to agent.</p>
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Source: Authors own

Table 1 explains the basic principles of agency that need to be a reference in the making of Indonesia Financial Authority regulations or in contracts made between the bank and agent about branchless banking services.

CONCLUSION

1. The basic principles of agency relationships inherent in agency relationships between principals and agents are not reflected in the Indonesian Financial Authority Regulation No. 19 / POJK.03 / 2014 concerning Smart Act Branchless Banking Service for Financial Inclusion as well as in a contract made between Bank Negara Indonesia as branchless banking operator with branchless banking services agent.
2. Implications arising from the non-fulfilment of the basic principles of agency relations in the Indonesia Financial Authority Regulation No. 19 / POJK.03 / 2014 concerning Smart Act Branchless Banking Service for Financial Inclusion resulted in the regulation being ineligible in regulating agency in branchless banking services. Further implications, contracts made between offshore financial service providers and their agents are null and void. Problems that may arise among the parties in the future as a result of the contract cannot be solved by agency principles, which would also affect the lack of legal certainty governing the legal relationship in case of legal problems in the future.

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